STATE OF COLORADO

Bill Ritter, Jr., Governor
James B. Martin, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

March 7, 2008

George Pangburn, Deputy Director
Division Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management Programs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Pangburn:

Enclosed is a copy of the proposed legally binding requirements that will be used to implement the Increased Controls (IC) Fingerprint requirements outlined in NRC Order EA-07-305 (RATs ID 2007-4) for applicable licensees in the State of Colorado. As with the initial IC requirements, the State of Colorado is implementing the additional IC Fingerprinting and associated requirements through legally binding license conditions and supplemental information. Due to the form and content of the NRC Order EA-07-305 our program found the NRC Order particularly difficult to implement as written partly due to the combination of actions to be completed by NRC, FBI, and our program. Additionally, we believe our licensees deserve a consistent approach to implementing the IC requirements in our state, and therefore we are retaining a similar approach with the additional fingerprinting requirements.

The Department will add the following legally binding license condition to all Increased Controls licenses:

XX. The licensee shall establish, implement, and maintain provisions as necessary to comply with the requirements contained in Annex A to this license entitled "Increased Controls for Licensees that Possess Sources Containing Radioactive Material Quantities of Concern."

i. The licensee shall complete implementation of additional Increased Control requirements outlined in the Department correspondence dated March 31, 2008, not later than September 29, 2008.

ii. The licensee shall notify the Department in writing within five (5) days after full compliance with Annex A has been achieved.

As with prior IC requirements issued by our Department, the actual IC requirements are contained in an Annex to each license (titled Annex A) and referenced in the license condition. Additionally, the Department will transmit additional implementation related requirements, timelines, and information through correspondence that will accompany the amended license. The correspondence and enclosures that will accompany the amended licenses are also referenced and tied-down in the aforementioned license condition.

Please note that the Department has found it necessary to re-format some aspects of the current IC requirements contained in the Annex to our licenses. Most notably we have added an IC condition (IC 1.e) that specifies the need to establish and maintain a T&R Official. Additionally, we have modified the display of Table 1 values to reflect two significant figures in scientific notation format and have developed a clearer approach for licensees to evaluate their need to implement IC requirements. Both a strike-out text version and final version of Annex A have been included with this correspondence. Modifications to the NRC Frequently Asked Questions (FAQ) document was necessary based on our implementation approach and due to recent changes to the IC Fingerprinting requirements allowing licensees to perform their own fingerprints. The strike-out text and final versions of these FAQ documents are enclosed as well.

We believe that adoption of these legally binding requirements satisfies the compatibility and health and safety categories established in the Office of Federal and State Materials and Environmental Programs (FSME) Procedure SA-200. We request NRC's comments by March 21, 2008. Our program expects to issue the legally binding conditions to our licensees by March 31, 2008, pending resolution of outstanding comments from NRC.

If you have any questions or require additional information, please contact James Jarvis of the Radiation Management Unit at james.jarvis@state.co.us or (303) 692-3454.

Stephen F. Tarlton, Unit Leader
Radiation Management Unit
Hazardous Materials and Waste Management Division

SFT:jsj

Cc: Christian Einberg, Senior Project Manager, Division Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission Washington, D.C. 20555-0001, Mail stop T8E24

Enclosures: Annex A to licenses (strike-out text version)
Annex A to licenses (final version)
Cover letter to Colorado licensees, and 3 enclosures (final version)
Q&A Pertaining to Fingerprinting and Criminal History Records Checks (strike- out text version)
Q&A Pertaining to Fingerprinting and Criminal History Records Checks (final version)

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Colorado Department
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and Environment

EXAMPLE OF LETTER AND ATTACHMENTS TO BE SENT TO ALL COLORADO IC LICENSEES.

LETTER IS ALSO TIED-DOWN IN A LICENSE CONDITION.

March 31, 2008

[LICENSEE NAME]
[LICENSEE ADDRESS]
[CITY] [STATE] [ZIP]

Attention [RSO]:

Enclosed is Colorado Radioactive Material License Number ####-##, Amendment ##. This license amendment incorporates new requirements pertaining to your radioactive materials security program. Please review this license and the attached documents thoroughly.

As discussed in the Department correspondence dated December 13, 2007, licensees authorized to possess radioactive material in a Quantity of Concern are now required to implement mandatory fingerprinting and FBI background checks for all personnel having unescorted access to radioactive material in a Quantity of Concern. Licensees are also required to establish a Trustworthy and Reliability Official(s) responsible for making the Trustworthy and Reliability determination for all other individuals having unescorted access to radioactive material in a Quantity of Concern.

The U.S. Nuclear Regulatory Commission (NRC) has directed the Agreement States to implement these additional requirements for its licensees based upon an August 8, 2005 amendment to the Section 149 of the Atomic Energy Act.

Please note the following specific changes to your license and Annex A.

- License Condition __ has been modified to include a specific deadline for compliance with the new Increased Control requirements;
- Annex A, Sections 1.b and 1.c have been modified to incorporate the fingerprinting and background check requirements;
- Annex A, Section 1.e has been added to incorporate the requirement for a T&R Official;
- Department Contact information in Annex A, Sections 2.d and 3.a.4 have been updated;
- Annex A, Table 1 ("Radionuclides of Concern") was modified to incorporate Radium-226; and
- The Department has added specific examples of Quantity of Concern calculations to Annex A.

Licensees have 180 days from the date of the enclosed license amendment to submit fingerprints and complete their review of the FBI criminal history records for all individuals authorized unescorted access to radioactive materials in quantities of concern.

Additional actions must also be completed prior to this 180 day period as outlined below and in the enclosed documents. Specifically:

1. By May 30, 2008 [60 days] the licensee shall, in writing, notify the Department:

    a) if it is unable to comply with any of the requirements described in this letter, the enclosures, or the requirements of the license;

    b) if compliance with any of the requirements is unnecessary in its specific circumstances; or

    c) if implementation of any of the requirements would cause the licensee to be in violations of the provisions any Department regulations or its license. The notification shall provide the licensee's justification for seeking relief from or variation of any specific requirement.

2. By June 30, 2008 [90 days] the licensee shall establish and maintain a fingerprinting program that meets the requirements of Annex A of the license for all individuals who have unescorted access to radioactive materials in Quantities of Concern.

3. By June 30, 2008 [90 days] the licensee shall provide under oath or affirmation, a certification that the Trustworthiness and Reliability Official is deemed trustworthy and reliable by the licensee. The process of certification of the T&R official is described in the enclosures to this correspondence.

4. By September 29, 2008 [180 days] the licensee shall complete implementation of the fingerprinting requirements. The licensee shall notify the Department when they have achieved full compliance with the requirements described in the amendment. The notification shall be made within **five (5) days** after full compliance has been achieved.

