

Department of Justice

§ 105.23

these regulations, except that the term excludes—

(1) Employees whose duties are primarily internal audit or credit functions;

(2) Employees of electronic security system companies acting as technicians or monitors; or

(3) Employees whose duties involve the secure movement of prisoners.

(h) *Security services* means services, whether provided by a third party for consideration, or by employees as an internal, proprietary function, to protect people or property, including activities to: Patrol, guard, or monitor property (including real property as well as tangible or intangible personal property such as records, merchandise, money, and equipment); protect against fire, theft, misappropriation, vandalism, violence, terrorism, and other illegal activity; safeguard persons; control access to real property and prevent trespass; or deter criminal activity on the authorized employer's or another's premises. This definition does not cover services by the employees described in §105.22(f) as excluded from the definition of *private security officer*.

(i) *State Identification Bureau (SIB)* means the state agency designated by the Governor or other appropriate executive official or the state legislature to perform centralized recordkeeping functions for criminal history records and associated services in the States.

§ 105.23 Procedure for requesting criminal history record check.

These procedures only apply to participating states. An authorized employer may obtain a State and national criminal history record check as authorized by section 6402 of Public Law 105-458 as follows:

(a) An authorized employer is required to execute a certification to the State, developed by the SIB or the relevant state agency for purposes of accepting requests for these background checks, declaring that it is an authorized employer that employs private security officers; that all fingerprints and requests for criminal history background checks are being submitted for private security officers; that it will use the information obtained as a re-

sult of the state and national criminal history record checks solely for the purpose of screening its private security officers; and that it will abide by other regulatory obligations. To help ensure that only legitimate use is made of this authority, the certification shall be executed under penalties of perjury, false statement, or other applicable state laws.

(b) An authorized employer must obtain a set of fingerprints and the written consent of its employee to submit those prints for a state and national criminal history record check. An authorized employer must submit the fingerprints and appropriate state and federal fees to the SIB in the manner specified by the SIB.

(c) Upon receipt of an employee's fingerprints, the SIB shall perform a fingerprint-based search of its criminal records. If no relevant criminal record is found, the SIB shall submit the fingerprints to the FBI for a national search.

(d) Upon the conclusion of the national search, the FBI will disseminate the results to the SIB.

(e) Based upon the results of the state check and, if necessary, the national check:

(1) If the State has standards for qualifying a private security officer, the SIB or other designated state agency shall apply those standards to the CHRI and notify the authorized employer of the results of the application of the state standards; or

(2) If the State does not have standards for qualifying a private security officer, the SIB or other designated state agency shall notify an authorized employer as to the fact of whether an applicant has been:

(i) Convicted of a felony;

(ii) Convicted of a lesser offense involving dishonesty or false statement if occurring within the previous ten years;

(iii) Convicted of a lesser offense involving the use or attempted use of physical force against the person of another if occurring within the previous ten years; or

(iv) Charged with a felony during the previous 365 days for which there has been no resolution.

§ 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 (7-1-08 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);