

From: "Mario Bettolo" <mbettolo@utah.gov>
To: <mlo1@nrc.gov>
Date: 3/21/2008 10:03:34 AM
Subject: Utah State Fingerprinting Compatibility

Hello Monica,

Please consider our attached document our legally submitted package for review of binding requirements for adding license amendments to IC licensees.

I have mailed the original signed copies as well.

Please find an attached pdf.

Thank you,

Mario A. Bettolo, M.S.
Health Physicist
Utah Division of Radiation Control
801-536-4250

Mail Envelope Properties (47E3C027.3B3 : 7 : 13235)

Subject: Utah State Fingerprinting Compatibility
Creation Date 3/21/2008 10:02:39 AM
From: "Mario Bettolo" <mbettolo@utah.gov>

Created By: mbettolo@utah.gov

Recipients

nrc.gov
TWGWPO03.HQGWDO01
MLO1 (Monica Orendi)

Post Office

TWGWPO03.HQGWDO01

Route

nrc.gov

Files	Size	Date & Time
MESSAGE	345	3/21/2008 10:02:39 AM
TEXT.htm	690	
Fingerprint.pdf	193196	
Mime.822	267087	

Options

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

Concealed Subject: No
Security: Standard

Junk Mail Handling Evaluation Results

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

Junk Mail settings when this message was delivered

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



State of Utah
Department of
Environmental Quality

Richard W. Sprott
Executive Director

Division of Radiation Control
Dane L. Finerfrock
Director

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

March 15, 2008

Ms. Monica Orendi
Office of Federal and State Materials and Environmental Management Programs
Division of Materials Safety and State Agreements
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

RE: "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material (NRC Order EA-07-305)". [RATS ID 2007-4] (FSME-08-005)

Dear Ms. Orendi,

The purpose of this letter is to notify the Nuclear Regulatory Commission that the Utah Division of Radiation Control intends to implement "Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material" by adding legally binding license conditions to the radioactive material licenses of affected licensees

Please review the cover letter and attached documents that we intend to use to inform applicable licensees of the new requirements. The cover letter will be dated and addressed to meet our specific needs. There are six (6) attachments to the cover letter and they are:

1. Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material
2. Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks
3. Table I: Radionuclide's of Concern
4. Amended License
5. Guidance for Evaluating FBI Identification and Criminal History Records Checks for Allowing Unescorted Access to Certain Radioactive Material
6. Questions and Answers dated 12/05/07 and Supplemental Questions and Answers dated 02/13/08

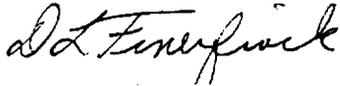
Feedback and review by staff within the Office of Federal and State Materials and

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Environmental Management Programs will be appreciated.

The documents were prepared by **Mario A. Bettolo** who can be contacted by phone at (801) 536-4250 or email (mbettolo@utah.gov).

Sincerely,

A handwritten signature in cursive script, appearing to read "Dane L. Finerfrock".

Dane L. Finerfrock Director
Utah Division of Radiation Control



State of Utah
Department of
Environmental Quality

Richard W. Sprott
Executive Director

Division of Radiation Control
Dane L. Finerfrock
Director

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

«Date»

CERTIFIED MAIL
RETURN RECEIPT REQUIRED

«FirstName» «Last Name», «Title»
«Licensee»
«DBA»
«Address»
«City», «State» «Zip»

RE: Administrative Amendment of Utah Radioactive Materials License Number «License »
License Action Number «LA_»-«Year»

Dear «Salutation» «Last Name»:

The U.S. Nuclear Regulatory Commission (NRC) and the Agreement States (including the State of Utah) are imposing fingerprinting and Federal Bureau of Investigation identification and criminal history records check requirements on all current increased controls (IC) licensees who are authorized to possess radioactive materials in quantities of concern. The NRC has determined that additional requirements need to be implemented to supplement existing regulatory requirements in 10 CFR 20.1801-1802 [Utah Radiation Control Rules R313-15-801(1) and (2)]. The fingerprinting and FBI identification and criminal history records check requirements are being imposed nationwide and must be implemented by Agreement States in a time frame designated by the NRC. The implementations must include content essentially identical to that being used by the NRC for its licensees.

Your radioactive material license has been identified as being subject to the IC requirements. Therefore, in accordance with R313-19-61(1) and pursuant to R313-22-34(2) (a) and (c), your license has been amended to require you to comply with the fingerprinting and FBI identification and criminal history records check requirements, detailed in both Attachment 1, titled "Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material," and Attachment 2, titled "Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks."

The table of radionuclides of concern is provided as Attachment 3, "Table 1: Radionuclide's of

Concern." Your newly amended radioactive material license is provided as Attachment 4.

Within thirty (30) days of the date of this letter:

I. You shall notify the Executive Secretary:

- a. **If** you are unable to comply with any of the requirements in Attachment 1 or Attachment 2;
- b. **If** compliance with any of the requirements is unnecessary because of your specific circumstances; or,
- c. **If** implementation of any of the requirements would cause you to be in violation of the provisions of any regulation or your license.

The notification shall provide your justification for seeking relief from, or variation of, any specific requirement.

2. **If** you consider that implementation of any of the requirements detailed in Attachment 1 or Attachment 2 would adversely impact safe operation of your facility, you must notify the Executive Secretary, in writing, of:

- a. The adverse safety impact;
- b. The basis for your determination that the requirement would have an adverse safety impact; and
- c. A proposal for achieving the same objectives specified in the Attachment 1 and Attachment 2 requirements in question, or a schedule for modifying the facility to address the adverse safety condition. **If** neither approach is appropriate, you must supplement your response to paragraph I above to identify the condition as a requirement with which you cannot comply, with attendant justifications as required in paragraph I above.