Licensees are strongly encouraged to thoroughly review and retain in their license files this letter and all of the enclosures. Additionally, documents, including frequently asked questions (FAQ) pertinent to these additional fingerprinting requirements are posted on the Department's website at: http://www.cdphe.state.co.us/hm/rad/rml/rmlpubs.htm

If you have questions regarding your license or need assistance understanding the IC requirements, please contact James Jarvis of this Division at james.jarvis@state.co.us or by phone at (303) 692-3454.

Sincerely,

Stephen F. Tarlton, Unit Leader
Radiation Management Unit
Colorado Department of Public Health and Environment

Attachments:
1. License Amendment and Annex
2. ENCLOSURE 1 - CERTIFICATION PROCESS FOR THE T&R OFFICIAL
3. ENCLOSURE 2 - PROCEDURES FOR PROCESSING FINGERPRINT CARDS
4. ENCLOSURE 3 - GUIDANCE FOR EVALUATING FBI IDENTIFICATION AND CRIMINAL HISTORY RECORDS CHECKS FOR ALLOWING UNESCORTED ACCESS TO CERTAIN RADIOACTIVE MATERIAL
5. FBI (Form -258) FINGERPRINT CARDS

ENCLOSURE 1 - CERTIFICATION PROCESS FOR THE TRUSTWORTHY AND RELIABLE OFFICIAL

As stated in the Department correspondence accompanying the license amendment requiring fingerprinting, the Department requires that all licensees respond within ninety (90) days of the date of issuance of the license amendment, and provide under oath or affirmation, a certification that the Trustworthiness and Reliability (T&R) Official. The T&R Official is an individual with the responsibility to determine the trustworthiness and reliability of other individual(s) requiring unescorted access to radioactive materials quantities of concern. Each licensee must determine or establish the Trustworthiness and Reliability of the T&R Official as required by Increased Control requirement 1.e. A person responsible for signing the license application and similar legal documents, such as the company president, CEO or other high ranking executive, or licensee owner is typically the person who establishes, approves, and certifies the trustworthiness and reliability of the T&R Official.

Licensees are required to provide under oath or affirmation a certification that the T&R Official is deemed trustworthy and reliable. This certification shall be done by one of the following methods:

1. Using a notary public to authenticate oaths or affirmations and to certify that the information provided is correct and true; or

2. Use the following unsworn declaration[1] 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.

[[1] as presented in the United States Code, Title 28, Section 1746 (28 USC 1746).]

3. If the T&R Official does not require unescorted access, they must be deemed trustworthy and reliable by the licensee in accordance with the requirements of IC 1 of Annex A - excluding only the fingerprinting and associated FBI background check requirements - before making a determination regarding the trustworthiness and reliability of another individual. If the T&R Official requires unescorted access to radioactive materials in quantities of concern, 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.

A licensee may have more than one T&R Official, but each must be approved in writing by the licensee as outlined above. An example of an acceptable certification letter is posted on the Department website for use by licensees. Once the T&R Official is designated, they cannot approve another additional, alternate or replacement T&R Official - only the licensee can establish each T&R Official. The T&R Official will however determine the T&R status of all other persons having unescorted access to radioactive materials in quantities of concern.

Licensee responses with certification of the T&R Official shall be submitted to:

Colorado Department of Public Health and Environment
Radiation Management Unit – HMWMD-B2
Attn: Stephen Tarlton, Unit Leader
4300 Cherry Creek Drive South
Denver, Colorado 80236-1530.

Responses are also acceptable electronically or by fax. Electronic submissions must be signed and sent as an attachment in pdf format and shall be sent to steve.tarlton@state.co.us. Signed faxes should be sent to (303) 759-5355 to the Attention of Stephen Tarlton, Unit Leader, Radiation Management Unit.

ENCLOSURE 2 – PROCEDURES FOR PROCESSING FINGERPRINT CARDS

Each licensee will be required to submit a completed fingerprint card to the NRC for each employee requiring unescorted access to radioactive materials in quantities of concern. The NRC will in turn submit fingerprint cards to the FBI for performance of the background screening. The results of the fingerprinting background check will be returned to NRC who will in turn return it to each Colorado licensee. The following provides specific information pertinent to obtaining and submitting fingerprints:

For the purpose of complying with the requirements contained in this license amendment, Licensees shall:

1. Submit one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) for each individual seeking access to unescorted access to certain radioactive material. **Fingerprint form FD-258 is the only form accepted by NRC/FBI.** The Department has provided you with a limited number of fingerprint cards so that you may become familiar with them and use as necessary. You may obtain additional fingerprint cards by writing to the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by calling (301) 415-5877, or by e-mail to forms@nrc.gov. Due to prior reported problems with having the appropriate/current form FD-258, you should not use forms available at local law enforcement offices.

   Fingerprints should be obtained through law enforcement officials or other private entities authorized to take fingerprints. Local law enforcement agencies typically charge between $5-$20 per fingerprint card to take fingerprints. As a courtesy to licensees, the Department has generated a list of law enforcement agencies that perform fingerprinting in some larger communities in Colorado. Licensees are encouraged to contact the applicable law enforcement agency to verify times and costs of fingerprint collection. Refer to the Department website for a list of Colorado law enforcement agencies who perform fingerprinting activities:
   http://www.cdphe.state.co.us/hm/rad/rml/rmlpubs.htm

   Licensees have the option to take their own fingerprints under certain conditions – refer to the Questions and Answers (FAQs) Pertaining Fingerprinting and Criminal History Records Document located on the Department website for additional information:
   http://www.cdphe.state.co.us/hm/rad/rml/rmlpubs.htm

2. Licensees will be required to pay a fee of $36 per fingerprint card submitted to the NRC prior to submitting the fingerprints for processing. This will be paid directly to the NRC via the licensees credit/debit card through the https://www.pay.gov/paygov/ website. Licensees should establish a payment account (user ID and password) with the NRC by:
   a. Sending an email to the NRC with the licensee name, address, point of contact, email address, and phone number to paygo@nrc.gov requesting a fingerprint payment account;
   b. NRC will forward this information to pay.gov website personnel;
   c. Someone from pay.gov will contact the licensee with the necessary information;
   d. Once the account is established, licensees should make payment for the appropriate number of fingerprint cards to be submitted. All payment receipts received through the pay.gov website should be retained by the licensee with a copy sent with each set of fingerprints submitted.

   For additional guidance on making electronic payments, contact the NRC Facilities Security Branch, Division of Facilities and Security, at (301) 415-7404.

   NOTE: Licensees also have the option of payment by company check, cashier check or money order. Checks should be made payable to "U.S. NRC" and should be mailed to the same address as fingerprints (specified below). Licensees should retain a copy of the check and/or check number should payment issues arise after submission.

3. Include with **each** fingerprint submission to NRC:
    a. the name and address of the T&R Official to whom the criminal history records results will be returned; and
    b. a copy of the T&R Official declaration (described in Enclosure 1). The T&R Official declaration shall be marked as "Security Related Information – Withold from Public Disclosure under 10 CFR 2.390 or Under 24-72-204, Colorado Revised Statutes."

