



Supplemental (S) Questions and Answers Regarding Implementation of the Order Imposing Fingerprinting and Criminal History Check Requirements For Unescorted Access to Certain Radioactive Material (EA-07-305)

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S1. What is the process for appointing a Trustworthiness and Reliability (T&R) Official if they require unescorted access to radioactive materials?

NRC Order EA-07-305, Section III, Paragraph A.2 states:

*“Within **ninety (90)** days of the date of this Order, the Licensee shall provide under oath or affirmation, a certification that the Trustworthiness and Reliability (T&R) Official (an individual with the responsibility to determine the trustworthiness and reliability of another individual requiring unescorted access to the radioactive materials identified in Attachment 2) is deemed trustworthy and reliable by the Licensee as required in paragraph B.2 of this Order.”*

Paragraph B.2 states in part:

“If the T&R Official requires unescorted access, the Licensee must consider the results of fingerprinting and the review of an FBI identification and criminal history records check as a component in approving a T&R Official.”

The Licensee must also consider the three minimum requirements of the Increased Controls (i.e. employment history, education and, personal references) in approving a T&R official.

Procedure for appointing a T&R Official who requires unescorted access to radioactive material:

Step 1: The Licensee should submit one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) for the individual nominated to be the T&R Official and who requires unescorted access to radioactive materials.

Step 2: Submit to the NRC’s Division of Facilities and Security, 11545 Rockville Pike, ATTN: Criminal History Program, Mail Stop T-6E46, Rockville, MD 20852. Overnight mail is preferred.

Step 3: Include the name and address of the individual to whom the nominated T&R Official's criminal history records should be returned for review. The results and information should be reviewed by someone other than the nominated T&R Official and should be the individual who will be submitting the certification under oath and affirmation. The reviewer would preferably be the same person who initially approved the T&R Official for the original Increased Controls requirements, but may be the custodian or initiator of the license.

Step 4: Once the NRC receives the FBI identification and criminal history records check results, it will forward the results to the individual identified in Step 3.

Step 5: Once the Licensee receives the information, they should consider the results of the fingerprinting along with the trustworthiness and reliability requirements of IC. 1. of the Increased Controls Order (EA-05-090 or applicable license condition) in determining the trustworthiness and reliability of the T&R Official.

Step 6: If the nominated T&R Official is deemed trustworthy and reliable by the licensee, the licensee must submit to the NRC, under oath or affirmation, a certification that the named T&R Official is deemed trustworthy and reliable as required by Order EA-07-305.

The requirement to submit documents to the NRC under oath or affirmation may be satisfied by using a notary public to authenticate oaths or affirmations and to certify that the information

provided is correct and true. An alternate method for complying with the oath or affirmation requirement is presented in the United States Code, Title 28, Section 1746 (28 USC 1746). This method allows use of the following unsworn declaration to satisfy the oath or affirmation requirement:

I declare [or certify, verify, state] under penalty of perjury that the foregoing is true and correct.

Executed on [date] [Signature]

When applying this declaration, it must be used verbatim. Licensing documents accompanied by this un-sworn declaration satisfy the requirement that such documents be submitted under oath or affirmation.

The initial certification must be submitted to the NRC within **ninety (90)** days of the date of the Order via one of the acceptable methods specified in the December 5, 2007 cover letter to the Order, and should be addressed to the Director, Office of Federal and State Materials and Environmental Management Programs, Attention: Christian Einberg.

In addition, a copy of this certification must be submitted with all subsequent fingerprints submitted to the NRC. Additionally, each time a new T&R Official is appointed, a new certification must be provided with the next submittal to the NRC.

S2. Can additional employees (e.g., new hires or existing employees changing positions within the company who did NOT have unescorted access prior to the date of the Order) be granted unescorted access to radioactive materials quantities of concern prior to the establishment of a fingerprinting program and certification that the Trustworthiness and Reliability Official is deemed trustworthy and reliable?

No. Prior to being granted unescorted access to material, all additional employees the licensee identifies after the date of the Order as requiring unescorted access, must be determined to be trustworthy and reliable based upon the requirements of the Increased Controls and the review of their FBI identification and criminal history records. The Order also requires that within 90 days of the date of the Order that licensees establish a fingerprinting program and provide under oath or affirmation a certification that the Trustworthiness and Reliability Official (T&R Official) is deemed trustworthy and reliable by the licensee.

