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Date: 2/28/2008 10:42:33 AM
Subject: re: fingerprinting -RI

As discussed in past phone conversations - our goal is to have info and amended licenses/fingerprinting out by March-originally week of 3 March but more realistic being week of 10 March -maybe on the ides of March.

Attached in pdf are the following documents that will be in package sent to licensees that are currently in IC group.

Additional enclosures in mailing will be copy of NRC order- for informational purposes, and the original and supplemental Q and A's (not enclosed in this transmission)

Any comments regarding the attached documents will be appreciated, with the understanding that our timeline is intended to be the week of 10 March.

thank you in advance for any assistance concerning this matter

JACK

CC: "Bill Dundulis" <Bill.Dundulis@health.ri.gov>, "Dennis Klaczynski" <Dennis.Klaczynski@health.ri.gov>

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Subject: re: fingerprinting -RI
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From: "Jack Ferruolo" <Jack.Ferruolo@health.ri.gov>
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Route

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Files	Size	Date & Time
MESSAGE	727	2/28/2008 10:41:28 AM
rev02-RIRCA_FingerprintGuidance_26Feb2008_doc.pdf		232959
LicenseConditionRequiringFingerprinting_26Feb2008_doc.pdf		89970
LicenseeCoverLtr_26Feb2008_doc.pdf		137207
Mime.822	632401	

Options

Expiration Date: None
Priority: Standard
ReplyRequested: No
Return Notification: None

Concealed Subject: No
Security: Standard



**RHODE ISLAND RADIATION CONTROL AGENCY
GUIDANCE DOCUMENT
IMPOSITION OF FINGERPRINTING AND CRIMINAL HISTORY
RECORDS CHECK REQUIREMENTS FOR UNESCORTED
ACCESS TO CERTAIN RADIOACTIVE MATERIAL¹**

[3 March 2008]

1. The licensee shall, by ~~[insert date 90 days after the date of this license amendment]~~ establish and maintain a fingerprinting program that meets the requirements of *Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material*² [Appendix 2 to this document] for individuals that require unescorted access to the radioactive material identified in Appendix 1 to this document.
2. The licensee shall, by ~~[insert date 90 days after the date of this license amendment]~~ 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 material identified in Appendix 1 to this document) is deemed trustworthy and reliable by the licensee in accordance with the following criteria:
 - a. The T&R Official, if he/she does not require unescorted access, must be deemed trustworthy and reliable by the licensee in accordance with IC.1. of the Agency's Increased Controls requirements² before making a determination regarding the trustworthiness and reliability of another individual.
 - b. 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.
3. The licensee shall make determinations on unescorted access to the radioactive material identified in Appendix 1 to this document as follows:
 - a. Continued unescorted access for persons currently granted unescorted access The licensee may allow any individual who currently has unescorted access to the radioactive material identified in Appendix 1 to this document, in accordance with the Agency's Increased Controls requirements referenced in Item 2 above, to continue to have unescorted access, pending a decision by the T&R Official. After ~~[insert date 180 days after the date of this license amendment]~~ no individual may have unescorted access to radioactive material identified in Appendix 1 to this document without a determination by the T&R Official (based upon fingerprinting, an FBI identification and criminal history records check and a previous trustworthiness and reliability determination) that the individual may have unescorted access to such materials.

¹ The requirements established in this Agency document are functionally equivalent to those mandated by U.S. Nuclear Regulatory Commission (NRC) Order EA -07-305, published in the Federal Register on 13 December 2007 [72 FR 7090]. The only substantive differences are to reference applicable Agency requirements and criteria documents in lieu of equivalent NRC requirements and criteria documents.

² *Increased Controls for Licensees That Possess Sources Containing Radioactive Material Quantities of Concern*. This document was originally issued as an attachment to Agency letter dated 14 October 2005 and is currently referenced in all Agency radioactive materials licenses which authorize use of the radioactive material identified in Appendix 1 to this document.