4. Submit:
    a. the completed Form FD-258 fingerprint card(s) – include the prefix "CO" plus your radioactive material license number on **each** form FD-258 fingerprint card submitted. (Example: CO-9999-01). This number should be placed in the "Your No. OCA" box located near the center/top of form FD-258.
    b. a receipt of the "pay.gov" payment (or cashiers check/money order) ;
    c. a copy of the T&R Official declaration MUST be included with each fingerprint batch submission to the NRC

    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

NOTE 1: Overnight mail is preferred for fingerprint submissions to NRC.

NOTE 2: The establishment of a pay.gov account are reported to take up to 5 days, so Licensees should plan accordingly to ensure deadlines are met.

NOTE 3: 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. If for some reason fingerprint cards are not readable by the FBI, are rejected, or are lost in transit licensees will have only **one** opportunity to correct them without an additional $36 fee being assessed. When resubmitting corrected fingerprint cards, include the FBI Transaction Control Number - received when fingerprints are rejected - with all resubmitted fingerprint cards.

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 Part 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

[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.

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.

Licensees should refer to Enclosure 3 – for additional information and guidance on evaluating a person's FBI Background Check and other background check related information once received from NRC/FBI.

Please note that the Colorado Department of Public Health and Environment, Radiation Management Unit (the Department) will not be involved directly in the fingerprinting process, the handling of fingerprint cards, or the evaluation of fingerprint results except as it applies to the Increased Controls inspection process and compliance with the requirements. Therefore, all fingerprints shall be submitted directly to the NRC for processing by the FBI. The T&R Official certification will however be submitted and reviewed by the Department as discussed in Enclosure 1.

To facilitate resolution of issues or questions related to compliance with the new requirements, please refer to the list of questions and answers posted on the Departments website at: http://www.cdphe.state.co.us/hm/rad/rml/rmlpubs.htm

For specific questions relating to payment of fees, and fingerprint processing please contact the NRC Increased Controls Support line at (301) 415-3340 or send questions via email to ICfingerprint@nrc.gov.

For additional questions regarding those activities being conducted by the Department, please contact Mr. James Jarvis at james.jarvis@state.co.us or by phone at (303) 692-3454.

[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.

ENCLOSURE 3 – GUIDANCE FOR EVALUATING FBI IDENTIFICATION AND CRIMINAL HISTORY RECORDS CHECKS FOR ALLOWING UNESCORTED ACCESS TO CERTAIN RADIOACTIVE MATERIAL

The purpose of this guidance is to address the fingerprinting component of the T&R determination. Each Licensee is responsible for determining whether to grant any specific 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 Table 1 of the Increased Controls Annex to your license) 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 Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements of Annex A of your license, in making a determination whether to grant unescorted access to certain radioactive materials.

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 the original Increased Control guidance in Q and A #22 at the following web address:
http://www.cdphe.state.co.us/hm/rad/rml/rmlimplementationqanda.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 recentness 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 and the level of security risk the licensee is willing to accept regarding any specific individual 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.

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 an NRC Order or legally binding conditions issued by an Agreement State (the Department), 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 the NRC Order or legally binding conditions issued by the Department. 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 legally binding conditions issued by the Department. 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 on whether to grant, or continue to allow unescorted access to risk significant radioactive materials equal to or greater than the quantities listed in Table 1 of Annex A of your license.

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 that supports a positive finding.

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 recentness 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 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 indicates 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 the NRC / Department does 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 is not suitable for escorted access or some other position that does not involve NRC or Department regulated activities.

Licensees shall notify the Department at (303) 877-9757 **and** NRC's Headquarters Operations Office at (301) 816-5100 within **24 hours** 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.

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 the Increased Controls requirements 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.

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 materials equal to or greater than the quantities listed in Annex A of your license.

Right to Correct and Complete Information

Prior to any final adverse determination, the Licensee shall notify and make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of the contents of any criminal records must be maintained by the Licensee 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 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 the Increased Controls requirements 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 Department or NRC 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.

INCREASED CONTROLS FOR LICENSEES THAT POSSESS SOURCES CONTAINING RADIOACTIVE MATERIAL QUANTITIES OF CONCERN

The purpose of the increased controls for radioactive sources is to enhance control of radioactive material in quantities greater than or equal to values described in Table 1, to reduce the risk of unauthorized use of radioactive materials, through access controls to aid prevention, and prompt detection, assessment, and response to mitigate potentially high consequences that would be detrimental to public health and safety. These increased controls for radioactive sources are established to delineate licensee responsibility to maintain control of licensed material and secure it from unauthorized removal or access. The following increased controls apply to licensees which, at any given time, possess radioactive sources greater than or equal to the quantities of concern of radioactive material defined in Table 1.

IC 1. In order to ensure the safe handling, use, and control of licensed material in use and in storage each licensee shall control access at all times to radioactive material quantities of concern and devices containing such radioactive material (devices), and limit access to such radioactive material and devices to only approved individuals who require access to perform their duties.

a. 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 and devices. The licensee shall approve for unescorted access only those individuals with job duties that require access to such radioactive material and devices. Personnel who require access to such radioactive material and devices to perform a job duty, but who are not approved by the licensee for unescorted access, must be escorted by an approved individual.

b. 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 employee's employment history with the licensee and fingerprinting and an FBI identification and criminal history records check.

c. 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.

d. The licensee shall document the basis for concluding that there is reasonable assurance that an individual granted unescorted access is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of radioactive material quantities of concern. The licensee shall maintain a list of persons approved for unescorted access to such radioactive material and devices by the licensee.

e. The licensee shall establish, maintain, and certify under oath and affirmation at least one Trustworthy and Reliability Official responsible for determining the trustworthiness and reliability of other individuals requiring unescorted access to radioactive materials quantities of concern. The Trustworthy and Reliability Official shall be determined as Trustworthy and Reliable in accordance with the requirements of IC 1.

IC 2. In order to ensure the safe handling, use, and control of licensed material in use and in storage, each licensee shall have a documented program to monitor and immediately detect, assess, and respond to unauthorized access to radioactive material quantities of concern and devices. Enhanced monitoring shall be provided during periods of source delivery or shipment, where the delivery or shipment exceeds 100 times the Table 1 values.

a. The licensee shall respond immediately to any actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices. The response shall include requesting assistance from a Local Law Enforcement Agency (LLEA).

b. The licensee shall have a pre-arranged plan with LLEA for assistance in response to an actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices which is consistent in scope and timing with realistic potential vulnerability of the sources containing such radioactive material. The pre-arranged plan shall be updated when changes to the facility design or operation affect the potential vulnerability of the sources. Pre-arranged LLEA coordination is not required for temporary job sites.

c. The licensee shall have a dependable means to transmit information between, and among, the various components used to detect and identify an unauthorized intrusion, to inform the assessor, and to summon the appropriate responder.

d. After initiating appropriate response to any actual or attempted theft, sabotage, or diversion of radioactive material or of the devices, the licensee shall, as promptly as possible, notify the CDPHE Radiation Management Unit at (303) 877-9757 via the 24 hour Radiation Management Duty Officer cell phone.

e. The licensee shall maintain documentation describing each instance of unauthorized access and any necessary corrective actions to prevent future instances of unauthorized access.

