who must first have been the subject of a favorable background investigation.

(1) Indian tribes and tribal organizations must ensure that persons charged with the responsibility for adjudicating employee background investigations are well-qualified and trained.

(2) Indian tribes and tribal organizations should also ensure that individuals who are not trained to adjudicate these types of investigations are supervised by someone who is experienced and receive the training necessary to perform the task.

(d) Each adjudicating official must be thoroughly familiar with all laws, regulations, and criteria involved in making a determination for suitability.

(e) The adjudicating official must review the background investigation to determine the character, reputation, and trustworthiness of the individual. At a minimum, the adjudicating official must:

(1) Review each security investigation form and employment application and compare the information provided;

(2) Review the results of written record searches requested from local law enforcement agencies, former employers, former supervisors, employment references, and schools; and

(3) Review the results of the fingerprint charts maintained by the Federal Bureau of Investigation or other law enforcement information maintained by other agencies.

(f) Relevancy is a key objective in evaluating investigative data. The adjudicating official must consider prior conduct in light of:

(1) The nature and seriousness of the conduct in question;

(2) The recency and circumstances surrounding the conduct in question;

(3) The age of the individual at the time of the incident;

(4) Societal conditions that may have contributed to the nature of the conduct;

(5) The probability that the individual will continue the type of behavior in question; and,

(6) The individual's commitment to rehabilitation and a change in the behavior in question.

§ 63.18 Are the requirements for Bureau of Indian Affairs adjudication different from the requirements for Indian tribes and tribal organizations?

Yes.

(a) In addition to the minimum requirements for background investigations found in § 63.12, *Bureau of Indian Affairs'* adjudicating officials must review the OPM National Agency Check and Inquiries which includes a search of the OPM Security/Suitability Investigations Index (SII) and the Defense Clearance and Investigations Index (DCII), and any additional standards which may be established by the BIA.

(b) *All* Bureau of Indian Affairs employees who have regular contact with or control over Indian children must be reinvestigated every five years during their employment in that or any other position which allows regular contact with or control over Indian children.

(c) *Indian tribes and tribal organizations* may adopt these additional requirements but are not mandated to do so by law.

§ 63.19 When should an employer deny employment or dismiss an employee?

(a) An employer must deny employment or dismiss an employee when an individual has been found guilty of or entered a plea of guilty or nolo contendere to any Federal, state or tribal offense involving a crime of violence, sexual assault, sexual molestation, child exploitation, sexual contact, prostitution, or crimes against persons.

(b) An employer may deny employment or dismiss an employee when an individual has been convicted of an offense involving a child victim, a sex crime, or a drug felony.

[61 FR 32274, June 21, 1996, as amended at 64 FR 66771, Nov. 30, 1999]

§ 63.20 What should an employer do if an individual has been charged with an offense but the charge is pending or no disposition has been made by a court?

(a) The employer may deny the applicant employment until the charge has been resolved.

(b) The employer may deny the employee any on-the-job contact with children until the charge is resolved.

(c) The employer may detail or reassign the employee to other duties that do not involve contact with children.

(d) The employer may place the employee on administrative leave until the court has disposed of the charge.

§ 63.21 Are there other factors that may disqualify an applicant, volunteer or employee from placement in a position which involves regular contact with or control over Indian children?

Yes.

(a) An applicant, volunteer, or employee may be disqualified from consideration or continuing employment if it is found that:

(1) The individual's misconduct or negligence interfered with or affected a current or prior employer's performance of duties and responsibilities.

(2) The individual's criminal or dishonest conduct affected the individual's performance or the performance of others.

(3) The individual made an intentional false statement, deception or fraud on an examination or in obtaining employment.

(4) The individual has refused to furnish testimony or cooperate with an investigation.

(5) The individual's alcohol or substance abuse is of a nature and duration that suggests the individual could not perform the duties of the position or would directly threaten the property or safety of others.

(6) The individual has illegally used narcotics, drugs, or other controlled substances without evidence of substantial rehabilitation.

(7) The individual knowingly and willfully engaged in an act or activities designed to disrupt government programs.

(b) An individual must be disqualified for Federal employment if any statutory or regulatory provision would prevent his/her lawful employment.

§ 63.22 Can an employer certify an individual with a prior conviction or substantiated misconduct as suitable for employment?

(a) The *Bureau of Indian Affairs* must use Federal adjudicative standards which allow the BIA to certify that an individual is suitable for employment in a position that does not involve regular contact with or control over Indian children. The adjudicating officer must determine that the individual's prior conduct will not interfere with the performance of duties and will not create a potential for risk to the safety and well-being of Indian children.

(b) *Indian tribes and tribal organizations* must identify those positions which permit contact with or control over Indian children and establish standards to determine suitability for employment. Those standards should then be used to determine whether an individual is suitable for employment in a position that permits contact with or control over Indian children. If not, the individual may only be placed in a position that does not permit contact with or control over Indian children.

§ 63.23 What rights does an applicant, volunteer or employee have during this process?

(a) The applicant, volunteer, or employee must be provided an opportunity to explain, deny, or refute unfavorable and incorrect information gathered in an investigation, before the adjudication is final. The applicant, volunteer, or employee should receive a written summary of all derogatory information and be informed of the process for explaining, denying, or refuting unfavorable information.

(b) Employers and adjudicating officials must not release the actual background investigative report to an applicant, volunteer, or employee. However, they may issue a written summary of the derogatory information.

(c) The applicant, volunteer, or employee who is the subject of a background investigation may obtain a copy of the reports from the originating (Federal, state, or other tribal) agency and challenge the accuracy and completeness of any information maintained by that agency.