- b. **New requests for unescorted access** The licensee shall only grant access to the radioactive material in **Appendix 1** in accordance with the requirements of the Agency's Increased Controls requirements referenced in Item 2 above and the requirements of this document.
4. All fingerprints obtained by the licensee pursuant to this document must be submitted to the NRC for transmission to the U.S. Federal Bureau of Investigation (FBI). Additionally, the licensee's submission of fingerprints shall also be accompanied by a certification, under oath and affirmation, of the trustworthiness and reliability of the Trustworthiness and Reliability Official as required by Item 2 above.
5. Prior to requesting fingerprints from any individual, the licensee shall provide a copy of this document to that person.
6. Upon receipt of the results of FBI identification and criminal history records checks, the licensee shall control such information as specified in the "Protection of Information" section of **Appendix 2** to this document and in requirement IC.5 of the Agency's Increased Controls requirements, as referenced in Item 2 above.
7. This document also supercedes the following provisions of the Agency's Increased Controls requirements, as referenced in Item 2 above:
- a. **Paragraph IC 1.b is superceded by the following** *"For individuals employed by the licensee for three years or less, and for non-licensee personnel, such as physicians, physicists, house-keeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, personal references, and fingerprinting and the review of an FBI identification and criminal history records check. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e. seeking references not supplied by the individual). For individuals employed by the licensee for longer than three years, trustworthiness and reliability shall be determined, at a minimum, by a review of the employees' employment history with the licensee and fingerprinting and an FBI identification and criminal history records check."*
- b. **Paragraph IC 1.c is superceded by the following** *"Service provider licensee employees shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation. Written verification attesting to or certifying the person's trustworthiness and reliability shall be obtained from the licensee providing the service."*
- c. **Table 1: Radionuclides of Concern is superceded by Appendix 1** to this document.
8. Information regarding fingerprint submittals and payment of fees is contained in **Appendix 3** to this document.
9. Guidance for evaluating FBI identification and criminal history records checks for allowing unescorted access to certain radioactive material, to aid licensees in their review of criminal history records, is contained in **Appendix 4** to this document.

APPENDIX 1

Table 1.--Radionuclides of Concern

Radionuclide	Quantity of concern ¹ (TBq)	Quantity of concern ² (Ci)
Am-241	0.6	16
Am-241/Be	0.6	16
Cf-252	0.2	5.4
Cm-244	0.5	14
Co-60	0.3	8.1
Cs-137	1	27
Gd-153	10	270
Ir-192	0.8	22
Pm-147	400	11,000
Pu-238	0.6	16
Pu-239/Be	0.6	16
Ra-226 ⁵	0.4	11
Se-75	2	54
Sr-90 (Y-90)	10	270
Tm-170	200	5,400
Yb-169	3	81
Combinations of radioactive materials listed above ³	See Footnote Below ⁴	

¹ The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern

² The primary values used for compliance with this Order are TBq. The curie (Ci) values are rounded to two significant figures for informational purposes only.

³ Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material.

⁴ If several radionuclides are aggregated, the sum of the ratios of the activity of each source, A_i of radionuclide, n , $A_i(n)$, to the quantity of concern for radionuclide n , $Q(n)$, listed for that radionuclide equals or exceeds one. $[(\text{aggregated source activity for radionuclide A}) / (\text{quantity of concern for radionuclide A})] + [(\text{aggregated source activity for radionuclide B}) / (\text{quantity of concern for radionuclide B})] + \text{etc.} \geq 1$

⁵ On August 31, 2005, the NRC issued a waiver, in accordance to Section 651(e) of the Energy Policy Act of 2005, for the continued use and/or regulatory authority of Naturally Occurring and Accelerator - Produced Material (NARM), which includes Ra -226. The NRC plans to terminate the waiver in phases, beginning November 30, 2007, and ending on August 7, 2009. The NRC has authority to regulate discrete sources of Ra -226, but has refrained from exercising that authority until the date of an entity's waiver termination. For entities that possess Ra-226 in quantities of concern, this requirement becomes effective upon waiver termination. For information on the schedule for an entity's waiver termination, please refer to the NARM Toolbox Web site at <http://nrc-stp.ornl.gov/narmtoolbox.html>.