IC 3. In order to ensure the safe handling, use, and control of licensed material in transportation for domestic highway and rail shipments by a carrier other than the licensee:

a. for quantities that equal or exceed those in Table 1 but are less than 100 times Table 1 quantities, per consignment, the licensee shall:

1. Use carriers which:
   A. Use package-tracking systems,
   B. Implement methods to assure trustworthiness and reliability of drivers,
   C. Maintain constant control and/or surveillance during transit, and
   D. Have the capability for immediate communication to summon appropriate response or assistance.

The licensee shall verify and document that the carrier employs the measures listed above.

2. Contact the recipient to coordinate the expected arrival time of the shipment;

3. Confirm receipt of the shipment; and

4. Initiate an investigation to determine the location of the licensed material if the shipment does not arrive on or about the expected arrival time. When, through the course of the investigation, it is determined the shipment has become lost, stolen, or missing, the licensee shall immediately notify the CDPHE Radiation Management Unit at (303) 877-9757 via the Radiation Management Duty Officer cell phone. If, after 24 hours of investigating, the location of the material still cannot be determined, the radioactive material shall be deemed missing and the licensee shall immediately notify the Department.

b. For domestic highway and rail shipments, prior to shipping licensed radioactive material that exceeds 100 times the quantities in Table 1 per consignment, the licensee shall:

1. Notify the NRC[1] and the Department, in writing, at least 90 days prior to the anticipated date of shipment. The NRC will issue the Order to implement the Additional Security Measures (ASMs) for the transportation of Radioactive Material Quantities of Concern (RAM QC). The licensee shall not ship this material until the ASMs for the transportation of RAM QC are implemented or the licensee is notified otherwise, in writing, by NRC.

2. Once the licensee has implemented the ASMs for the transportation of RAM QC, the notification requirements of 3.b.1 shall not apply to future shipments of licensed radioactive material that exceed 100 times the Table 1 quantities. The licensee shall implement the ASMs for the transportation of RAM QC.

c. If a licensee employs an M&D licensee to take possession of the licensed radioactive material and ship it under its M&D license, the requirements of 3.a. and 3.b above shall not apply.

d. If the licensee is to receive radioactive material greater than or equal to the Table 1 quantities, per consignment, the licensee shall coordinate with the originating licensee to:

1. Establish an expected time of delivery; and

2. Confirm receipt of transferred radioactive material. If the material is not received at the expected time of delivery, notify the originating licensee and assist in any investigation.

[1] Director, Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555

RADIOACTIVE MATERIALS LICENSE

IC 4. In order to ensure the safe handling, use, and control of licensed material in use and in storage each licensee that possesses mobile or portable devices containing radioactive material in quantities greater than or equal to Table 1 values, shall:

a. For portable devices, have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

b. For mobile devices:

1. that are only moved outside of the facility (e.g., on a trailer), have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

2. that are only moved inside a facility, have a physical control that forms a tangible barrier to secure the material from unauthorized movement or removal when the device is not under direct control and constant surveillance by the licensee.

c. For devices in or on a vehicle or trailer, licensees shall also utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee.

IC 5. The licensee shall retain documentation required by these increased controls for three years after they are no longer effective:

a. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.

b. Each time the licensee revises the list of approved persons required by 1.d., the T&R Official required by 1.e, or the documented program required by 2, the licensee shall retain the previous documentation for three years after the revision.

c. The licensee shall retain documentation on each radioactive material carrier for three years after the licensee discontinues use of that particular carrier.

d. The licensee shall retain documentation on shipment coordination, notifications, and investigations for three years after the shipment or investigation is completed.

e. After the license is terminated or amended to reduce possession limits below the quantities of concern, the licensee shall retain all documentation required by these increased controls for three years.

RADIOACTIVE MATERIALS LICENSE

IC 6. Detailed information generated by the licensee that describes the physical protection of radioactive material quantities of concern, is sensitive information and shall be protected from unauthorized disclosure.

a. The licensee shall control access to its physical protection information to those persons who have an established need to know the information, and are considered to be trustworthy and reliable.

b. The licensee shall develop, maintain and implement policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, its physical protection information for radioactive material covered by these requirements. The policies and procedures shall include the following:

1. General performance requirement that each person who produces, receives, or acquires the licensee's sensitive information, protect the information from unauthorized disclosure,

2. Protection of sensitive information during use, storage, and transit,

3. Preparation, identification or marking, and transmission,

4. Access control,

5. Destruction of documents,

6. Use of automatic data processing systems, and

7. Removal from the licensee's sensitive information category.

RADIOACTIVE MATERIALS LICENSE

Table 1: Radionuclides of Concern

Radionuclide	Quantity of Concern (TBq)	Quantity of Concern (Ci)
Am-241	6.0 E-1	16
Am-241/Be	6.0 E-1	16
Cf-252	2.0 E-1	5.4
Cm-244	5.0 E-1	14
Co-60	3.0 E-1	8.1
Cs-137	1.0 E+0	27
Gd-153	1.0 E+1	270
Ir-192	8.0 E-1	22
Pm-147	4.0 E+2	11,000
Pu-238	6.0 E-1	16
Pu-239/Be	6.0 E-1	16
Ra-226	4.0 E-1	11
Se-75	2.0 E+0	54
Sr-90 (Y-90)	2.0 E+1	270
Tm-170	2.0 E+2	5,400
Yb-169	3.0 E+0	81

Determining if radioactive materials constitute a Quantity of Concern:

1. The primary Units used for determining compliance with this Annex are TBq at two significant figures as shown in Column 2 of Table 1 above.

2. Any single source constitutes a Quantity of Concern if that source contains a radionuclide listed in Table 1 with an activity equal to or greater than the activity listed in (the TBq column of) Table 1 for that radionuclide.

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. All radioactive sources located on a single vehicle are considered collocated.

5. Multiple collocated sources of the same radionuclide constitute a Quantity of Concern when the combined activity of those sources is equal to or exceeds the Quantity of Concern for that radionuclide listed in Table 1.

6. Multiple collocated sources of the different radionuclides listed in Table 1 constitute a Quantity of Concern when the sum of the ratios is equal to or exceeds 1 using the following method.

   The Sum of the Ratios is determined by:

   (amount of radionuclide A) ÷ (quantity of concern for radionuclide A)
   + (amount of radionuclide B) ÷ (quantity of concern for radionuclide B)
   + (amount of radionuclide C) ÷ (quantity of concern for radionuclide C)
   + etc...