3. You shall submit to the Executive Secretary a schedule for completion of each requirement detailed in Attachment 1 and in Attachment 2.

Responses shall be submitted to Dane L. Finerfrock, Executive Secretary, Utah Radiation Control Board, Division of Radiation Control, 168 North 1950 West, Salt Lake City, Utah 84116-3085. In addition, your response shall be marked as "Sensitive - Security Related Information Protected Under UCA 63-2-201(3)(b)."

The Executive Secretary of the Utah Radiation Control Board may, only in writing, relax or rescind any of the above conditions upon your demonstration of good cause.

As provided by R313-17-6(1)(b), you have an opportunity to request a hearing to contest this action. In accordance with R313-17-6(2), if you wish such a hearing to be convened, we must have your written request for a hearing within 30 days of the date of this letter.

Please note that instructional materials are also provided for your consideration. "Guidance for Evaluating FBI Identification and Criminal History Records Checks for Allowing Unescorted Access to Certain Radioactive Material" is Attachment 5. Questions and Answers regarding the implementation of the fingerprinting and FBI identification and criminal history records check requirements is Attachment 6. These documents include information regarding questions on specific implementation issues and the intent behind the fingerprinting and FBI identification and criminal history records check requirements.

Also, find enclosed some fingerprint cards, "Form FD-258." 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.

Should you require assistance in preparing a response, please contact Craig W. Jones at (801) 536-4250.

Sincerely,

Dane L. Finerfrock, Executive Secretary
Utah Radiation Control Board

Attachments:

1. Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material
2. Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks
3. Table I: Radionuclides of Concern
4. Amended License
5. Guidance for Evaluating FBI Identification and Criminal History Records Checks for Allowing Unescorted Access to Certain Radioactive Material
6. Questions and Answers dated 12/05/07 and Supplemental Questions and Answers dated 02/13/08

Enclosure: Form FD-258, fingerprint cards

Attachment 1

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

BACKGROUND

Section 274 of the Atomic Energy Act (AEA) of 1954, as amended, provides a statutory basis under which the U.S. Nuclear Regulatory Commission (NRC or Commission), relinquished to the State of Utah portions of its regulatory authority to license and regulate radioactive materials. The Licensees receiving the Executive Secretary's letter dated XXXXX and attached documents to the Executive Secretary's letter, hold licenses issued by the Executive Secretary of the Utah Radiation Control Board in accordance with Utah Radiation Control Rule, R313-22-34, authorizing them to possess items containing radioactive material in quantities of concern. These materials and the quantities of concern are identified in Attachment 3 titled "Table I: Radionuclide's of Concern."

Section 652 of the Energy Policy Act of 2005 (EPAct), which became law on August 8, 2005, amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check for "any individual who is permitted unescorted access to radioactive materials or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks." Section 149 of the AEA also requires that "all fingerprints obtained by a licensee or applicant...shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check." The NRC has decided to implement this requirement, prior to the completion of a future rulemaking. NRC and the Agreement States are implementing these provisions of the EPAct, because a deliberate malevolent act by an individual with unescorted access to these radioactive materials has the potential to result in significant adverse impacts to the public health and safety. Individuals or classes of individual listed in 10 C.F.R. § 73.61 [72 Fed. Reg. 4945 (February 2, 2007)] are relieved from the fingerprinting and FBI identification and criminal history records check requirements of Section 149. Individuals identified using paragraph three of Attachment 2 titled, "Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks", have already satisfied the requirements of Section 149 of the AEA and therefore do not need to take additional action.

Therefore, as set forth in this document, and to maintain compatibility with NRC requirements, the Executive Secretary is imposing the additional requirements for unescorted access to certain radioactive materials as found in Section 149 of the AEA, as amended by the EPAct (See Section III below).

Attachment 1

II SECURITY

Subsequent to the terrorist events of September 11, 2001, the Executive Secretary of the Utah Radiation Control Board issued the Increased Controls letter dated November 14, 2005¹ to certain Licensees (IC Licensees, Licensees) authorized to possess radioactive material in quantities of concern. This letter required Utah licensees to increase control over licensed radioactive material in order to prevent unintended radiation exposure and malicious acts. Specifically, the IC letter required Licensees to conduct background checks to determine the trustworthiness and reliability of individuals needing unescorted access to radioactive materials in quantities of concern. "Access" to radioactive material means that an individual could exercise some physical control over the material or over devices containing the material. Prior to the enactment of the EAct, the NRC did not have the authority, except in the case of power reactor Licensees, to require Licensees to submit fingerprints for FBI identification and criminal history records checks of individuals being considered for unescorted access to radioactive materials in quantities of concern subject to NRC regulations. The Commission determined that radioactive materials possessed by IC Licensees are considered of such significance to the public health and safety as to warrant fingerprinting and FBI identification and criminal history records checks for such persons. Therefore, in accordance with Section 149 of the AEA, as amended by the EAct, the Commission has imposed the fingerprinting and FBI identification and criminal history records check requirements, as set forth in this document, including those requirements identified in Attachment 2 titled "Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks", on all IC Licensees which are currently authorized to possess radioactive materials in quantities of concern. The Executive Secretary of the Utah Radiation Control Board is imposing the fingerprinting and FBI identification and criminal history records check requirements, as set forth in this document, including those requirements identified in Attachment 2 titled "Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks", on all IC Licensees which are currently authorized to possess radioactive materials in quantities of concern. These requirements will remain in effect until the Executive Secretary determines otherwise,

In addition, pursuant to Utah Code Annotated (UCA), Section 19-3-108, because of the potentially significant adverse impacts associated with a deliberate malevolent act by an individual with unescorted access to radioactive materials quantities of concern, the Executive Secretary has determined, in order to ensure protection of the public health and safety, that the requirements of the Executive Secretary's letter dated XXXXX and attached documents to the Executive Secretary's letter are effective immediately.