Only after the T&R Official has been certified to be trustworthy and reliable, can the T&R Official make trustworthiness and reliability determinations for any employee who requires unescorted access after the date of the Order. Each submittal of fingerprints to the NRC must be accompanied with a copy of this certification. See question 33 and supplemental question S1 for guidance on appointing and certifying a Trustworthiness and Reliability Official.

S3. Who can perform the task of fingerprinting for my employees?

Licensees must have their fingerprints taken by an authorized official, such as a representative from a local law enforcement agency. However, an authorized official, for the purposes of taking fingerprints, could be available through private entities, contractors, or an established on-site fingerprinting program. If a licensee has fingerprints taken at a facility other than that of a

recognized Federal, State, or local law enforcement agency, the licensee should ensure that the prints are taken legibly and match the identity of the individual named on the fingerprint card.

In these cases, the individual taking fingerprints should at a minimum:

- 1) Be trained to take fingerprints (*Training to take fingerprints is offered through the FBI, or may be available from local law enforcement agencies and some professional associations.*);
- 2) Verify the identity of the individual being fingerprinted by checking a government-issued picture identification (*e.g. a passport or driver's license*) and that the name on the card matches the government issued identification.
- 3) Sign the block on the fingerprint card labeled "SIGNATURE OF OFFICIAL TAKING THE FINGERPRINTS."

The licensee must ensure that complete and accurate information is provided in accordance with 10 CFR 30.9. available at:

<http://www.nrc.gov/reading-rm/doc-collections/cfr/part030/part030-0009.html>

For additional related information, also see Q&A 9, 10, 11, Enclosure 2 "Procedures for Processing Fingerprint Checks," and Attachment 3 to the Order EA-07-305.

***This Q&A supersedes Q&As 6, 7, and 8 enclosed (Enclosure 4) with the Order EA-07-305, as issued on December 5, 2007.*

S4. How is the initial trustworthiness and reliability (T&R) determination and certification made (based on fingerprints and a criminal history record check) if the individual to be designated as the T&R official is also the license custodian, initiator, or applicant, and has unescorted access?

In most cases, there will be no one within an organization or company, above the custodian or initiator of a license ("licensee"), previously determined trustworthy and reliable for purposes of evaluating background check and criminal history information and making the initial determination as to whether a designated T&R official is trustworthy and reliable.

Within the licensing process, there are a series of screening criteria used by the reviewer to assess information regarding the applicant. The purpose of the screening criteria is to provide reasonable assurance that radioactive material will be used as intended. The fact that a regulatory authority, using established processes, has authorized the individual applicant to possess radioactive material quantities of concern provides the basis for allowing the applicant to appoint T&R officials.

Where the licensee or applicant requires unescorted access and intends to designate himself or herself as the T&R Official, the licensee or applicant should submit fingerprints to the NRC and indicate that the results of the criminal history record check be returned directly to him or her, specifying the appropriate address. Once the criminal history information has been received by the licensee or applicant, the results must be reviewed and filed by the licensee or applicant and made available to NRC inspectors for ensuring compliance with the fingerprinting requirements.

The licensee or applicant must then submit a letter to the NRC certifying under oath and affirmation that he or she is the initial T&R official for the license. The licensee or applicant can then make T&R determinations for other employees who require unescorted access subject to the fingerprinting requirements, or designate other T&R officials for the purpose of reviewing criminal history information.

A letter certifying a T&R official under oath and affirmation must accompany each additional submission of fingerprints to the NRC. This letter must specify the name(s) and address of the T&R official(s) who will review the criminal history information from the FBI for a given lot of fingerprints.

S5. Must the certification for the Trustworthiness and Reliability (T&R) Official required by section III.A.2. of the Order specifically identify the T&R Official by name, or can it apply generically to the position within the company that is designated as the T&R Official (e.g., the Security Officer or a Human Resources position)?

The certification that the T&R Official is deemed trustworthy and reliable must specifically identify the name or names of the individual(s) designated as the T&R Official(s). This applies to the initial certification required by section III.A.2. of the Order and the certification provided with each fingerprint submission required by item 4. of the “Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks” (Attachment 3 to the Order).

If the licensee has designated multiple individuals to serve as the T&R Official, the licensee may either provide separate certifications for each T&R Official, or provide a single certification that identifies each of the T&R Officials by name.