APPENDIX 2

Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material

These new fingerprinting requirements supplement the Agency's previously issued Increased Controls requirements¹.

Licenses currently have a program to grant unescorted access to individuals. As required by Item 1 of this document, licenses shall modify their current trustworthiness and reliability program to include the following:

1. Each licensee subject to the provisions of this Appendix shall fingerprint each individual who is seeking or permitted unescorted access to risk significant radioactive materials equal to or greater than the quantities listed in **Appendix 1** to this document. The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) identification and criminal history records check and ensure that the provisions contained in this document and this Appendix are satisfied.
2. The licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the "Right to Correct and Complete Information" section of this Appendix.
3. 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 Program²) 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 documentation³). 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 *Increased Controls for Licensees That Possess Sources Containing Radioactive Material Quantities of Concern.* This document was originally issued as an attachment to Agency letter dated 14 October 2005 and is currently referenced in all Agency radioactive materials licenses which authorize use of the radioactive material identified in Appendix 1 to this document.

² 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.

³ 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.

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4. All fingerprints obtained by the licensee pursuant to this document must be submitted to the NRC for transmission to the FBI. Additionally, the licensee shall submit a certification of the trustworthiness and reliability of the T&R Official as determined in accordance with Item 2 of Agency guidance document *Imposition of Fingerprinting and Criminal History Records Check Requirements For Unescorted Access To Certain Radioactive Material*.
5. The licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements of the Agency's previously issued Increased Controls requirements (referenced above), in making a determination whether to grant unescorted access to certain radioactive materials.
6. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to risk significant radioactive material equal to or greater than the quantities listed in **Appendix 1**.
7. The licensee shall document the basis for its determination whether to grant, or continue to allow unescorted access to risk significant radioactive material equal to or greater than the quantities listed in **Appendix 1**.

PROHIBITIONS

A licensee shall not base a final determination to deny an individual unescorted access to certain radioactive material solely on the basis of information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A licensee shall not use information received from a criminal history check obtained pursuant to this document in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

RIGHT TO CORRECT AND COMPLETE INFORMATION

Prior to any final adverse determination, the licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. The licensee shall maintain each individual's written confirmation of receipt of this notification for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537-9700 (as set forth in 28 CFR part 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an Official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI identification and criminal history records check after the record is made available for his/her review. The licensee may make a final unescorted access to certain radioactive material determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on unescorted access to certain radioactive material, the licensee shall provide the

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individual its documented basis for denial. Unescorted access to certain radioactive material shall not be granted to an individual during the review process.

PROTECTION OF INFORMATION

1. Each licensee who obtains a criminal history record on an individual pursuant to this document shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.
2. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining unescorted access to certain radioactive material. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.
3. The personal information obtained on an individual from a criminal history record check may be transferred to another licensee if the licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.
4. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC and/or the Agency to determine compliance with the regulations and laws.
5. The licensee shall retain all fingerprint and criminal history records from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or determination of unescorted access to certain radioactive material (whether unescorted access was approved or denied). After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

APPENDIX 3

Procedures for Processing Fingerprint Checks

For the purpose of complying with this document, licensees shall:

1. Submit one completed, legible standard fingerprint card (Form FD -258, ORIMDNR0000Z) for each individual seeking access to unescorted access to certain radioactive material.
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.
3. Include the name and address of the individual (T&R Official) to whom the criminal history records should be returned.
4. 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 Program¹) 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 documentation²). 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.

Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555 -0001, by calling (301) 415-5877, or by e-mail to forms@nrc.gov. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

Licensees must have their 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.

The NRC will review submitted fingerprint cards for completeness. Any Form FD-258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI

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.

