1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. Section 558.355 is amended in the last sentence in paragraph (f)(3)(xiii)(B) by removing ''(d)(12)'' and adding in its place ''(d)(13)''; and by adding paragraph (f)(3)(xiv) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(3) * * *

(xiv) *Amount per ton.* Monensin, 11 to 400 grams.

(A) *Indications for use.* For increased milk production efficiency (production of marketable solids-corrected milk per unit of feed intake) in dairy cows.

(B) *Limitations.* Feed continuously to dry and lactating dairy cows in a component feeding system (including top dress). The Type C medicated feed must be fed in a minimum of 1 lb of feed to provide 185 to 660 mg/head/day monensin to lactating cows or 115 to 410 mg/head/day monensin to dry cows. See paragraphs (d)(2), (d)(5), (d)(6), (d)(7)(i), (d)(7)(ii), (d)(7)(iii), (d)(7)(vi), (d)(8), and (d)(13) of this section.

* * * * *

Dated: January 4, 2006.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 06–228 Filed 1–10–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

28 CFR Part 105

[Docket No. FBI 112; AG Order No. 2796–2006]

RIN 1110–AA23

Implementation of the Private Security Officer Employment Authorization Act of 2004

AGENCY: Federal Bureau of Investigation (FBI), Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of Justice (the Department) hereby amends title 28 of the Code of Federal Regulations to authorize access to FBI-maintained criminal justice information systems to effectuate the Private Security Officer Employment Authorization Act of 2004, which was enacted as section 6402 of the Intelligence Reform and Terrorism Prevention Act of 2004. This law authorizes a fingerprint-based check of state and national criminal history records to screen prospective and current private security officers and requires the Attorney General to issue rules to regulate the ''security, confidentiality, accuracy, use, submission, dissemination, destruction of information and audits, and record keeping'' of the criminal history record information (CHRI) and related information; standards for qualifying as an authorized employer; and the imposition of fees.

DATES: The rule is effective January 11, 2006. Written comments must be received on or before March 13, 2006.

ADDRESSES: All comments may be submitted to Assistant General Counsel Harold M. Sklar, Federal Bureau of Investigation, CJIS Division, 1000 Custer Hollow Road, Module E–3, Clarksburg, West Virginia 26306, or by telefacsimile to (304) 625–3944. To ensure proper handling, please reference FBI Docket No. 112 on your correspondence. You may view an electronic version of this proposed rule at *http://www.regulations.gov.* You may also comment via electronic mail at *enexreg@leo.gov* or by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include RIN 1110-AA23 or FBI Docket No 112 in the subject box.

FOR FURTHER INFORMATION CONTACT: Assistant General Counsel Harold M. Sklar, telephone number (304) 625–2000.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 2004, the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458, became law. Section 6402 of that Act (The Private Security Officer Employment Authorization Act of 2004) authorizes a fingerprint-based criminal history check of state and national criminal history records to screen prospective and current private security officers. Section 6402(d)(2) requires the Attorney General to publish an interim final or final regulation within 180 days of the statute's enactment to regulate 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.

The FBI maintains several criminal justice information systems, notably the Fingerprint Identification Record System (FIRS) and the National Crime Information Center (NCIC). Access to the FIRS is predicated upon fingerprint submission through the Integrated Automated Fingerprint Identification System (IAFIS). Previously enacted federal law authorizes similar criminal history record checks for persons engaged in other professions and occupations, such as the banking, securities, and nursing home industries. In implementing section 6402, the interim rule seeks to ensure that the exchange of CHRI and related information relating to the employment of private security guards is accomplished as fully and effectively as possible, achieving the public safety goals of section 6402 and recognizing the sensitive nature of the information involved. To that end, the Department is amending title 28 of the Code of Federal Regulations (CFR) to regulate the exchange of CHRI authorized by section 6402.

