



Background Checks

Crosswalk of Deleted, New, and Amended Rules All Operation Types

Overview of Changes

This document is a crosswalk of the deleted or amended background check rules that are being amended or replaced with new background check rules, which will become effective on January 13, 2019. All of the background check rules in Subchapter F, Chapter 745 are new (except for the Definitions rule at §745.601) and have been reorganized and renumbered. In addition, this document describes significant changes to the new or amended rule.

Deleted/ Amended Rule Number	Old Rule Title	New or Amended Rule Citation	Summary of Significant Changes
§743.105 Deleted	What are the background check requirements?	§743.105 New	The new rule has significant changes for shelter care operations that: <ul style="list-style-type: none">• Requires compliance with the background check requirements of Subchapter F, Chapter 745 (instead of having separate background check rules for shelter care operations, any differences for shelter care operations are specifically noted in Subchapter F); and• Does not require submission of a background check request for a person 14 years of age or older who resides at the shelter, unless the person is otherwise required to have a background check.

<p>§745.601 Amended</p>	<p>What words must I know to understand this subchapter?</p>	<p>§745.601 Amended</p>	<p>The amended rule has significant changes that include:</p> <ul style="list-style-type: none"> • Adding new definitions for: <ul style="list-style-type: none"> ○ "Central Registry" (which incorporates the definition from deleted §745.611(3)); ○ "client in care" (which incorporates part of the definition from deleted §745.619.); ○ "criminal history"; ○ "days"; ○ "designated finding"; ○ "DFPS"; ○ "DPS"; ○ "FBI"; ○ "HHSC"; ○ "Licensing"; ○ "present at an operation" (which incorporates the definition from deleted §745.603 and clarifies that solely attending orientation or pre-service training at an operation while not having contact with children in care is not considered "present at an operation"); ○ "subject or subject of a background check"; and ○ "sustained finding"; • Deleting the definitions for: <ul style="list-style-type: none"> ○ "continuous stay" and "non-continuous visit" (which have been incorporated into the updated definition for "regularly or frequently present at an operation"); and ○ "owner" (which has been incorporated into new §745.605(a)(1) as persons that an operation must submit a request for a background check on); • Changing the term "direct care or direct access" to "direct access"; and • Updating the definitions for: <ul style="list-style-type: none"> ○ "CBCU"; ○ "initial background check";
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			<ul style="list-style-type: none"> “regularly or frequently present at an operation” (which has incorporated the deleted definitions of “continuous stay” and “non-continuous visit”); “renewal background check”; “risk evaluation” (which clarifies that the process is now initiated by the subject of a background check, versus the operation); “substitute employee”; and “unsupervised access”.
§745.603 Deleted	Who does DFPS consider to be present at an operation while children are in care?	§745.601(14) Amended	The deleted rule was incorporated as a new definition for “present at an operation”.
§745.611 Deleted	What are background checks?	<ul style="list-style-type: none"> • §745.607 – New • §745.601(2) – Amended 	<p>New §745.607 has significant changes, which:</p> <ul style="list-style-type: none"> • Reorganize the different types of background checks, including a new type for out-of-state background checks, into a chart; and • Clarify that a fingerprint-based criminal history check and a name-based criminal history check includes a sex offender registry search. <p>The description of “Central Registry” from deleted §745.611(3) was added as a new definition at §745.601(2).</p>
§745.613 Deleted	What is the purpose of background checks?	N/A	The rule was not replaced with a new rule because the rule is no longer necessary. Determining whether a person has a criminal history or child abuse and neglect finding and determining whether a person is a risk to children is self-evident. In addition, background checks are mandated by state and federal law.

Deleted/ Amended Rule Number	Old Rule Title	New or Amended Rule Citation	Summary of Significant Changes
§745.615 Deleted	On whom must I request background checks?	<ul style="list-style-type: none"> • §745.605 – New • §745.609 – New • §745.611 – New • §745.615 – New 	<p>Portions of the deleted rule have been incorporated into each of the noted new rules with many significant changes, including:</p> <ul style="list-style-type: none"> • Generally, §745.605 includes a list of the roles of persons that operations must submit (or not submit) a background check request for; and • Information on what types of background checks are needed for particular roles and operation types is now separated into §§745.609, 745.611, 745.613¹ (a new requirement for out-of-state checks), and 745.615. <p>For more specific information on significant changes for each new rule, see <i>Background Checks, Significant Changes for New or Amended Rules, All Operation Types</i>.</p>
§745.616 Deleted	Transitional rule for requesting fingerprint-based criminal history checks for listed family homes, registered child-care homes, and licensed child-care homes as required by the 84th Texas Legislature.	N/A	The rule was not replaced with a new rule because the rule was a transitional rule that expired on December 31, 2017.

