

**THE OFFICE OF CONTRACTING AND PROCUREMENT**

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**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

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The Chief Procurement Officer of the District of Columbia, pursuant to authority granted by section 202 and 204 of the District of Columbia Procurement Practices Act of 1985, as amended, ("PPA"), effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code §§2-302.02 and 2-302.04), and Mayor's Order 2002-207, dated December 18, 2002, hereby gives notice of its intent to adopt the following amendment to Chapter 20 of Title 27 of the District of Columbia Municipal Regulations (Contracts and Procurements). The proposed rules are intended to amend a section of Chapter 20 of Title 27 *D.C. Municipal Regulations*, which concerns special contracting methods which would allow the District to extend an option on an existing contract for more than five (5) years on recurring and continuing services requirements.

Action was taken on April 1, 2005 to adopt the following rules on an emergency basis effective on that date. Without these emergency rules, the Office of Contracting and Procurement will not be able to extend options on several city-wide contracts that are critical to the needs of District residents. These contracts include services for janitorial maintenance; trash and recyclable materials collection services; and food, medical and mental health services for inmates at the Department of Corrections. These contracts provide services that impact the environment, health and safety of District residents. Adoption of these emergency rules to amend Chapter 20 is thus necessary for the immediate preservation of the public peace, health, safety, or welfare, in accordance with the District law as codified at D.C. Official Code §2-505(c)(2001). These emergency rules will remain in effect up to one hundred twenty (120) days from date of adoption, unless earlier superseded by another rulemaking notice or by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The Chief Procurement Officer also gives notice of intent to take final rulemaking action in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The Chief Procurement Officer will submit the rules to the Council of the District of Columbia for a sixty (60) day period of review pursuant to subsection 205(a) of the PPA (D.C. Official Code §2-302.05(a)), and will not take final rulemaking action until completion of the 60-day review period or Council approval of the rules by resolution before the end of the review period.

## CHAPTER 20

## SPECIAL CONTRACTING METHODS

*Section 2005.6 is amended to read as follows:*

**2005 USE OF OPTIONS**

2005.6 The basic period in a contract for services or supplies shall not exceed one (1) year, unless the contract is funded from an appropriation that is available for more than one (1) year. The total of the basic and option periods in a contract for services or supplies shall not exceed five (5) years except, as follows:

- (a) a contract for city-wide telecommunications systems may exceed five years but shall not exceed ten years;
- (b) a contract for medical and mental health services provided to the Department of Corrections may exceed five years but shall not exceed six years; and
- (c) a contract for any supplies or services may exceed five years but shall not exceed five years and six months.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, and send to the Chief Procurement Officer, 441 4<sup>th</sup> Street, 700 South, Washington, D.C. 20001. Comments must be received no later than thirty (30) days from the date of publication of this notice in the *D.C. Register*. A copy of this proposed rulemaking may be obtained at the same address.

DISTRICT OF COLUMBIA  
DEPARTMENT OF MOTOR VEHICLESNOTICE OF EMERGENCY RULEMAKING

The Director of the Department of Motor Vehicles, pursuant to the authority set forth in Section 1825 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code § 50-904); Section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)); and Mayor's Order 03-58, effective April 21, 2003, hereby gives notice of the adoption, on an emergency basis, of an amendment to Chapter 22 of Title 18 of the District of Columbia Municipal Regulations (DCMR) (Vehicles and Traffic). The amendment moves the definition of an open alcoholic beverage container to a new subsection.

The facts that constitute emergency circumstances are as follows:

Section 601(h) of the Department of Motor Vehicles Reform Amendment Act of 2004 (D.C. Act 15-704), will establish a fine for violating 18 DCMR § 2224, Alcoholic Beverages in Motor Vehicles. It is projected to take effect April 12, 2005. However, the subsection where the fine is to be codified, 18 DCMR § 2224.4, already contains the definition of the term "opened alcoholic beverage container". It is therefore necessary to move the definition to a new subsection 2224.5 to preserve the Council's intent.

This emergency action was taken to provide for the immediate preservation of the public health, safety and welfare. The emergency rulemaking was adopted on April 11, 2005 and became effective immediately upon that date.