¹ Subsequently, the IC requirements were imposed through license condition on new or amended DRC licenses authorizing the possession of radioactive materials in quantities of concern as identified in Attachment 3 titled "Table 1: Radionuclides of Concern,"

Attachment 1

III REQUIREMENTS

Accordingly, pursuant to Sections 81,149, 161b, 161i, 1610, 182, 186 and 274 of the Atomic Energy Act of 1954, as amended, the Commission's regulations in 10 CFR 2.202, 10 CFR Parts 30 and 33, and in accordance with UCA 19-3-103.5, UCA 19-3-108, and R313-19-34, R313-19-61, and R313-22, it is hereby required, effective immediately, that all Licensees receiving the Executive Secretary's letter dated XXXXX and attached documents to the Executive Secretary's letter, shall comply with the requirements of the Executive Secretary's letter dated XXXXX and attached documents to the Executive Secretary's letter, as follows:

1. A. The Licensee shall, within ninety (90) days of the date of the Executive Secretary's letter dated XXX:XX and attached documents to the Executive Secretary's letter, establish and maintain a fingerprinting program meeting the requirements of Attachment 2 titled "Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks", for individuals that require unescorted access to radioactive materials in quantities of concern.
- B. The Licensee shall, within ninety (90) days of the date of the Executive Secretary's letter dated XXX:XX and attached documents to the Executive Secretary's letter, provide to the Executive Secretary, 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 other individuals requiring unescorted access to the radioactive materials identified in Attachment 3 titled "Table 1: Radionuclide's of Concern") is deemed trustworthy and reliable by the Licensee as required in paragraph 2.B of this document.
- C. The Licensee shall, within sixty (60) days of the Executive Secretary's letter dated XXX:XX and attached documents to the Executive Secretary's letter, notify the Executive Secretary of the Utah Radiation Control Board, in writing, (1) if they are unable to comply with any of the requirements described in Attachment 1, "Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material" or in Attachment 2, "Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks," (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Utah Radiation Control Rule or its Utah Radioactive Materials License. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.
- D. The Licensee shall complete implementation of the program established in accordance with paragraph I.A of this document by [[insert 180 days from date of letter]], In addition to the notifications in paragraphs 8 and C above, the Licensee shall notify the Executive Secretary of the Utah Radiation Control Board

Attachment 1

within twenty-five (25) days after they have achieved full compliance with the requirements described in Attachment 2 titled "Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks", If by [insert 180 days from date of letter]), the Licensee is unable, due to circumstances beyond its control, to complete implementation of the requirements of the Executive Secretary's letter dated XXXXX and attached documents to the Executive Secretary's letter, the Licensee shall submit a written request to the Executive Secretary of the Utah Radiation Control Board explaining the need for an extension of time to implement the requirements, The request shall provide the Licensee's justification for seeking more time to comply with the requirements of the Executive Secretary's letter dated XXXXX and attached documents to the Executive Secretary's letter,

- E. Licensees shall notify the 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.
2.
 - A. Except as provided in Item 5 for individuals who are currently approved for unescorted access, the Licensee shall grant access to radioactive material identified in Attachment 3 titled "Table I: Radionuclides of Concern" in accordance with the requirements of IC.I of the Executive Secretary's Increased Control letter dated November 14, 2005, or an equivalent Increased Control letter, and the requirements of the Executive Secretary's letter dated XXXXX and attached documents to the Executive Secretary's letter.
 - B. The T&R Official, if not required to have unescorted access, must be deemed trustworthy and reliable by the Licensee in accordance with the requirements of IC.I of the Executive Secretary's Increased Control letter dated November 14, 2005, or an equivalent Increased Control letter, before making a determination regarding the trustworthiness and reliability of another individual. If the T&R Official requires unescorted access, the Licensee must consider the results of fingerprinting and the review of an FBI identification and criminal history records check as a component in approving a T&R Official.
 3. Prior to requesting fingerprints from any individual, the Licensee shall provide that person a copy of the Executive Secretary's letter dated XXXXX and attached documents to the Executive Secretary's letter.
 4. Upon receipt of the results of FBI identification and criminal history records checks, the Licensee shall control such information as specified in the "Protection of Information" section of Attachment 2 titled "Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks", and in requirement IC.5 of the Executive Secretary's Increased Control letter dated November 14, 2005, or an equivalent Increased Control letter.

Attachment 1

5, The Licensee shall make determinations on continued unescorted access for persons currently granted unescorted access, by [[insert 180 days from date of letter]], based upon the results of the fingerprinting and FBI identification and criminal history records check. The Licensee may allow any individual who currently has unescorted access to certain radioactive materials in accordance with the Executive Secretary's Increased Control letter dated November 14, 2005, or an equivalent Increased Control letter, to continue to have unescorted access, pending a decision by the T&R Official. After [[insert 180 days from date of letter]] no individual may have unescorted access to radioactive materials in quantities of concern without a determination by the T&R Official (based upon fingerprinting, an FBI identification and criminal history records check and a previous trustworthiness and reliability determination) that the individual may have unescorted access to such materials.

