

From: "Craig Jones" <cwjones@utah.gov>
To: <MLO1@nrc.gov>
Date: Fri, Mar 28, 2008 12:59 PM
Subject: Revisions to Utah's Fingerprinting Requirements

Hi Monica,

Attached to this e-mail are some revisions to our fingerprinting requirements. They are as follows:

- 1) The cover letter was revised so our licensees have sixty (60) days to notify the Executive Secretary for items 1a,b and c. This revision fixes the first error you listed.
- 2) Attachment 1, Section III, paragraph E was changed so our licensees are to call the Executive Secretary and the NRC if an individual is on the FBI Terrorist Screening Data Base. This revision fixes the second error you listed.
- 3) Attachment 4 was changed so that there is only one license condition for existing licensees. We will use example 2 for existing licensees. The license conditions for new and existing licensees were changed so that our licensees are to notify the Executive Secretary and the NRC if an individual is on the FBI Terrorist Screening Data Base. This revision fixes the third error you listed.
- 4) The last paragraph of Attachment 5 was revised so that our licensees are to notify the Executive Secretary and the NRC if an individual is on the FBI Terrorist Screening Data Base. This revision is associated with the second error you listed.

Thank you for your prompt review of these submissions. If you have questions, please contact me because Mario Bettolo is not scheduled to return to work until April 7th.

Craig Jones, Program Manager

CC: "Dane Finerfrock" <DFINERFROCK@utah.gov>, "Mario Bettolo" <MBETTOLO@utah.gov>

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Subject: Revisions to Utah's Fingerprinting Requirements
Creation Date Fri, Mar 28, 2008 12:58 PM
From: "Craig Jones" <cwjones@utah.gov>

Created By: cwjones@utah.gov

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Files	Size	Date & Time
MESSAGE	1381	Friday, March 28, 2008 12:58 PM
TEXT.htm	1958	
Attachment 1 Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive M	56320	
Attachment 0 Fingerprinting letter.doc	151040	
Attachment 5 Guidance for Evaluating FBI Identification and Criminal History Records Checks.doc	41472	
Attachment 4 FP License Condition.doc	40960	
Mime.822	402924	

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

«Date»

CERTIFIED MAIL
RETURN RECEIPT REQUIRED

«First_Name» «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 sixty (60) days of the date of this letter:

1. 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 1 above to identify the condition as a requirement with which you cannot comply, with attendant justifications as required in paragraph 1 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 1: 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

Enclosure: Form FD-258, fingerprint cards

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

I

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 1: 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 EPAct, 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 EPAct, 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: Radionuclide's of Concern."

Attachment 1

III REQUIREMENTS

Accordingly, pursuant to Sections 81, 149, 161b, 161i, 161o, 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 XXXXX 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 XXXXX 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 XXXXX 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 1.A of this document by **[[insert 180 days from date of letter]]**. In addition to the notifications in paragraphs B 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 both the Executive Secretary at 801-536-4250 and 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 1: Radionuclide's of Concern" in accordance with the requirements of IC.1 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.1 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 superseded 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 superseded 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 1

the attachment titled "Table 1: Radionuclides of Concern" is superceded by material identified in the Executive Secretary's letter dated XXXXX, Attachment 3 titled "Table 1: 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 1: Radionuclide's of Concern."

Licensee responses to 1.A, 1.B, 1.C and 1.D 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.

Attachment 4

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 1: Radionuclides of Concern" contained within the Order. The licensee shall notify the [AS 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 [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:

XX. The licensee shall comply with the requirements described in the Executive Secretary's letter dated XXXXX, Attachment 1, "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 1, 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 1, "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 both the Executive Secretary and 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:

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:

XX. The licensee shall comply with requirements described in the Executive Secretary's letter dated XXXXX, Attachment 1, "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 1, "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 1, "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 1, "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 both the Executive Secretary and 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]

...

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 1: 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;

Attachment 5

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.

Attachment 5

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:

1. Committed, attempted to commit, aided, or abetted another who committed or attempted to commit any act of sabotage, espionage, treason, sedition, or terrorism.
2. Publicly or privately advocated actions that may be inimical to the interest of the United States, or publicly or privately advocated the use of force or violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means.
3. Knowingly established or continued a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, terrorist, or revolutionist, or with an espionage agent or other secret agent or representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means. (Ordinarily, the Licensee should not consider chance or casual meetings or contacts limited to normal business or Official relations.)
4. Joined or engaged in any activity knowingly in sympathy with or in support of any foreign or domestic organization, association, movement, group, or combination of persons which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or any State or any subdivisions thereof by unlawful means, or which advocate the use of force and violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional

Attachment 5

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 both the Executive Secretary at 801-536-4250 and 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.