The proposed fingerprint-based criminal history records check process was similar to that proposed in the NPRM.

Discussion of SNPRM Comments

The FAA received 34 comments in response to the SNPRM. Commenters included Congressman James L. Oberstar, 12 airport operators, 3 air carriers, 2 individuals, 3 small businesses, 1 state transportation department, the Federal Bureau of Investigation, the U.S. Customs Service and the following aviation organizations: Air Transport Association (ATA), Air Transport Association of Canada (ATAC), Aircraft Owners and Pilots Association (AOPA), Airline Pilots Association (ALPA), Airport Law Enforcement Agencies Network (ALEAN), Airports Association Council International (AACI), American Association of Airport Executives (AAAE), Association of Flight Attendants (AFA), Families of Pan Am 103/Lockerbie, National Air Transportation Association (NATA), and Regional Airline Association (RAA).

Fifteen commenters support the employment investigation proposed in the SNPRM. Several of these commenters commend the FAA for its response and attention in addressing many of their major concerns in the initial notice.

Seven commenters oppose the proposal, arguing against the need for the employment investigation because no documented terrorist act has ever been committed by someone with both unescorted access privileges and a record of conviction for one of the disqualifying crimes listed in the Act. One commenter questions the link between past convictions for disqualifying crimes and future terrorist actions. Two commenters, a member of Congress and the Families of Pan Am 103/Lockerbie, want a more extensive employment investigation than that proposed in the SNPRM. They suggest extending the employment verification portion to 10 years and applying the employment investigation to individuals with existing unescorted access privilege.

Three commenters also discuss the degree of discretion provided the Administrator in implementing the employment investigation requirement of the Act. One commenter states that the Act does not require this regulation and the FAA should not issue a final rule. Another states that the Act requires only an employment investigation with a criminal history check as the Administrator determines necessary. According to this commenter, issuance of a rule is completely discretionary. A

third commenter contends that the statute mandates an employment investigation, not a criminal history records check.

FAA Response: This rule enhances existing FAA security requirements and supports the objectives of the Act through a cost-effective and practical regulatory program. The FAA's security requirements focus on protecting persons and property in air transportation against acts of criminal violence, air piracy, and terrorism. These acts are neither simple nor uniform, and are certainly not limited to sophisticated acts of international terrorists with political motives or acts of deranged individuals. Also of concern are individuals deliberately committing, or deliberately or unknowingly assisting in the commission of criminal acts against aviation for financial gain or reprisal. For example, individuals with a history of felony narcotics distribution may be more susceptible to exploitation by those wishing to target a passenger aircraft. In this scenario, the employee would wittingly assist in placing a package of purported narcotics on the aircraft, only to find later that the packet actually contained an explosives device. A trust is placed in individuals authorized to have unescorted access, and it is reasonable to establish measures to reduce the likelihood that they will present a security risk to civil aviation.

The U.S. aviation industry has not experienced incidents in which there was a direct relation between the disqualifying offenses and a serious security incident, such as a terrorist bombing or hijacking. However, the Act indicates Congress' concern that an individual's criminal history could show a disposition to engage in such conduct in the future, which could result in a serious security incident. Moreover, it is a reasonable and feasible precaution to prohibit unescorted access to individuals with a criminal record for certain types of crimes. This rule uses practices similar to other industry standards (e.g., bankers, stockbrokers and employees at nuclear facilities).

The Act requires the FAA to issue regulations subjecting individuals with unescorted access to U.S. or foreign air carrier aircraft, or to SIDAs of U.S. airports, to such employment investigations, including a criminal history records check, as the Administrator determines necessary to ensure air transportation security. While the Act gives the Administrator flexibility in implementing the employment investigation provision, the Congress clearly contemplated that

granting unescorted access privileges would be tied to some type of employment investigation.

In response to the public hearings and written comments, the FAA modified the initial proposal and developed the SNPRM to enhance aviation security in a more cost-effective manner. The Conference Report on the Department of Transportation Fiscal Year 1993 Appropriations legislation addressed the FAA's SNPRM stating:

The conferees have agreed to delete the language proposed by the House that would have prohibited the Federal Aviation Administration from implementing a rule to require criminal background checks of airline and airport employees. The conferees' action is based on the Federal Aviation Administration's Supplemental Notice of Proposed Rulemaking published in the September 18, 1992, Federal Register in which the Federal Aviation Administration revised an earlier proposed rulemaking. The conferees recognize that the Federal Aviation Administration has used its discretionary authority to address the many concerns raised by the industry groups about the operational, financial and constitutional issues associated with its earlier proposal, and have concurred that the Federal Aviation Administration should not be prohibited from moving forward with this approach.

This action clarified Congress' view that the SNPRM conforms with the legislative intent of the Act.

Discussion of the Final Rule

The FAA developed this final rule based on the legislative mandate and the comments received during the rulemaking process. This rule amends 14 CFR parts 107 and 108; and parts 107 and 108 of the Federal Aviation Regulations (FAR). The rule expands the pre-existing requirements for an investigation into the background of individuals applying for unescorted access privileges to the SIDA of U.S. airports by providing specific guidelines for requirements.

The final rule augments and clarifies the process required to satisfactorily determine the eligibility of individuals for unescorted access privileges. This rule requires the employment investigation to include: provision of a 10-year employment history by those applying for access; verification of the most recent 5 years of that history by the employer; and the completion of a criminal history records check when specific conditions are identified as a result of the information obtained through the investigation process.

Similar in concept to the SNPRM, this final rule strengthens the existing employment investigation requirement by providing specific guidance on the type of information that must be