The certification provided with each fingerprint submission need only identify the T&R Official to whom the licensee specifies the results should be returned (see item 3 of the “Procedures for Processing Fingerprint Checks”). A copy of the initial certification is acceptable if it includes the name of the specified T&R Official. If the name of the T&R Official changes, a new certification must be prepared that includes the name of the new T&R Official and be provided the next time fingerprints are submitted.

S6. When completing the fingerprint cards, NRC Licensees should use their NRC docket number in the field “YOUR NO. OCA.” Since Agreement State Licensees do not have NRC docket numbers, what should they use to complete the field?

Agreement State Licensees should use their two letter State abbreviation followed by a dash and the Licensee’s license number (e.g. CA-123456).

S7. When making a payment to the NRC through Pay.gov for processing of fingerprints, Pay.gov requires a TCN. What is a TCN and what information should go in this field?

TCN stands for “Transaction Control Number” and it identifies payment for the processing of fingerprints for any given individual. The TCN is a tool for Licensees to track their submissions and may include any number of identifying information that would be useful for that purpose. For instance, Licensees can include the names of one or more individuals for whom payment is being made, Licensee’s name and/or date of submittal.

S8. Can I submit my fingerprints electronically to the NRC?

Yes. Some Licensees may choose to make arrangement with the NRC to submit fingerprints electronically to the NRC. However, for many Licensees this option may be prohibitive, due to the cost associated with the purchase of electronic fingerprinting equipment. To establish an electronic fingerprinting program with the NRC, please contact NRC's Facility Security Branch at 301-415-6511. Please note that electronic submission of fingerprints to the NRC must come directly from the Licensee.

S9. If I submit fingerprints electronically, how should I provide an electronic copy of the oath or affirmation that is required to accompany each submission?

Copies of oaths or affirmations can be submitted by fax to 301-415-5118 or by email sent to Doreen.Turner@nrc.gov with a ".pdf" format attached. Each submittal should indicate the names of the individuals for whom the oath or affirmation is being provided.

S10. What happens to the fingerprint cards after the NRC receives it from the Licensee?

The NRC scans the fingerprint cards to transmit to the FBI electronically. The cards are retained and secured for approximately a month after which time they are destroyed in accordance with federal guidelines.

S11. Does the initial Trustworthiness and Reliability Official certification go to the Agreement State for Licensees in Agreement States?

Yes. Agreement State Licensees will implement fingerprinting requirements in response to a State's legally binding requirements, such as license conditions. The Agreement State Licensees must submit their initial Trustworthiness and Reliability Official certification to the State regulatory authority or licensing agency that imposed the requirements.

S12. How should large companies that are licensed in multiple jurisdictions respond to the fingerprinting requirements?

The fingerprinting requirements are imposed based on the license, not the company. If a company holds multiple licenses subject to the fingerprinting requirements, it must respond for each license. For example, if a company holds two NRC licenses, it must respond for both licenses. If convenient, the company may submit a combined response covering both licenses, but the response must address each of the licenses (i.e., "Joe Smith, RSO for both of our licenses, will serve as the T&R Official for both licenses XX-XXXXX-01 and XX-XXXXX-02.") Companies licensed in multiple jurisdictions must respond to each jurisdiction in which it holds a license subject to the fingerprinting requirements.

S13. Whom should I notify if the results from a FBI identification and criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base?

NRC Licensees are required to notify the NRC's Headquarters Operations Office at 301-816-5100 within 24 hours. Similarly, Agreement State Licensees are required to notify their State Regulatory Agency who issued their license within 24 hours.

S14. The June 2, 2008 implementation deadline has passed and I have not completed the trustworthiness and reliability adjudication process for certain individuals because I have not received classifiable fingerprint/FBI criminal history check results. Should I submit a request for relief from the implementation deadline?

A request for relief from the June 2, 2008 implementation deadline is not necessary if the initial fingerprint submissions for individuals requiring unescorted access to radioactive materials in quantities of concern were submitted to the Nuclear Regulatory Commission (NRC) by the implementation deadline. For these individuals, the trustworthiness and reliability adjudication process should be completed within a maximum of 35 days from the date of receipt of classifiable fingerprints and criminal history reports. Licensees operating within Agreement State jurisdiction should work with their respective authorities to meet Agreement State specific implementation deadlines.