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Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application (Note: other fees may apply to obtain fingerprints from your local law enforcement agency). Licensees shall submit payments electronically via <http://www.pay.gov>. Payments through **Pay.gov** can be made directly from the licensee's credit/debit card. Licensees will need to establish a password and user ID before they can access **Pay.gov**. To establish an account, licensee requests must be sent to paygo@nrc.gov. The request must include the licensee's name, address, point of contact, e-mail address, and phone number. The NRC will forward each request to **Pay.gov** and someone from **Pay.gov** will contact the licensee with all of the necessary account information.

Licensees shall make payments for processing before submitting applications to the NRC. Combined payment for multiple applications is acceptable. Licensees shall include the **Pay.gov** payment receipt(s) along with the application(s). For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415 -7404. The application fee (currently \$36) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. NRC will directly notify licensees subject to this regulation of any fee changes.

It is necessary for a licensee to resubmit fingerprints only under two conditions:

1. The FBI has determined that the fingerprints cannot be classified due to poor quality in the mechanics of taking the initial impressions; or,
2. The initial submission has been lost.

If the FBI advises the fingerprints are unclassifiable based on conditions other than poor quality, the licensee must submit a request to NRC for alternatives. When those search results are received from the FBI, no further search is necessary. NRC will receive and forward to the submitting licensee all data from the FBI as a result of the licensee's application(s) for criminal history records checks, including the FBI fingerprint record(s).

APPENDIX 4

Guidance for Evaluating FBI Identification and Criminal History Records Checks for Allowing Unescorted Access to Certain Radioactive Material

Each licensee is responsible for determining whether to grant an individual unescorted access to certain radioactive materials. The licensee shall allow only trustworthy and reliable individuals, approved in writing by the licensee, to have unescorted access to radioactive material quantities of concern (listed in **Appendix 1** of this document) and devices containing that radioactive material. The T&R determination, to grant an individual unescorted access to certain radioactive materials, is made by the licensee's T&R Official, based on information gathered from all four elements of the background check and evaluated by the T&R Official. The minimum four background check elements are: 1) fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check, 2) verifying employment history, 3) verifying education, and 4) personal references. The purpose of this guidance is to address the fingerprinting component of the T&R determination.

Unescorted access determinations require an evaluation of a person's trustworthiness and reliability. When a person's life history shows evidence of unreliability or untrustworthiness, questions arise whether the person can be relied on and trusted to exercise the responsibility necessary for working with risk - significant radioactive materials. The purpose of the T&R determination requirement, for unescorted access, is to provide reasonable assurance that those individuals are trustworthy and reliable, and do not constitute an unreasonable risk to the public health and safety, including the potential to commit or aid theft and/or radiological sabotage. This is a licensee's business decision as to what criteria it uses for the bases of the trustworthiness and reliability determination. Some indicators that licensees should consider for what may be a trustworthiness and reliability concern can be found in Increased Control guidance in Q and A #22 at the following web address:

<http://www.nrc.gov/reading-rm/doccollections/enforcement/security/2005/ml053130233.pdf>.

In evaluating the relevance of an individual's conduct, the T&R Official should consider the following factors:

- (1) The nature, extent, and seriousness of the conduct;
- (2) The circumstances surrounding the conduct, to include knowledgeable participation;
- (3) The frequency and recency of the conduct;
- (4) The individual's age and maturity at the time of the conduct;
- (5) The extent to which participation is voluntary;
- (6) The presence or absence of rehabilitation and other permanent behavioral changes;
- (7) The motivation for the conduct;
- (8) The potential for pressure, coercion, exploitation, or duress; and
- (9) The likelihood of continuation or recurrence.

Each case must be judged on its own merits, and final determination remains the responsibility of the licensee. In every case, the T&R Official should evaluate trustworthiness and reliability based on an accumulation of information which supports a positive finding, prior to granting unescorted access. Items to consider include:

1. The T&R Official should evaluate the information collected for consistency and adequacy.
2. True identity should be evaluated by comparing applicant provided identification and personal history data to pertinent information from the background check, and other data sources.

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3. The T&R Official should determine whether inconsistencies determined through review or investigation, are intentional, innocent, or an oversight. Willful or intentional acts of omission or untruthfulness could be grounds for denial of unescorted access.