6, A. The Licensee shall comply with; and to the extent the recipient of the Executive Secretary's letter dated XXXXX and attached documents to the Executive Secretary's letter, is also the recipient of the Executive Secretary's Increased Control letter dated November 14, 2005, or an equivalent Increased Control letter, paragraph IC 1.b is superceded by the following:

"For individuals employed by the licensee for three years or less, and for non-licensee personnel, such as physicians, physicists, house-keeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, personal references, and fingerprinting and the review of an FBI identification and criminal history records check. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i. e. seeking references not supplied by the individual). For individuals employed by the licensee for longer than three years, trustworthiness and reliability shall be determined, at a minimum, by a review of the employees' employment history with the licensee, fingerprinting and an FBI identification and criminal history records check.

B. The Licensee shall comply with; and to the extent the recipient of the Executive Secretary's letter dated XXXXX and attached documents to the Executive Secretary's letter, is also the recipient of the Executive Secretary's Increased Control letter dated November 14, 2005, or an equivalent Increased Control letter, paragraph IC 1.c of that prior letter is superceded by, the following:

"Service provider licensee employees shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation. Written verification attesting to or certifying the person's trustworthiness and reliability shall be obtained from the licensee providing the service,"

C. For Licensees who have previously received the Executive Secretary's Increased Control letter dated November 14, 2005, or an equivalent Increased Control letter,

Attachment I

the attachment titled "Table I: Radionuclides of Concern" is superceded by material identified in the Executive Secretary's letter dated XXXXX, Attachment 3 titled "Table I: Radionuclide's of Concern" to include Ra-226. The previous Executive Secretary's Increased Control letter dated November 14, 2005, or an equivalent Increased Control letter, will, therefore, also apply to Ra-226 as noted in Attachment 3 titled "Table I: Radionuclide's of Concern."

Licensee responses to 1.A, I.B, I.C and 1.0 above shall be submitted to Dane L. Finerfrock, Executive Secretary, Utah Radiation Control Board, Division of Radiation Control, 168 North 1950 West, Salt Lake City, Utah 84116-3085. In addition, your response shall be marked as "Sensitive - Security Related Information Protected under UCA 63-2-201 (3)(b)."

The Executive Secretary of the Utah Radiation Control Board may, only in writing, relax or rescind any of the above conditions upon demonstration, by the Licensee, of good cause,

IV HEARING

As provided by R313-17-6(1)(b), licensees and affected individuals may request a hearing to contest this action. In accordance with R313-17-6(2), if you wish such a hearing to be convened, the Executive Secretary must receive your written request for a hearing within 30 days of the date of the Executive Secretary's letter dated XXXXX

Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks

The new fingerprinting requirements supplement previous requirements issued by the Executive Secretary's Increased Control letter dated November 14, 2005, or an equivalent Increased Control letter. Licensees currently are required to have a program to grant unescorted access to individuals. As required by condition I.A of Attachment 1 titled "Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material," licensees shall modify their current trustworthiness and reliability program to include the following:

- I. Each Licensee subject to the provisions of the Executive Secretary's letter dated XXXXX and attached documents to the Executive Secretary's letter, shall fingerprint each individual who is seeking or permitted unescorted access to risk significant radioactive materials equal to or greater than the quantities identified in Attachment 3 titled "Table 1: Radionuclide's of Concern." The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) identification and criminal history records check to ensure that the provisions contained in the Executive Secretary's letter dated XXXXX and attached documents to the Executive Secretary's letter are satisfied.
2. The Licensee shall notify each affected individual that their fingerprints will be used to secure a review of their criminal history record and shall inform each individual of the procedures for revising the record or including an explanation in the record, as specified in the "Right to Correct and Complete Information" section of this document.
3. Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR § 73.61, or if an individual 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') within the last five (5) calendar years, or an individual who has an active federal security clearance (provided in

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.

Attachment 2

the latter two cases that they make the appropriate documentation' available to the licensee). 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 these written confirmations for a period of three (3) years from the date the individual no longer requires unescorted access to radioactive material, in quantities of concern, associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to the Executive Secretary's letter dated XXXXX and attached documents to the Executive Secretary's letter must be submitted to the NRC for transmission to the FBI. Additionally, the Licensee shall submit a certification of the trustworthiness and reliability of the T&R Official as determined in accordance with paragraph 2.B of Attachment 1 titled "Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material."
5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements of the Executive Secretary's Increased Control letter dated November 14, 2005, or an equivalent Increased Control letter, in making a determination whether to grant unescorted access to radioactive materials in quantities of concern.
6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to radioactive materials equal to or greater than the quantities listed in Attachment 3 titled "Table I: Radionuclide's of Concern."
7. The Licensee shall document the basis for determining whether to grant, or continuing to allow unescorted access to risk significant radioactive materials equal to or greater than the quantities listed in Attachment 3 titled "Table I: Radionuclide's of Concern."

Prohibitions

A Licensee shall not base a final determination to deny an individual unescorted access to certain radioactive material in quantities of concern, 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 Executive Secretary's letter dated XXXXX and attached documents to the Executive Secretary's letter 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

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 ABA by submitting to fingerprinting and an FBI identification and criminal history records check.