Additional Information

The following discussion provides additional information to participating States, authorized employers, and prospective and current private security officers on the operation of the interim rule.

a. To initiate a criminal history record check, section 6402(d)(1)(A) requires the submission of ''fingerprints or other means of positive identification * * *.'' The IAFIS presently utilizes ten rolled fingerprints (captured or submitted manually or electronically) to effectuate a search of the FBI's criminal history repository. Effective June 15, 2005,

IAFIS has begun to also accept ten ''flat'' fingerprint impressions for noncriminal justice purposes subject to certain conditions. Other forms of positive identification cannot currently be accepted.

b. Before an authorized employer may request a criminal history record check from a participating state, the authorized employer must execute a certification to the state, developed by the State Identification Bureau (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 result 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. The authorized employer will provide a copy of the certification to the appropriate state agency. The FBI will develop a model certification form that participating States may use for this purpose.

c. Section 6402 and the interim rule require that an authorized employer obtain the written consent of an employee to submit the employee's fingerprints to the SIB to perform a search of the criminal records. Such consent should clearly indicate the employee's willingness to undergo a fingerprint-based criminal history record check for the purpose of employment as a private security officer and be provided not more than one year prior to the date the check is requested. In light of the triennial auditing cycle maintained by the FBI and the States, the authorized employer must retain such consent forms for no less than three years from the date when the consent was last used as a basis for a records check request.

d. The Act provides legal authority for a criminal history record check—the check is permissive, not mandatory. Subject to any contrary requirements of a particular jurisdiction, an employer may forego requesting a check or may provide interim employment during the pendency of a check. The Act does not compel an adverse or favorable employment determination based upon the results of the check. Nor does a favorable section 6402 check guarantee employment or provide an applicant or an employee any legal right or entitlement.

e. In States that do not have state standards for a private security officer, section 6402(d)(1)(D)(ii)(I)(aa) permits notification of the fact of ''conviction'' of certain crimes to an employer. In light of the Act's silence as to the impact of post-conviction relief, the legal import of the various forms of post-conviction relief shall be determined by applying the law of the convicting jurisdiction.

f. Section 6402(d)(1)(D) contains two periods for considering relevant criminal conduct—ten years from convictions for non-felony crimes involving ''dishonesty or a false statement'' or ''the use or attempted use of physical force,'' and 365 days for a charge for a felony that remains unresolved. The statute is silent as to the date from which such periods should commence. Although the date of submission by an employer or state agency and the date of processing by the SIB and FBI may vary for several reasons (including whether the submission is in manual or electronic form), the date of fingerprint capture is static. Hence, for uniform application of this federal statute, these periods should be considered to commence in reference to the date the fingerprints were taken.

Pursuant to section 6402(d)(1)(D), a State that does not have ''standards for qualifications to be a private officer * * * shall notify an authorized employer as to the fact of whether an employee has been * * * charged with a criminal felony for which there has been no resolution during the preceding 365 days.'' The regulation clarifies that 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.

g. Criminal history records maintained by the SIBs and the FBI frequently do not include information about the disposition of arrest records. In light of this fact, the interim rule provides that if relevant CHRI is missing disposition information, the SIB or responsible agency 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. The interim rule also provides that if additional time beyond a State's standard response time is needed to find relevant disposition information, the SIB or responsible agency may notify the authorized employer that additional research is necessary before a final response can be provided.

h. It is the general practice of the FBI and SIBs when processing criminal history background checks for licensing and employment purposes, such as the checks authorized under Public Law 92–544, to have the SIB first determine whether the applicant has a criminal history at the state level. By checking records at the state level first, a more thorough criminal history check is conducted. If a record is found at the state level, the SIB may retrieve the remainder of the record by accessing the FBI's Interstate Identification Index. The FBI receives fingerprint submissions of individuals who do not have an identifiable record at the state level and the results of the FBI check are then returned to the authorized agency. This work process is reflected in section 105.23(b) of the interim rule.

i. Section 6402(d)(4) authorizes the imposition of a user fee by the FBI ''to process background checks * * *.'' Additionally, section 6402(d)(4)(C) authorizes a State ''to assess a reasonable fee on an authorized employer for the costs to the State of administering this Act.'' The interim rule acknowledges this user fee authority.

j. Section 6402(c)(3)(A) authorizes the Attorney General to exempt some services from coverage under the Act if it would serve the public interest. In light of the limited period authorized by statute for the promulgation of these regulations, the Attorney General has not determined what services, if any, should be excluded from coverage. Therefore, the authority provided by section 6402(c)(3)(A) has been expressly reserved by section 105.27(c) of the regulation.