   Example #1:

$$\frac{5.9\text{ E-1 TBq Am-241}}{6.0\text{ E-1 TBq}} + \frac{6.3\text{ E-2 TBq Cs-137}}{1.0\text{ E+0 TBq}} = 0.98 + 0.06 \geq 1.0$$

   Since the sum of the ratios in Example #1 is greater than or equal to 1, this combination of sources if collocated would constitute a Quantity of Concern.

   Example #2:

$$\frac{3.5\text{ E-1 TBq Am-241:Be}}{6.0\text{ E-1 TBq}} + \frac{2.5\text{ E-1 TBq Ir-192}}{8.0\text{ E-1 TBq}} + \frac{1.5\text{ E-2 TBq Cs-137}}{1.0\text{ E+0 TBq}}$$

$$= 0.58 + 0.31 + .02 = 0.91 < 1.0$$

   Since the sum of the ratios in Example #2 is **LESS** than 1, this combination of sources would **NOT** constitute a Quantity of Concern.

State of Colorado
Department of Public Health and Environment

RADIOACTIVE MATERIALS LICENSE

ANNEX A (MARCH 31, 2008 ~~DECEMBER 1, 2005~~)

INCREASED CONTROLS FOR LICENSEES THAT POSSESS SOURCES CONTAINING RADIOACTIVE MATERIAL QUANTITIES OF CONCERN

The purpose of the increased controls for radioactive sources is to enhance control of radioactive material in quantities greater than or equal to values described in Table 1, to reduce the risk of unauthorized use of radioactive materials, through access controls to aid prevention, and prompt detection, assessment, and response to mitigate potentially high consequences that would be detrimental to public health and safety. These increased controls for radioactive sources are established to delineate licensee responsibility to maintain control of licensed material and secure it from unauthorized removal or access. The following increased controls apply to licensees which, at any given time, possess radioactive sources greater than or equal to the quantities of concern of radioactive material defined in Table 1.

IC 1. ~~—~~In order to ensure the safe handling, use, and control of licensed material in use and in storage each licensee shall control access at all times to radioactive material quantities of concern and devices containing such radioactive material (devices), and limit access to such radioactive material and devices to only approved individuals who require access to perform their duties.

a. 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 and devices. The licensee shall approve for unescorted access only those individuals with job duties that require access to such radioactive material and devices. Personnel who require access to such radioactive material and devices to perform a job duty, but who are not approved by the licensee for unescorted access, must be escorted by an approved individual.

b. 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, ~~and~~ 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 employee's employment history with the licensee **and fingerprinting and an FBI identification and criminal history records check**.

c. Service providers **licensee employees** shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation ~~as an employee of a manufacturing and distribution (M&D) licensee~~. Written verification attesting to or certifying the person's trustworthiness and reliability shall be obtained from the ~~manufacturing and distribution~~ licensee providing the service.

d. ~~d.~~ ~~———————————————————~~The licensee shall document the basis for concluding that there is reasonable assurance that an individual granted unescorted access is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of radioactive material

quantities of concern. The licensee shall maintain a list of persons approved for unescorted access to such radioactive material and devices by the licensee.

e. **The licensee shall establish, maintain, and certify under oath and affirmation at least one Trustworthy and Reliability Official responsible for determining the trustworthiness and reliability of other individuals requiring unescorted access to radioactive materials quantities of concern. The Trustworthy and Reliability Official shall be determined as Trustworthy and Reliable in accordance with the requirements of IC 1.**

IC 2. In order to ensure the safe handling, use, and control of licensed material in use and in storage, each licensee shall have a documented program to monitor and immediately detect, assess, and respond to unauthorized access to radioactive material quantities of concern and devices. Enhanced monitoring shall be provided during periods of source delivery or shipment, where the delivery or shipment exceeds 100 times the Table 1 values.

a. The licensee shall respond immediately to any actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices. The response shall include requesting assistance from a Local Law Enforcement Agency (LLEA).

b. The licensee shall have a pre-arranged plan with LLEA for assistance in response to an actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices which is consistent in scope and timing with realistic potential vulnerability of the sources containing such radioactive material. The pre-arranged plan shall be updated when changes to the facility design or operation affect the potential vulnerability of the sources. Pre-arranged LLEA coordination is not required for temporary job sites.

c. The licensee shall have a dependable means to transmit information between, and among, the various components used to detect and identify an unauthorized intrusion, to inform the assessor, and to summon the appropriate responder.

d. After initiating appropriate response to any actual or attempted theft, sabotage, or diversion of radioactive material or of the devices, the licensee shall, as promptly as possible, notify the CDPHE Radiation Management Unit at ~~(303) 692-3300 during business hours or~~ (303~~877~~) 877~~518~~-9757~~5608~~ via the 24 hour **Radiation Management Duty Officer cell phone**~~CDPHE spill line~~.

e. The licensee shall maintain documentation describing each instance of unauthorized access and any necessary corrective actions to prevent future instances of unauthorized access.

IC 3. ~~a.~~ In order to ensure the safe handling, use, and control of licensed material in transportation for domestic highway and rail shipments by a carrier other than the licensee:~~,~~

a. for quantities that equal or exceed those in Table 1 but are less than 100 times Table 1 quantities, per consignment, the licensee shall:

1. Use carriers which:

A. Use package-tracking systems,

B. Implement methods to assure trustworthiness and reliability of drivers,

C. Maintain constant control and/or surveillance during transit, and

D. Have the capability for immediate communication to summon appropriate response or assistance.

The licensee shall verify and document that the carrier employs the measures listed above.

2. Contact the recipient to coordinate the expected arrival time of the shipment;

3. Confirm receipt of the shipment; and

4. Initiate an investigation to determine the location of the licensed material if the shipment does not arrive on or about the expected arrival time. When, through the course of the investigation, it is determined the shipment has become lost, stolen, or missing, the licensee shall immediately notify the CDPHE Radiation Management Unit at ~~(303) 692-3300 during business hours or~~ (303~~877~~) ~~518~~877-97~~575608 via the 24 hour CDPHE spill line~~ **via the Radiation Management Duty Officer cell phone**. If, after 24 hours of investigating, the location of the material still cannot be determined, the radioactive material shall be deemed missing and the licensee shall immediately notify the ~~NRC Operations Center or, for Agreement State licensees, the appropriate Agreement State regulatory agency~~ **Department**.

b. For domestic highway and rail shipments, prior to shipping licensed radioactive material that exceeds 100 times the quantities in Table 1 per consignment, the licensee shall:

1. Notify the NRC[1] **and the Department**, in writing, at least 90 days prior to the anticipated date of shipment. The NRC will issue the Order to implement the Additional Security Measures (ASMs) for the transportation of Radioactive Material Quantities of Concern (RAM QC). The licensee shall not ship this material until the ASMs for the transportation of RAM QC are implemented or the licensee is notified otherwise, in writing, by NRC.

