access authority of FAA Safety Inspectors using Form 8000–39.

FAA Response: This rule adopts the language proposed in the SNPRM that no additional investigation is required for Federal, state, and local government employees who have been subjected to an employment investigation by their respective agencies. Typically, the government employer subjects applicants to an employment investigation that is at least equivalent to that proposed in this rule. For example, both Standard Form 171 and Optional Form 306 requires Federal applicants to disclose convictions, and the Office of Personnel Management, where appropriate, conducts a criminal history records check. The rule also provides an option to except state and local governments. This exception will reduce the cost and burden of implementing this rule, while maintaining an effective level of security. Airport operators should work with representatives from the Federal, state and local government agencies to resolve the type of biographical information needed to receive the identification media.

With regard to using Form 8000–39, this rule will not have any effect. Form 8000–39 will continue to authorize the FAA Inspectors to be present in an air operations areas to conduct short term duties associated with their safety related responsibilities.

Foreign Air Carrier Employees

Five commenters address the application of the employment investigation to employees of foreign air carriers. ATA believes the alternate security arrangement for foreign air carrier flightcrew members included in the SNPRM creates "serious competitive imbalances between U.S. and foreign carriers. . . ." ATA implies that the advantage would be to the foreign carriers.

ATAC states that it does not object to the requirement to conduct employment investigations for individuals employed by Canadian carriers in the U.S. applying for unescorted access. However, ATAC contends that the alternative program for transient air crews is unnecessary because Canadian carriers already subject their air crews to a "criminal/subversive/financial security check" before a Transport Canada Airside Restricted Area Pass to operate from Canadian airports is granted. ATAC argues that this security check exceeds the employment investigation requirement in the SNPRM and that the FAA should, therefore, allow Canadian air crews unrestricted access in U.S. airports or at least to areas and offices necessary for operational functions.

A foreign air carrier raises several concerns. The first is related to section 105(a) of the Act which states: "Nothing in this subsection shall be construed as requiring investigations or record checks where such investigations or record checks are prohibited by applicable laws of a foreign government."

This commenter states that the investigation of employees hired in another country and assigned to duty in the U.S. could require an investigation of records in some other country where privacy laws prohibit such an investigation. The commenter recommends addressing this conflict in the rule by stating that such investigations be performed only to the extent permitted by law in the foreign country.

This foreign air carrier requests that the alternate security procedures be expanded to include all crew members and to areas beyond the footprint of the aircraft. (The preamble to the SNPRM explained an example of an alternate system as language in the airport security program permitting a foreign air carrier flightcrew member to have unescorted access or movement limited to the footprint of their aircraft.) The commenter asks that the FAA's final rule explicitly require airport operators to consult with foreign air carriers to identify areas to which crew members need access using the alternate security arrangement.

This carrier also suggests that the SNPRM be revised to allow foreign air carriers to use temporary personnel without performing an employment investigation. According to the commenter, these personnel could be subject to alternate security arrangements, specified in an airport operator security program, restricting access of such personnel to the areas necessary for performance of their jobs. The carrier contends that the revision is needed because foreign air carriers often require services of special relief personnel at particular airports for brief periods. The commenter believes that temporary duty assignments are vital to foreign air carriers, which have significantly fewer permanent personnel based in the U.S. than do domestic carriers. Therefore, an employment investigation of such employees is not feasible because it would counteract the flexibility needed to quickly hire temporary employees for unanticipated increases in workload.

FAA Response: This rule adopts the proposal outlined in the SNPRM, with one modification for foreign air carrier

employees. The Act, and hence this rule, apply only to U.S. airports. Therefore, under this rule, foreign nationals and U.S. citizens working in the U.S. for a foreign air carrier will be subject to an access investigation for unescorted access privileges in a manner similar to non-air-carrier airport tenants. While the airport operator is responsible for ensuring that the investigation is completed, the foreign air carrier could perform the employment history verification as it currently does at most airports.

This rule allows an airport operator to implement an alternate security arrangement in its approved airport security program for foreign air carrier crew members. The final rule uses the broader term "crewmember" rather than "flightcrew member" as proposed in the SNPRM. In accordance with present FAA policy on ramp movement, however, the alternate arrangement would be limited to foreign flightcrew members (i.e., captain, second-incommand, flight engineer, or company check pilot) in the immediate vicinity of the aircraft to which they are assigned. The FAA is willing to consider the merits of including cabin crew and expanding the scope of ramp movement for foreign air carrier crew members on a case-by-case basis. Any alternate arrangements should be developed with and coordinated through the airport operator.

Responding to the concerns raised by ATA over the proposed authority to permit alternate arrangements for foreign crew members, the FAA has determined that it is reasonable from a security standpoint, and consistent with international practices, to permit limited access (around the assigned aircraft). Failure to provide alternate procedures for foreign air carrier crews could result in the adoption of additional requirements for investigations by foreign countries for U.S. air carrier personnel. There are significant operational restrictions associated with using the alternate arrangement that outweigh any associated financial advantages that may accrue to a foreign air carrier. In addition, there is a very low probability of detecting disqualifying convictions for a foreign national based outside the U.S. through an investigation of FBI records because those records normally include only arrests and convictions occurring in the U.S.

This rule does not specifically allow for the acceptance of the Transport Canada Airside Restricted Area Pass as meeting the rule's requirement. However, the required access investigation is more easily