

(2) *Exception.* If the legal fee charged in connection with the settlement of a civil action described in section 405(c)(3)(C)(iii) of the Act of an individual is less than 10 percent of the aggregate amount of compensation awarded to such individual through such settlement, the representative who charged such legal fee to that individual may charge an amount for compensation for services rendered to the extent that such amount charged is not more than—

(i) Ten (10) percent of such aggregate amount through the settlement, minus

(ii) The total amount of all legal fees charged for services rendered in connection with such settlement.

(c) *Discretion to lower fee.* In the event that the Special Master finds that the fee limit set by paragraph (a) or (b) of this section provides excessive compensation for services rendered in connection with such claim, the Special Master may, in the discretion of the Special Master, award as reasonable compensation for services rendered an amount lesser than that permitted for in paragraph (a) of this section.

**PART 105—CRIMINAL HISTORY  
BACKGROUND CHECKS**

**Subpart A [Reserved]**

**Subpart B—Aviation Training for Aliens and  
Other Designated Individuals**

- Sec.
- 105.10 Definitions, purpose, and scope.
- 105.11 Individuals not requiring a security risk assessment.
- 105.12 Notification for candidates eligible for expedited processing.
- 105.13 Notification for candidates not eligible for expedited processing.
- 105.14 Risk assessment for candidates.

**Subpart C—Private Security Officer  
Employment**

- 105.21 Purpose and authority.
- 105.22 Definitions.
- 105.23 Procedure for requesting criminal history record check.
- 105.24 Employee's rights.
- 105.25 Authorized employer's responsibilities.
- 105.26 State agency's responsibilities.
- 105.27 Miscellaneous provisions.

AUTHORITY: Section 113 of Pub. L. 107-71, 115 Stat. 622 (49 U.S.C. 44939).

SOURCE: Order No. 2656-2003, 68 FR 7318, February 13, 2003, unless otherwise noted.

**Subpart A [Reserved]**

**Subpart B—Aviation Training for  
Aliens and Other Designated  
Individuals**

**§ 105.10 Definitions, purpose, and  
scope.**

(a) *Definitions.*

*ATSA* means the Aviation and Transportation Security Act, Public Law 107-71.

*Candidate* means any person who is an alien as defined in section 101(a)(3) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(3), or a person specified by the Under Secretary of Transportation for Security, who seeks training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more from a Provider.

*Certificates with ratings recognized by the United States* means a valid pilot or flight engineer certificate with ratings issued by the United States, or a valid foreign pilot or flight engineer license issued by a member of the Assembly of the International Civil Aviation Organization, as established by Article 43 of the Convention on International Civil Aviation.

*Notification* means providing the information required under this regulation in the format and manner specified.

*Provider* means a person or entity subject to regulation under Title 49 Subtitle VII, Part A, United States Code. This definition includes individual training providers, training centers, certificated carriers, and flight schools. Virtually all private providers of instruction in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more are covered by section 113 of ATSA (49 U.S.C. 44939) and are therefore subject to this rule. Providers located in countries other than the United States are included in this definition to the extent that they are providing training leading to a United States license, certification, or rating. Providers who "dry-lease" simulator equipment to individuals or entities for use within the

United States are deemed to be providing the training themselves if the lessee is not subject to regulation under Title 49. Providers located in countries other than the United States who are providing training that does not lead to a United States pilot or flight engineer certification, or rating are not included in this definition. When the Department of Defense or the U.S. Coast Guard, or an entity providing training pursuant to a contract with the Department of Defense or the U.S. Coast Guard (including a subcontractor), provides training for a military purpose, such training is not subject to Federal Aviation Administration (FAA) regulation. Accordingly, these entities, when providing such training, are not “person[s] subject to regulation under this part” within the meaning of section 113 of ATSA.

*Training* means any instruction in the operation of an aircraft, including “ground school,” flight simulator, and in-flight training. It does not include the provision of training manuals or other materials, and does not include mechanical training that would not enable the trainee to operate the aircraft in flight.