2. Once the licensee has implemented the ASMs for the transportation of RAM QC, the notification requirements of 3.b.1 shall not apply to future shipments of licensed radioactive material that exceed 100 times the Table 1 quantities. The licensee shall implement the ASMs for the transportation of RAM QC.

c. If a licensee employs an M&D licensee to take possession of the licensed radioactive material and ship it under its M&D license, the requirements of 3.a. and 3.b above shall not apply.

[1] Director, Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555

d. If the licensee is to receive radioactive material greater than or equal to the Table 1 quantities, per consignment, the licensee shall coordinate with the originating licensee to:

1. Establish an expected time of delivery; and

2. Confirm receipt of transferred radioactive material. If the material is not received at the expected time of delivery, notify the originating licensee and assist in any investigation.

IC 4. In order to ensure the safe handling, use, and control of licensed material in use and in storage each licensee that possesses mobile or portable devices containing radioactive material in quantities greater than or equal to Table 1 values, shall:

a. For portable devices, have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

b. For mobile devices:

1. that are only moved outside of the facility (e.g., on a trailer), have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

2. that are only moved inside a facility, have a physical control that forms a tangible barrier to secure the material from unauthorized movement or removal when the device is not under direct control and constant surveillance by the licensee.

c. For devices in or on a vehicle or trailer, licensees shall also utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee.

IC 5. The licensee shall retain documentation required by these increased controls for three years after they are no longer effective:

a. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.

b. Each time the licensee revises the list of approved persons required by 1.d., **the T&R Official required by 1.e,** or the documented program required by 2, the licensee shall retain the previous documentation for three years after the revision.

c. The licensee shall retain documentation on each radioactive material carrier for three years after the licensee discontinues use of that particular carrier.

d. The licensee shall retain documentation on shipment coordination, notifications, and investigations for three years after the shipment or investigation is completed.

e. After the license is terminated or amended to reduce possession limits below the quantities of concern, the licensee shall retain all documentation required by these increased controls for three years.

IC 6. Detailed information generated by the licensee that describes the physical protection of radioactive material quantities of concern, is sensitive information and shall be protected from unauthorized disclosure.

a. The licensee shall control access to its physical protection information to those persons who have an established need to know the information, and are considered to be trustworthy and reliable.

b. The licensee shall develop, maintain and implement policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, its physical protection information for radioactive material covered by these requirements. The policies and procedures shall include the following:

1. General performance requirement that each person who produces, receives, or acquires the licensee's sensitive information, protect the information from unauthorized disclosure,

2. Protection of sensitive information during use, storage, and transit,

3. Preparation, identification or marking, and transmission,

4. Access control,

5. Destruction of documents,

6. Use of automatic data processing systems, and

7. Removal from the licensee's sensitive information category.

RADIOACTIVE MATERIALS LICENSE

Table 1: Radionuclides of Concern

[illegible]	[illegible]	[illegible]
Am-241	**6.0 E-1** ~~0.6~~	16
Am-241/Be	**6.0 E-1** ~~0.6~~	16
Cf-252	**2.0 E-1** ~~0.2~~	5.4
Cm-244	**5.0 E-1** ~~0.5~~	14
Co-60	**3.0 E-1** ~~0.3~~	8.1
Cs-137	**1.0 E+0** ~~1~~	27
Gd-153	**1.0 E+1** ~~10~~	270
Ir-192	**8.0 E-1** ~~0.8~~	22
Pm-147	**4.0 E+2** ~~400~~	11,000
Pu-238	**6.0 E-1** ~~0.6~~	16
Pu-239/Be	**6.0 E-1** ~~0.6~~	16
Ra-226	**4.0 E-1**	11
Se-75	**2.0 E+0** ~~2~~	54
Sr-90 (Y-90)	**2.0 E+1** ~~10~~	270
Tm-170	**2.0 E+2** ~~200~~	5,400
Yb-169	**3.0 E+0** ~~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, *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. [(aggregated source activity for radionuclide A) ÷ (quantity of concern for radionuclide A)] + [(aggregated source activity for radionuclide B) ÷ (quantity of concern for radionuclide B)] + etc..... ≥1~~

~~Use the following method to determine which sources of radioactive material require increased controls (ICs):~~

- ~~Include any single source equal to or greater than the quantity of concern in Table 1~~
- ~~Include multiple collocated sources of the same radionuclide when the combined quantity equals or exceeds the quantity of concern~~
- ~~For combinations of radionuclides, include multiple collocated sources of different radionuclides when the aggregate quantities satisfy the following unity rule: [(amount of radionuclide A) ÷ (quantity of concern of radionuclide A)] + [(amount of radionuclide B) ÷ (quantity of concern of radionuclide B)] + etc.....≥ 1~~

~~Example of "unity" rule~~

~~For combinations of radioactive material the sum of ratios would be expressed as:~~

$$\frac{\text{"X" Ci Radionuclide A}}{\text{Quantity of Concern for Radionuclide A}} + \frac{\text{"Y" Ci Radionuclide B}}{\text{Quantity of Concern for Radionuclide B}}$$

$$\frac{\text{"Z" Ci Radionuclide C}}{\text{Quantity of Concern for Radionuclide C}} + [\text{etc.}] \leq 1$$

Determining if radioactive materials constitute a Quantity of Concern:

1. **The primary Units used for determining compliance with this Annex are TBq at two significant figures as shown in Column 2 of Table 1 above.**
2. **Any single source constitutes a Quantity of Concern if that source contains a radionuclide listed in Table 1 with an activity equal to or greater than the activity listed in (the TBq column of) Table 1 for that radionuclide.**
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. **All radioactive sources located on a single vehicle are considered collocated.**
5. **Multiple collocated sources of the same radionuclide constitute a Quantity of Concern when the combined activity of those sources is equal to or exceeds the Quantity of Concern for that radionuclide listed in Table 1.**

6. **Multiple collocated sources of the different radionuclides listed in Table 1 constitute a Quantity of Concern when the sum of the ratios is equal to or exceeds 1 using the following method.**

   The Sum of the Ratios is determined by:

   (amount of radionuclide A) ÷ (quantity of concern for radionuclide A)
   + (amount of radionuclide B) ÷ (quantity of concern for radionuclide B)
   + (amount of radionuclide C) ÷ (quantity of concern for radionuclide C)
   + etc...

   Example #1:

$$\frac{5.9\text{ E-1 TBq Am-241}}{6.0\text{ E-1 TBq}} + \frac{6.3\text{ E-2 TBq Cs-137}}{1.0\text{ E+0 TBq}} = 0.98 + 0.06 \geq 1.0$$

   Since the sum of the ratios in Example #1 is greater than or equal to 1, this combination of sources if collocated would constitute a Quantity of Concern.

