Questions and Answers with Regards to Fingerprinting and Criminal History Records Checks

1. **Information on how I would be required to respond to this notice when I receive it does not appear to be included with the implementing guidance? Will my response include sensitive information?**

   For NRC Licensees, the information on how to respond to the NRC Order requiring implementation of the fingerprinting requirements is contained in the Order itself. For Agreement States Licensee, the information on how to respond will be provided separately by each Agreement State licensing organization, based on the method chosen to execute legally binding requirements. The NRC Orders are not considered sensitive information. Examples of previous Orders can be found by searching ADAMS or NRC's website.

   Licensee responses to the fingerprinting Order is considered sensitive information and should be marked appropriately with **"Withhold From Public Disclosure Under 10 CFR 2.390."**

   Agreement State licensee responses to the fingerprinting requirements should be marked in accordance with applicable Agreement State authority for withholding of sensitive security or proprietary information.

2. **Why is the NRC/Agreement State now requiring fingerprinting and criminal history records checks as part of the Increased Controls trustworthiness and reliability requirements?**

   The requirement for fingerprinting for unescorted access to radioactive materials quantities of concern was included in Section 652 of the Energy Policy Act of 2005. The NRC has determined that the requirement for fingerprinting should not wait for rulemaking and should be issued as Orders or legally binding requirements.

3. **Does a National Agency Check (NAC) satisfy the provisions of the Order?**

   If the NAC has been conducted within the past five calendar years and the employee can provide documentation of favorable results to the licensee's T&R Official, then this would satisfy the provisions of the Order.

4. **Can the Human Resources department be designated as the licensee's Trustworthiness and Reliability (T&R) Officials to review criminal history records? Do they have to be fingerprinted to be able to review and approve others?**

   The requirements for fingerprinting and criminal history records should be incorporated into the licensee's current program of reviewing and approving background information of its employees. The duties of a T&R Official can be delegated to the Human Resources department or any other appropriate department as long as the individuals involved in the determining of an employee's trustworthiness and reliability have been

determined themselves to be trustworthy and reliable by the licensee. T&R Official shall only be fingerprinted if his/her duties require unescorted access to radioactive materials quantities of concern.

5. What is a Trustworthiness and Reliability (T&R) Official? Who can be a T&R Official?

A T&R Official is an individual who the licensee determines to be trustworthy and reliable, based on the three minimum requirements for background checks of the Increased Controls (i.e., employment history, education, and personal references). Fingerprinting and criminal history checks are only needed if the T&R Official has, or will have, unescorted access to radioactive material quantities of concern.

6. Can I take my own fingerprints or can someone else at my company fingerprint me?

Licensees cannot take their own employee fingerprints. Licensees must have their employee fingerprints taken by local law enforcement (or a private entity authorized to take fingerprints) because an authorized Official must certify the identity of the person being fingerprinted.

7. Can a notary act as a witness when I take my fingerprints?

No, fingerprints must be taken by local law enforcement (or a private entity authorized to take fingerprints).

8. Where can I have my fingerprints taken?

Most local law enforcement facilities can take your fingerprints.

9. I was only provided a few fingerprint cards, where can I get more?

You can request more fingerprint cards by writing to the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555, by calling (301) 415-5877, or by e-mail to forms@nrc.gov.

10. What information do I need to include on the card?

Incomplete fingerprint cards will not be processed and will be returned to the licensee. Licensees need to include the following information on each card:

a. Last name, first name, middle name
b. Signature of person being fingerprinted
c. Residence of person being fingerprinted
d. Date
e. Signature of official taking the fingerprints
f. Employer and address
g. Reason for being fingerprinted
h. Aliases
i. Citizenship

j. Social security number and any of the other corresponding numbers requested on the card if applicable
k. Date of birth
l. Place of birth
m. Sex
n. Race
o. Height
p. Weight
q. Eye color
r. Hair color

11. I was able to get more fingerprint cards from my local law enforcement agency, can I use those instead?

No, because of problems that have been experienced in the past with some of the cards.

12. How can I make sure that my fingerprints are classifiable (readable)?

There are instructions on the back of each fingerprint card on how to achieve classifiable fingerprints. Individuals that submit fingerprint cards that are not classifiable will have to submit new cards.

13. Who do I send my fingerprints to?

A completed fingerprint card should be sent to:

Director, Division of Facilities and Security
U.S. NRC
Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738
ATTN: Criminal History Program, Mail Stop T-6E46

14. Is there a fee associated with the NRC/Agreement States processing the fingerprints?

The current fee to process each fingerprint card is a $36.00 per card. Additional fees may be charged by the entity taking the fingerprints.

15. What method of payment does the NRC accept?

The NRC only accepts electronic payments through http://www.pay.gov. Please refer to the instructions on the Order for details on how to pay electronically.

16. My facility is currently not implementing the Increased Controls requirements because it does not possess radioactive materials quantities of concern. Can we implement the fingerprinting Order?

No. The requirements of Section 149 of the Atomic Energy Act only apply to facilities that have radioactive materials in quantities of concern, as identified by the Commission.

17. If I do not have the quantities of material in Table 1, in aggregate or individually, do I need to implement the requirements in this Order?

No. Implementation is only required if you possess radioactive material quantities of concern (i.e., at or above the thresholds of Table 1) individually or in aggregate. You may request that your license be amended to lower your possession limits below the Table 1 quantity so that requirements are not applicable. If you anticipate that you will exceed the Table 1 quantities, in aggregate or individually, you must implement the Increased Controls requirements (EA-05-090) and fingerprinting requirements prior to actual possession of the material.