Attachment 2

in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Right to Correct and Complete Information

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification 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 determination for granting or continuing to grant and individual's unescorted access to certain radioactive material in quantities of concern, 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 in quantities of concern, the Licensee shall provide the individual a documented basis for denial. Unescorted access to certain radioactive material in quantities of concern, shall not be granted to an individual during the review process.

Protection of Information

- I. Each Licensee who obtains a criminal history record on an individual pursuant to the Executive Secretary's letter dated XXXXX and attached documents to the Executive Secretary's letter, shall establish and maintain a system of files and procedures for protecting records and 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, the individual's designated representative, or to those who have a need to access the information in performing an assigned duty related to the process of determining unescorted access to certain radioactive material in quantities of concern. No individual authorized to have access to

Attachment 2

the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. Personal information obtained about an individual from a criminal history record check may be transferred to another Licensee only if the Licensee holding the criminal history record check receives the individual's written request to share the information contained in the individual's file. The Licensee receiving the information, shall verify the individual's identity, using the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes only.
4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the Executive Secretary to determine compliance with regulatory requirements.
5. The Licensee shall retain all fingerprints and criminal history records from the FBI, or a copy, if the individual's file has been transferred, for three (3) years after the individual's termination of employment or determination of unescorted access to radioactive material in quantities of concern (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.

Procedures for Processing Fingerprint Checks

For the purpose of complying with the Executive Secretary's letter dated XXXXX and attached documents to the Executive Secretary's letter, Licensees shall:

- I. Submit one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) for each individual seeking unescorted access to radioactive material in quantities of concern.
2. Submit each fingerprint card to the NRC's Division of Facilities and Security, I1545 Rockville Pike, ATTN: Criminal History Program, Mail Stop T-6E46, Rockville, MD 20852. Overnight mail is preferred.
3. Include the name and address of the individual (T&R Official) to whom the criminal history records should be returned.
4. Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, or any person who has been favorably-decided by a U.S. Government program involving fingerprinting and an FBI identification and criminal history records check (e.g. National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, Health and Human Services security risk

Attachment 2

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') within the last five (5) calendar years, or any person who has an active federal security clearance (provided in the latter two cases that the individuals provide the appropriate documentation" to the licensee), 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 written documentation for a period of three (3) years from the date the individual no longer requires unescorted access to radioactive material in quantities of concern, associated with the Licensee's activities.

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

Licensees must have their fingerprints taken by local law enforcement (or a private entity authorized to take fingerprints) because an authorized official must certify the identity of the person being fingerprinted.

The NRC will review submitted fingerprint cards for completeness. Any Form FD-258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

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

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.

⁴ This documentation must allow the T&R Official to verify that the individual has fulfilled the unescorted access requirements of Section 149 of the ABA by submitting to fingerprinting and an FBI identification and criminal history records check.

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phone number. The NRC will forward each request to Pay.gov and an individual from Pay.gov will contact the Licensee with all of the necessary account information.

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

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

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

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

Attachment 3

Table 1: Radionuclide's of Concern

Radionuclide	Quantity of Concern (terabecquerels)	Quantity of Concern (curies)
Americium-241	0.6	16
Americium-241/Berthelium	0.6	16
Californium-252	0.2	5.4
Curium-244	0.5	14
Cobalt-60	0.3	8.1
Cesium-137	1	27
Gadolinium-153	10	270
Iridium-192	0.8	22
Promethium-147	400	11,000
Plutonium-238	0.6	16
Plutonium-239/berthelium	0.6	16
Radium-226	0.4	11
Selenium-75	2	54
Strontium-90 (Yttrium-90)	10	270
Thulium-170	200	5,400
Ytterbium-169	3	81
Combinations of radioactive materials listed above)	See Footnote Below ⁴	

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 table are terabecquerels. The curie 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 barrier (e.g. a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material.
- ⁴ If several radionuclides are aggregated, the sum of the ratios of the activity of each source, $A_{(i,n)}$, to the quantity of concern for radionuclide n , $Q_{(n)}$, listed for that radionuclide equals or exceeds one. $[(\text{aggregated source activity for radionuclide A}) \div (\text{quantity of concern for radionuclide A})] + [(\text{aggregated source activity for radionuclide B}) \div (\text{quantity of concern for radionuclide B})] + \text{etc.} > 1$

LICENSE CONDITION REQUIRING FINGERPRINTING FOR NEW LICENSEES

ORIGINAL:

XX. The licensee shall comply with the requirements described in Order EA-07-305 (the Order). The licensee shall complete implementation of said requirements by the first day that radionuclides in quantities of concern are possessed at or above the limits specified in "Table I: Radionuclides of Concern" contained within the Order. The licensee shall notify the [Agency IAS nomenclature] when they have achieved full compliance with the requirements described in the Order. The notification shall be made within twenty-five (25) days after full compliance has been achieved. This notification shall include a certification that the Trustworthiness and Reliability (T&R) Official (and any subsequent T&R Official) is themselves deemed trustworthy and reliable by the Licensee as required in B.2. of the Order. The licensees shall notify the [Agency IAS nomenclature] within 24 hours if the results from a criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

DRC VERSION:

XX. The licensee shall comply with the requirements described in the Executive Secretary's letter dated XXXXX, Attachment I, "Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material" and Attachment 2, "Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks." The licensee shall complete implementation of the requirements by the first day that radionuclide's in quantities of concern are possessed at or above the limits specified in Table I, provided as Attachment 3 to the Executive Secretary's letter dated XXXXX. The licensee shall notify the Executive Secretary when full compliance with the requirements of this license condition has been achieved. Notification to the Executive Secretary shall be made within twenty-five (25) days after full compliance with the requirements have been achieved. Notification to the Executive Secretary shall include a certification that the Trustworthiness and Reliability (T&R) Official (and any subsequent T&R Official) are themselves deemed trustworthy and reliable by the Licensee as required in part 2.B of the Attachment I, "Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material" to the Executive Secretary's letter dated XXXX. Licensees shall notify the U.S. Nuclear Regulatory Commission within 24 hours if the results from a criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base..

