

§ 105.24

(f) The limitation periods set forth in paragraph (e)(2) of this section shall be determined using the date the employee's fingerprints were submitted. An employee shall be considered charged with a criminal felony for which there has been no resolution during the preceding 365 days if the individual is the subject of a complaint, indictment, or information, issued within 365 days of the date that the fingerprints were taken, for a crime punishable by imprisonment for more than one year. The effect of various forms of post-conviction relief shall be determined by the law of the convicting jurisdiction.

§ 105.24 Employee's rights.

An employee is entitled to:

(a) Obtain a copy from the authorized employer of any information concerning the employee provided under these regulations to the authorized employer by the participating State;

(b) Determine the status of his or her CHRI by contacting the SIB or other state agency providing information to the authorized employer; and

(c) Challenge the CHRI by contacting the agency originating the record or complying with the procedures contained in 28 CFR 16.34.

§ 105.25 Authorized employer's responsibilities.

An authorized employer is responsible for:

(a) Executing and providing to the appropriate state agency the certification to the State required under § 105.23(a) before a State can accept requests on private security guard employees;

(b) Obtaining the written consent of an employee to submit the employee's fingerprints for purposes of a CHRI check as described herein;

(c) Submitting an employee's fingerprints and appropriate state and federal fees to the SIB not later than one year after the date the employee's consent is obtained;

(d) Retaining an employee's written consent to submit his fingerprints for a criminal history record check for a period of no less than three years from the date the consent was last used to request a CHRI check;

28 CFR Ch. I (7-1-10 Edition)

(e) Upon request, providing an employee with confidential access to and a copy of the information provided to the employer by the SIB; and

(f) Maintaining the confidentiality and security of the information contained in a participating State's notification by:

(1) Storing the information in a secure container located in a limited access office or space;

(2) Limiting access to the information strictly to personnel involved in the employer's personnel and administration functions; and

(3) Establishing internal rules on the handling and dissemination of such information and training personnel with such access on such rules, on the need to safeguard and control the information, and on the consequences of failing to abide by such rules.

§ 105.26 State agency's responsibilities.

(a) Each State will determine whether it will opt out of participation by statutory enactment or gubernatorial order and communicating such determination to the Attorney General. Failure to inform the Attorney General of the determination will result in a State being considered a participating State.

(b) Each participating State is responsible for:

(1) Determining whether to establish a fee to perform a check of state criminal history records and related fees for administering the Act;

(2) Developing a certification form for execution by authorized employers under § 105.25(a) and receiving authorized employers' certifications;

(3) Receiving the fingerprint submissions and fees from the authorized employer; performing a check of state criminal history records; if necessary, transmitting the fingerprints to the FBI; remitting the FBI fees consistent with established interagency agreements; and receiving the results of the FBI check;

(4) Applying the relevant standards to any CHRI returned by the fingerprint check and notifying the authorized employer of the results of the application of the standards as required under § 105.23(e);

Department of Justice

§ 200.1

(5) Providing to an employee upon his or her request a copy of CHRI upon which an adverse determination was predicated; and

(6) Maintaining, for a period of no less than three years, auditable records regarding

(i) Maintenance and dissemination of CHRI; and

(ii) The employer's certification.

(c) If relevant CHRI is lacking disposition information, the SIB or responsible agency in a participating State will make reasonable efforts to obtain such information to promote the accuracy of the record and the integrity of the application of the relevant standards. If additional time beyond a State's standard response time is needed to find relevant disposition information, the SIB or responsible agency may advise the authorized employer that additional research is necessary before a final response can be provided. If raised, a participating State should take into account the effect of post-conviction relief.

§ 105.27 Miscellaneous provisions.

(a) *Alternate State availability.* (1) An authorized employer may submit the employee's fingerprints to the SIB of a participating State other than the State of employment—provided it obtains the permission of the accommodating State—if the authorized employer is prevented from submitting an employee's fingerprints because the employee's employment is in:

(i) A State that does not have an applicable Public Law 92-544 statute authorizing state and national fingerprint-based criminal history checks of prospective and current private security officers and has elected to opt out; or

(ii) A participating State that has not yet established a process for receiving fingerprints and processing the checks under the regulations in this subpart.

(2) A participating State agreeing to process checks under this subsection will discontinue doing so if thereafter the State of the employee's employment establishes a process State and

national fingerprint-based criminal history checks of prospective and current private security officers.

(b) *FBI fees for national check.* The fee imposed by the FBI to perform a fingerprint-based criminal history record check is that routinely charged for noncriminal justice fingerprint submissions as periodically noticed in the FEDERAL REGISTER.

(c) *Penalties for misuse.* (1) In addition to incarceration for a period not to exceed two years, one who knowingly and intentionally misuses information (including a State's notification) received pursuant to the Act may be subject to a fine pursuant to 18 U.S.C. 3571.

(2) Consistent with State law, a violation of these regulations may also result in the divestiture of "authorized employer" status, thereby precluding an employer which provides security services from submitting fingerprints for a State and national criminal history record check.

(d) *Exclusion from coverage.* [Reserved]

PART 200—ALIEN TERRORIST REMOVAL PROCEDURES

AUTHORITY: Pub. L. 105-277, 112 Stat. 2681.

SOURCE: 64 FR 8496, Feb. 19, 1999, unless otherwise noted. Redesignated by Order No. 2662-2003, 68 FR 9846, Feb. 28, 2003.

§ 200.1 Eligibility for Protection under the Convention Against Torture.

A removal order under Title V of the Act shall not be executed in circumstances that would violate Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention, as implemented by section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105-277. Convention-based claims by aliens subject to removal under this Title shall be determined by the Attorney General, in consultation with the Secretary of State.