When a licensee submits fingerprints to the NRC pursuant to a license requirement and this criteria document, it will receive a FBI identification and criminal history record since the individual's eighteenth birthday. The licensee will receive the information from the criminal history check of those individuals requiring unescorted access to radioactive materials, and the licensee T&R Official should evaluate that information using the guidance below.

The licensee's T&R Official is required to evaluate all available information in making a T&R determination for unescorted access to radioactive materials, including the criminal history records information pertaining to the individual as required by this document. The FBI identification and criminal history records check is used in the determination of whether the individual has a record of criminal activity that indicates that the individual should not have unescorted access to radioactive materials subject to this Order. Each determination of T&R for unescorted access to radioactive materials, which includes a review of criminal history information, must be documented to include the basis for the decision made.

Licensees shall not make a final determination made solely on the basis of criminal history checks information involving an arrest more than 1 year old for which there is not information on the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

All information collected is to be considered by the licensee in making a trustworthiness or reliability determination for unescorted access. Potentially disqualifying information obtained from confidential/unnamed sources must be substantiated and documented, and should not be used as a sole basis to deny access authorization unless corroborated. Licensees should establish criteria that would disqualify someone from being granted authorized access. In every case, the licensee should evaluate trustworthiness and reliability based on an accumulation of information which supports a positive finding. Items to evaluate and consider include:

The FBI identification and criminal history records check is used to evaluate whether the individual has a record of criminal activity that may compromise his or her trustworthiness and reliability. Identification of a criminal history through the FBI criminal history records check does not automatically indicate unreliability or lack of trustworthiness of the employee. The licensee will have to judge the nature of the criminal activity, length of employment, and recency of the criminal activity. The licensee can authorize individuals with criminal records for unescorted access to radioactive materials, based on a documented evaluation of the basis for determining that the employee was reliable and trustworthy notwithstanding his or her criminal history. Each evaluation conducted in review of criminal history and other background checks information, should be documented to include the decision making basis.

At a minimum, the licensee should consider the following elements when evaluating the results of the FBI Identification and Criminal History Records check:

1. Committed, attempted to commit, aided, or abetted another who committed or attempted to commit any act of sabotage, espionage, treason, sedition, or terrorism.
2. Publicly or privately advocated actions that may be inimical to the interest of the United States, or publicly or privately advocated the use of force or violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means.
3. Knowingly established or continued a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, terrorist, or revolutionist, or with an espionage agent or other secret agent or representative of a foreign nation whose interests may be inimical to the interests of the United

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States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means. (Ordinarily, the licensee should not consider chance or casual meetings or contacts limited to normal business or official relations.)

4. Joined or engaged in any activity knowingly in sympathy with or in support of any foreign or domestic organization, association, movement, group, or combination of persons which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or any State or any subdivisions thereof by unlawful means, or which advocate the use of force and violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means. (Ordinarily, the licensee should not consider chance or casual meetings or contacts limited to normal business or official relations.)
5. Deliberately misrepresented, falsified or omitted relevant and material facts from documentation provided to the licensee.
6. Has been convicted of a crime(s) which, in the T&R Official's opinion, indicate poor judgment, unreliability, or untrustworthiness.

These indicators are not meant to be all-inclusive nor intended to be disqualifying factors. Licensees can also consider how recent such indicators occurred and other extenuating or mitigating factors in their determinations. Section 149.c.(2)(B) of the AEA requires that the information obtained as a result of fingerprinting be used solely for the purposes of making a determination as to unescorted access suitability. Unescorted access suitability is not a hiring decision, and both the NRC and the Agency do not intend for licensees to use this guidance as such. Because a particular individual may not be suitable for Unescorted Access does not necessarily mean that he/she is not suitable for escorted access or some other position that does not involve NRC- or Agency-regulated activities.

