points out that, in accordance with its reading of the Act and the Americans with Disability Act, the FAA has the legal authority and right to include insanity as a disqualifying factor. Another commenter states that insanity as a disqualifying factor should be determined on a case-by-case basis and that the final determination should be based on national and local FAA field office guidelines to ensure nationwide consistency.

AACI and AAAE state that "certain crimes aboard aircraft in flight" is too vague and that this disqualifying crime needs to be better explained. They are also concerned that the regulation would not permit an employer to take into account rehabilitation. They argue that the Act is arbitrary because it assumes rehabilitation would "magically" occur after 10 years, but cannot be taken into account before the 10 years for purposes of allowing unescorted access.

Three commenters state that the regulation should not limit the employer to those crimes on the list. In their view, an employer should have some discretion to include other crimes or conditions as disqualifying.

Two commenters assert there should be measures for punishing applicants who falsify the information they provide on the application forms or, at a minimum, disqualifying the individual from unescorted access. One of these commenters states that individuals convicted of any of the disqualifying crimes would not hesitate to falsify an application form and that stronger measures are needed, such as making it a Federal crime to falsify such information.

FAA Response: As proposed, this rule adds felony arson to the list of disqualifying crimes. (In the SNPRM, FAA proposed "arson"; the rationale for the clarifying change can be found below.) The deliberate nature of the offense and the safety and practical considerations of fueling aircraft make it logical to do so. Although the FAA is not aware of any instance where an individual with unescorted access privileges ever perpetrated an act of arson at an airport, arson has occurred at airports and is too dangerous an act to omit it from the list of disqualifying crimes.

Also, in response to comments received on the initial notice and the SNPRM, this rule adds "not-guilty by reason of insanity" for any of the disqualifying crimes as a disqualifying factor. While recognizing that insanity is not a crime, the FAA concludes that insanity associated with a disqualifying crime should be a disqualifying

condition because of the seriousness of these crimes and the difficulty involved in ascertaining recovery.

The FAA has made some minor clarifying changes to the introductory language of § 107.31(b). The phrase "in any jurisdiction" has been added to parallel the language of the Act. Also added is the phrase "a crime involving * * *" to the enumerated offenses in order to make clear that the intent of the rule is to disqualify an individual who has been convicted of one of the disqualifying offenses, even if the name of the statute under which the individual was convicted does not exactly match the language of the final rule. As long as the conviction involves a crime specified in the rule, the individual would be disqualified.

In its comment to the NPRM, the Department of Justice's Criminal Division requested several changes to the rule language to which the FAA has agreed. The Division suggested that we limit disqualifying convictions for arson to felony arson in order to exclude instances of minor vandalism. The Division also requested that some of the disqualifying offenses be further defined. These revisions include:

• § 107.31(b)(2)(xvii): the phrase "or hostage taking" has been added after "kidnapping";

• § 107.31(b)(2)(xix): the phrase "or aggravated sexual abuse" has been added after "rape";

• § 107.31(b)(2)(xx): the word "use" has been added before "sale."

It is the FAA's understanding and intent that these changes clarify the intent of Congress but do not substantively expand the list of disqualifying crimes. The Criminal Division also requested that $\S 107.31(b)(2)(xxv)$ be revised to include attempts" to commit any of the aforementioned criminal acts. The Division states that while this section, as proposed, included a conviction for conspiracy to commit any of the enumerated offenses (as required by the Act), the conduct underlying an attempt may be more serious than that required to support a conviction of conspiracy. The FAA has therefore revised this section to include the phrase "or attempt.

The Act provides no discretion for rehabilitation, requiring only a 10-year period from the time of the conviction for the disqualifying offense. This rule also includes the 10-year period for instances of not guilty by reason of insanity.

In the rule, the FAA does not attempt to further define the commission of "certain crimes aboard aircraft" because it is one of the named disqualifying crimes from the Act. An individual's criminal record would reflect convictions for this offense as a specific violation listed in 49 U.S.C. 46506.

This rule limits the mandatory disqualifying crimes to those required by the statute and the additional disqualifiers discussed above. Apart from meeting the requirements of this rule for unescorted access privileges, an airport operator and air carrier will retain discretion to determine the suitability and qualifications of applicants for unescorted access privileges based on any other information available to them.

This rule does not include penalties for falsifying application information. It is not a disqualifying condition covered by the Act, and the decision to deny access based upon falsification would be a local determination. However, substantial inconsistencies between required information provided on the application and information obtained during the access investigation would trigger a criminal history records check.

If the access investigation discloses a conviction for a disqualifying crime in the previous 10 years measured from the date the verification is initiated, the individual may not be granted unescorted access authority. The Act does not allow the consideration of the possible rehabilitation of an individual.

The disqualifying crimes identified in this rule include specific sections of 49 U.S.C. Chapters 463 and 465, sections of the United States Criminal Code, offenses named in the Act, and two additional disqualifiers.

The specific sections of 49 U.S.C. Chapters 463 and 465 are: (b) § 46706 forgery of certificates, false marking of aircraft and other aircraft registration violations; (c) § 46308 interference with air navigation; (h) § 46312 improper transportation of a hazardous material; (i) § 46502 aircraft piracy; (j) § 46504 interference with flightcrew members or flight attendants; (k) § 46506 commission of certain crimes abroad aircraft in flight; (l) § 46505 carrying a weapon or explosive aboard an aircraft; (m) § 46507 conveying false information and threats; (n) § 46502(b) aircraft piracy outside the special aircraft jurisdiction of the United States; (q) § 46315 lighting violations involving transporting controlled substances; and (r) § 46314 unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements.

The disqualifying crime in 18 U.S.C. 32 is the destruction of an aircraft or aircraft facility.

The other disqualifying crimes are: murder; assault with intent to murder;