(b) *Purpose and scope.* (1) Section 113 of ATSA (49 U.S.C. 44939) prohibits Providers from furnishing candidates with training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more without the prior notification of the Attorney General. Training in the operation of smaller aircraft is considered to be training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more if the training would lead to a type rating allowing the candidate to operate a model of the same or substantially similar type of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more in accordance with FAA regulations. The purpose of this notification is to allow the Attorney General to determine whether such an individual presents a risk to aviation or national security before training may begin. The Department believes that it is not required to make a candidate wait for 45 days in order to begin training if the Department has completed its risk assessment. There-

fore, after providing the required notification to the Attorney General as described in this subpart, the Provider may begin instruction of a candidate if the Attorney General has informed the Provider that the Attorney General has determined as a result of the risk assessment conducted pursuant to section 113 of ATSA that providing the training does not present a risk to aviation or national security. If the Attorney General does not provide either an authorization to proceed with training or a notice to deny training within 45 days after receiving the required notification, the Provider may commence training at that time. All candidates who are not citizens or nationals of the U.S. must show a valid passport establishing their identity to a Provider before commencing training.

(2) The Department may, at any time, require the resubmission of all or a portion of a candidate’s training request, including fingerprints. If, after approving any training application, the Department determines that a candidate presents a risk to aviation or national security, it will notify the Provider to cease training. The Provider who submitted the candidate’s identifying information will be responsible for ensuring that the training is promptly halted, regardless of whether another Provider is currently training the candidate.

(3) Providing false information or otherwise failing to comply with section 113 of ATSA may present a threat to aviation or national security and is subject to both civil and criminal sanctions. The United States will take all necessary legal action to deter and punish violations of this section.

(4) Providers should make every effort to ensure that approved training occurs on the dates specified in the training request at the location of the Provider who submitted the request. However, where scheduling problems or other exigent circumstances prevent this from happening, training may be rescheduled for any time within 30 days of the approved training dates without submitting an additional request. If any scheduling change of greater than 30 days occurs, a new request with the

## Department of Justice

## § 105.12

corrected training dates must be submitted. Any proposed change in location or Provider must precipitate a new request, although Providers may employ the assistance of other Providers or their facilities for a portion of the training, provided that the substantial majority of the training occurs at location of the Provider who submitted the request.

### § 105.11 Individuals not requiring a security risk assessment.

(a) *Citizens and nationals of the United States.* A citizen or national of the United States is not subject to section 113 of ATSA unless otherwise designated by the Under Secretary of Transportation for Security. A Provider must determine whether a prospective trainee is a citizen or national of the United States prior to providing training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. To establish United States citizenship or nationality, the prospective trainee must show the Provider from whom he or she seeks training any of the following documents as proof of United States citizenship or nationality:

(1) A valid, unexpired United States passport;

(2) An original or government-issued certified birth certificate with a registrar's raised, embossed, impressed or multicolored seal, registrar's signature, and the date the certificate was filed with the registrar's office, which must be within 1 year of birth, together with a government-issued picture identification of the individual named in the birth certificate (the birth certificate must establish that the person was born in the United States or in an outlying possession, as defined in section 101(a)(29) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(29)));

(3) An original United States naturalization certificate with raised seal, INS Form N-550 or INS Form N-570, together with a government-issued picture identification of the individual named in the certificate;

(4) An original certification of birth abroad with raised seal, Department of State Form FS-545 or Form DS-1350, together with a government-issued pic-

ture identification of the individual named in the certificate;

(5) An original certificate of United States citizenship with raised seal, INS Form N-560 or Form N-561, together with a government-issued picture identification of the individual named in the certificate; or

(6) In the case of training provided to a federal employee (including military personnel) pursuant to a contract between a federal agency and a Provider, the agency's written certification as to its employee's United States citizenship/nationality, together with the employee's government-issued credentials or other federally-issued picture identification.

(b) *Exception.* Notwithstanding paragraph (a) of this section, a Provider is required to provide notification to the Attorney General with respect to any individual specified by the Under Secretary of Transportation for Security. Individuals specified by the Under Secretary of Transportation for Security will be identified by procedures developed by the Department of Transportation and are not eligible for expedited processing under § 105.12 of this part.