This emergency rule will expire on August 10, 2005, one hundred and twenty (120) days after its adoption.

Title 18, DCMR, Chapter 22, Section 2224, ALCOHOLIC BEVERAGES IN MOTOR VEHICLES, is amended by moving the text in subsection 2224.4 to a new subsection 2224.5.

**D.C. OFFICE OF PERSONNEL****NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000 and Mayor's Order 2004-166, dated September 30, 2004; and in accordance with Title II of the Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (Act), effective February 17, 2005 (D.C. Act 16-30), and any similar succeeding legislation, hereby gives notice of the adoption of the following emergency rules. The Act requires that criminal background checks be obtained for: (1) persons being considered for paid employment, or unsupervised voluntary services, with District government agencies that meet the definition of "covered child or youth services provider" in section 202 (3) of the Act; and (2) employees and unsupervised volunteers in District government agencies considered covered child or youth services providers. The Act also requires that traffic record checks be conducted for certain persons being considered for employment, compensated or voluntary, with District government agencies considered covered child or youth services providers; that employees and unsupervised volunteers submit to periodic criminal background checks; and that rules be issued to implement the provisions of the title. Therefore, to ensure the preservation of the welfare of the public in general, and to ensure the preservation of the welfare of children and youth in particular, action was taken on March 11, 2005 to supersede the Notice of Emergency and Proposed Rulemaking adopted on December 16, 2004 and published at 52 DCR 1006 (February 4, 2005), and adopt the following rules on an emergency basis effective March 18, 2005. These emergency rules implement the provisions of the Act by adding a new section 412 to Chapter 4, Organization for Personnel Management, of Title 6 of the District of Columbia Municipal Regulations. These rules will remain in effect for up to one hundred twenty (120) days from March 18, 2005, unless earlier superseded by another rulemaking notice.

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000 and Mayor's Order 2004-166, dated September 30, 2004; and in accordance with Title II of the Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (Act), effective February 17, 2005 (D.C. Act 16-30), and any similar succeeding legislation, hereby gives notice of the intent to adopt the following proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The Act also requires that rules be issued to implement the provisions of the title. Accordingly, these proposed rules would implement the provisions of the Act by adding a new section 412 to Chapter 4, Organization for Personnel Management, of Title 6 of the District of Columbia Municipal Regulations. Upon adoption, these rules would amend Chapter 4, Organization for Personnel Management, of Title 6 of the District of Columbia Municipal Regulations, published at 32 DCR 75 (January 4, 1985) and amended at 33 DCR 4447 (July 25, 1986), 51 DCR 928 (January 23, 2004), and 51 DCR 11591 (December 24, 2004).

**CHAPTER 4****ORGANIZATION FOR PERSONNEL MANAGEMENT**

*A new section 412 is added to read as follows:*

- 412 CRIMINAL BACKGROUND CHECK AND TRAFFIC RECORD CHECK REQUIREMENTS – DISTRICT GOVERNMENT AGENCIES CONSIDERED COVERED CHILD OR YOUTH SERVICES PROVIDERS**
- 412.1 Pursuant to Title II of D.C. Act 16-30, the Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (Act), effective February 17, 2005, and any similar succeeding legislation, and as specified in this section, the Mayor and other personnel authorities shall be required to conduct criminal background checks and traffic record checks to investigate certain employees, volunteers, and persons being considered for employment with District government agencies that are “covered child or youth services providers,” as that term is defined in section 202 (3) of the Act and section 499 of this chapter.
- 412.2 Pursuant to section 211 (1) of the Act, District government agencies considered covered child or youth services providers shall begin conducting criminal background checks within forty-five (45) days of the publication in the D.C. Register of the notice of final rulemaking implementing the criminal background check requirements of the Act. The requirement for the criminal background checks shall apply not only to new appointees to paid and voluntary positions covered under the Act, but also to employees occupying positions covered under the Act. Such employees will be subjected to an initial criminal background check within the timeframe specified in this subsection and, subsequent to that, to periodic checks as specified in section 412.3 of this section.
- 412.3 Pursuant to section 203 (g) of the Act, each employee or volunteer described in section 412.11 (c) and (d) of this section occupying a covered position shall be required to submit to periodic criminal background checks while employed by, or volunteering at, a District government agency considered a covered child or youth services provider. The provisions for periodic criminal background checks are specified in sections 412.36 through 412.38 of this section.
- 412.4 The following subordinate agencies shall be considered covered child or youth services providers subject to the criminal background check and traffic record check provisions of the Act. The standard for determining that an agency is subject to the Act is that as part of its mission, the agency, as a whole or certain components thereof, provides the types of direct services to children and youth,

