

§ 1544.229 Fingerprint-based criminal history records checks (CHRC): Unescorted access authority, authority to perform screening functions, and authority to perform checked baggage or cargo functions.

This section applies to each aircraft operator operating under a full program, a private charter program, or a full all-cargo program.

(a) *Scope.* The following individuals are within the scope of this section. Unescorted access authority, authority to perform screening functions, and authority to perform checked baggage or cargo functions, are collectively referred to as “covered functions.”

(1) *New unescorted access authority or authority to perform screening functions.*

(i) Each employee or contract employee covered under a certification made to an airport operator on or after December 6, 2001, pursuant to 14 CFR 107.209(n) in effect prior to November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001) or § 1542.209(n) of this chapter.

(ii) Each individual issued on or after December 6, 2001, an aircraft operator identification media that one or more airports accepts as airport-approved media for unescorted access authority within a security identification display area (SIDA), as described in § 1542.205 of this chapter (referred to as “unescorted access authority”).

(iii) Each individual granted authority to perform the following screening functions at locations within the United States (referred to as “authority to perform screening functions”):

(A) Screening passengers or property that will be carried in a cabin of an aircraft of an aircraft operator required to screen passengers under this part.

(B) Serving as an immediate supervisor (checkpoint security supervisor (CSS)), and the next supervisory level (shift or site supervisor), to those individuals described in paragraphs (a)(1)(iii)(A) or (a)(1)(iii)(C) of this section.

(C) Screening cargo that will be carried on an aircraft of an aircraft operator with a full all-cargo program.

(2) *Current unescorted access authority or authority to perform screening functions.* (i) Each employee or contract

employee covered under a certification made to an airport operator pursuant to 14 CFR 107.31(n) in effect prior to November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001), or pursuant to 14 CFR 107.209(n) in effect prior to December 6, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001).

(ii) Each individual who holds on December 6, 2001, an aircraft operator identification media that one or more airports accepts as airport-approved media for unescorted access authority within a security identification display area (SIDA), as described in § 1542.205 of this chapter.

(iii) Each individual who is performing on December 6, 2001, a screening function identified in paragraph (a)(1)(iii) of this section.

(3) *New authority to perform checked baggage or cargo functions.* Each individual who, on and after February 17, 2002, is granted the authority to perform the following checked baggage and cargo functions (referred to as “authority to perform checked baggage or cargo functions”), except for individuals described in paragraph (a)(1) of this section:

(i) Screening of checked baggage or cargo of an aircraft operator required to screen passengers under this part, or serving as an immediate supervisor of such an individual.

(ii) Accepting checked baggage for transport on behalf of an aircraft operator required to screen passengers under this part.

(4) *Current authority to perform checked baggage or cargo functions.* Each individual who holds on February 17, 2002, authority to perform checked baggage or cargo functions, except for individuals described in paragraph (a)(1) or (2) of this section.

(b) *Individuals seeking unescorted access authority, authority to perform screening functions, or authority to perform checked baggage or cargo functions.* Each aircraft operator must ensure that each individual identified in paragraph (a)(1) or (3) of this section has undergone a fingerprint-based CHRC that does not disclose that he or she has a disqualifying criminal offense, as described in paragraph (d) of this section, before—

(1) Making a certification to an airport operator regarding that individual;

(2) Issuing an aircraft operator identification medium to that individual;

(3) Authorizing that individual to perform screening functions; or

(4) Authorizing that individual to perform checked baggage or cargo functions.

(c) *Individuals who have not had a CHRC*—(1) *Deadline for conducting a CHRC.* Each aircraft operator must ensure that, on and after December 6, 2002:

(i) No individual retains unescorted access authority, whether obtained as a result of a certification to an airport operator under 14 CFR 107.31(n) in effect prior to November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001), or under 14 CFR 107.209(n) in effect prior to December 6, 2001 (see 14 CFR Parts 60 to 139 revised as of January 1, 2001), or obtained as a result of the issuance of an aircraft operator's identification media, unless the individual has been subject to a fingerprint-based CHRC for unescorted access authority under this part.

(ii) No individual continues to have authority to perform screening functions described in paragraph (a)(1)(iii) of this section, unless the individual has been subject to a fingerprint-based CHRC under this part.

(iii) No individual continues to have authority to perform checked baggage or cargo functions described in paragraph (a)(3) of this section, unless the individual has been subject to a fingerprint-based CHRC under this part.

(2) *Lookback for individuals with unescorted access authority or authority to perform screening functions.* When a CHRC discloses a disqualifying criminal offense for which the conviction or finding was on or after December 6, 1991, the aircraft operator must immediately suspend that individual's unescorted access authority or authority to perform screening functions.