Deleted/ Amended Rule Number	Old Rule Title	New or Amended Rule Citation	Summary of Significant Changes
§745.617 Deleted	If my operation is located in a large building that includes other businesses or services, must I request a background check on people working in the building who are not involved in my operation?	N/A	The deleted rule was not replaced with a new rule because the rule is not necessary. Persons working in a large building that includes other businesses would not be regularly or frequently present at an operation [See §745.605(A)(7)]. However, Licensing is adding a Helpful Information box to clarify that a person is not regularly and frequently at an operation unless the person is present in the actual area of the building where the operation is located.
§745.619 Deleted	For a registered child-care home that is also a foster home, must I request background checks on foster children who are over 14 years old?	<ul style="list-style-type: none"> • §745.601(3) – Amended • §745.605(b)(1) – New 	<p>The deleted rule was incorporated as part of the new definition for “client in care” at §745.601(3).</p> <p>In addition, §745.605(b)(1) states that operations do not have to submit a background check request for a client in care.</p>
§745.621 Deleted	Must I request background checks on board members of corporations or associations who own or govern the operation?	§745.605(b)(4) New	The new rule has a significant change, which clarifies that background checks are not required for controlling persons, including board members, who do not otherwise fulfill a role specified in §745.605(a).

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§745.623(a) Deleted	How do I request a background check?	§745.619 New	The new rule has significant changes that require the following information to be included with a request for a background check: <ul style="list-style-type: none"> • The person's city and state of each residence outside of Texas in the previous 5 years; • The person's email address, if available; and • The person's role at the operation, including title and job duties, level of supervision, and ages of children the person will be caring for.
§745.623 (b), (c), and (d) Deleted	How do I request a background check?	§745.617 New	The new rule has a significant change that requires licensed and registered homes to submit requests for background checks through the home's online Child Care Licensing account. These homes can no longer submit manual requests on Form 2971.
§745.625 Deleted	When must I submit a request for an initial or renewal background check?	§745.621 New	The new rule has significant changes related to renewal background checks, including: <ul style="list-style-type: none"> • The time frame requirement for submitting renewal checks has changed from two years to five years for a person who requires a fingerprint-based background check (the timeframe is still two years for a person who only requires a name-based Texas criminal history check); and • Renewal background checks must also be submitted when: <ul style="list-style-type: none"> ○ There is a change in the person's state of residence; or ○ The person's role at the operation changes from a role that only required a name-based Texas criminal history check to a role that requires a fingerprint-based criminal history check.

Deleted/ Amended Rule Number	Old Rule Title	New or Amended Rule Citation	Summary of Significant Changes
§745.626 Deleted	How soon after I request a background check on a person can that person provide direct care or have direct access to a child?	§745.641 New	<p>The new rule has significant changes regarding when an operation may allow a person to be present at the operation, including:</p> <ul style="list-style-type: none"> • Requiring the operation to receive notice from the CBCU that the person's background check determination is <i>eligible</i>, <i>eligible with conditions</i>, or <i>provisionally eligible with conditions</i> before allowing the person to be present at an operation; and • An exception that while the background check determination is pending, the person may be present for the sole purpose of attending orientation or pre-service training, provided the person does not have contact with children in care. <p>Note: The staff shortage exception in deleted rule §745.626 was deleted in response to federal and state law changes.</p>
§745.629 Deleted	How do I submit fingerprints for a fingerprint-based criminal history check?	§745.623 New	<p>The new rule has a significant change that requires the CBCU to send a notification with instructions on how to schedule appointments for submitting fingerprints to the person who is the subject of the background check. The notice was previously sent to the operation.</p>
§745.630 Deleted	If a fingerprint-based criminal history check has already been completed on a person, must that person submit new fingerprints at the time my initial or renewal background check on that person is due?	§745.625 New	<p>The new rule has significant changes regarding when a person must submit new fingerprints because Licensing is now using the FBI's national rap back service. The significant changes include:</p> <ul style="list-style-type: none"> • A person will not need to submit new fingerprints if the CBCU is able to confirm the person has an active subscription to the FBI's national rap back service, or if the CBCU is able to reactivate a subscription; and • If the CBCU is unable to confirm or reactivate a subscription, the person will need to get fingerprinted again. <p>For a description of the FBI's national rap back service, please refer to <i>Background Checks, FBI National Rap Back Overview</i>.</p>