or for the benefit of children and youth, encompassed in the duties and responsibilities listed in section 412.13 of this section:

- (a) Department of Human Services;
- (b) Department of Health;
- (c) Department of Parks and Recreation;
- (d) Fire and Emergency Medical Services Department;
- (e) Metropolitan Police Department;
- (f) State Education Office within the Executive Office of the Mayor;
- (g) Department of Mental Health; and
- (h) Child and Family Services Agency.

- 412.5 A District government agency designated by the Mayor or independent personnel authority as a child or youth services provider subject to the Act, may challenge such a designation and the requirement to comply with the Act, by submitting a challenge of the designation, in writing, to the appropriate personnel authority, within five (5) days of the publication in the D.C. Register of the notice of final rulemaking implementing the criminal background check requirements of the Act. The submission shall include information and documentation deemed appropriate by the agency to challenge the designation. The personnel authority will evaluate the information and documentation submitted by the agency and respond in writing within five (5) days of the receipt of the agency's challenge.
- 412.6 Pursuant to section 204 (b)(2) of the Act, traffic record checks shall be conducted on employees and supervised and unsupervised volunteers of District government agencies considered covered child or youth services providers who are, or on appointees who would be, required to drive motor vehicles to transport children or youth in the course of performing their duties. Traffic record checks shall be obtained from the traffic records maintained by the D.C. Department of Motor Vehicles.
- 412.7 Pursuant to section 205 (b)(1) of the Act, criminal background checks will be conducted in accordance with Federal Bureau of Investigations (FBI) policies and procedures and in a FBI-approved environment, by means of fingerprint and National Criminal Information Center checks.
- 412.8 Agencies subordinate to the Mayor that are subject to the Act, and independent District government agencies that are subject to the Act, shall cover the costs

for criminal background checks and traffic record checks required under the Act.

- 412.9 The Director, D.C. Office of Personnel, shall enter into a Memorandum of Understanding (MOU) with the Chief, Metropolitan Police Department (MPD) stating that the MPD will conduct the criminal background checks under the Act, including fingerprinting, and develop internal operating procedures to conduct the checks, for agencies under the personnel authority of the Mayor.
- 412.10 Personnel authorities shall be responsible for conducting traffic record checks pursuant to the Act, and for developing internal operating procedures for conducting the checks.
- 412.11 Except as specified in section 412.12 of this section, criminal background checks pursuant to this section will be required for the following persons:
- (a) Each person being considered for paid employment with a District government agency considered a covered child or youth services provider, in a position with duties and responsibilities as described in section 412.13 of this section or similar duties and responsibilities;
  - (b) Each person being considered for voluntary service in a District government agency considered a covered child or youth services provider, in an unsupervised position with duties and responsibilities as described in section 412.13 of this section or similar duties and responsibilities;
  - (c) Each paid employee of a District government agency considered a covered child or youth services provider, who occupies a position with duties and responsibilities as described in section 412.13 of this section or similar duties and responsibilities; and
  - (d) Each volunteer in a District government agency considered a covered child or youth services provider in an unsupervised position with duties and responsibilities as described in section 412.13 of this section or similar duties and responsibilities.
- 412.12 Criminal background checks are not required for the following persons:
- (a) A person being considered for compensated or voluntary employment with a District government agency considered a covered child or youth services provider that will not bring the person in direct contact with children or youth;
  - (b) A volunteer in a District government agency considered a covered child or youth services provider who has only supervised contact with children or

youth; however, if applicable, such person will be required to submit to a traffic record check pursuant to section 204 (b)(2) of the Act; and

- (c) A person being considered for compensated or voluntary employment with a District government agency considered a covered child or youth services provider who has an active federal security clearance.