18. When are licensees required to submit fingerprints to the NRC/Agreement States?

Licensees are required to fingerprint and review the criminal history results for all individuals who currently have, or will require, unescorted access to radioactive materials quantities of concern to the NRC within 180 days after the Order is issued.

19. Will guidance be provided on how to determine trustworthiness and reliability based on FBI identification and criminal history records checks?

Guidance is included with the Order documents; however, it will ultimately be the decision of the licensee's T&R Official to determine whether an individual should be granted unescorted access to the radioactive material, based on the results of the criminal records history check, and the other trustworthiness and reliability requirements of the Increased Controls.

20. Can employees continue to have unescorted access until they are approved or denied based on the results of their fingerprints?

During the implementation period (i.e., up to 180 days after the NRC Order is issued) employees who have unescorted access at the time the Order is issued may continue to have unescorted access in accordance with the requirements of the Increased Controls until they are fingerprinted and continued access is approved or denied based on the review of their FBI identification and criminal history record. After the expiration of the implementation period, no one may have unescorted access until they are fingerprinted and receive approval from the T&R Official based upon a review of their FBI identification and criminal history record.

21. My fingerprints have been returned several times as unclassifiable, can I get an extension to submit my fingerprints?

On a rare case that a licensee needs additional time to implement the fingerprinting requirements beyond the 180-day implementation time, the NRC will consider granting extensions only on a case by case basis. Licensees must take the appropriate actions to minimize any potential impacts in delays from receiving the criminal history results from the NRC. In a rare case that an extension is needed, the request must be date-stamped before the deadline to implement the requirements and must include the licensee's justification as to why additional time is needed beyond the 180-day implementation period and the appropriate compensatory actions that will be implemented until the fingerprints are processed.

22. Our radioactive material is in a room where several people have unescorted access, even though they do not work directly with the radioactive material (i.e. custodial staff), do they need to be fingerprinted?

Yes. Other personnel (both licensee and non-licensee) that have job duties that require unescorted access to the room where the materials are used or stored must be fingerprinted and determined to be trustworthy and reliable by the T&R Official based on the evaluation of the individual's criminal history record and the other trustworthiness and reliability requirements of the Increased Controls.

23. What does unescorted access to the material mean?

Unescorted access to the material means that an individual can exert some physical control over the material or device while they are alone.

24. If I decide that based on a federal criminal records history check one of my employees previously granted unescorted access should not have unescorted access to radioactive material what actions can I take?

The licensee is ultimately responsible to determine the best course of action.

25. Does the denial of unescorted access create legal liability for the licensee?

The NRC and Agreement States acknowledge that employer liability potentially exists through the process for determining trustworthiness and reliability, just as employer liability potentially exists throughout the hiring process. A finding that results in denying someone employment may be actionable on the part of the employee/employee candidate, and this is no different.

26. At this time our Human Resources department make the trustworthy and reliability determination for unescorted access. Since they make this decision, do they need to be fingerprinted?

Only individuals that have unescorted access to radioactive materials quantities of concern are required to be fingerprinted. Therefore, individuals that make trustworthy and reliability determinations that do not have unescorted access do not need to be

fingerprinted. However, they are still required to be determined trustworthy and reliable per the requirements in the Increased Control Order (EA-05-090).

27. How far back do the criminal history record checks go? Can the NRC provide guidance on what types of information could be considered when granting unescorted access?

The criminal history records check provides information on all arrests since the individual's eighteenth birthday. Guidance on criminal offenses that could be considered is included with the Order. However, the list of offenses is not inclusive. There may be additional offenses not listed in the guidance that the licensee wants to consider as part of unescorted access approval process. It is the licensee's ultimate business decision as to what criteria it uses for the bases of the trustworthiness and reliability determination.

28. Is there a process to request an exemption from fingerprinting? Do employees that have been fingerprinted in the past need to be fingerprinted again?

Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR § 73.61, or any person who has been favorably-decided by a U.S. Government program involving fingerprinting and an FBI identification and criminal history records check (e.g., National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Patrol's Free and Secure Trade Program[1] within the last five (5) calendar years, or any person who has an active federal security clearance (provided in the latter two cases that they make available the appropriate documentation[2]). Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.

[1] The FAST program is a cooperative effort between the Bureau of Customs and Border Patrol and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S. - Canada and U.S. - Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

[2] This documentation must allow the T&R Official to verify that the individual has fulfilled the unescorted access requirements of Section 149 of the AEA by submitting to fingerprinting and an FBI identification and criminal history records check.

29. Is fingerprinting meant to replace the trustworthiness and reliability determination?

No, fingerprinting is only one component of the trustworthiness and reliability determination. A trustworthiness and reliability determination should be based, at a minimum, by verifying employment history, education personal references and a federal criminal history check. All four of these components need to be considered when making a T&R determination.

30. How will compliance with the fingerprinting component be verified?

Compliance will be verified at the time the licensee's trustworthiness and reliability program is inspected by the regulatory agency.

31. Is there financial aid or funding available to assist in the implementation of the fingerprinting requirements? Will the licensees be compensated in any way?

The NRC will not provide financial aid and there is no funding available to assist in the implementation of the fingerprinting requirements.

32. Will there be a reevaluation period?

At the moment there is no reevaluation period. The reevaluation of criminal history records will be addressed during the NRC's rulemaking process.

33. The Order requires that the licensee shall provide under oath or affirmation a certification that the T&R Official is deemed trustworthy and reliable. What does it mean to submit documents to the NRC "under oath or affirmation"?

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 unsworn declaration satisfy the requirement that such documents be submitted under oath or affirmation.