### § 105.12 Notification for candidates eligible for expedited processing.

(a) *Expedited processing.* The Attorney General has determined that providing aviation training to certain categories of candidates presents a minimal additional risk to aviation or national security because of the aviation training already possessed by these individuals or because of risk assessments conducted by other agencies. Therefore, the following categories of candidates are eligible for expedited processing, unless the candidate is an individual specified by the Under Secretary of Transportation for Security:

(1) Foreign nationals who are current and qualified as pilot in command, second in command, or flight engineer with respective certificates with ratings recognized by the FAA for aircraft with a maximum certificated takeoff weight of over 12,500 pounds, or who are currently employed and qualified by U.S. regulated air carriers as pilots on aircraft with a maximum certificated

§ 105.13

28 CFR Ch. I (7-1-14 Edition)

takeoff weight of 12,500 pounds or more;

(2) Foreign nationals who are commercial, governmental, corporate, or military pilots of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more who are receiving training on a particular aircraft in connection with the sale of that aircraft, provided that the training provided is limited to familiarization (*i.e.*, training required by one who is already a competent pilot to become proficient in configurations and variations of a new aircraft) and not initial qualification or type rating; or

(3) Foreign military or law enforcement personnel who must receive training on a particular aircraft given by the United States to a foreign government pursuant to a draw-down authorized by the President under section 506(a)(2) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2318(a)(2)), if the training provided is limited to familiarization.

(b) *Notification.* Before a Provider may conduct training for a candidate eligible for expedited processing under paragraph (a) of this section, the Provider must submit the following information to the Department:

- (1) The full name of the candidate;
- (2) A unique student identification number created by the Provider as a means of identifying records concerning the candidate;
- (3) Date of birth;
- (4) Country of citizenship;
- (5) Passport issuing authority;
- (6) Dates of training; and
- (7) The category of expedited processing under paragraph (a) of this section for which the candidate qualifies.

(c) *Commencement of training.* (1) The notification must be provided electronically to the Department by the Provider in the specific format and by the specific means identified by the Department. Notification must be made by electronic mail. Only notifications sent from an electronic mail address registered as a Provider will be accepted. Specific details about the mechanism for the notification will be made available by the Department and distributed through the FAA.

(2) After the complete notification is furnished to the Department, the Pro-

vider may commence training the candidate as soon as the Provider receives a response from the Department that the individual does not present a risk to aviation or national security as a result of the risk assessment conducted pursuant to section 113 of ATSA and the foreign national candidate presents a valid passport establishing his or her identity to the Provider. Receipt of this response from the Department will be deemed approval by the Department to commence training.

(d) *Records.* When a Provider conducts training for a candidate eligible for expedited processing, the Provider must retain a copy of the relevant pages of the passport and other records to document how the Provider made the determination that the candidate was eligible. The Provider also must retain certain identifying records regarding the candidate, including date of birth, place of birth, passport issuing authority, and passport number. The Provider must be able to reference these records by the unique student identification number provided to the Department pursuant to this section. Providers also are encouraged to maintain photographs of all candidates trained by the Provider. Such records must be maintained for at least three years following the conclusion of training by the Provider. The Provider must also be able to use the unique student identification number to cross-reference any other documentation that the FAA may require the Provider to retain regarding the candidate.

**§ 105.13 Notification for candidates not eligible for expedited processing.**

(a) A Provider must submit a complete *Flight Training Candidate Checks Program* (FTCCP) form and arrange for the submission of fingerprints to the Department in accordance with this section prior to providing flight training, except with respect to persons whom the Provider has determined, as provided in §105.11 of this part, are not subject to a security risk assessment. A separate FTCCP form must be submitted for each course or instance of training requested by a candidate. A set of fingerprints must be submitted in accordance with this rule prior to the commencement of any training.

## Department of Justice

## § 105.13

Where a Provider enlists the assistance of another Provider in training a candidate, no additional request need be submitted, as long as the specific instance of training has been approved.

(b) The completed FTCCP form must be sent to the Attorney General via electronic submission at <https://www.flightschoolcandidates.gov>. The form must be submitted no more than three months prior to the proposed training dates. No paper submissions of this form will be accepted.

