obtained and evaluated, identifying specific "triggers" that indicate a need to conduct a criminal history records check, and establishing recordkeeping requirements. This final rule differs from the SNPRM in that it requires individuals applying for unescorted access privileges to provide their employment history for a period of 10 years prior to the date of application rather than 5 years. While the employer will have to review the entire application, consistent with the SNPRM, only the most recent 5 years of this history need be verified as part of the employment investigation review. Hence, while an applicant will have to provide additional employment history information, this will not materially increase the burden on airport operators, air carriers or other non-aircarrier airport tenants involved in granting unescorted access privileges. The FAA believes that this approach increases the effectiveness of the rule in identifying individuals with unexplained gaps in employment who may have been convicted of the disqualifying crimes during the past 10 years and will afford employers additional information on which to base access determinations.

This final rule also modifies a key term used throughout the rule to further clarify its intent. Since it was used in the Act, the term "employment investigation" was used extensively in the NPRM and the SNPRM. While both notices specified that the "employment investigation" is really related to access authority and not necessarily to employment decisions, the final rule uses the term "access investigation." The FAA believes that this term better describes the intent of the rule.

The FAA Act of 1958 was recodified and appeared at 49 U.S.C. Subtitle VII, then under Public Law 103–272, (effective July 5, 1994) recoding occurred under 49 U.S.C. Code "Transportation". This Final Rule lists both the new statutory numbers for crimes committed and the former citations, in part because FBI records are likely to only have the latter citations.

Another modification to the SNPRM is that the FAA will act as the clearinghouse for criminal history records checks. The procedures for processing fingerprint cards and associated fees are discussed later in this preamble under § 107.31(i), 'Fingerprint Processing.''

Further Action Considered

Although this final rule makes an important improvement to the civil aviation security system, and is fully consistent with the rulemaking record,

the FAA is currently evaluating whether further changes may be warranted. Subsequent to the close of the comment period for the SNPRM, this country has experienced two major acts of domestic terrorism. The World Trade Center bombing and the recent bombing of a Federal office building in Oklahoma City are evidence of the threat of terrorism within the United States. While neither incident involved an aviation target or appears to have involved individuals who had a disqualifying criminal record that would have been disclosed by an FBI fingerprint check, the incidents to raise questions about whether a broader rule should be considered in light of the general level of threat. It also raises questions about whether the statutory authority should be expanded to include other persons with security responsibilities, such as checkpoint screeners, who do not necessarily have unescorted access to air carrier aircraft or to the secured area of an airport. However, the FAA has concluded that it is essential and appropriate to move forward with this final rule on the existing record and not further delay action until the FAA's evaluation and possible further rulemaking are completed.

The FAA intends to actively consult with airport operators and air carriers as part of this evaluation. The effect of this rule and its actual implementation by airports and air carriers will be followed closely from the outset. In addition, input will be sought from the Aviation Security Advisory Committee. The FAA will determine what further actions may be necessary based on the evaluation. The FAA also will review intelligence information in relation to the possible impact of a more extensive criminal history check requirement.

Section-by-Section Analysis

Section 107.1 Applicability and Definitions

Escort

In the SNPRM, the FAA defined the term "escort" in § 107.1(b)(3). One commenter, NATA, states that the proposed definition of escort implies that this function and any associated responses must be performed by the same individual. NATA suggests that an individual other than the one performing the escort be allowed to perform follow-up actions, and that escorting by electronic means be allowed.

FAA Response: This rule retains the definition of "escort" that was included in the SNPRM, with minor modifications. Only an individual

authorized by the airport operator to have access to areas controlled for security purposes may perform escorting. Specific action must be taken, in accordance with local airport procedures, if the individual under escort engages in activities other than those for which the escorted access is granted. The definition is modified by adding a sentence that explains that necessary responsive actions can be taken by the escort or other authorized individuals.

The definition of escort adopted in this rule includes a performance standard. The definition provides the latitude to use various methods and procedures for the escort as long as they meet the established standard. For example, an airport could choose to establish escorting procedures for its general aviation areas that use electronic means and prescribe specific follow-up actions.

Section 107.31 Access Investigation 107.31(a)—Applicability

Area Covered

Six commenters to the SNPRM discuss the applicability of the regulation to the SIDA. RAA, ATA, and AOPA contend that at some airports broad SIDA definitions include the entire air operations areas (AOA). The commenters believe the FAA should mandate a consistently defined, limited SIDA.

An airport operator requests a broader applicability of the rule stating that two different levels of employment verification for SIDA and non-SIDA areas controlled for security purposes will be confusing. This operator recommends the rule apply uniformly to all areas that require identification badges. AACI and AAAE contend that one standard should apply to all, and they are particularly concerned that individuals performing air carrier screening are not included in the employment investigation rulemaking.

FAA Response: This rule applies only to airports that require continuous display of airport-approved identification, i.e., the SIDA as defined in § 107.25. The SIDA typically includes the secured area of an airport (§ 107.14 secured area) and some or all of the air operations areas (§ 107.13).

FAA guidance has defined the areas and types of operations for inclusion within the SIDA. Any expansion of an airport SIDA requires FAA approval. In such instances, application of the policy guidance assures uniformity to the extent practical. Given the varied operational areas at airports, it is not