INCLUDE IN TIE DOWN:

XX. Except as specifically provided otherwise by this license, the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in the documents, including any enclosures, listed below. The Utah Radiation Control Rules shall govern unless the statements, representations, and procedures in the licensee's application and correspondence are more restrictive than the rules.

A. Application dated...

X. Executive Secretary's letter dated XXXXX [LA# XXX-2008]

LICENSE CONDITION REQUIRING FINGERPRINTING FOR EXISTING LICENSEES

ORIGINAL (Example 1):

XX. The licensee shall comply with the requirements described in Order EA-07-305 (the Order). The licensee shall complete implementation of said requirements by 1180 days, 2008). The licensee shall notify the IAS nomenclature] when they have achieved full compliance with the requirements described in the Order. The notification shall be made within twenty-five (25) days after full compliance has been achieved. This notification shall include a certification that the Trustworthiness and Reliability (T&R) Official (and any subsequent T&R Official) is themselves deemed trustworthy and reliable by the Licensee as required in paragraph B.2. of the Order. The licensee shall notify the Agency IAS nomenclature] within 24 hours if the results from a criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

DRC VERSION (Example 1):

XX. The licensee shall comply with the requirements described in the Executive Secretary's letter dated XXXXX, Attachment I, "Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material" and Attachment 2, "Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks." The licensee shall complete implementation of the requirements by [[DUE DATE.]] The licensee shall notify the Executive Secretary when full compliance with the requirements of this license condition has been achieved. Notification to the Executive Secretary shall be made within twenty-five (25) days after full compliance has been achieved. The Executive Secretary notification shall include a certification that the Trustworthiness and Reliability (T&R) Official (and any subsequent T&R Official) are themselves deemed trustworthy and reliable by the Licensee as required in part 2.B of Attachment I, "Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material." The licensee shall notify the U.S. Nuclear Regulatory Commission within 24 hours if the results from a criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

INCLUDE IN TIE DOWN:

XX. Except as specifically provided otherwise by this license. the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in the documents, including any enclosures, listed below. The Utah Radiation Control Rules shall govern unless the statements, representations, and procedures in the licensee's application and correspondence are more restrictive than the rules.

- A. Application dated...
- X. Executive Secretary's letter dated XXXXX [LA# XXX-2008]

LICENSE CONDITION REQUIRING FINGERPRINTING FOR EXISTING LICENSEES

ORIGINAL (Example 2):

XX. The licensee shall comply with the requirements described in [insert requirement], dated [insert date of requirement), and the document (NRC Order EA-07-305 with attachments dated December 5, 2007) entitled "Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material." The requirements listed in the NRC Order shall be implemented as part of the trustworthiness and reliability program of the Increased Controls requirements.

- By [insert date 90 days after the date of this license amendment] of the effective date of this license condition, the licensee shall provide under oath or affirmation, a certification that the Trustworthiness and Reliability Official is deemed trustworthy and reliable by the licensee as required in paragraph B.2. of the U.S. Nuclear Regulatory Commission (NRC) Order EA-07-305, published in the Federal Register on December 13, 2007 [72 FR 70901].
- All fingerprints obtained by the licensee pursuant to this requirement must be submitted to the NRC for transmission to the U.S. Federal Bureau of Investigation (FBI). Additionally, the licensee's submission of fingerprints shall also be accompanied by a certification, under oath and affirmation, of the trustworthiness and reliability of the Trustworthiness and Reliability Official as required by paragraph B.2. of NRC Order EA-07-305.
- The licensee shall complete implementation of the fingerprinting requirements by [insert date 180 days after the date of this license amendment]. The licensee shall notify the Agency [AS nomenclature) when they have achieved full compliance with the requirements described in the NRC Order. The notification shall be made within twenty-five (25) days after full compliance has been achieved.
- The licensee shall notify the Agency [AS nomenclature) within 24 hours if the results from a criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

DRC VERSION (Example 2):

XX. The licensee shall comply with requirements described in the Executive Secretary's letter dated XXXXX, Attachment I, "Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material" and Attachment 2, "Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks." The requirements of this license condition shall be implemented as part of the trustworthiness and reliability program of the Increased Controls requirements.

- A. On or before [[DUE DATE)), the licensee shall provide under oath or affirmation, a certification that the Trustworthiness and Reliability Official is deemed trustworthy and reliable by the licensee as required in paragraph 2.B of Attachment I, "Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material."
- B. All fingerprints obtained by the licensee pursuant to this requirement must be submitted to the U.S. Nuclear Regulatory Commission for transmission to the U.S. Federal Bureau of Investigation (FBI). Additionally, the licensee's submission of fingerprints shall also be accompanied by a certification,

under oath and affirmation, of the trustworthiness and reliability of the Trustworthiness and Reliability Official as required by paragraph 2.B of Attachment I, "Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material."