412.13 Upon consulting with the head of a District government agency considered a covered child or youth services provider, the appropriate personnel authority shall identify and determine which positions in the agency shall be covered under the Act. In identifying the covered positions, the personnel authority shall ensure that the duties and responsibilities of each position require the provision of direct services that affect the health, safety, and welfare of children or youth or services for the benefit of children or youth, including but not limited to, at least one (1) of the following duties and responsibilities:

- (a) Childcare duties;
- (b) Recreational activities;
- (c) Delinquency prevention and control services, including custody, security, supervision, and residential and community support services for committed and detained juvenile offenders;
- (d) Educational activities;
- (e) Individual counseling;
- (f) Group counseling;
- (g) Assessment, case management and support services;
- (h) Psychiatric and psychological assessment services;
- (i) Developmental, speech, and language evaluation services;
- (j) Diagnostic evaluation and treatment services;
- (k) Childhood development services;
- (l) Medical or clinical services;
- (m) Therapeutic services, including individual and group therapy, and play therapy;
- (n) Prevention and intervention services;

- (o) Mentoring services;
- (p) Youth care services;
- (q) Healthcare services, including medical, behavioral, mental health, dental, vision, nutrition, or developmental services;
- (r) Cultural enrichment services;
- (s) Public safety services, including counseling or education intervention services about safety, crime prevention, fire safety, youth problem-solving; or
- (t) Driving a motor vehicle to transport children or youth.

412.14 The following standards shall be applied in identifying positions, compensated or not, which shall be subject to the criminal background check requirement or the traffic record check requirement under the Act:

- (a) The underlying guiding standard to be applied in identifying positions that shall be subject to the criminal background check requirement and traffic record check requirement shall be one of reasonableness, coupled with the standards outlined in section 412.14 (b) through (k) of this section, as applicable.
- (b) A determination that a position is covered under the Act and subject to the criminal background check requirement shall be based on a comprehensive analysis of the position description or statement of duties, as applicable. The purpose of the analysis shall be to determine if the position description or statement of duties contains at least one (1) of the duties and responsibilities listed in section 412.13 of this section or similar duties and responsibilities and that any incumbent of the position will perform the duties and responsibilities personally and routinely.
- (c) The single fact that a position is located in a District government agency considered a covered child or youth services provider does not automatically make the position or its incumbent subject to the criminal background check requirement or the traffic record check requirement of the Act.
- (d) Strictly tangential, casual, or occasional contact with children or youth does not automatically make an employee or volunteer subject to the criminal background check requirement or traffic record check requirement of the Act.
- (e) Administrative, clerical, or technical support positions within the immediate office of the head of a District government agency considered a

covered child or youth services provider as well as within other components, units, or divisions of the agency that provide non-operational support services shall not be subject to the criminal background check requirement unless the position descriptions or statements of duties, as applicable, contain at least one (1) of the duties and responsibilities listed in section 412.13 of this section, or similar duties and responsibilities related to the direct provision of services to children or youth, and a determination is made that any incumbents of the positions will perform the duties and responsibilities personally and routinely. Such positions may include, but are not limited to the head of the agency, special assistants, administrative officers, staff assistants, and secretaries.

