

Department of Justice

§ 105.26

(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;

(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);