- C. The licensee shall complete implementation of the fingerprinting requirements on or before [[DUE DATE.]] The licensee shall notify the Executive Secretary when full compliance with the requirements described in the Executive Secretary's letter dated XXXXX, Attachment I, "Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material" and Attachment 2, "Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks" have been achieved. Notification to the Executive Secretary shall be made within twenty-five (25) days after full compliance has been achieved.
- D. The licensee shall notify the U.S. Nuclear Regulatory Commission within 24 hours **if** the results from a criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

INCLUDE IN TIE DOWN:

- XX. Except as specifically provided otherwise by this license, the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in the documents, including any enclosures, listed below. The Utah Radiation Control Rules shall govern unless the statements, representations, and procedures in the licensee's application and correspondence are more restrictive than the rules.
 - A. Application dated...
 - X. Executive Secretary's letter dated XXXXX [LA# XXX-200S]

Attachment 5

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

Each Licensee is responsible for determining whether to grant an individual unescorted access to radioactive materials in quantities of concern. 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 Attachment 3 titled "Table I: Radionuclide's of Concern.") and devices containing radioactive material in quantities of concern. The T&R determination, to grant an individual unescorted access to radioactive materials in quantities of concern, is made by the Licensee's T&R Official, based on information gathered from all four elements of the background check and evaluated by the T&R Official. The minimum four background check elements are: 1) fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check, 2) verifying employment history, 3) verifying education, and 4) personal references. The purpose of this guidance is to address the fingerprinting component of the T&R determination

Unescorted access determinations require an evaluation of a person's trustworthiness and reliability. When a person's life history shows evidence of unreliability or untrustworthiness, questions arise whether the person can be relied on and trusted to exercise the responsibility necessary for working with radioactive materials in quantities of concern. 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. The criterion used for the basis of determining trustworthiness and reliability is a Licensee's business decision. Some indicators that Licensees should consider for what may be trustworthiness and reliability concern can be found in Increased Control guidance in Q and A #22 at the following web address:

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

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

1. The nature, extent, and seriousness of the conduct;
2. The circumstances surrounding the conduct, to include knowledgeable participation;
3. The frequency and 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;

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8. The potential for pressure, coercion, exploitation, or duress; and
9. The likelihood of continuation or recurrence.

Each individual's case must be judged on its own merits, and final determination remains the responsibility of the Licensee. In every case, the T&R Official must evaluate trustworthiness and reliability based on an accumulation of information which supports a positive finding, prior to granting the individual unescorted access to radioactive material in quantities of concern. 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 the Executive Secretary's letter dated XXXXX and attached documents to the Division's letter, it will receive an 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 in quantities of concern, 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 in quantities of concern, including the criminal history records information pertaining to the individual as required by the Executive Secretary's letter dated XXXXX and attached documents to the Executive Secretary's letter. 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 in quantities of concern, subject to the Executive Secretary's letter dated XXXXX and attached documents to the Executive Secretary's letter. Each determination of T&R for unescorted access to radioactive materials in quantities of concern, which includes a review of criminal history information, must be documented to include the basis for the decision made.

Licensees shall not make a final determination made solely on the basis of criminal history checks information involving an arrest more than one 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.

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

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 may authorize individuals with criminal records for unescorted access to radioactive materials, based on a documented evaluation of a basis for determining that the individual is reliable and trustworthy notwithstanding the individual's criminal history. Each evaluation conducted in review of criminal history and other background checks information, must 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:

- I. 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

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means. (Ordinarily, the Licensee should not consider chance or casual meetings or contacts limited to normal business or official relations.)

5. Deliberately misrepresented, falsified or omitted relevant and material facts from documentation provided to the Licensee.
6. Has been convicted of a crime(s) which, in the T&R Official's opinion, indicate poor judgment, unreliability, or untrustworthiness.

These indicators are not meant to be all inclusive nor intended to be disqualifying factors. Licensees can also consider how recent such indicators occurred and other extenuating or mitigating factors in their determinations. Section 149.c.(2)(B) of the Atomic Energy Act 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 neither the NRC nor the Executive Secretary intends for licensees to use this guidance as such. Because a particular individual may not be suitable for Unescorted Access to radioactive materials in quantities of concern, does not necessarily mean that the individual is not suitable for escorted access or some other position that does not involve DRC-regulated activities.

Licensees shall notify the 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.

Attachment 6

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

Version: 12/05/07

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

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

Licensee responses to the fingerprinting Order are considered sensitive information and should be marked appropriately with "Withhold from Public Disclosure under 10 CFR 2.390." Agreement State licensee responses to the fingerprinting requirements should be marked in accordance with applicable Agreement State authority for withholding of sensitive security or proprietary information.

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

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

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

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

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

The requirements for fingerprinting and criminal history records should be incorporated into the licensee's current program of reviewing and approving background information of its employees. The duties of a T&R Official can be delegated to the Human Resources department or any other appropriate department as long as the individuals involved in the determining of an employee's trustworthiness and reliability have been determined themselves to be trustworthy and reliable by the licensee. T&R Official shall only be fingerprinted if his/her duties require unescorted access to radioactive materials quantities of concern.

