

§ 136.412

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that allow regular contact with or control over Indian children, Indian Tribes or Tribal organizations may, but are not required to, adopt portions of the rules in this subpart that are specifically applicable to employment with the IHS.

§ 136.412 What questions must the IHS ask as part of the background investigation?

(a) Applications for employment with the IHS must include the following questions:

(1) Has the individual been arrested or charged with a crime involving a child? If yes, the individual must provide the date, explanation of the violation, disposition of the arrest or charge, place of occurrence, and the name and address of the police department or court involved.

(2) Has the individual ever been found guilty of, or entered a plea of *nolo contendere* or guilty to, any felonious or misdemeanor offense, under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children? If yes, the individual must provide an explanation of the violation, place of occurrence, date and disposition of the court proceeding, and the name and address of the police department or court involved.

(b) The IHS must require that the individual sign, under penalty of perjury, a statement verifying the truth of all information provided in the employment application and acknowledging that knowingly falsifying or concealing a material fact is a felony that may result in fines up to \$10,000 or five years imprisonment, or both.

(c) The IHS must inform the individual that a criminal history record check is a condition of employment and require the individual to consent in writing to a criminal history record check.

§ 136.413 What protections must the IHS and Tribes or Tribal organizations provide to individuals undergoing a background investigation?

(a) The IHS must comply with all policies, procedures, criteria, and guidance contained in other appropriate

guidelines, such as the OPM policies, procedures, criteria, and guidance. Questions asked in § 136.412 will be added as an addendum to item #16 of the OPM Optional Form 306, "Declaration for Federal Employment." The information is collected as part of the OPM Optional Form 306 and is safeguarded in accordance with Privacy Act provisions.

(b) Indian Tribes and Tribal organizations must comply with the privacy requirements of the Federal, State, or other Tribal agency providing the background investigations. Indian Tribes and Tribal organizations may establish their own procedures that safeguard information derived from background investigations.

§ 136.414 How does the IHS determine eligibility for placement or retention of individuals in positions involving regular contact with Indian children?

(a) Adjudication is the process IHS uses to determine eligibility for placement or retention of individuals in positions involving regular contact with Indian children. The adjudication process protects the interests of the employer and the right of applicants and employees. Adjudication requires uniform evaluation to ensure fair and consistent judgment.

(b) Each case is judged on its own merits. All available information, both favorable and unfavorable, should be considered and assessed in terms of accuracy, completeness, relevance, seriousness, overall significance, and how similar cases have been handled in the past.

(c) The adjudicating official who conducts the adjudication must first have been the subject of a favorable background investigation.

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

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

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