k. The FBI diligently attempts to maintain accurate and current CHRI and related information. Although the Act does not expressly provide a record subject an opportunity to controvert his record, nonetheless that opportunity is provided generally by other regulations. See 28 CFR 50.12(b). An employee seeking to review the CHRI upon which an adverse determination was predicated is authorized by federal law to receive his CHRI by the submission of fingerprints and a fee to the FBI. 28 CFR 16.32 *et seq.,* implementing Departmental Order 556–73. However, inasmuch as the SIB or designated state agency is in possession of the employee's CHRI (which was predicated upon positive identification), requiring an employee to comply with the Departmental Order proceeding is

unnecessarily expensive and time-consuming. Therefore, a State may redisseminate the employee's CHRI to the subject of the record in such cases.

l. Numerous States already have adequate statutory authority under the auspices of Public Law 92–544 to perform state and national fingerprint-based criminal history record checks of prospective and current private security officers, and therefore may elect to opt out of participation in this program. Other states may, for other reasons, wish not to participate in this program for national background checks on private security officers. Congress has therefore provided that a State may opt out of the Act by enactment of a law or promulgation of a gubernatorial order. Section 6402(d)(5). If a State elects to opt out of the Act, these regulations are inapplicable to that State.

m. Section 6402(d)(1)(A) of the Act provides that an authorized employer ''may submit to the state identification bureau of a participating State'' a request for a criminal history background check of a private security guard employee pursuant to the Act. Although the law does not specify to which participating State the authorized employer is required to submit the request, it is generally expected that an authorized employer will seek background checks on its employee in the state of employment. Some States, however, may opt out from participating in this background check system even where they have no applicable Public Law 92–544 statute authorizing state and national fingerprint-based criminal history checks of prospective and current private security officers. In addition, some participating states may take time to set up a process to accept and process the checks under these regulations. To allow for the possibility of checks authorized by the Act being done in these circumstances, the interim rule provides that if an authorized employer is prevented from submitting an employee's fingerprints because the employee's employment is (1) in 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 that has elected to opt out, or (2) in a participating state that does not yet have a process for accepting such fingerprint submissions under these regulations, then the employer may submit the employee's fingerprints to the SIB of another participating State other than the state of employment provided it obtains the permission of the accommodating state. Such an arrangement would be voluntary, could involve the imposition of additional requirements by the alternative state as a condition to agreeing to do the out-of-state checks, and would discontinue once the State where the private security guard is employed makes available a process for doing these checks. Conducting a national check through an alternative state where possible may be preferable to no check at all. Conducting the check through the state of employment is, however, generally preferable inasmuch as such states are more likely to have records on a subject not available at the FBI than an alternative state with which an employee has had no contact.

n. Although not required by the statute, States are encouraged to explore the beneficial use of (1) electronic/livescan fingerprint capture and submission, and (2) channeling agents to transmit fingerprints to the FBI and the results of the criminal history checks to the States.

Comments Invited

The Department is seeking comments regarding this interim rule. Accordingly, the Department invites interested persons to participate in this rulemaking by submitting written comments. The Department may change this rule in light of the comments received.

Good Cause Exception

The Department's implementation of this rule as an immediately effective interim rule is based on the ''good cause'' exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). The private security guard industry is growing rapidly and performing an increasingly vital role in protecting the public from violent crime and terrorism. As reflected in the Congressional findings for the Private Security Officer Employment Authorization Act of 2004, ''private security officers protect individuals, property, and proprietary information, and provide protection to such diverse operations as banks, hospitals, research and development centers, manufacturing facilities, defense and aerospace contractors, high technology businesses, nuclear power plants, chemical companies, oil and gas refineries, airports, communication facilities and operations, office complexes, schools, residential properties, apartment complexes, gated communities, and others.'' Many of the areas protected by private security guards may be potential targets for terrorists or violent criminals. Congress found that the ''threat of additional terrorist attacks requires cooperation between public and private sectors and demands professional, reliable, and responsible security officers for the protection of people, facilities, and institutions.''

Key to preserving the trust placed by the public in private security guards performing their protective duties are background checks that include the CHRI maintained by the FBI. These checks will help States and the private security guard industry assess the qualifications of the private security guards performing vital public safety and homeland security functions. Any delays in implementing such a program will be detrimental to the public's safety.

Indeed, Congress recognized the need for the rapid implementation of this program. Section 6402(d)(2) of the Act requires the Attorney General to issue final or interim final regulations within 180 days of the law's enactment. The Department believes that the compelling public safety and homeland security reasons specified by Congress in the findings of the Act provides good cause in accordance with 5 U.S.C. 553(b)(3)(B) for dispensing with the requirements of prior notice. These same reasons also provide good cause in accordance with 5 U.S.C. 553(d)(3) for making this rule immediately effective on January 11, 2006.

