the air carrier's certification satisfies its regulatory obligation. The airport operator may accept a written statement that the employment history verification and, where appropriate, the criminal history records check were performed as part of the process of an air carrier issuing identification credentials to its employees. If a specific air carrier employee or its contractor employee is receiving airport-issued identification, the airport operator must receive certification for each employee prior to issuing an identification credential. The certification should include a statement that the investigation was conducted in accordance with § 108.33 and provide the name(s) of the individuals requiring the unescorted access authority credential. However, the air carrier should retain the specific documentation supporting the access investigation.

The rule also includes a provision permitting an airport operator to accept written certification from airport tenants that they have reviewed the applicant's 10-year employment history and verified the most recent 5 years of that history. Again, the airport tenant should retain the specific documentation supporting this certification. Pursuant to the Act, only airport operators and air carriers can request a criminal history records check, although the costs of such checks will normally be borne by the employer. Thus, the airport operator must process criminal history records checks for all airport tenants other than U.S. air carriers. However, the airport operator is responsible only for the unescorted access privilege determination. Employment-related decisions such as hiring and firing, and an individual's status while a criminal history records check is pending, rest with the airport tenant.

For purposes of this rule, non-aircarrier tenants include airline food service companies, fixed base operators, foreign air carriers, and indirect air carriers subject to part 109 whose employees receive airport identification.

Section 107.31(g)—Appointing Contact

Six commenters respond to the issue of the airport operator appointing a person who will be responsible for reviewing the results of the employment investigation, determining an individual's eligibility for unescorted access and serving as the liaison if the individual disputes the results of a criminal check. As proposed in the SNPRM, the appointed person could delegate the day-to-day duties, but would serve as the FAA's point of contact with the airport for purposes of monitoring compliance with the employment investigation requirement. In the SNPRM, the FAA also solicited comments on whether it should require the contact to be the airport security coordinator (ASC). Five commenters acknowledge that the ASC would be the contact, but believe the FAA should not require or specify the position.

FAA Response: This final rule requires the airport operator to designate the ASC required under § 107.29 as the contact for access investigations. The ASC can delegate the duties while continuing to serve as the FAA's point of contact with the airport for purposes of monitoring compliance with this rule. This is consistent with the requirements of § 107.29 that the ASC serve as the airport operator's primary contact for security-related activities and communications with the FAA.

The ASC, or designee, is responsible for reviewing the results of the access investigation and determining an individual's eligibility for unescorted access privileges. The ASC also serves as the liaison when the individual disputes the results of the criminal history records check that revealed information that would disqualify the person from unescorted access.

Section 107.31(h)—Individual Notification

The FAA received no comments on this section.

Note: An individual covered by this rule must be notified of the need for a criminal history records check prior to commencing the check. Because the FAA will serve as the entity to process the criminal history records check required by this rule, this section of the final rule is modified from that proposed in the SNPRM by removing the language related to designating an outside entity.

Section 107.31(i)—Fingerprint Processing

The Act provides the FAA Administrator, in consultation with the Attorney General, the authority to designate persons to obtain and transmit fingerprints, and receive the results of a criminal history records check. In the SNPRM, the FAA proposed allowing airport operators and air carriers to directly contact the FBI or use an outside entity to request and process the criminal history records checks. The Department of Justice has agreed that airport operators and air carriers may access the criminal records system. The FBI indicates concerns about the FAA's SNPRM proposal to have multiple entities request the checks. The FBI recommends that the FAA serve as the central processor, suggesting the use of a system similar to that of the Nuclear

Regulatory Commission (NRC). The NRC serves as the processor of FBI criminal history records checks for the nuclear industry.

Nine comments address the issue of having a centralized processor or "clearing house" batch and process the FBI criminal history records check requests. Many of the commenters note that the proposed language in the SNPRM would result in far fewer criminal history checks being conducted (compared to the NPRM) and question whether a non-governmental clearing house is feasible for so few requests. As an alternative, they recommend that the FAA serve as the processor.

Three commenters focus on the related issue of screening criminal history records check results. RAA supports the concept in the SNPRM that allows the airport operator and air carriers to review an individual's complete record. Two commenters state that a complete FBI record should not be sent to the airport operator or air carrier; rather, the records should be screened in some manner to determine whether a disqualifying conviction occurred and only that information provided. These commenters believe there is a significant privacy issue involved in releasing an entire record. NATA believes that the FAA should check the records and report any disgualifying convictions to the airport operator. AOPA suggests developing a reply form for the airport operator to submit along with the criminal history records check card. AOPA recommends that the FBI could use this form to return a response to the airport of "qualified or disqualified" for unescorted access privileges. AOPA also states that because the FAA is proposing to mandate these criminal checks, it must take an active role in protecting the rights of individuals affected by this rule and institute strict procedures to protect sensitive personal information.

Seven commenters express concerns over the authority needed by airport operators and air carriers to gain access to the FBI's criminal history record database. Another commenter suggests that the FAA obtain access authority to the National Crime Information Center (NCIC) automated database to allow for a "name check" of individuals applying for unescorted access authority.

FAA Response: The FAA has consulted with the Attorney General, as required by the Act, and has obtained the Department of Justice's concurrence in the following procedures. The FAA is following the recommendations made by the commenters, including the FBI, and will serve as the central processor for the criminal history records check