   Example #2:

$$\frac{3.5\text{ E-1 TBq Am-241:Be}}{6.0\text{ E-1 TBq}} + \frac{2.5\text{ E-1 TBq Ir-192}}{8.0\text{ E-1 TBq}} + \frac{1.5\text{ E-2 TBq Cs-137}}{1.0\text{ E+0 TBq}}$$

$$= 0.58 + 0.31 + .02 = 0.91 < 1.0$$

   Since the sum of the ratios in Example #2 is LESS than 1, this combination of sources would NOT constitute a Quantity of Concern.

Questions and Answers Pertaining to Fingerprinting and Criminal History Records Checks - March 31, 2008

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 Colorado Licensees, the information on how to respond to the fingerprinting requirements is contained in your radioactive materials license and associated correspondence and guidance. The license conditions, license annex, cover letter, and supplemental guidance are not considered sensitive information.

   Licensee responses to the fingerprinting requirements is considered sensitive information and should be marked appropriately with **Withhold From Public Disclosure Under Section 3.8.6 of the *Regulations* and 24-72-204, CRS (or 10 CFR 2.390 when corresponding with NRC)**

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 for both NRC and Agreement State licensees. The NRC therefore directed Agreement States to implement these requirements for Agreement State licensees as well.

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

   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 new IC requirements.

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 may take their own employee fingerprints as discussed in the supplemental question #__ below. Licensees should consider having 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. Additionally, fingerprints which are unreadable will not be accepted by the NRC/FBI and will be returned to licensees for resubmission. This may result in delays or additional fees.

7. Where can I have my fingerprints taken?

Most local law enforcement facilities can take your fingerprints.

8. 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.

9. 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 (licensee name) and address of person being fingerprinted
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
s. Your Colorado license number preceded by "CO" should be written in the "Your NO. OCA" box near the middle/top of fingerprinting form FD-258.

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. Reliance on trained personnel at local law enforcement offices may also help ensure that fingerprints are classifiable.

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 processing the fingerprints?

The current NRC fee to process each fingerprint card is $36.00 per card. Additional fees may be charged by the entity taking the fingerprints. At this time the Colorado Department of Public Health and Environment will not be assessing additional fees associated with fingerprinting requirements, nor will the Department be directly involved in the fingerprinting process.

15. What method of payment does the NRC accept?

The NRC accepts electronic payments through http://www.pay.gov. Please refer to the instructions in the Department correspondence transmitting the fingerprinting requirements and other supplemental information for details on how to pay electronically. Other methods of payment may also be available – refer to Enclosure 2, of the Departments correspondence dated March 31, 2008. [Note – the State of Colorado Radiation Management Program will not be directly involved in the fingerprinting process or FBI background checks, and will not collect fees specific to these activities. Therefore, all fee payments for fingerprinting processing and FBI checks will be made through the NRC as specified above.]

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 requirements?

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 fingerprinting requirements.?

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 and fingerprinting requirements prior to actual possession of the material.

[*NOTE: The State of Colorado Radiation Management Program may determine that the IC and fingerprinting requirements be retained in some licensees even if the licensee does not possess radioactive materials exceeding Table 1 quantities. These licensees will be required to implement the IC requirements when quantities of materials exceeding Table 1 are exceeded. These will be handled on a case-by-case basis.*]

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

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 license containing the fingerprinting requirements 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 correspondence accompanying the amended license; 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 license containing the fingerprinting requirements is issued) employees who have unescorted access at the time the requirement 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 (180 days after issuance of the license containing the fingerprinting requirements), 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. Individuals hired on or after the date of the amended license mandating the Increased Controls Fingerprinting requirements may <u>not</u> be granted unescorted access under the "old" or prior IC requirements unless they are fingerprinted and results and review of their FBI criminal history record is complete.

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 Department 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 <u>unescorted access</u>, 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 Increased Control requirements contained in Annex A of your radioactive materials license .

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 correspondence and guidance accompanying the license. 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.

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[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 history, personal references and a federal criminal history check (initiated by submission of fingerprints). 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 Department.

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?

Neither the NRC nor the Colorado Department of Public Health and Environment Radiation Management Unit will provide financial aid and there is no funding available to assist licensees 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 which may result in changes to the requirements in Colorado.

33. The fingerprinting requirements specifies 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 Department "under oath or affirmation"?

The requirement to submit documents to the Department 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.

The Department has posted on its website an example T&R Official certification letter for use by licensees.

SUPPLEMENTAL QUESTIONS AND ANSWERS

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

Increased Control requirement 1.e states:

The licensee shall establish, maintain, and certify under oath and affirmation at least one Trustworthy and Reliability Official responsible for determining the trustworthiness and reliability of other individuals requiring unescorted access to radioactive materials quantities of concern. The Trustworthy and Reliability Official shall be determined as Trustworthy and Reliable in accordance with the requirements of IC 1.

The Departments correspondence dated March 31, 2008 also states the following:

By June 30, 2008 [90 days] the licensee shall provide under oath or affirmation, a certification that the Trustworthiness and Reliability Official is deemed trustworthy and reliable by the licensee. The process of certification of the T&R official is described in the enclosures to this correspondence.

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.

The procedure for appointing a T&R Official who requires unescorted access to radioactive material is the same as that other individuals having unescorted access with the exception of the certification portion required only for the T&R Official.

The results and information from the FBI records check should be reviewed by <u>someone other than</u> 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.

If the nominated T&R Official is deemed trustworthy and reliable by the licensee, the licensee must submit to the Department, under oath or affirmation, a certification that the named T&R Official is deemed trustworthy and reliable as required by the Increased Controls contained in Annex A of your license.

The requirement to submit documents to the Department under oath or affirmation is discussed above in a prior Q&A and in the Department correspondence dated March 31, 2008.

The initial certification must be submitted to the Department within **ninety (90)** days of the date of the license amendment.

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 of fingerprints 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 Amended license) 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 license amendment 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 correspondence accompanying the amended license also requires that within 90 days of the date of the amended license 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 amended license. Each submittal of fingerprints to the NRC must be accompanied with a copy of the current T&R Official certification. See prior FAQs 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 <u>established</u> 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 prior Q&A's.

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 Department inspectors for ensuring compliance with the fingerprinting requirements.

The licensee or applicant must then submit a letter to the Department 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 IC 1.e 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 IC 1.e, and the Department correspondence dated March 31, 2008 and the certification provided with each fingerprint submission discussed in the Departments correspondence and attachments dated March 31, 2008.

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 the enclosures to the Department correspondence dated March 31, 2008). 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.