Applicable Administrative Procedures and Executive Orders

Executive Order 12866—Regulatory Planning and Review

The proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, it has been reviewed by the Office of Management and Budget.

Executive Order 13132—Federalism

This rule will not have a substantial, direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

The rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. The FBI charges a user fee in compliance with Public Law 101–515. States must submit $22.00 to the FBI for each fingerprint forwarded to the FBI in accordance with these regulations. State fees for such checks can range from $5.00 to $75.00. This rule, however, imposes minimal costs on businesses, organizations, or governmental jurisdictions (whether large or small) in that the submission of fingerprints for State and national criminal background checks is voluntary on the part of both the authorized employer and the participating States. Additionally, any costs that may be borne by the current or prospective employee are expected to be minimal.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995. Additionally, the regulation authorizes State governments to recoup their costs by collecting a reasonable fee for their services.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. 804. This proposed rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. The FBI charges a user fee in compliance with Public Law 101–515. States must submit $22.00 to the FBI for each fingerprint submitted pursuant to this provision. State fees for such checks can range from $5.00 to $75.00. Inasmuch as authorized employers are permitted and not mandated to request these background checks, and some States may opt out of doing the checks, it is not known how many such checks will be requested by the private security guard industry.

Paperwork Reduction Act of 1995

The rule does not contain collection of information requirements. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is not required.

List of Subjects in 28 CFR Part 105

Administrative practice and procedure, Intergovernmental Relations, Investigations, Law Enforcement, Privacy.

■ Accordingly, title 28 of the Code of Federal Regulations is amended as follows:

PART 105—CRIMINAL HISTORY BACKGROUND CHECKS

■ 1. Revise the heading for part 105 to read as set forth above.

■ 2. In part 105, insert a new subpart C to read as follows.

Subpart C—Private Security Officer Employment

Sec.

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

§ 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 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 result 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.

(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);

(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.]

Dated: January 5, 2006.

Alberto R. Gonzales,

Attorney General.

[FR Doc. 06–223 Filed 1–10–06; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD–2006–OS–002]

RIN 0720–AA92

TRICARE; Revision of Participating Providers Reimbursement Rate; TRICARE Dental Program (TDP)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Department is publishing this final rule to revise the requirements and procedures for the reimbursement of TRICARE Dental program participating providers. Participating providers will no longer be reimbursed at the equivalent of a percentile of prevailing charges sufficiently above the 50th percentile of prevailing charges made for similar services in the same locality (region) or state, or the provider's actual charge, whichever is lower, less any cost-share amount due for authorized services. Specifically, the revision will require TRICARE Dental Program participating providers to be reimbursed in accordance with the contractor's network agreements, less any cost-share amount due for authorized services.

EFFECTIVE DATE: January 11, 2006.

FOR FURTHER INFORMATION CONTACT: Col. Gary C. Martin, Office of the Assistant Secretary of Defense (Health Affairs)/ TRICARE Management Activity, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION:

I. Overview of the Rule

This final rule revises the provision found in 32 CFR 199.13 that requires the TRICARE Dental Program contractor to reimburse participating providers at the equivalent of a percentile of prevailing charges sufficiently above the 50th percentile of prevailing charges made for similar services in the same locality (region) or state, or the provider's actual charge, whichever is lower, less any cost-share amount due for authorized services. This provision was included in the regulation to constitute a significant financial incentive for participation of providers in the contractor's network and to ensure a network of quality providers through use of a higher reimbursement rate. This provision, however, places an unnecessary restriction on contractors that already have established, high quality provider networks with reimbursement rates below the 50th percentile that are of sufficient size to meet the access requirements of the TRICARE Dental Program. The reimbursement rates that have been negotiated over the life of the dental contract represent the general market rates for dental insurance reimbursement, and the final rule brings DoD reimbursement rates into line with the broader insurance market. Elimination of the 50th percentile requirement affords the Government and enrollees significant cost savings through lower provider reimbursement costs by the contractor. Additionally, contractors have other methods available to ensure the TDP members receive high quality dental services. These quality assurance methods include, but are not limited to, licensing and credentialing standards, patient satisfaction assessments, and provider trend analyses.

II. Review of Comments

The proposed rule was published in the **Federal Register** on August 31, 2005