(1) In order to ensure that such electronic submissions are made by FAA certificated training providers, Providers must receive initial access to the system through the FAA. Providers should register through their local FAA Flight Standards District Offices. The FAA has decided that registration will be only by appointment. Upon registration, Providers will be sent (via electronic mail) an access password to use the system.

(2) Candidates may complete the online FTCCP form at <https://www.flightschoolcandidates.gov> to reduce the burden on the Provider. After the form has been completed by a candidate, it will be forwarded electronically to the Provider for verification that the candidate is a bona fide applicant. Verification by the Provider will be considered submission of the form for purposes of paragraph (a) of this section. To reduce the burden on the candidates, personal information needs only to be updated, rather than reentered, for each subsequent training request.

(c) Candidates must submit fingerprints to the Federal Bureau of Investigation (FBI) as part of the identification process. These fingerprints must be taken by, or under the supervision of, a federal, state, or local law enforcement agency, or by another entity approved by the Director of the Foreign Terrorist Tracking Task Force, in consultation with the FBI's Criminal Justice Information Services Division. Where available, fingerprints may be taken by U.S. government personnel at a United States embassy or consulate. Law enforcement agencies and U.S. diplomatic installations are not required to participate in this process, but their cooperation is strongly en-

couraged. Any individual taking fingerprints as part of the notification process must comply with the following requirements when taking and processing fingerprints to ensure the integrity of the process:

(1) Candidates must provide two forms of identification at the time of fingerprinting. In the case of aliens, one of the forms of identification must be the individual's passport. In the case of United States citizens or nationals designated by the Under Secretary of Transportation for Security, a valid photo driver's license issued in the United States may be submitted in lieu of a passport;

(2) The fingerprints must be taken under the direct observation of a law enforcement or consular officer, or another specifically authorized individual. Individuals other than law enforcement or consular officers will only be approved on a case-by-case basis by the Director of the Foreign Terrorist Tracking Task Force, in consultation with the FBI's Criminal Justice Information Services Division, upon a showing that they possess the necessary training and will ensure the integrity of the fingerprinting process;

(3) The fingerprints must be processed by means approved by the Director of the Foreign Terrorist Tracking Task Force, in consultation with the FBI's Criminal Justice Information Services Division;

(4) The fingerprint submissions must be forwarded to the FBI in the manner specified by the Director of the Foreign Terrorist Tracking Task Force, in consultation with the FBI's Criminal Justice Information Services Division;

(5) Officials taking fingerprints must ensure that any fingerprints provided to the FBI are not placed within the control of the candidate or the Provider at any time; and

(6) Candidates must pay for all costs associated with taking and processing their fingerprints.

(d) In accordance with Public Law 101-515, as amended, the Director of the FBI is authorized to establish and collect fees to process fingerprint identification records and name checks for certain purposes, including non-criminal justice and licensing purposes. In

**§ 105.14**

**28 CFR Ch. I (7-1-14 Edition)**

addition to the cost to the FBI for conducting its review, other fees may be imposed, including the cost of taking the fingerprints and the cost of processing the fingerprints and submitting them to the FBI for review. Because the total fee may vary by agency, the candidate must check with the entity taking the fingerprints to determine the applicable total fee. This payment must be made at the designated rate for each set of fingerprints submitted.

(e) In some cases, candidates seeking training from Providers abroad may be unable to obtain fingerprints. If a Provider located in a country other than the United States can demonstrate that compliance with the fingerprint requirement is not practicable, a temporary waiver of the requirement may be requested by contacting the Foreign Terrorist Tracking Task Force. The Director of the Foreign Terrorist Tracking Task Force will have the discretion to grant the waiver, deny the waiver, or prescribe a reasonable, alternative manner of complying with the fingerprint requirement for each Provider location.

(f) The 45-day review period by the Department will not start until all the required information has been submitted, including fingerprints.