Licensees shall notify¹ the Agency within 24 hours if the results from a criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

¹ During normal business hours, the Agency may be contacted at (401) 222 -2438. At other times, this number will allow you to leave a message on the answering machine. In case of an emergency when it is necessary to immediately contact the Agency, utilize the RI Department of Health's 24 -hour number [(401) 272 -5952] and indicate the nature of your emergency. FAX communications may be sent 24 hours a day to (401) 222 -2456.

LICENSE CONDITION REQUIRING FINGERPRINTING

- XX. A. The licensee shall comply with the requirements described in Agency document *Imposition of Fingerprinting and Criminal History Records Check Requirements For Unescorted Access To Certain Radioactive Material*, dated 3 March 2008. The requirements listed in this document shall be implemented as part of the trustworthiness and reliability program of the Increased Controls requirements.
- B. By **[insert date 90 days after the date of this license amendment]** of the effective date of this license condition, the licensee shall provide under oath or affirmation, a certification that the Trustworthiness and Reliability Official is deemed trustworthy and reliable by the licensee as required in Item 2 of Agency document *Imposition of Fingerprinting and Criminal History Records Check Requirements For Unescorted Access To Certain Radioactive Material*, dated 3 March 2008.
- C. All fingerprints obtained by the licensee pursuant to this requirement must be submitted to the U.S. Nuclear Regulatory Commission (NRC) for transmission to the U.S. Federal Bureau of Investigation (FBI). Additionally, the licensee's submission of fingerprints shall also be accompanied by a certification, under oath and affirmation, of the trustworthiness and reliability of the Trustworthiness and Reliability Official as required by Item 4 of Agency document *Imposition of Fingerprinting and Criminal History Records Check Requirements For Unescorted Access To Certain Radioactive Material*, dated 3 March 2008.
- D. The licensee shall complete implementation of the fingerprinting requirements by **[insert date 180 days after the date of this license amendment]**. The licensee shall notify the Agency when they have achieved full compliance with the requirements described in Agency document *Imposition of Fingerprinting and Criminal History Records Check Requirements For Unescorted Access To Certain Radioactive Material*, dated 3 March 2008. The notification shall be made within **twenty-five (25) days** after full compliance has been achieved.
- E. The licensee shall notify the Agency within 24 hours if the results from a criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

xx March 2008

TO: Licensees Authorized To Possess Radioactive Material Quantities Of Concern
SUBJECT: Issuance of License Amendment Imposing Fingerprinting and Criminal History Records Check Requirements For Unescorted Access To Certain Radioactive Material

You have previously received a license amendment from the Agency requiring that you implement increased controls (IC) with respect to the possession of radioactive material quantities of concern. As part of the IC license amendment, you were required to determine that each person who requires access to radioactive material quantities of concern to perform their job duties is sufficiently trustworthy and reliable. The IC license amendment includes direction and guidance on the specific factors which must be considered when making that determination.

Section 652 of the Energy Policy Act of 2005 (EPAct), enacted on 8 August 2005, amended the fingerprinting requirements of the Atomic Energy Act (AEA). Specifically, the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check for "any individual who is permitted unescorted access to radioactive materials or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks." In response to this requirement, the U.S. Nuclear Regulatory Commission (NRC or Commission) issued Order EA-07-305 [**Enclosure 2, with attachments**] to its applicable licensees on 5 December 2007, with instructions to expeditiously implement, in part, these additional requirements as enhancements to the existing trustworthiness and reliability requirements of their original IC Order. Order EA-07-305 was also published in the Federal Register on 13 December 2007 [72 FR 70901]. A copy of this Order is attached for reference only. These additional requirements are a matter of compatibility with NRC and must be implemented in a time frame desired by the NRC and with essentially identical content to those being used by NRC for its licensees. However, this Agency has opted to meet this requirement by issuance of a license amendment, rather than by Order.

Therefore, in accordance with C.5.6(b) of the Rhode Island Rules and Regulations for the Control of Radiation [R23-1.3-RAD], your license has been amended to require you to comply with Agency guidance document *Imposition of Fingerprinting and Criminal History Records Check Requirements For Unescorted Access To Certain Radioactive Material*, dated 3 March 2008 [**Enclosure 1**]. Your newly amended license is provided as [**Enclosure 3**].