Deleted/ Amended Rule Number	Old Rule Title	New or Amended Rule Citation	Summary of Significant Changes
§745.631 Deleted	Must Licensing complete the background check(s) before issuing my permit?	§745.647 New	<p>The new rule has significant changes that require the CBCU to issue a background check determination of <i>eligible</i> or <i>eligible with conditions</i> (rather than just receiving the results from the background check):</p> <ul style="list-style-type: none"> • For all household members before Licensing may issue a permit to a licensed, registered, or listed home; or • For only the owner before Licensing may issue a permit to any other operation that is not a home. <p>For specific descriptions of the background check determinations, see new rule §745.629¹.</p>
§745.633 Deleted	Can a child-placing agency (CPA) verify a foster home, foster group home, or adoptive home prior to receiving the results of the background checks?	§745.649 New	<p>The new rule has significant changes that require the CBCU to send the CPA a background check determination of <i>eligible</i> or <i>eligible with conditions</i> (rather than a cleared background check) for all household members of a foster family home or adoptive home before the CPA may verify or approve the home.</p> <p>For specific descriptions of the background check determinations, see new rule §745.629¹.</p>
§745.635 Deleted	Can I do my own criminal history background checks?	§745.653 New	No significant changes.
§745.637 Deleted	What information may I obtain from Licensing's records regarding a person's previous history in a child-care operation?	§745.633(a)(3) New	This is not a change in practice, but the new rule does not use the term "person's previous history" and specifically states that a list of each operation that submitted a request for a background check on the person and when the operation submitted the request will be included in the notice sent to the operation.

Deleted/ Amended Rule Number	Old Rule Title	New or Amended Rule Citation	Summary of Significant Changes
§745.651 Deleted	What types of criminal convictions may affect a person's ability to be present at an operation?	§745.661 New	The new rule has significant changes, including: <ul style="list-style-type: none"> • Making multiple modifications to how the three criminal history charts will be updated, including: <ul style="list-style-type: none"> ◦ Publishing proposed changes to the charts in the <i>Texas Register</i> and on the Licensing public website for a 30-day public comment period; ◦ Publishing responses to the comments on the Licensing public website; ◦ Making changes to any chart in response to comments based on a reasoned justification; and ◦ Republishing adopted changes to any chart in the <i>Texas Register</i>; and • Clarifying that on a case-by-case basis Licensing will compare the legal elements of each offense to determine whether a federal offense or offense in another state is substantially similar to a Texas offense.
§745.653 Deleted	If a criminal history check reveals a criminal conviction other than those enumerated in the relevant chart listed in §745.651 of this title (relating to What types of criminal convictions may affect a person's ability to be present at an operation?), will Licensing notify me of the results?	§745.633(b)(2) New	The new rule has a significant change to clarify that Licensing will no longer release criminal history and child abuse and neglect findings directly to operations (including non-enumerated crimes), with the noted exception of a child-placing agency for persons associated with a current or prospective foster or adoptive home.

Deleted/ Amended Rule Number	Old Rule Title	New or Amended Rule Citation	Summary of Significant Changes
§745.655 Deleted	Do criminal convictions include deferred adjudication for an offense that may affect a person's ability to be present at an operation?	§745.663 New	The new rule has a significant change, which clarifies that deferred adjudication community supervision is also considered a conviction when revoking a permit. In addition, all of the information in the rule was placed into a chart for clarity.
§745.656 Deleted	Will a requirement that a person register with the Texas Sex Offender Registry affect the person's ability to be present at an operation?	§745.669 New	The new rule has a significant change, which clarifies that registration as a sex offender outside of Texas also bars a person from being present at an operation.
§745.657 Deleted	What types of Central Registry findings may affect a person's ability to be present at an operation?	§745.671 New	The new rule has a significant change, which adds a new type of finding to the chart at (a)(7) for a DFPS child abuse or neglect finding that has not been sustained when the CBCU has determined that the person who is the subject of the background check does not present an immediate threat or danger to the health or safety of a child.

