consistent with other applicable laws. Also under its own authority, an employer could apply the employment verification (but not the FBI criminal history records check), to any employees, not just those covered by this rule.

The "triggers" or conditions for the criminal history records check are based on information supplied by the aviation industry on the criteria used by some air carriers to screen job applicants. The combination of triggers provides the appropriate conditions to trigger the requirement for further review of the individual's background through a criminal history records check.

Under the first trigger, an individual who is not able to adequately account for 12 months or more of unemployment over the past 10 years in a manner that substantiates that he or she was not incarcerated for a disqualifying crime would be subject to a criminal history records check. Note that while there is no requirement to verify the information in an applicant's employment history for years 6 to 10, there is an obligation to resolve periods of unemployment of more than 12 months. Unemployment for a 12-month period or more does not automatically trigger a check. Rather, the criminal check is required when the period of unemployment cannot be verified through the checking of appropriate documentation or references. For example, a gap can be satisfactorily explained by receipts for unemployment compensation, travel records, or other information providing sufficient evidence of an individual's whereabouts. In instances where an individual was self-employed, tax records, billing records, work orders or other means can be used to support the claims made on the application.

Second, a criminal history records check is triggered if there is an inability to substantiate statements made, or if there are significant inconsistencies between the information provided by the applicant or the information obtained during the employment verification. This requirement is intentionally defined using broad terms to allow the airport operator and employer to determine what is acceptable. However, if an individual's employment cannot be verified, this is considered an inability to substantiate statements made.

Third, if information becomes available during the course of the access investigation indicating a possible conviction for one of the disqualifying crimes, a criminal history records check is required.

Responding to the question raised by AACI and AAAE, there is a significant

difference between finding out during the access investigation process that information provided was not correct versus finding information that indicates the individual may have a conviction for a disqualifying crime. If incorrect information is provided, it does not necessarily indicate the presence of a disqualifying conviction that raises questions about the individual's truthfulness. An individual's truthfulness is a key component of the access investigation process. Lack of veracity suggest the need to investigate further to determine if the person is trying to conceal a conviction for a disqualifying crime.

The purpose of the last trigger is to identify individuals that may require a criminal check based on any positive information identified during the access investigation. The trigger is intended to substantiate information provided.

Section 107.31(d)—Escorted Access

Under § 107.31(d) of the SNPRM, an individual who does not have unescorted access privileges may be permitted to enter a security area under escort. Five commenters object to allowing an individual who is the subject of a criminal history investigation access to a secured area even under escort because an on-going investigation indicates the likelihood of a criminal record. Three commenters also believe that the escort language proposed in § 107.31(d) of SNPRM is inconsistent with the FAA's policy in § 107.14.

FAA Response: This rule requires individuals who have not been authorized to have unescorted access authority to be under escort, as defined in $\S107.1(b)(3)$, while the SIDA. The employer retains the option of completing the access investigation prior to hiring an individual needing unescorted access privileges rather than providing an escort while the investigation is pending. The primary means of determining an individual's eligibility for unescorted access is the access investigation, including a 5-year employment history verification, which normally takes from 5 to 10 days to complete. Thus, escorting is not necessary for most individuals while undergoing the check because the applicants would not be employed in a position whose utility is predicated on unescorted access until completion of the employment history verification.

The primary reason for security access under this rule is for individuals awaiting a criminal history records check.

Escorted access is permissible while in the security sensitive area even though a criminal history records check has been triggered. A criminal history records check may take from 30 to 90 days to complete; escorted access is allowable when the employment history verification triggers one of the conditions requiring a criminal check. There is nothing in the rule language that requires an airport operator to provide escorted access into a SIDA to an individual undergoing a criminal history records check.

Under the FAA's policy on § 107.14(a) access controls, an individual with § 107.14(a) access privileges may not be escorted through an access point meeting the requirements of § 107.14. Each person with § 107.14(a) access must be subjected to the access control system. Because § 107.31(d) is applicable only to individuals not authorized for unescorted access, the escort language in this section is consistent with the FAA's policy on § 107.14.

Section 107.31(e)—Exceptions to the Investigation Requirements

Six commenters respond to the proposed exceptions from the employment investigation included in the SNPRM. The exceptions included Federal, State, and local government employees who as a condition of employment have been subject to an employment investigation; crew members of foreign air carriers covered by alternate security arrangements; individuals who have been continuously employed in a position requiring unescorted access by another airport operator, tenant, or air carrier; and individuals who have been authorized access to the U.S. Customs Service security area of an airport.

Under this rule, certain categories of individuals are excluded from the access investigation requirement. The FAA expects each airport operator to develop the procedures it uses to implement this section and, where appropriate, issue the individual identification media indicating authorization for unescorted access privileges.

Government Employees

Two commenters request selective application of the exception for Federal, State, and local government employees because employment verification by different entities may not be as stringent as that proposed in the SNPRM. The commenters also raise concerns over the issue of Federal and local law enforcement officers observing the airport's access rules and requirements. Another commenter wants to ensure that the final rule does not alter the