(3) *Lookback for individuals with authority to perform checked baggage or cargo functions.* When a CHRC discloses a disqualifying criminal offense for which the conviction or finding was on or after February 17, 1992, the aircraft operator must immediately suspend

that individual's authority to perform checked baggage or cargo functions.

(d) *Disqualifying criminal offenses.* An individual has a disqualifying criminal offense if the individual has been convicted, or found not guilty by reason of insanity, of any of the disqualifying crimes listed in this paragraph in any jurisdiction during the 10 years before the date of the individual's application for authority to perform covered functions, or while the individual has authority to perform covered functions. The disqualifying criminal offenses are as follows:

(1) Forgery of certificates, false marking of aircraft, and other aircraft registration violation; 49 U.S.C. 46306.

(2) Interference with air navigation; 49 U.S.C. 46308.

(3) Improper transportation of a hazardous material; 49 U.S.C. 46312.

(4) Aircraft piracy; 49 U.S.C. 46502.

(5) Interference with flight crew members or flight attendants; 49 U.S.C. 46504.

(6) Commission of certain crimes aboard aircraft in flight; 49 U.S.C. 46506.

(7) Carrying a weapon or explosive aboard aircraft; 49 U.S.C. 46505.

(8) Conveying false information and threats; 49 U.S.C. 46507.

(9) Aircraft piracy outside the special aircraft jurisdiction of the United States; 49 U.S.C. 46502(b).

(10) Lighting violations involving transporting controlled substances; 49 U.S.C. 46315.

(11) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements; 49 U.S.C. 46314.

(12) Destruction of an aircraft or aircraft facility; 18 U.S.C. 32.

(13) Murder.

(14) Assault with intent to murder.

(15) Espionage.

(16) Sedition.

(17) Kidnapping or hostage taking.

(18) Treason.

(19) Rape or aggravated sexual abuse.

(20) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon.

(21) Extortion.

(22) Armed or felony unarmed robbery.

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(23) Distribution of, or intent to distribute, a controlled substance.

(24) Felony arson.

(25) Felony involving a threat.

(26) Felony involving—

(i) Willful destruction of property;
(ii) Importation or manufacture of a controlled substance;

(iii) Burglary;

(iv) Theft;

(v) Dishonesty, fraud, or misrepresentation;

(vi) Possession or distribution of stolen property;

(vii) Aggravated assault;

(viii) Bribery; or

(ix) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year.

(27) Violence at international airports; 18 U.S.C. 37.

(28) Conspiracy or attempt to commit any of the criminal acts listed in this paragraph (d).

(e) *Fingerprint application and processing.* (1) At the time of fingerprinting, the aircraft operator must provide the individual to be fingerprinted a fingerprint application that includes only the following—

(i) The disqualifying criminal offenses described in paragraph (d) of this section.

(ii) A statement that the individual signing the application does not have a disqualifying criminal offense.

(iii) A statement informing the individual that Federal regulations under 49 CFR 1544.229 impose a continuing obligation to disclose to the aircraft operator within 24 hours if he or she is convicted of any disqualifying criminal offense that occurs while he or she has authority to perform a covered function.

(iv) A statement reading, “The information I have provided on this application is true, complete, and correct to the best of my knowledge and belief and is provided in good faith. I understand that a knowing and willful false statement on this application can be punished by fine or imprisonment or both. (See section 1001 of Title 18 United States Code.)”

(v) A line for the printed name of the individual.

(vi) A line for the individual’s signature and date of signature.

(2) Each individual must complete and sign the application prior to submitting his or her fingerprints.

(3) The aircraft operator must verify the identity of the individual through two forms of identification prior to fingerprinting, and ensure that the printed name on the fingerprint application is legible. At least one of the two forms of identification must have been issued by a government authority, and at least one must include a photo.

(4) The aircraft operator must:

(i) Advise the individual that a copy of the criminal record received from the FBI will be provided to the individual, if requested by the individual in writing; and

(ii) Identify a point of contact if the individual has questions about the results of the CHRC.

(5) The aircraft operator must collect, control, and process one set of legible and classifiable fingerprints under direct observation by the aircraft operator or a law enforcement officer.

(6) Fingerprints may be obtained and processed electronically, or recorded on fingerprint cards approved by the FBI and distributed by TSA for that purpose.

(7) The fingerprint submission must be forwarded to TSA in the manner specified by TSA.

(f) *Fingerprinting fees.* Aircraft operators must pay for all fingerprints in a form and manner approved by TSA. The payment must be made at the designated rate (available from the local TSA security office) for each set of fingerprints submitted. Information about payment options is available through the designated TSA headquarters point of contact. Individual personal checks are not acceptable.