Deleted/ Amended Rule Number	Old Rule Title	New or Amended Rule Citation	Summary of Significant Changes
§745.659 Deleted	What will happen if a person at my child-care operation has a criminal conviction or a Central Registry finding?	§745.633 New	<ul style="list-style-type: none"> • The new rule has significant changes, because Licensing will no longer release criminal history and child abuse and neglect findings directly to operations, with the noted exception below for child-placing agencies (CPA). • The new rule requires the CBCU to provide a notice to an operation, which includes: <ul style="list-style-type: none"> ◦ The person’s background check determination (for specific descriptions of the background check determinations, see new rule §745.629¹); ◦ Any conditions or restrictions on the person’s presence at the operation; and ◦ A list of each operation that submitted a request for a background check on the person and when the operation submitted the request. [Note: This requirement came from deleted §745.637 and is not a change in practice, however, the language in the new rule is more specific as to what will be provided in the notice.] • If a CPA submitted a request because of the person’s association with a current or prospective foster or adoptive home, the notice will also include: <ul style="list-style-type: none"> ◦ The sources of the information that were used for the background check; ◦ Any criminal history, including non-enumerated crimes which were previously required by deleted §745.653; ◦ Sustained Central Registry findings; ◦ Whether the person is eligible for a risk evaluation; and ◦ Any Central Registry finding of child abuse or neglect that is not sustained, if the CBCU determines the person cannot be present at your operation.

Deleted/ Amended Rule Number	Old Rule Title	New or Amended Rule Citation	Summary of Significant Changes
§745.661 Deleted	What must I do after Licensing notifies me that a person at my operation has one of these types of criminal convictions or Central Registry findings?	§745.635 New	The new rule has significant changes because the action an operation must take is based on the type of background check determination made by the CBCU, not the criminal conviction or central registry finding. The action an operation must take for a background check determination depends upon the determination. For specific descriptions of the action to take for a specific background check determination, see the description for §745.635 in <i>Background Checks, Significant Changes for New or Amended Rules, All Operation Types</i> .
§745.663 Deleted	What if the person with the criminal conviction or central registry finding believes the information obtained is incorrect?	§745.643 New	The new rule has significant changes because the person who is the subject of the background check (rather than the operation) is responsible for challenging the accuracy or completeness of the information in the background check. The process was also clarified in the following ways: <ul style="list-style-type: none"> • The person should first attempt to resolve the issue with the CBCU representative; and • If still unable to resolve the issue, then the person should seek resolution from the agency that provided the results.
§745.681 Deleted	When may I request a risk evaluation?	§745.683 New	The new rule has a significant change, because the CBCU's notification that the person is eligible for a risk evaluation will go to the person who is the subject of the background check (rather than the operation).
§745.683 Deleted	Who is responsible for submitting a request for a risk evaluation?	§745.681 New	The new rule has a significant change, because the person who is the subject of the background check (rather than the operation) is responsible for requesting a risk evaluation.

Deleted/ Amended Rule Number	Old Rule Title	New or Amended Rule Citation	Summary of Significant Changes
§745.685 Deleted	How do I submit a request for a risk evaluation?	§745.687 New	<ul style="list-style-type: none"> The new rule includes significant changes to clarify that it is the responsibility of the person who is the subject of the background check to submit the risk evaluation packet (previously, it was the operation's responsibility). Another significant change requires the completed risk evaluation packet to include the information noted in §745.689 or §745.691. This has always been the practice, but was not clearly stated in the deleted rule.
§745.686 Deleted	What are the time frames for requests for a risk evaluation?	§745.685 New	<p>The significant changes in the new rule clarify that:</p> <ul style="list-style-type: none"> A request for a risk evaluation must be submitted within 30 calendar days from when the operation submitted the background check request; and The CBCU will notify the person when the request for the risk evaluation is due.
§745.687 Deleted	What must I include in my request for a risk evaluation based on criminal history?	§745.689 New	<p>The significant changes in the new rule include:</p> <ul style="list-style-type: none"> Adding a requirement to provide an official copy of the police report regarding the circumstances of the arrest; Deleting the requirement for the operation to provide a valid rationale as to why the person would not pose a risk to the health and safety of children (except a CPA must still provide a rationale if the risk evaluation is for a foster or adoptive home); and Deleting the requirement to provide information regarding the person's role at the operation (this information is required at new §745.619(10)).