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

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

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6. Can I take my own fingerprints or can someone else at my company fingerprint me?
Licensees cannot take their own employee fingerprints. Licensees must have their employee fingerprints taken by local law enforcement (or a private entity authorized to take fingerprints) because an authorized Official must certify the identity of the person being fingerprinted.
7. Can a notary act as a witness when I take my fingerprints?
No, fingerprints must be taken by local law enforcement (or a private entity authorized to take fingerprints).
8. Where can I have my fingerprints taken?
Most local law enforcement facilities can take your fingerprints.
9. I was only provided a few fingerprint cards, where can I get more?
You can request more fingerprint cards by writing to the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555, by calling (301) 415- 5877, or by e-mail to forms@nrc.gov.
10. What information do I need to include on the card?
Incomplete fingerprint cards will not be processed and will be returned to the licensee. Licensees need to include the following information on each card:
- a. Last name, first name, middle name
 - b. Signature of person being fingerprinted
 - c. Residence of person being fingerprinted
 - d. Date
 - e. Signature of official taking the fingerprints
 - f. Employer and address
 - g. Reason for being fingerprinted
 - h. Aliases
 - i. Citizenship
 - j. Social security number and any of the other corresponding numbers requested on the card if applicable
 - k. Date of birth
 - l. Place of birth
 - m. Sex
 - n. Race
 - o. Height
 - p. Weight
 - q. Eye color
 - r. Hair color
11. I was able to get more fingerprint cards from my local law enforcement agency, can I use those instead?
No, because of problems that have been experienced in the past with some of the cards.
12. How can I make sure that my fingerprints are classifiable (readable)?
There are instructions on the back of each fingerprint card on how to achieve classifiable fingerprints. Individuals that submit fingerprint cards that are not classifiable will have to submit new cards.

Attachment 6

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
A1TN: Criminal History Program, Mail Stop T-6E46

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

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

15. What method of payment does the NRC accept?

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

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

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

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

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

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

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

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

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

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

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

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unescorted access until they are fingerprinted and receive approval from the T&R Official based upon a review of their FBI identification and criminal history record.

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

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

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

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

23. What does unescorted access to the material mean?

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

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

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

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

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

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

Only individuals that have unescorted access to radioactive materials quantities of concern are required to be fingerprinted. Therefore, individuals that make trustworthy and reliability determinations that do not have unescorted access do not need to be fingerprinted. However, they are still required to be determined trustworthy and reliable per the requirements in the Increased Control Order (EA-05-090).

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

The criminal history records check provides information on all arrests since the individual's eighteenth birthday. Guidance on criminal offenses that could be considered is included with the

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Order. However, the list of offenses is not inclusive. There may be additional offenses not listed in the guidance that the licensee wants to consider as part of unescorted access approval process. It is the licensee's ultimate business decision as to what criteria it uses for the bases of the trustworthiness and reliability determination.

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

Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR § 73.61, or any person who has been favorably decided by a U.S. Government program involving fingerprinting and an FBI identification and criminal history records check (e.g., National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27CFR Part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572. Customs and Border Patrol's Free and Secure Trade Program¹ within the last five (5) calendar years, or any person who has an active federal security clearance (provided in the latter two cases that they make available the appropriate documentation²). Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.

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

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

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

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

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

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

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

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

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32. Will there be a reevaluation period?

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

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

The requirement to submit documents to the NRC under oath or affirmation may be satisfied by using a notary public to authenticate oaths or affirmations and to certify that the information provided is correct and true. An alternate method for complying with the oath or affirmation requirement is presented in the United States Code, Title 28, Section 1746 (28 USC 1746). This method allows use of the following unsworn declaration to satisfy the oath or affirmation requirement: I declare [or certify, verify, state] under penalty of perjury that the foregoing is true and correct. Executed on [date] [Signature]

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

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Supplemental (S) Questions and Answers Regarding Fingerprinting and Criminal History Check Requirements for Unescorted Access to Certain Radioactive Material

Version: 02/13/08

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

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

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

Paragraph B.2 states in part:

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

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

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

Step 1: The Licensee should submit one completed, legible standard fingerprint card (Form FD-258, ORIMDNR000Z) for the individual nominated to be the T&R Official and who requires unescorted access to radioactive materials.

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

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

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

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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.I of the Increased Controls Order (EA-05-090 or applicable license condition) in determining the trustworthiness and reliability of the T&R Official.

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

The requirement to submit documents to the NRC under oath or affirmation may be satisfied by using a notary public to authenticate oaths or affirmations and to certify that the information provided is correct and true. An alternate method for complying with the oath or affirmation requirement is presented in the United States Code, Title 28, Section 1746 (28 USC 1746). This method allows use of the following unsworn declaration to satisfy the oath or affirmation requirement: I declare [or certify, verify, state] under penalty of perjury that the foregoing is true and correct. Executed on [date] [Signature]

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

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

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

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

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

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

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

Licenses must have their fingerprints taken by an authorized official, such as a representative from a local law enforcement agency. However, an authorized official, for the purposes of taking fingerprints, could be available through private entities, contractors, or an established on-site fingerprinting program. If a licensee has fingerprints taken at a facility other than that of a recognized Federal, State, or local law enforcement agency, the licensee should ensure that the prints are taken legibly and match the identity of the individual named on the fingerprint card.

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

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

The licensee must ensure that complete and accurate information is provided in accordance with 10 CFR 30.9 available at: <http://www.nrc.gov/reading-rm/doc-collections/cfr/part030/part030-0009.html>

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

***This Q&A supersedes Q&As 6, 7, and 8 enclosed as issued on December 5, 2007.*

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

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

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

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

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

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

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

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

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

The certification provided with each fingerprint submission need only identify the T&R Official to whom the licensee specifies the results should be returned (see item 3 of the "Procedures for Processing Fingerprint Checks"). A copy of the initial certification is acceptable if it includes the name of the specified T&R Official. If the name of the T&R

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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.