

or on any flight to those persons with an operational need to know.

(h) Law enforcement officers authorized to carry a weapon during a flight will be contacted directly by a Federal Air Marshal who is on that same flight.

§ 108.225 Security of aircraft and facilities.

Each aircraft operator shall use the procedures included, and the facilities and equipment described, in its security program to perform the following control functions with respect to each aircraft operation:

(a) Prevent unauthorized access to areas controlled by the aircraft operator under an exclusive area agreement in accordance with §107.111 of this chapter.

(b) Prevent unauthorized access to each aircraft.

(c) Conduct a security inspection of each aircraft before placing it into passenger operations if access has not been controlled in accordance with the aircraft operator security program and as otherwise required in the security program.

§ 108.227 Exclusive Area Agreement.

(a) An aircraft operator that has entered into an exclusive area agreement with an airport operator, under §107.111 of this chapter shall carry out that exclusive area agreement.

(b) The aircraft operator shall list in its security program the locations at which it has entered into exclusive area agreements with an airport operator.

(c) The aircraft operator shall provide the exclusive area agreement to the Administrator upon request.

(d) Any exclusive area agreements in effect on November 14, 2001 shall meet the requirements of this section and §107.111 of this chapter no later than November 14, 2002.

§ 108.229 Fingerprint-based criminal history records checks (CHRC).

(a) *Scope.* The following persons are within the scope of this section—

(1)(i) Each employee or contract employee covered under a certification made to an airport operator on or after December 6, 2001, pursuant to §107.209(n) of this chapter.

(ii) Each individual issued on or after December 6, 2001, 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 §107.205 of this chapter (referred to as unescorted access authority).

(iii) Each individual, on or after December 6, 2001, 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 paragraph (a)(1)(iii)(A) of this section.

(2)(i) Each employee or contract employee covered under a certification made to an airport operator pursuant to §107.31(n) as it existed before November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001), or pursuant to §107.209(n) of this chapter before December 6, 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 §107.205 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.

(b) *Individuals seeking unescorted access authority or authority to perform screening functions.* Each aircraft operator must ensure that each individual identified in (a)(1) 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; or

(3) Authorizing that individual authority to perform screening functions.

(c) *Individuals who have not had a CHRC.* (1) 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 §107.31(n) as it existed before November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001), or under §107.209(n) of this chapter before December 6, 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.

(2) 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.

(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 unescorted access authority or authority to perform screening functions, or while the individual has unescorted access authority or authority to perform screening 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.

(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.

(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 14 CFR 108.229 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 unescorted access authority.

(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 the FAA for that purpose.

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

(f) *Fingerprinting fees.* Aircraft operators must pay for all fingerprints in a form and manner approved by the FAA. The payment must be made at the designated rate (available from the local FAA security office) for each set of fingerprints submitted. Information about payment options is available through the designated FAA 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) 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 unescorted access authority or authority to perform screening functions.

(2) When a CHRC on an individual described in paragraph (a)(2) of this section discloses an arrest for any disqualifying criminal offense without indicating a disposition, the aircraft operator must suspend the individual’s unescorted access authority or authority to perform screening functions 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.

(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, unescorted access authority; individuals for whom it is issuing, or has issued, authority to perform screening functions; and individuals who are covered by a certification from an aircraft operator under

§107.209 (n) of this chapter. The aircraft operator may not make determinations for individuals described in §107.209 (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) 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 unescorted access authority or authority to perform screening functions 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 unescorted access authority or authority to perform screening functions.

(3) Immediately following the suspension of unescorted access authority or authority to perform screening functions, 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, 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 granting unescorted access authority or authority to perform screening functions.

(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 unescorted access authority or authority to perform screening functions.

(2) For an individual with unescorted access authority or authority to perform screening functions before December 6, 2001, 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 unescorted access authority or authority to perform screening functions.

(j) *Limits on dissemination of results.* Criminal record information provided by the FBI may be used only to carry out this section and §107.209 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 107 of this chapter when the determination is not based on the aircraft operator's certification under §107.209 (n) of this chapter.

(3) Other aircraft operators who are determining whether to grant unescorted access to the individual or authorize the individual to perform screening functions under this part.

(4) Others designated by the Administrator.

(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 the Administrator 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 unescorted access authority or authority to perform screening functions. When files are no longer maintained, the criminal record must be destroyed.

(1) *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 unescorted access authority or authority to perform screening functions 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 unescorted access authority or authority to perform screening functions 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 im-

mediately revoke any unescorted access authority and authority to perform screening 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 §107.209 (n) of this chapter, 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 unescorted access authority or authority to perform screening 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 §108.33 as it existed before 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. Section 138 of ATSA removes the exemption for the individuals with access to U.S. Customs' secured areas.

[Doc. FAA-2001-10999, 66 FR 63484, Dec. 6, 2001]

§108.231 Airport-approved and exclusive area personnel identification systems.

(a) Each aircraft operator shall establish and carry out a personnel identification system for identification media that are airport-approved, or identification media that are issued for use in an exclusive area. The system shall include the following:

(1) Personnel identification media that—