- (f) An employee who is detailed, temporarily promoted, or temporarily reassigned from a non-covered position to a covered position shall be subject to an initial criminal background check upon the personnel action being effected and to periodic criminal background checks while detailed, temporarily promoted, or temporarily reassigned.
- (g) A volunteer whose assignment changes from non-covered duties and responsibilities to covered duties and responsibilities shall be subject to an initial criminal background check upon being moved to the covered assignment and to periodic criminal background checks while in the covered assignment.
- (h) A determination that a position is subject to the traffic record check requirement under the Act shall be based on a comprehensive analysis of the position description or statement of duties, as applicable. The purpose of the analysis shall be to determine if the position description or statement of duties requires that any incumbent of the position drive a motor vehicle to transport children or youth in the course of performing his or her duties.
- (i) An employee who is detailed, temporarily promoted, or temporarily reassigned from a non-covered position to a position that will require him or her to drive a motor vehicle to transport children or youth in the course of performing the duties of the detail, temporary promotion, or temporary reassignment shall be subject to an initial traffic record check upon the personnel action being effected.
- (j) A volunteer whose assignment changes from non-covered duties and responsibilities to duties and responsibilities that will require him or her to drive motor vehicle to transport children or youth in the course of performing the duties of the voluntary assignment shall be subject to an initial traffic record check requirement upon being moved to the covered assignment.

- (k) Except as specified in section 412.12 of this section, any position subject to the traffic record check requirement shall also be subject to the criminal background check requirement.
- 412.15 District government agencies considered covered child or youth services providers may submit information and documentation to the appropriate personnel authority to challenge the designation of a position as subject to a criminal background check or traffic record check. The personnel authority shall evaluate any information and documentation submitted by an agency, and promptly determine whether the original designation shall stand or be changed.
- 412.16 Vacancy announcements for positions identified and designated as requiring a criminal background check or traffic record check, or both, shall include statements informing each applicant that:
- (a) The position for which he or she is applying has been identified and designated as requiring a criminal background check or traffic record check, or both;
  - (b) If tentatively selected for the position, a criminal background check or traffic record check, or both, as appropriate, will be conducted; and
  - (c) The employing agency may offer employment to the appointee to the position contingent upon receipt of a satisfactory criminal background check or traffic record check, or both.
- 412.17 In the case of non-competitive recruitment for a position requiring a criminal background check or traffic record check, or both, the appropriate personnel authority shall inform the person being considered for employment, in writing, of the requirements specified in section 412.16 of this section.
- 412.18 The Director, D.C. Office of Personnel (or his or her designee), shall publish the list of positions in agencies under the personnel authority of the Mayor that are subject to a criminal background check or traffic record check, or both, in the District Personnel Manual (or any other procedural manual developed). The list shall be published on an annual basis.
- 412.19 An appointee to a compensated position with a District government agency considered a covered child or youth services provider may be offered employment contingent upon receipt of a satisfactory criminal background check or traffic record check, or both, and begin working in a supervised setting, prior to receiving the results of the checks, and prior to the employing agency making a determination that the appointee meets the requirements of the Act. Upon making a determination to allow the appointee to begin working prior to receiving the results of the check or checks, the employing agency shall so inform the appropriate personnel authority.

- 412.20 An appointee to an unsupervised volunteer position with a District government agency considered a covered child or youth services provider will not be allowed to begin volunteering in an unsupervised setting until the results of the criminal background check or traffic record check, or both, are received and a determination is made that the appointee meets the requirements of the Act.
- 412.21 Prior to a criminal background check being conducted, the appropriate personnel authority will inform each appointee, employee, or unsupervised volunteer subject to the check of the location of the office where the check will be conducted, when to report for fingerprinting, and provide each appointee, employee, or unsupervised volunteer with a form or forms to be utilized for the following purposes:
- (a) To authorize the MPD or other entity, as appropriate, to conduct the criminal background check and confirm that the appointee, employee, or unsupervised volunteer has been informed that the employing agency is authorized to conduct a criminal background check;
  - (b) To affirm that the appointee, employee, or unsupervised volunteer has not been convicted of a crime, has not pleaded nolo contendere, is not on probation before judgment or placement of a case upon a stet docket, and has not been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District of Columbia or any other state or territory, or for any of the following offenses or their equivalent in another state or territory:
    - (1) Murder, attempted murder, manslaughter or arson;
    - (2) Assault, battery, assault and battery, assault with a dangerous weapon, mayhem, or threats to do bodily harm;
    - (3) Burglary;
    - (4) Robbery;
    - (5) Kidnapping;
    - (6) Theft, fraud, forgery, extortion, or blackmail;
    - (7) Illegal use or possession of a firearm;
    - (8) Trespass or injury to property;
    - (9) Sexual offenses, including indecent exposure; promoting, procuring, compelling, soliciting, or engaging in prostitution; corrupting minors (sexual relations with children); molesting; voyeurism; committing

sex acts in public; incest; rape; sexual assault; sexual battery; or sexual abuse;