Deleted/ Amended Rule Number	Old Rule Title	New or Amended Rule Citation	Summary of Significant Changes
§745.689 Deleted	What must I include in my request for a risk evaluation based on a Central Registry finding?	§745.691 New	The significant changes in the new rule include: <ul style="list-style-type: none"> • Clarifying that the rule applies to any child abuse or neglect finding, not just Texas Central Registry findings; • Deleting the requirement that the operation provide a valid rationale as to why the person would not pose a risk to the health and safety of children (except a CPA must still provide a rationale if the risk evaluation is for a foster or adoptive home); • Clarifying that evidence of rehabilitative efforts must be included; and • Deleting the requirement to provide information regarding the person's role at the operation (this information is required at new §745.619(10)).
§745.691 Deleted	May conditions or restrictions be placed on a person's presence at an operation?	§745.631 New	The significant changes in the new rule include additional situations in which the CBCU may place conditions or restrictions on a person's presence at an operation, including: <ul style="list-style-type: none"> • While the person's out-of-state criminal history check or abuse or neglect registry check is pending and there is no other information that makes the person ineligible to be present at an operation; or • When there is a subsequent minimum standards violation relevant to a condition or restriction already in place.
§745.693(a) Deleted	Must I follow conditions or restrictions that have been placed on a person's presence at an operation?	§745.635(3) New	The new rule has significant changes because the action an operation must take is based on the type of background check determination made by the CBCU, not the criminal conviction or central registry finding. However, the action an operation must take for a background check determination of <i>eligible with conditions</i> or <i>provisionally eligible with conditions</i> is very similar to deleted §745.693(a). The operation must restrict the person's duties in a manner that follows the conditions or restrictions the CBCU placed on the person's presence at the operation.

Deleted/ Amended Rule Number	Old Rule Title	New or Amended Rule Citation	Summary of Significant Changes
§745.693(b) Deleted	Must I follow conditions or restrictions that have been placed on a person's presence at an operation?	§745.637 New	The significant changes: <ul style="list-style-type: none"> Clarify what actions Licensing may take when operations do not follow the conditions or restrictions placed on a person's presence at the operation or when there is a subsequent minimum standard violation that is relevant to a condition or restriction already placed on the person; Delete Licensing's option of putting in place a safety plan; and Add an option for Licensing to amend the conditions or restrictions.
§745.697 Deleted	Is an approved risk evaluation permanent?	§745.697 New	The new rule has significant changes, which clarify that: <ul style="list-style-type: none"> An approved risk evaluation expires if the CBCU amends or rescinds it; After a risk evaluation expires, the CBCU will either conduct a new risk evaluation or reprocess the current risk evaluation based on any new information; and An approved risk evaluation for a crime for which the person has been arrested or charged is temporary, and a final decision will be made once there is a final outcome to the alleged crime.
§745.699 Deleted	What should I do if a person in my child-care operation is currently the subject of a criminal investigation?	§745.665 New	The new rule has a significant change, which clarifies that a person who has been arrested or charged with a crime may continue to be present at the operation unless the CBCU notifies the operation that the person is ineligible to be present. The operation is still responsible for immediately reporting the information to Licensing.
§745.701 Deleted	May a person arrested or charged with a crime be present at an operation while children are in care?	§745.667 New	The new rule has a significant change, which clarifies that a background check determination for a person who has been arrested or charged with a crime, including any conditions or restrictions that have been placed on the person, are temporary, and a final determination will be made once there is a final outcome to the alleged crime.

