espionage; sedition; kidnapping or hostage taking; treason; rape or aggravated sexual abuse; unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon; extortion; armed robbery; distribution of, or intent to distribute, a controlled substance; felony arson; conspiracy or attempt to commit any of these criminal acts; or a finding of not guilty by reason of insanity for any of these criminal acts.

This rule does not limit the ability of airport operators and air carriers to review an individual's complete FBI criminal history record, although the record may not be requested unless one of the regulatory triggers is met. However, any decision to deny unescorted access may be attributed to this rule only if it is based on the individual's conviction within the previous 10 years of an enumerated crime. Any other adverse information contained in the criminal record does not disqualify an individual under this rule.

Section 107.31(c)—Elements of Access Investigations

**Employment History Verification** 

A number of commenters support the process for conducting the verification outlined in the SNPRM. In the SNPRM, the FAA proposed that applicants be required to prove their identity by providing two forms of identification (ID), including a photo ID. In the SNPRM, the FAA proposed that applicants would have to explain employment gaps of more than 12 months in the previous 5 years, and that employers would have to verify information on the application for unescorted access in writing, by telephone, or in person. The FAA solicited comments on whether other means of verifying an individual's employment, such as written documentation, should be acceptable in the verification process.

Two commenters specifically support accepting documentation instead of telephone calls or visits to previous employers. One commenter suggests that legitimate gaps in employment can be documented by copies of school records or certified letters of references from physicians, clergy, or other professionals. Two commenters caution that the rule could have the unintended consequence of generating greater paperwork burdens on employers who must keep records of how they verified employment. Another commenter opposes adding security-related information requirements to its

application forms, fearing that such forms could become needlessly lengthy.

FAA Response: This rule specifies the information required on the application, requires proof of the individual's identity, and requires verification of representations made by the individual. The FAA has crafted the rule using existing industry procedures and practices where possible to avoid creating unnecessary paperwork burdens. The individual applying for unescorted access privileges must complete an application form that includes: (1) the individual's full name, as well as any aliases or nicknames; (2) the dates, names, phone numbers, and addresses of the individual's previous employers for the last 10 years, with explanations for any gaps in employment of more than 12 months; (3) a notice that the individual will be subject to an employment history verification and possibly a criminal history records check; and (4) a question asking if the individual has been convicted of any of the disqualifying crimes or conditions during the previous 10 years.

To assist the applicant in understanding the question on convictions, it would be advisable for the application to include a list of the disqualifying crimes or conditions. This rule permits supplementing an existing application form with a separate sheet requesting the required information and questions.

The information on the application will help identify applicants who may have a disqualifying conviction. For example, an unexplained gap in employment may have occurred due to incarceration for a conviction of a disqualifying crime. The airport operator is responsible for verifying, or accepting certification that the information required on the employment application was verified, to the extent necessary, to validate representations made regarding the most recent 5-year period. This process is similar to that used for the existing 5year employment verification conducted by telephone, in writing, or in person.

This rule allows the use of documentation to verify an individual's previous employment history. However, it is important for airport operators and air carriers to carefully examine the documentation provided to guard against counterfeit documentation.

In cases where a previous employer has gone out of business, a reasonable attempt to verify the period of prior employment should be made. Pay stubs, tax records or other documentation may be used to support the statements on the application.

Section 107.31(n) requires maintaining a record of the method used to verify the applicant's most recent 5 years of employment and the results obtained. Section 107.31(n) also discusses the specific recordkeeping requirements.

Conditions Requiring a Criminal History Records Check

Four commenters address the conditions that "trigger" the requirement for an FBI criminal history records check. One commenter fully supports the triggers proposed in the SNPRM although it requests that the triggers not be considered as limitations. This commenter suggests that an airport operator or air carrier could elect to conduct a complete criminal history records check if, for example, it found an unexplained gap in employment of less than 12 months. Another commenter questions the adequacy of a 12-month period asserting that a person could serve less than 12 months for a disqualifying crime or could be allowed to plead guilty to a lesser crime.

ÅACI and ÅAAE believe that two of the conditions triggering a check are virtually identical to each other. These are: (1) the individual is unable to support statements made or there are significant inconsistencies between information provided on the application in response to questions required by the rule and that which is obtained through the verification process; and (2) information becomes available during the employment history verification indicating a possible conviction for one of the disqualifying crimes.

FAA Response: If one or more of the conditions or "triggers" established by the rule is activated, a fingerprint-based check of the criminal records maintained by the FBI must be completed prior to determining if unescorted access authority will be granted. An airport operator or air carrier is not permitted to establish additional triggers for requesting a criminal check under the authority provided by this rule.

The Act provides the statutory authority for airport operators and air carriers to access FBI records. The Act has been implemented by these regulations, which limit the circumstances under which the airport operator or air carrier can get the criminal history record. However, on its own authority, a potential employer could disqualify someone from unescorted access authority or refuse to hire an individual for an unexplained gap in employment of less than 12 months, or for any other reason. Of course, these actions would have to be