practical for the FAA to further define SIDA in the regulation.

The FAA has clarified that this rule does not apply to smaller airports that do not have a continuous display requirement by removing the reference to these airports contained in § 107.31(a)(2) of the SNPRM. However, if an airport has an area controlled for security reasons that is not a SIDA, the existing 5-year employment history verification continues to apply to individuals requesting unescorted access authority.

The access investigation requirement of this rule applies to individuals seeking unescorted access privileges in the SIDA as well as those in a position to authorize others to have such access and supersedes the 5-year employment history verification in the airport security program for the covered individuals. The issuance or denial of an identification credential for continuous display in the SIDA serves as the vehicle for implementation of this requirement from a practical and enforcement standpoint.

For individuals applying for positions that do not require SIDA unescorted access privileges (and thus are not covered by this rule), the existing security program language requiring the 5-year employment history verification will continue to apply. This includes security screening personnel and any other individuals with unescorted access only to security-controlled areas outside of a SIDA. While having somewhat different requirements may result in some extra administrative effort, the commenters did not provide any specific information showing that this will significantly increase the burden on airports. Except for the authority to access an applicant's criminal history record, an employer may use the application process specified in this rule in all circumstances.

Definition of Employer

One commenter points out that the SNPRM implies that all persons for whom an airport operator may authorize or deny unescorted access privileges are employees of the airport subject to being hired or fired by the airport operator. This commenter explains that many individuals applying for unescorted access privileges are not airport operator employees.

Two commenters address the consequences of the employment investigation proposed in the SNPRM on the employment process. One commenter believes the rule would affect the issuance of unescorted access authority rather than employment. The

other commenter states that an employer would probably not hire a person who, based on preliminary employment investigation results, cannot be authorized for unescorted access privileges without going through a FBI criminal record history check. This commenter assumes the termination of the employment inquiry if it appears that a criminal records check is needed.

FAA Response: The FAA agrees that the intent of the investigation is to determine an individual's eligibility for unescorted access authority. The Act, and the final rule, do not specifically prohibit the employment of disqualified individuals; rather, they prohibit individuals convicted of certain enumerated crimes in the past 10 years from being employed in a position having unescorted access to secured areas of a U.S. airport or to U.S. and foreign air carrier aircraft. As previously noted, the final rule uses the term "access investigation" rather than "employment investigation," which was used in the NPRM and SNPRM. This change was made to clarify the intent of the rule. The FAA recognizes that individuals affected by the rule include current employees not previously granted unescorted access authority and prospective employees of an airport operator, air carrier, tenants other than air carriers, and contractors whose positions require unescorted access. This rule does not attempt to establish guidance, beyond ineligibility for unescorted access privileges, for the disposition of an individual whose access investigation reveals a conviction for a disqualifying crime.

Individuals With Current Access Authority

Sixteen commenters address exempting individuals with existing unescorted access authority from the proposed employment investigation. Fifteen of these commenters (including air carriers, airport operators, unions, and non-air-carrier airport tenants) fully support the language in the SNPRM that would exempt from the required employment investigation all individuals who have current unescorted access authority on the effective date of the final rule. This support follows the recommendations made by the ASAC and numerous comments received in response to the initial notice and the SNPRM.

One commenter (Congressman Oberstar) opposes the exclusion for individuals with existing access authority. Congressman Oberstar contends that the Commission's report recommendation and the Act's

employment investigation provision are intended to cover individuals with existing authority and individuals applying for unescorted access privilege. He argues that the existing 5year employment history verification is not subject to FAA approval, and the FAA has not provided guidance on what constitutes an acceptable check. Therefore, Congressman Oberstar states that the final rule must "require that current employment investigation programs conform with those mandated in the final rule" and that "employers with non-conforming programs must be required to conduct 5-year employment checks of current employees to assure that they have undergone the same scrutiny as applicants."

One commenter is uncertain whether individuals exempted under the proposal with a previous conviction for a disqualifying crime would lose their privileges for unescorted access.

FAA Response: While the Act gives the FAA authority to require employment investigations for individuals currently authorized for unescorted access privileges, the Act confers discretion on the FAA Administrator on methods for imposing such a requirement. Individuals authorized to have unescorted access privileges since November 26, 1985, have been subjected to a 5-year employment history verification required by the FAA in the security programs of airport operators and air carriers. Since granting these individuals unescorted access privileges, airport operators and air carriers have had the opportunity to observe the individual's conduct.

The benefits, if any, of subjecting current employees with unescorted access authority to the proposed access investigation would not justify the disruption and cost that such a requirement would place on the air carriers and airport operators. The estimated cost for verifying employment histories of all existing employees would be an additional \$5.4 million. Further, because of typically high turnover rates, much of the employee population with unescorted access will have been subjected to the expanded background check within a relatively short period. Therefore, the FAA concludes that air transportation security does not require the retroactive application of this rule to individuals with current unescorted access authority.

This rule does not require individuals currently authorized to have unescorted access to disclose a past conviction for a disqualifying crime. However, if a conviction occurs after the effective date