(10) Child abuse or cruelty to children; or

(11) Unlawful distribution or possession of, or possession with intent to distribute, a controlled substance;

(c) To acknowledge in writing that the appointee, employee, or unsupervised volunteer has been notified of his or her right to obtain a copy of the criminal background check report and to challenge the accuracy and completeness of the report;

(d) To acknowledge that the employing agency may choose to deny the appointee employment or an unsupervised volunteer position based on the outcome of the criminal background check;

(e) To provide any additional identification that is required, such as name, social security number, date of birth, and gender; and

(f) To inform the appointee or employee that a false statement on the form or forms may subject them to criminal penalties.

412.22 Upon receiving and completing the form or forms specified in section 412.21 of this section, the appointee or employee shall report to the designated location to be fingerprinted.

412.23 Upon completing each criminal background check, the designated MPD representative, or the representative for any other entity conducting the check, shall forward the check to the appropriate employing agency. The employing agency shall forward a copy of the check to the personnel authority upon completing the review and determination process pursuant to sections 412.24 through 412.32 of this section.

412.24 District government agencies shall consider a variety of factors in determining an appointee's suitability for employment based on a criminal background check conducted pursuant to this section, but shall not consider arrest records unless they are related to crimes against children or youth. Possession of one (1) or more of the following criminal background characteristics may make the appointee ineligible for employment or unsupervised voluntary service:

(a) A felony conviction; or

(b) A serious misdemeanor conviction.

- 412.25 Except as provided in section 412.26 of this section, the following variables shall be closely considered and evaluated on a case-by-case basis to determine if an appointee subject to a criminal background check shall be ineligible for paid employment or unsupervised voluntary service:
- (a) The recency of any conviction;
  - (b) The age of the appointee at the time of any conviction;
  - (c) Any false statements made by the appointee concerning the form or forms described in section 412.21 of this section, or the uncovering of any intentional false statements of material fact or deception or fraud in applying for employment, compensated or not, that would provide a basis for disqualification; and
  - (d) The absence or presence of rehabilitation or efforts toward rehabilitation.
- 412.26 Notwithstanding the factors and variables specified in sections 412.24 and 412.25 of this section, a criminal background check reflecting a conviction or convictions for crimes against children or youth shall result in the disqualification of the appointee subject to the check.
- 412.27 Records of traffic infractions shall be judged on an individual basis for appointees whose duties would include driving a motor vehicle to transport children or youth as described in the Act. A pattern of disregard for existing traffic regulations, particularly where there has been a conviction for driving under the influence of intoxicants or drugs, may make the appointee ineligible for employment or voluntary service, if the appointee could be required to drive a motor vehicle to transport children or youth in the course of performing his or her duties.
- 412.28 Based on the outcome of the criminal background check, each employing agency shall determine whether a final offer of appointment should be made or denied or, when the appointee to a compensated position was allowed to begin working in a supervised setting prior to receiving the results of the check, if he or she will be retained or employment will be terminated.
- 412.29 If the determination is to deny the final offer of appointment or terminate employment, the employing agency shall do all of the following:
- (a) Send the appointee a written notification of the determination. The written notification shall inform the appointee of his or her right to obtain a copy of the criminal background check report and to challenge the accuracy and completeness of the report, in writing, within ten (10) days of receiving the written notification; and