License Amendment-Fingerprinting and Criminal History Records Check Requirements

Page 2

This license amendment does not obviate the need for licensees to continue to meet the requirements of the original IC license amendment, and to maintain the effectiveness of security measures taken in response to the events of 11 September 2001. In addition, the enclosed license amendment modifies sections 1.b., 1.c., and "Table 1: Radionuclides of Concern" of Agency document *Increased Controls for Licensees That Possess Sources Containing Radioactive Material Quantities of Concern* to reflect recent NRC policies and regulations. This document was originally issued as an attachment to Agency letter dated 14 October 2005 which was sent with your original IC license amendment

Licensees have **180 days from the date of this license amendment** to submit fingerprints and complete their review of the FBI criminal history records for all individuals currently authorized unescorted access under the original IC license amendment.

The enclosed license amendment requires that the licensee **respond to the Agency within ninety (90) days of the date of its issuance**, and 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 radioactive materials quantities of concern] is deemed trustworthy and reliable by the licensee: **Licensee responses [not fingerprint cards] shall be submitted to the Rhode Island Radiation Control Agency, 3 Capitol Hill-Room 206, Providence, RI 02908-5097. In addition, your response shall be marked as "Withhold from Public Disclosure Under RIGL 38-2-2(4)(S)."**

The Rhode Island Radiation Control Agency may, in writing, relax or rescind any of the above conditions upon your demonstration of good cause.

As provided by A.7.5 and A.7.6 of the Rhode Island Rules and Regulations for the Control of Radiation [R23-1.3-RAD], you have an opportunity to request a hearing to contest this action. In accordance with A.7.6 of the Rhode Island Rules and Regulations for the Control of Radiation [R23-1.3-RAD], if you wish such a hearing to be convened, we must have your request to that effect, in writing, within fifteen (15) days of your receipt of this letter.

Licensees are also required to submit fingerprints in accordance with this license amendment. The current processing fee is \$36.00 per submission and payment must be made electronically through <http://www.pay.gov>. Additional information regarding fingerprint submittals and payment of fees is contained in **Appendix 3** to Agency guidance document *Imposition of Fingerprinting and Criminal History Records Check Requirements For Unescorted Access To Certain Radioactive Material*, dated 3 March 2008. Guidance for evaluating FBI identification and criminal history records checks for allowing unescorted access to certain radioactive material is contained in **Appendix 4** to Agency guidance document *Imposition of Fingerprinting and Criminal History Records Check Requirements For Unescorted Access To Certain Radioactive Material*, dated 3 March 2008.

Licensee fingerprint cards are required to be submitted to the NRC. The following mailing address should be used:

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

License Amendment-Fingerprinting and Criminal History Records Check Requirements
Page 3

To facilitate resolution of any issues or questions related to compliance with the requirements in the enclosed license amendment, please refer to the list of **questions and answers in Enclosures 4 and 5**, or call NRC's Fingerprinting for Increased Controls Support at (301) 415-3340. You may also send questions to ICfingerprint@nrc.gov

Should you require assistance in addressing this letter, please contact the undersigned at (401) 222-2438 [e-mail: Jack.Ferruolo@health.ri.gov].

Sincerely,



John L. Ferruolo
Supervising Radiological Health Specialist
Radiological Health Program

Enclosures:

1. Agency guidance document *Imposition of Fingerprinting and Criminal History Records Check Requirements For Unescorted Access To Certain Radioactive Material*, dated 3 March 2008
2. NRC Order EA-07-305, Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material [**For Reference Only**]
3. Amended License
4. Questions and Answers with Regards to Fingerprinting and Criminal History Records Checks [Undated; Issued 5 December 2007]
5. Supplemental 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) [Revised 13 February 2008]

From: "Jack Ferruolo" <Jack.Ferruolo@health.ri.gov>
To: <MLO1@nrc.gov>
Date: 3/6/2008 3:03:31 PM
Subject: per discussion re NEW licese IC conditions

supplements attached in pdf to address New license approach.

pdf-1--license conditions proposed for current licensees, which you should have,are (on top of page) and on the bottom the conditions proposed for new licensees (new applicants and licenses amended to address IC quantities)

flow chart to guide us in our handling. As discussed once prelicensing and licensing review is completed a site visit would be instituted and then we would have a better indication of commitments made in writing re: IC and fingerprinting in response to our license review process.