Deleted/ Amended Rule Number	Old Rule Title	New or Amended Rule Citation	Summary of Significant Changes
§745.703 Deleted	If I have knowledge that a person has a criminal conviction or Central Registry finding, can the person be present at my operation while children are in care?	N/A	The rule was not replaced with a new rule because the rule is redundant. The information is included in several new rules that clarify how background checks are conducted, which crimes or abuse or neglect findings prevent a person from being present at an operation, and how risk evaluations are determined.
§745.705 Deleted	What must I do if a person in my child-care operation is the subject of an abuse or neglect investigation?	§745.673 New	The new rule has significant changes, which clarify that: <ul style="list-style-type: none"> • The rule also applies to child abuse and neglect findings in other states; and • The person may continue to be present at the operation unless the CBCU notifies the operation that the person is ineligible to be present. The operation is still responsible for immediately reporting the information to Licensing.
§745.707 Deleted	Who makes the final decision on a risk evaluation?	§745.693 New	The new rule has a significant change, which requires the CBCU to provide the person who is the subject of the background check with a written final decision on the risk evaluation within 45 days from the date background check was submitted.

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§745.709 Deleted	What is the basis of the risk evaluation decision?	§745.695 New	The new rule has significant changes, which: <ul style="list-style-type: none"> • Clarify when reviewing the information required by §745.689 and §745.691, the CBCU will consider whether the person failed to submit any information, and review any other relevant information; • Add new factors the CBCU will consider when assessing whether the person poses a risk to the health or safety of children, including: <ul style="list-style-type: none"> ○ The length of time since the crime or abuse or neglect was committed; ○ The person's role in the crime or abuse or neglect; ○ Any pattern of type of crime or abuse or neglect; and ○ Evidence of rehabilitative efforts over the last 10 years.
§745.711 Deleted	What can I do if I disagree with the risk evaluation decision?	§745.699 New	The new rule has significant changes, which: <ul style="list-style-type: none"> • Give a person the right to request a review of the risk evaluation decision, including the conditions or restrictions that were imposed, if there is new information that was not available at the time of the risk evaluation decision; • Require the request for a review to be in writing; • Require the CBCU director or designee to provide a written response within 30 days, which may be extended for another 30 days for good cause; and • State that the review of the risk evaluation is a final decision.
§745.731 Deleted	What are designated perpetrators and sustained perpetrators of child abuse or neglect?	§745.731 New	The new rule has significant changes, which: <ul style="list-style-type: none"> • Clarify that a person's due process rights includes any rights of appeal; and • Delete the definition of Central Registry and move it to §745.601(2).

Deleted/ Amended Rule Number	Old Rule Title	New or Amended Rule Citation	Summary of Significant Changes
§745.733 Deleted	Will Licensing release a central registry finding on a designated perpetrator or sustained perpetrator to my operation?	N/A	The rule was not replaced with a new rule because the rule is no longer applicable. New §745.633 describes the information that will be sent to operations in a notice letter. Licensing will no longer release child abuse and neglect findings directly to operations (instead Licensing will be releasing background check determinations to operations), with the noted exception of a child-placing agency when the person has an association with a foster or adoptive home.
§745.735 Deleted	What notice will Licensing send a designated perpetrator or a sustained perpetrator working at an operation?	N/A	The rule was not replaced with a new rule because the rule is no longer applicable. However, new §745.639 ¹ describes the information that will be sent to the person who is the subject of a background check in a notice letter.
§745.751 Deleted	What factors does Licensing consider when determining if a person or an operation is an immediate threat to the health or safety of children?	§745.751 New	No significant changes
§745.753 Deleted	How will I know whether Licensing has determined that a person or my operation poses an immediate threat or danger to the health or safety of children?	N/A	The rule was not replaced with a new rule because the rule is no longer applicable. New §745.633(a) states that Licensing will release to the operation a background check determination, including whether the person may be present at the operation and any conditions or restrictions placed on the person's presence at the operation. The background check determination will have already factored in whether the person poses an immediate threat to the health or safety of children.

Deleted/ Amended Rule Number	Old Rule Title	New or Amended Rule Citation	Summary of Significant Changes
§745.8713 Amended	When may Licensing impose a monetary penalty before a correction action?	§745.8713 Amended	The significant changes to the rule make the circumstances for which Licensing may first impose a monetary penalty consistent with the changes regarding background check determinations.

¹Note: New §§745.613, 745.627, 745.629, 745.639, 745.645 and 745.651 were not discussed in the Summary of Significant Changes, because these new rules have new requirements that are not based on any deleted rule. For an overview and summary of the significant changes on each of these new rules, see *Background Checks, Significant Changes for New or Amended Rules, All Operation Types*.