Questions and Answers ~~with~~Pertaining ~~Regards~~ to Fingerprinting and Criminal History Records Checks
~~**********DRAFT**********January 29~~, March 31, 2008

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~~ **Colorado** Licensees, the information on how to respond to the ~~NRC Order requiring implementation of the~~ fingerprinting requirements is contained in ~~the Order itself~~ **your radioactive materials license and associated correspondence and guidance**. ~~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~~ **license conditions, license annex, cover letter, and supplemental guidance** 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~~ **requirements** is considered sensitive information and should be marked appropriately with ~~A~~**Withhold From Public Disclosure Under Section 3.8.6 of the *Regulations* and 24-72-204, CRS (or 10 CFR 2.390 when corresponding with NRC)** ~~**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 **for both NRC and Agreement State licensees. The NRC therefore directed Agreement States to implement these requirements for Agreement State licensees as well.**

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

   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 **new IC requirements**~~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.

~~9.~~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.

~~10.~~6. Can I take my own fingerprints or can someone else at my company fingerprint me?

Licensees ~~cannot~~ **may** take their own employee fingerprints **as discussed in the supplemental question #__ below**. Licensees ~~must~~ **should consider** havinge 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. **Additionally, fingerprints which are unreadable will not be accepted by the NRC/FBI and will be returned to licensees for resubmission. This may result in delays or additional fees.**

~~**11.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).~~

~~12.~~7. Where can I have my fingerprints taken?

Most local law enforcement facilities can take your fingerprints.

~~13.~~8. 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.

~~14.~~9. 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 **(licensee name)** and address **of person being fingerprinted**
g. Reason for being fingerprinted
h. Aliases
i. Citizenship
~~s.~~j. Social security number and any of the other corresponding numbers requested on the card if applicable
~~t.~~k. Date of birth
i. Place of birth
~~u.~~l. Sex
~~v.~~m. Race
~~w.~~n. Height
~~x.~~o. Weight
~~y.~~p. Eye color
~~z.~~q. Hair color
r. **Your Colorado license number preceded by "CO" should be written in the "Your NO. OCA" box near the middle/top of fingerpring form FD-258.**

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. **Reliance on trained personnel at local law enforcement offices may also help ensure that fingerprints are classifiable.**

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 **NRC** fee to process each fingerprint card is a $36.00 per card. Additional fees may be charged by the entity taking the fingerprints. **At this time the Colorado**

Department of Public Health and Environment will not be assessing additional fees associated with fingerprinting requirements, nor will the Department be directly involved in the fingerprinting process.

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~~ **in the Department correspondence transmitting the fingerprinting requirements and other supplemental information** for details on how to pay electronically. **Other methods of payment may also be available – refer to Enclosure 2, of the Departments correspondence dated March 31, 2008. [Note – the State of Colorado Radiation Management Program will not be directly involved in the fingerprinting process or FBI background checks, and will not collect fees specific to these activities. Therefore, all fee payments for fingerprinting processing and FBI checks will be made through the NRC as specified above.]**

~~2.~~ 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 requirements~~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.

~~3.~~17. If I do not have the quantities of material in Table 1, in aggregate or individually, —do I need to implement the fingerprinting 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. **[NOTE: The State of Colorado Radiation Management Program may determine that the IC and fingerprinting requirements be retained in some licensees even if the licensee does not possess radioactive materials exceeding Table 1 quantities. These licensees will be required to implement the IC requirements when quantities of materials exceeding Table 1 are exceeded. These will be handled on a case-by-case basis.]**

~~4.~~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~~ **license containing the fingerprinting requirements** is issued.

~~5.~~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~~ **correspondence accompanying the amended license**; 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.

~~6.~~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~~**license containing the fingerprinting requirements** is issued) employees who have unescorted access at the time the ~~Order~~ **requirement** 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 **(180 days after issuance of the license containing the fingerprinting requirements)**, 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. **Individuals hired on or after the date of the amended license mandating the Increased Controls Fingerprinting requirements may <u>not</u> be granted unescorted access under the "old" or prior IC requirements unless they are fingerprinted and results and review of their FBI criminal history record is complete.**

~~7.~~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~~ **Department** 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.

~~8.~~22. Our radioactive material is in a room where several people have <u>unescorted access</u>, 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.

~~9.~~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.

~~10.~~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.

~~11.~~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.

~~12.~~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 **requirements contained in Annex A of your radioactive materials license** ~~Order (EA-05-090)~~.

~~13.~~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~~ **correspondence and guidance accompanying the license**. 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.

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~~14.~~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.

~~15.~~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 **history,** personal references and a federal criminal history check **(initiated by submission of fingerprints)**. All four of these components need to be considered when making a T&R determination.

~~16.~~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~~ **Department**.

~~17.~~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?

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[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.

Neither ~~The~~ the NRC nor the Colorado Department of Public Health and Environment Radiation Management Unit will ~~not~~ provide financial aid and there is no funding available to assist **licensees** in the implementation of the fingerprinting requirements.

~~18.~~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 **which may result in changes to the requirements in Colorado**.

~~19.~~33. The ~~Order~~ fingerprinting requirements specifies ~~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~~Department ~~A~~"under oath or affirmation"@?

The requirement to submit documents to the ~~NRC~~ **Department** 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.

The Department has posted on its website an example T&R Official certification letter for use by licensees.

SUPPLEMENTAL QUESTIONS AND ANSWERS

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~~ Increased Control requirement 1.e states:

The licensee shall establish, maintain, and certify under oath and affirmation at least one Trustworthy and Reliability Official responsible for determining the trustworthiness and reliability of other individuals requiring unescorted access to radioactive materials quantities of concern. The Trustworthy and Reliability Official shall be determined as Trustworthy and Reliable in accordance with the requirements of IC 1.

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~~*"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."*~~

The Departments correspondence dated March 31, 2008 also states the following:

By June 30, 2008 [90 days] the licensee shall provide under oath or affirmation, a certification that the Trustworthiness and Reliability Official is deemed trustworthy and reliable by the licensee. The process of certification of the T&R official is described in the enclosures to this correspondence.

~~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.

The procedure for appointing a T&R Official who requires unescorted access to radioactive material is the same as that other individuals having unescorted access with the exception of the certification portion required only for the T&R Official.

~~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 from the FBI records check 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 Department, under oath or affirmation, a certification that the named T&R Official is deemed trustworthy and reliable as required by the Increased Controls contained in Annex A of your license.

The requirement to submit documents to the Department under oath or affirmation is discussed above in a prior Q&A and in the Department correspondence dated March 31, 2008. ~~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 Department within ninety (90) days of the date of the license amendment. ~~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 of fingerprints 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 license amendment 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 correspondence accompanying the amended license also requires that within 90 days of

the date of the amended license 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 amended license. Each submittal of fingerprints to the NRC must be accompanied with a copy of the current T&R Official certification. See prior questions ~~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

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

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 Department inspectors for ensuring compliance with the fingerprinting requirements.

The licensee or applicant must then submit a letter to the Department 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~~ IC 1.e 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~~ IC 1.e, and the Department correspondence dated March 31, 2008 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)~~ discussed in the Departments correspondence and attachments dated March 31, 2008.

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~~ the enclosures to the Department correspondence dated March 31, 2008). 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.

~~**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?**~~