As discussed- intention is to usea form of the NRC license condition for new licensees in a license review letter with a response required re: commitments to meet IC and fingerprinting. The New license or amendment is issued with the RI "New license conditions" for IC/fingerprinting.

If any of this makes sense please let me know

thank you
JACK

Mail Envelope Properties (47D04E02.248 : 8 : 41544)

Subject: per discussion re NEW licese IC conditions
Creation Date 3/6/2008 3:01:49 PM
From: "Jack Ferruolo" <Jack.Ferruolo@health.ri.gov>
Created By: Jack.Ferruolo@health.ri.gov

Recipients

nrc.gov
 TWGWPO03.HQGWDO01
 MLO1 (Monica Orendi)

Post Office

TWGWPO03.HQGWDO01

Route

nrc.gov

Files	Size	Date & Time
MESSAGE	926	3/6/2008 3:01:49 PM
pdf-1 supplement for NEW lic.pdf		813918
Mime.822	1116094	

Options

Expiration Date: None
Priority: Standard
ReplyRequested: No
Return Notification: None

Concealed Subject: No
Security: Standard

Junk Mail Handling Evaluation Results

Message is eligible for Junk Mail handling
 This message was not classified as Junk Mail

Junk Mail settings when this message was delivered

Junk Mail handling disabled by User
 Junk Mail handling disabled by Administrator
 Junk List is not enabled
 Junk Mail using personal address books is not enabled
 Block List is not enabled

LICENSE CONDITION REQUIRING FINGERPRINTING [CURRENT LICENSES]

- XX. A. The licensee shall comply with the requirements described in Agency document *Imposition of Fingerprinting and Criminal History Records Check Requirements For Unescorted Access To Certain Radioactive Material*, dated 3 March 2008. The requirements listed in this document shall be implemented as part of the trustworthiness and reliability program of the Increased Controls requirements.
- B. By [insert date 90 days after the date of this license amendment] of the effective date of this license condition, the licensee shall provide under oath or affirmation, a certification that the Trustworthiness and Reliability Official is deemed trustworthy and reliable by the licensee as required in Item 2 of Agency document *Imposition of Fingerprinting and Criminal History Records Check Requirements For Unescorted Access To Certain Radioactive Material*, dated 3 March 2008.
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- E. The licensee shall notify the Agency within 24 hours if the results from a criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

LICENSE CONDITION REQUIRING FINGERPRINTING [NEW LICENSES]

- XX. A. The licensee shall comply with the requirements described in Agency document *Imposition of Fingerprinting and Criminal History Records Check Requirements For Unescorted Access To Certain Radioactive Material*, dated 3 March 2008. The requirements listed in this document shall be implemented as part of the trustworthiness and reliability program of the Increased Controls requirements.
- B. All fingerprints obtained by the licensee pursuant to this requirement must be submitted to the U.S. Nuclear Regulatory Commission (NRC) for transmission to the U.S. Federal Bureau of Investigation (FBI). Additionally, the licensee's submission of fingerprints shall also be accompanied by a certification, under oath and affirmation, of the trustworthiness and reliability of the Trustworthiness and Reliability Official as required by Item 4 of Agency document *Imposition of Fingerprinting and Criminal History Records Check Requirements For Unescorted Access To Certain Radioactive Material*, dated 3 March 2008.
- C. The licensee shall notify the Agency within 24 hours if the results from a criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

"IC" LICENSE REVIEW FLOWCHART