(g) *Determination of arrest status.* (1) When a CHRC on an individual described in paragraph (a)(1) or (3) of this section discloses an arrest for any disqualifying criminal offense listed in paragraph (d) of this section without indicating a disposition, the aircraft operator must determine, after investigation, that the arrest did not result in a disqualifying offense before granting authority to perform a covered function. If there is no disposition, or if

the disposition did not result in a conviction or in a finding of not guilty by reason of insanity of one of the offenses listed in paragraph (d) of this section, the individual is not disqualified under this section.

(2) When a CHRC on an individual described in paragraph (a)(2) or (4) of this section discloses an arrest for any disqualifying criminal offense without indicating a disposition, the aircraft operator must suspend the individual's authority to perform a covered function not later than 45 days after obtaining the CHRC unless the aircraft operator determines, after investigation, that the arrest did not result in a disqualifying criminal offense. If there is no disposition, or if the disposition did not result in a conviction or in a finding of not guilty by reason of insanity of one of the offenses listed in paragraph (d) of this section, the individual is not disqualified under this section.

(3) The aircraft operator may only make the determinations required in paragraphs (g)(1) and (g)(2) of this section for individuals for whom it is issuing, or has issued, authority to perform a covered function; and individuals who are covered by a certification from an aircraft operator under § 1542.209(n) of this chapter. The aircraft operator may not make determinations for individuals described in § 1542.209(a) of this chapter.

(h) *Correction of FBI records and notification of disqualification.* (1) Before making a final decision to deny authority to an individual described in paragraph (a)(1) or (3) of this section, the aircraft operator must advise him or her that the FBI criminal record discloses information that would disqualify him or her from receiving or retaining authority to perform a covered function and provide the individual with a copy of the FBI record if he or she requests it.

(2) The aircraft operator must notify an individual that a final decision has been made to grant or deny authority to perform a covered function.

(3) Immediately following the suspension of authority to perform a covered function, the aircraft operator must advise the individual that the FBI criminal record discloses information

that disqualifies him or her from retaining his or her authority, and provide the individual with a copy of the FBI record if he or she requests it.

(i) *Corrective action by the individual.* The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in his or her record, subject to the following conditions—

(1) For an individual seeking unescorted access authority or authority to perform screening functions on or after December 6, 2001; or an individual seeking authority to perform checked baggage or cargo functions on or after February 17, 2002; the following applies:

(i) Within 30 days after being advised that the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the aircraft operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The aircraft operator must obtain a copy, or accept a copy from the individual, of the revised FBI record or a certified true copy of the information from the appropriate court, prior to authority to perform a covered function.

(ii) If no notification, as described in paragraph (h)(1) of this section, is received within 30 days, the aircraft operator may make a final determination to deny authority to perform a covered function.

(2) For an individual with unescorted access authority or authority to perform screening functions before December 6, 2001; or an individual with authority to perform checked baggage or cargo functions before February 17, 2002; the following applies: Within 30 days after being advised of suspension because the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the aircraft operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The aircraft operator must obtain a copy, or accept a copy from the individual, of the revised FBI record, or a certified true copy of the information from the appropriate court, prior to reinstating authority to perform a covered function.

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(j) *Limits on dissemination of results.* Criminal record information provided by the FBI may be used only to carry out this section and § 1542.209 of this chapter. No person may disseminate the results of a CHRC to anyone other than:

(1) The individual to whom the record pertains, or that individual's authorized representative.

(2) Officials of airport operators who are determining whether to grant unescorted access to the individual under part 1542 of this chapter when the determination is not based on the aircraft operator's certification under § 1542.209(n) of this chapter.

(3) Other aircraft operators who are determining whether to grant authority to perform a covered function under this part.

(4) Others designated by TSA.

(k) *Recordkeeping.* The aircraft operator must maintain the following information.

(1) *Investigation conducted before December 6, 2001.* The aircraft operator must maintain and control the access or employment history investigation files, including the criminal history records results portion, for investigations conducted before December 6, 2001.

(2) *Fingerprint application process on or after December 6, 2001.* The aircraft operator must physically maintain, control, and, as appropriate, destroy the fingerprint application and the criminal record. Only direct aircraft operator employees may carry out the responsibility for maintaining, controlling, and destroying criminal records.

(3) *Protection of records—all investigations.* The records required by this section must be maintained in a manner that is acceptable to TSA and in a manner that protects the confidentiality of the individual.

(4) *Duration—all investigations.* The records identified in this section with regard to an individual must be maintained until 180 days after the termination of the individual's authority to perform a covered function. When files are no longer maintained, the criminal record must be destroyed.