**§ 105.14 Risk assessment for candidates.**

(a) It is the responsibility of the Department of Justice to conduct a risk assessment for each candidate. The Department has made an initial determination that providing training to the aliens in the categories set forth in § 105.12(a) of this part presents minimal additional risk to aviation or national security and therefore has established an expedited processing procedure for these aliens. Based on the information contained in each FTCCP form and the corresponding set of fingerprints, the Department will determine whether a candidate not granted expedited processing presents a risk to aviation or national security.

(b) After submission of the FTCCP form by the Provider, the Department will perform a preliminary risk assessment.

(1) If the Department determines that a candidate does not present a

risk to aviation or national security as a result of the preliminary risk assessment, the candidate or the Provider will be notified electronically that the Provider may supply the candidate with the appropriate materials and instructions to complete the fingerprinting process described in § 105.13(c) and (d) of this part.

(2) If the Department determines that the candidate presents a risk to aviation or national security, when appropriate, it will notify the Provider electronically that training is prohibited.

(3) For each complete training request submitted by a Provider, the Department will promptly conduct an appropriate risk assessment. Every effort will be made to respond to a training request in the briefest time possible. In routine cases, the Department anticipates granting approval to train within a fraction of the 45-day notification period after receiving a complete, properly submitted request, including fingerprints. In the unlikely event that no notification or authorization by the Department has occurred within 45 days after the proper submission under these regulations of all the required information, the Provider may proceed with the training, upon establishing the candidate's identity in accordance with paragraph (c) of this section.

(c) Providers must ascertain the identity of each candidate. For candidates who are not citizens or nationals of the United States designated by the Under Secretary of Transportation for Security, a Provider must inspect the candidate's passport and visa to verify the candidate's identity before providing training. Candidates who are citizens or nationals of the United States must present the documentation described in § 105.11(a) of this part. If the candidate's identity cannot be verified, then the Provider cannot proceed with training.

(d) If, at any time after training has begun, the Department determines that a candidate subject to this section being trained by a Provider presents a risk to aviation or national security, the Department shall notify the Provider to cease training. A Provider so

notified shall immediately cease providing any training to the person, regardless of whether or in what manner such training commenced or had been authorized. The Provider who submitted the candidate's identifying information will be responsible for ensuring that the training is promptly halted, regardless of whether another Provider is currently training the candidate.

(e) With regard to any determination as to an alien candidate's eligibility for training, when appropriate, the Department will inform the Secretary of State and the Secretary of Homeland Security as to the identity of the alien and the determination made.

### Subpart C—Private Security Officer Employment

AUTHORITY: 18 U.S.C. 534; sec. 6402, Pub. L. 108-458 (18 U.S.C. 534 note).

SOURCE: Order No. 2796-2006, 71 FR 1693, Jan. 11, 2006, unless otherwise noted.

#### § 105.21 Purpose and authority.

(a) The purpose of this subpart is to regulate the exchange of criminal history record information ("CHRI"), as defined in 28 CFR 20.3(d), and related information authorized by Section 6402 (The Private Security Officer Employment Authorization Act of 2004) (Act) of Public Law 108-458 (The Intelligence Reform and Terrorism Prevention Act of 2004). Section 6402 authorizes a fingerprint-based criminal history check of state and national criminal history records to screen prospective and current private security officers, and section 6402(d)(2) requires the Attorney General to publish regulations to provide for the "security, confidentiality, accuracy, use, submission, dissemination, destruction of information and audits, and record keeping" of the CHRI and related information, standards for qualifying an authorized employer, and the imposition of fees.

(b) The regulations in this subpart do not displace state licensing requirements for private security officers. A State retains the right to impose its own licensing requirements upon this industry.

#### § 105.22 Definitions.

As used in this subpart:

(a) *Authorized employer* means any person that employs private security officers and is authorized by the regulations in this subpart to request a criminal history record information search of an employee through a state identification bureau. An employer is not authorized within the meaning of these regulations if it has not executed and submitted to the appropriate state agency the certification required in §105.25(g), if its authority to do business in a State has been suspended or revoked pursuant to state law, or, in those states that regulate private security officers, the employer has been found to be out of compliance with any mandatory standards or requirements established by the appropriate regulatory agency or entity.

(b) *Employee* means both a current employee and an applicant for employment as a private security officer.