- (b) Send the personnel authority a copy of the written notification.
- 412.30 In challenging the results of a criminal background check report, the appointee may present information and documentation to clarify any errors in the report resulting from mistakes in identity, and any mitigating circumstances that may exist concerning the report.
- 412.31 Upon receiving a challenge to a criminal background check report, the appropriate employing agency shall promptly make a determination on the case and inform the appointee of the decision, in writing, with a copy to the personnel authority.
- 412.32 If the determination is that a final offer of appointment should be made to an appointee who did not begin working prior to the employing agency receiving the results of the check, the employing agency shall promptly notify the personnel authority.
- 412.33 Upon receiving the employing agency's determination that a final offer of appointment should be made to an appointee, the appropriate personnel authority shall promptly issue a final offer letter to the appointee. If the determination is to terminate employment, the personnel authority will process the action to terminate the employment within ten (10) days of receiving the employing agency's determination.
- 412.34 An appointee under this section who intentionally provides false information that is material to the application in the course of applying for a position shall be subject to prosecution pursuant to section 404 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-2405) (2001).
- 412.35 A volunteer in an unsupervised position may use the same successful criminal background check conducted on him or her for a period of two (2) years when applying for multiple unsupervised volunteer positions, if the volunteer provides a signed affirmation that he or she has not been convicted of a crime, has not pleaded nolo contendere, is not on probation before judgment or placement of a case upon a stet docket, and has not been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses listed in section 412.21 (b)(1) through (11) of this section, or their equivalent in any other state or territory, since the date of the most recent check.
- 412.36 Periodic criminal background checks for current employees and unsupervised volunteers shall be conducted when:
- (a) Derogatory information about the employee or unsupervised volunteer, of a nature that will impact the employee's or unsupervised volunteer's suitability to continue performing the duties of the covered position, is

disclosed to the employing agency or personnel authority by a credible source or sources, or is independently discovered by the employing agency or personnel authority; or

- (b) Information about a criminal offense committed by the employee or unsupervised volunteer, such as the criminal offenses listed in section 412.21 of this section, is disclosed to the employing agency or personnel authority by a credible source or sources, or is independently discovered by the employing agency or personnel authority.

412.37 An employee who fails a periodic criminal background check may be subject to administrative action up to and including removal. In determining the type of administrative action to be taken, the employing agency shall consider the factors and variables in sections 412.24 and 412.25 of this section as well as any other similar factors and variables, except that a criminal background check reflecting a conviction or convictions for crimes against children or youth shall result in removal. In addition to, or in the place of administrative action, and at the employing agency's discretion, an employee who fails a periodic check may be reassigned to a non-covered position, except that this option shall not be available for an employee whose criminal background check reflects a conviction or convictions for crimes against children or youth.

412.38 An unsupervised volunteer who fails a periodic criminal background check may be terminated or moved to another volunteer assignment that does not include the provision of direct services to children or youth. In determining the type of action to be taken, the employing agency shall consider the factors and variables in sections 412.24 and 412.25 of this section as well as any other similar factors and variables, except that a criminal background check reflecting a conviction or convictions for crimes against children or youth shall result in the termination of the voluntary services.

412.39 In the case of an agency that violates any of the provisions of the Act, the Mayor (or his or her designee) or independent personnel authority may take administrative action, or direct that administrative action be taken, against the agency head or other agency official who violated the particular provision or provisions of the Act.

412.40 Criminal background check records obtained under this section shall be confidential and shall be for the exclusive purpose of making employment-related determinations under this section. The records shall not be released or otherwise disclosed to any person, except when:

- (a) Required as one component of an application for employment with a District government agency considered a covered child or youth services provider;

- (b) Requested by the personnel authority during an official inspection or investigation;
  - (c) Ordered by a court;
  - (d) Authorized by the written consent of the person being investigated; or
  - (e) Utilized for an administrative action in a personnel proceeding, including but not limited to, disciplinary actions under Chapter 16 of these regulations.
- 412.41 An individual who discloses confidential information in violation of any of the provisions in section 412.40 of this section shall be guilty of a criminal offense and, upon conviction, shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one hundred eighty (180) days, or both.
- 412.42 Each personnel authority with agencies considered covered child or youth services providers shall prepare compliance reports every six (6) months beginning on the date that these regulations are effective. Each report shall be submitted to the Mayor and shall include:
- (a) The number of criminal background checks and traffic record checks conducted for appointees, the number of appointees who were hired upon completion of the check, and the number rejected; and
  - (b) The number of periodic criminal background checks conducted for employees and unsupervised volunteers, and any administrative action initiated or taken upon completion of the periodic checks.
- 412.43 Agencies covered under the Act shall submit, to the Mayor, a list of positions subject to the criminal background check requirement on an annual basis by December 1<sup>st</sup> of every year.