(l) *Continuing responsibilities.* (1) Each individual with unescorted access authority or the authority to perform

screening functions on December 6, 2001, who had a disqualifying criminal offense in paragraph (d) of this section on or after December 6, 1991, must, by January 7, 2002, report the conviction to the aircraft operator and surrender the SIDA access medium to the issuer and cease performing screening functions, as applicable.

(2) Each individual with authority to perform a covered function who has a disqualifying criminal offense must report the offense to the aircraft operator and surrender the SIDA access medium to the issuer within 24 hours of the conviction or the finding of not guilty by reason of insanity.

(3) If information becomes available to the aircraft operator indicating that an individual with authority to perform a covered function has a possible conviction for any disqualifying criminal offense in paragraph (d) of this section, the aircraft operator must determine the status of the conviction. If a disqualifying criminal offense is confirmed the aircraft operator must immediately revoke any authority to perform a covered function.

(4) Each individual with authority to perform checked baggage or cargo functions on February 17, 2002, who had a disqualifying criminal offense in paragraph (d) of this section on or after February 17, 1992, must, by March 25 2002, report the conviction to the aircraft operator and cease performing check baggage or cargo functions.

(m) *Aircraft operator responsibility.* The aircraft operator must—

(1) Designate an individual(s) to be responsible for maintaining and controlling the employment history investigations for those whom the aircraft operator has made a certification to an airport operator under 14 CFR 107.209(n) in effect prior to November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001), and for those whom the aircraft operator has issued identification media that are airport-accepted. The aircraft operator must designate a direct employee to maintain, control, and, as appropriate, destroy criminal records.

(2) Designate an individual(s) to maintain the employment history investigations of individuals with authority to perform screening functions

whose files must be maintained at the location or station where the screener is performing his or her duties.

(3) Designate an individual(s) at appropriate locations to serve as the contact to receive notification from individuals seeking authority to perform covered functions of their intent to seek correction of their FBI criminal record.

(4) Audit the employment history investigations performed in accordance with this section and 14 CFR 108.33 in effect prior to November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001). The aircraft operator must set forth the audit procedures in its security program.

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§ 1544.230 Fingerprint-based criminal history records checks (CHRC): Flightcrew members.

(a) *Scope.* This section applies to each flightcrew member for each aircraft operator, except that this section does not apply to flightcrew members who are subject to § 1544.229.

(b) *CHRC required.* Each aircraft operator must ensure that each flightcrew member has undergone a fingerprint-based CHRC that does not disclose that he or she has a disqualifying criminal offense, as described in § 1544.229(d), before allowing that individual to serve as a flightcrew member.

(c) *Application and fees.* Each aircraft operator must ensure that each flightcrew member's fingerprints are obtained and submitted as described in § 1544.229 (e) and (f).

(d) *Determination of arrest status.* (1) When a CHRC on an individual described in paragraph (a) of this section discloses an arrest for any disqualifying criminal offense listed in § 1544.229(d) without indicating a disposition, the aircraft operator must determine, after investigation, that the arrest did not result in a disqualifying offense before the individual may serve as a flightcrew member. If there is no disposition, or if the disposition did not result in a conviction or in a finding of not guilty by reason of insanity of one of the offenses listed in § 1544.229(d), the flight crewmember is not disqualified under this section.

(2) When a CHRC on an individual described in paragraph (a) of this section discloses an arrest for any disqualifying criminal offense listed in § 1544.229(d) without indicating a disposition, the aircraft operator must suspend the individual's flightcrew member privileges not later than 45 days after obtaining a CHRC, unless the aircraft operator determines, after investigation, that the arrest did not result in a disqualifying criminal offense. If there is no disposition, or if the disposition did not result in a conviction or in a finding of not guilty by reason of insanity of one of the offenses listed in § 1544.229(d), the flight crewmember is not disqualified under this section.

(3) The aircraft operator may only make the determinations required in paragraphs (d)(1) and (d)(2) of this section for individuals whom it is using, or will use, as a flightcrew member. The aircraft operator may not make determinations for individuals described in § 1542.209(a) of this chapter.

(e) *Correction of FBI records and notification of disqualification.* (1) Before making a final decision to deny the individual the ability to serve as a flightcrew member, the aircraft operator must advise the individual that the FBI criminal record discloses information that would disqualify the individual from serving as a flightcrew member and provide the individual with a copy of the FBI record if the individual requests it.

(2) The aircraft operator must notify the individual that a final decision has been made to allow or deny the individual flightcrew member status.

(3) Immediately following the denial of flightcrew member status, the aircraft operator must advise the individual that the FBI criminal record discloses information that disqualifies him or her from retaining his or her flightcrew member status, and provide the individual with a copy of the FBI record if he or she requests it.

(f) *Corrective action by the individual.* The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in his or her record, subject to the following conditions—