S15. What are the next steps in the process if the FBI rejects a Form FD-258 (fingerprint card) because the fingerprints are not classifiable? What options are available to licensees if an individual's fingerprints cannot be classified based on conditions other than poor quality after multiple attempts?

The overwhelming majority of fingerprint cards are returned as classifiable (i.e., can be read by the FBI and used to identify the individual). If the initial fingerprint submission is returned by the FBI because the fingerprint impressions cannot be classified, the fingerprints may be retaken and resubmitted (i.e., new Form-258 or electronic submission) for a second attempt. The licensee will not be charged for the resubmission if the licensee provides a copy of the FBI response indicating the fingerprints could not be classified or the FBI Transaction Control Number (TCN).

If the FBI is unable to classify the second submission of fingerprints, the licensee can submit additional fingerprint impressions for the individual, as follows:

1. The third fingerprint card submission will require payment of an additional \$36 processing fee.
2. If the third submission is also returned as unclassifiable, the licensee may submit a fourth set of fingerprints. An additional fee is not required because the fee for the third submission includes one resubmission. As with the second submission, the FBI response or TCN should be included, or the submission may be treated as a new request and an additional fee may be charged.

Please note that a licensee can opt to take and submit the third and fourth sets of fingerprints together to avoid a potential delay in the response. If the third set is returned as unclassifiable, NRC will automatically resubmit the fourth set.

3. If the fourth submission is returned as unclassifiable, the licensee should submit six (6) additional fingerprint cards for the individual. All six cards will be forwarded to the FBI, who will take what they believe to be the best quality prints from each card to make a complete set of fingerprints. An additional \$36 processing fee is required and covers the processing of all six fingerprint cards, but does not include an additional resubmission.
4. If the FBI is unable to obtain classifiable fingerprints from the six cards, **based on conditions other than poor quality** (e.g., medical conditions or physical anomalies that prevent the taking of readable prints), then the NRC will automatically request a check based on a name search for the individual, and will forward the results to the licensee.
5. No further submissions will be required, and the licensee can consider the results of the name search-FBI identification and criminal history records check as a component in determining trustworthiness and reliability in accordance with IC 1.

The NRC will consider licensee requests for deviation from the above process for good cause (e.g., a demonstrated history of difficulty providing classifiable fingerprints during other fingerprinting programs or a documented medical condition or physical anomaly that can prevent the taking of readable prints). Licensees may submit a request for consideration of alternatives, and provide the basis for the need for an alternative process to NRC's Facilities Security Branch in the Division of Facilities and Security (requests may be made by phone at 301-492-3531, mailed to the mailing address in Enclosure 2 to the Order, by FAX to the attention of Doreen Turner at 301-492-3448 with a cover sheet attached, or e-mailed to Doreen.turner@nrc.gov). Please note that requests for an alternative to the above process will not affect a licensee's responsibility to fingerprint individuals for unescorted access or to comply with the trustworthiness and reliability requirements of IC 1.

Licensees should be aware that Steps 3 and 4 do not occur often, and should take notice that Step 4 may only occur in instances where the FBI has determined that the fingerprints can not be classified based on conditions other than poor quality. Failure to provide quality fingerprint impressions may result in the individual not able to be considered for unescorted access.

Fingerprints may be unclassifiable for a number of reasons, including:

1. Incomplete impressions (fingers not completely rolled from one side of the nail to the other).
2. Left and right hands reversed on the fingerprint card.
3. The same hand or finger printed twice on the card.
3. Fingerprints are not clear and distinct (smudged, uneven, too dark or light, etc.).
4. Fingers on the card are missing or partially missing without an explanation.

To avoid rejection of fingerprints by the FBI as "unclassifiable," the person taking the prints should ensure they are of good quality and do not include any of these deficiencies, and follow the instructions on the back of the fingerprint card. Also, fingerprint cards with incomplete or missing information will be returned to the licensee to provide complete information, resulting in a delay in processing.

The FBI has provided guidance on the taking of fingerprints for submission to the FBI at <http://www.fbi.gov/hq/cjisd/takingfps.html>. This guidance also discusses special situations, such

as fingerprinting an individual with abnormalities of the fingers, thumbs or hands, and the appropriate way to identify such situations on the fingerprint card. A checklist to verify that the fingerprint impressions meet the FBI's requirements is also included.

This Q&A supplements the guidance in Q&As 12 and 21 provided in Enclosure 4 to Order EA-07-305, issued December 5, 2007.