(c) *Charged*, with respect to a criminal felony, means being subject to a complaint, indictment, or information.

(d) *Felony* means a crime punishable by imprisonment for more than one year, regardless of the period of imprisonment actually imposed.

(e) *Participating State* means a State that has not elected to opt out of participating in the Act by statutory enactment or gubernatorial order. A State may decline to participate in the background check system authorized by the Act by enacting a law or issuing an order by the Governor (if consistent with state law) providing that the State is declining to participate. The regulations in this subpart that pertain to States apply only to participating states.

(f) *Person* means an individual, partnership, firm, company, corporation or institution that performs security services, whether for a third party for consideration or as an internal, proprietary function.

(g) *Private Security Officer* means an individual other than an employee of a Federal, State, or local government whose primary duty is to perform security services, full or part time, for consideration, whether armed or unarmed and in uniform or plain clothes, except as may be excluded from coverage in

§ 105.23

28 CFR Ch. I (7-1-14 Edition)

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.

## 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);

§ 105.27

28 CFR Ch. I (7–1–14 Edition)

(5) Providing to an employee upon his or her request a copy of CHRI upon which an adverse determination was predicated; and

(6) Maintaining, for a period of no less than three years, auditable records regarding

(i) Maintenance and dissemination of CHRI; and

(ii) The employer’s certification.

(c) If relevant CHRI is lacking disposition information, the SIB or responsible agency in a participating State will make reasonable efforts to obtain such information to promote the accuracy of the record and the integrity of the application of the relevant standards. If additional time beyond a State’s standard response time is needed to find relevant disposition information, the SIB or responsible agency may advise the authorized employer that additional research is necessary before a final response can be provided. If raised, a participating State should take into account the effect of post-conviction relief.

§ 105.27 Miscellaneous provisions.

(a) Alternate State availability. (1) An authorized employer may submit the employee’s fingerprints to the SIB of a participating State other than the State of employment—provided it obtains the permission of the accommodating State—if the authorized employer is prevented from submitting an employee’s fingerprints because the employee’s employment is in:

(i) A State that does not have an applicable Public Law 92–544 statute authorizing state and national fingerprint-based criminal history checks of prospective and current private security officers and has elected to opt out; or

(ii) A participating State that has not yet established a process for receiving fingerprints and processing the checks under the regulations in this subpart.

(2) A participating State agreeing to process checks under this subsection will discontinue doing so if thereafter the State of the employee’s employment establishes a process State and national fingerprint-based criminal history checks of prospective and current private security officers.

(b) FBI fees for national check. The fee imposed by the FBI to perform a fingerprint-based criminal history record check is that routinely charged for noncriminal justice fingerprint submissions as periodically noticed in the FEDERAL REGISTER.

(c) Penalties for misuse. (1) In addition to incarceration for a period not to exceed two years, one who knowingly and intentionally misuses information (including a State’s notification) received pursuant to the Act may be subject to a fine pursuant to 18 U.S.C. 3571.

(2) Consistent with State law, a violation of these regulations may also result in the divestiture of “authorized employer” status, thereby precluding an employer which provides security services from submitting fingerprints for a State and national criminal history record check.

(d) Exclusion from coverage. [Reserved]

PART 115—PRISON RAPE ELIMINATION ACT NATIONAL STANDARDS

Sec.

115.5 General definitions.

115.6 Definitions related to sexual abuse.

Subpart A—Standards for Adult Prisons and Jails

PREVENTION PLANNING

115.11 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.

115.12 Contracting with other entities for the confinement of inmates.

115.13 Supervision and monitoring.

115.14 Youthful inmates.

115.15 Limits to cross-gender viewing and searches.

115.16 Inmates with disabilities and inmates who are limited English proficient.

115.17 Hiring and promotion decisions.

115.18 Upgrades to facilities and technologies.

RESPONSIVE PLANNING

115.21 Evidence protocol and forensic medical examinations.

115.22 Policies to ensure referrals of allegations for investigations.

TRAINING AND EDUCATION

115.31 Employee training.

115.32 Volunteer and contractor training.

115.33 Inmate education.

115.34 Specialized training: Investigations.