*Section 499 is amended to add the following definitions:*

**499 DEFINITIONS**

499.1 When used in this chapter, the following terms have the meaning ascribed:

**Applicant** – for the purposes of section 412 of this chapter, a person who has filed a resume or written or electronic (web-based) application for employment with a District government agency considered a covered child or youth services provider; or a person who has made an affirmative effort through written application, resume or a verbal request, to serve in an unsupervised volunteer position with a District government agency considered a covered child or youth services provider.

**Appointee** – for the purposes of section 412 of this chapter, a person who has been made a tentative job offer to a covered position, compensated or voluntary, subject to the satisfactory completion of a criminal background check or traffic record check, or both.

**Children** – for the purposes of section 412 of this chapter, persons twelve (12) years of age and under.

**Covered assignment** – for the purposes of section 412 of this chapter, tasks of a volunteer with a District government agency considered a covered child or youth services provider, which require the volunteer to provide direct services that affect the health, safety, and welfare of children or youth, including but not limited to the duties and responsibilities listed in section 412.13 (a) through (t) of this chapter.

**Covered child or youth services provider** – for the purposes of section 412 of this chapter, any District government agency, or a component of a District government agency such as an office, unit or division, including the agencies listed in section 412.4 of this chapter, that provides direct services that affect the health, safety, and welfare of children or youth, including individual and group counseling, therapy, case management, supervision, or mentoring. These services are provided either directly or for the benefit of children or youth.

**Covered duties and responsibilities** – for the purposes of section 412 of this chapter, duties and responsibilities of a volunteer in a District government agency considered a covered child or youth services provider, that require the volunteer to provide direct services that affect the health, safety, and welfare of children or youth or services for the benefit of children or youth, including but not limited to the duties and responsibilities listed in section 412.13 of this chapter.

**Covered position** – for the purposes of section 412 of this chapter, a position, compensated or voluntary, in a District government agency considered a covered child or youth services provider, with duties and responsibilities that would require the employee or volunteer to provide direct services that affect the health, safety, and welfare of children or youth or services for the benefit of children or youth, including but not limited to the duties and responsibilities listed in section 412.13 of this chapter.

**Criminal background check** – the investigation of a person's criminal history through the record systems of the FBI or MPD.

**Days** – calendar days, unless otherwise indicated.

**Independent agency** – any board or commission of the District of Columbia government not subject to the administrative control of the Mayor.

**Material** – a statement that is capable of influencing, or has a natural tendency to affect, an official decision.

**Non-covered duties and responsibilities** – for the purposes of section 412 of this chapter, duties and responsibilities of a volunteer in a District government agency considered a covered child or youth services provider, of such a nature that would not require that the volunteer be subjected to the criminal background check and traffic records check requirements of the Act.

**Non-covered position** – for the purposes of section 412 of this chapter, a position, compensated or voluntary, in a District government agency considered a child or youth services provider, with duties and responsibilities of such a nature that would not require that the employee or volunteer be subjected to the criminal background check and traffic records check requirements of the Act.

**Person being considered for employment** – for the purposes of section 412 of this chapter, a person who has been made a tentative offer of employment, compensated or voluntary, to a covered position, subject to the satisfactory completion of a criminal background check or a traffic record check, or both.

**Volunteer** – for the purposes of section 412 of this chapter, any person who performs work without any monetary or other financial compensation, in a covered position, for a District government agency considered a child or youth services provider.

**Youth** – for the purposes of section 412 of this chapter, persons between thirteen (13) and seventeen (17) years of age, inclusive.

Comments on these proposed regulations should be submitted, in writing, to Ms. Lisa R. Marin, SPHR, Director of Personnel, 441 4<sup>th</sup> Street, N.W., Suite 300 South, Washington, D.C. 20001, within thirty (30) days of the date of the publication of this notice. Additional copies of these proposed rules are available from the above address.