

From: "James Jarvis" <jsjarvis@smtpgate.dphe.state.co.us>
To: <mlo1@nrc.gov>
Date: Mon, Mar 31, 2008 10:48 AM
Subject: RESPONSE TO IC QUESTIONS - STATE OF COLORADO

Ms. Orendi,

Per our recent discussions by telephone regarding the implementation of the Increased Controls fingerprinting requirements by the State of Colorado we have addressed your comments as follows:

1. NRC COMMENT: The documents submitted by the Colorado Agreement State Program do not explicitly allow a licensee to go beyond 180 days due to difficulties beyond their control (i.e., delays with FBI checks, etc.) as allowed by the NRC Order (Section 3, Paragraph A.4).

Colorado Response: The following sentences have been added to the IC Fingerprinting requirements cover letter to our licensees (Page 2, Item 4):

If by [180 d DATE] the Licensee is unable, due to circumstances beyond its control, to complete implementation of these requirements, the Licensee shall submit a written request to the Department explaining the need for an extension of time to implement the requirements. The request shall be made as soon as the licensee becomes aware of a delay and prior to [_____ 180 d DATE] and shall provide the Licensee's justification for seeking more time to comply with the requirements.

2. NRC COMMENT: Although it is not a significant issue, why did the Colorado program give licensees 5 days rather than 25 days (as stated in NRC Order and prior Colorado IC requirements) to report that they are in compliance with the IC requirements?

Colorado Response: Colorado feels that it does not serve any useful purpose to wait 25 days for a response and feel that licensees can adequately respond within 5 days as to whether they are in full compliance or not.

3. NRC COMMENT: The 24 hour notification requirement (when a background check indicates that a licensee employee is identified on the FBI's Terrorist Screening Data Base) could not be located in the documents submitted by Colorado.

Colorado Response: As discussed with NRC staff, the 24 hour notification requirement is contained in Enclosure 3 of our correspondence submitted for review to the NRC. However, to make this provision stronger, we have added the following license condition to each IC license: The licensee shall notify the Department at (303) 877-9757 and the NRC's Headquarters Operations Office at 301 816 5100 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.

Please note that as a general related comment, Colorado feels that the NRC has not provided sufficient guidance to Agreement States on what

specific actions should be taken in the event that a licensee employee appears on the FBI Terrorist Screening Data Base.

4. NRC COMMENT: The information submitted by Colorado does not appear to contain the requirements of Section III.B and Paragraph E of the NRC Order that pertains to individuals previously deemed Trustworthy and Reliable and who may continue to have unescorted access under the prior ICs until results are received from the FBI as long as it is within the 180 day timeframe.

Colorado Response: As discussed with NRC staff, FAQ #20 outlines the provision that allows someone who is T&R'd under the old IC requirements to have continued access until the FBI criminal background check and evaluation is complete or until the 180 day period is up, whichever is sooner. However, since the FAQs are mentioned but not tied down to either the cover letter, enclosures, or Annex to our licenses, we have strengthened and clarified this requirement and have added the following wording to the cover letter that will accompany the amended license and revised IC requirements:

Individuals who are currently granted unescorted access under the IC requirements issued prior to [April __, 2008 – DATE OF THIS LETTER] may continue to have unescorted access pending a determination by the T&R Official. The determination for continued unescorted access shall be based upon fingerprinting, an FBI identification and criminal history records check and a previous trustworthiness and reliability determination.

Individuals requiring unescorted access to radioactive materials Quantities of Concern (QOC) and who are hired on or after [April __, 2008]:

- (a) cannot be approved under IC requirements issued prior to [April __, 2008]; and
- (b) must meet all requirements of the enclosed Annex A prior to being granted unescorted access to radioactive materials QOC.

After [180 d DATE], no individual may have unescorted access without a determination by the T&R Official based upon the requirements of Annex A (dated April __, 2008) of the license.

5. NRC COMMENT: The information submitted by Colorado does not appear to contain the requirements of Section III.3 of the NRC Order, which pertains to licensees providing the person being fingerprinted with the fingerprinting and related requirements.

Colorado Response: To give Licensees the option to provide their fingerprinted employees with electronic access to the requirements or a hardcopy of the requirements, we will add the following two sentences to Page 1 of Enclosure 2 of the letter that will be sent with the amended IC Fingerprinting license:

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

Prior to requesting fingerprints from any individual, provide access to or a copy of the Department correspondence and enclosures dated [__TBD__], and Annex A of the license to that person. Licensees should maintain documents that the required information was provided to the individual.

6. NRC COMMENT: The NRC inquired as to how the Colorado program will handle new licensees that will require ICs, since the documents submitted to NRC addressed only existing/current IC Licensees.

Colorado Response: Our approach will be the same as we have done with previous IC requirements – we will require all IC requirements (or commensurate requirements under special circumstances) to be in place at the licensee's facility prior to issuance of a new IC license.

In addition to all of above NRC requested changes or clarifications, the Colorado program has added the following statement to IC 1.e of the Annex A to our licenses in order to further clarify that the T&R Official is to be fingerprinted only if they have unescorted access to RAM: Fingerprinting of the T&R Official is required only if his/her duties require unescorted access to radioactive materials quantities of concern.

Attached is a revised version of our cover letter - with changes highlighted - that will be sent to licensees with the IC requirements. The dates provided in the document will be revised as necessary pending the NRC review and Colorado's implementation schedule. We will however keep the same timeline limitations as specified in the NRC Order.

Please contact me should you have additional questions or comments.

James S. Jarvis, M.S.
Health Physicist
Radiation Management Unit - HMWMD-B2
Colorado Dept. of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

(303) 692-3454
(303) 759-5355 FAX

james.jarvis@state.co.us

CC: "JOE Vranka" <jsvranka@smtpgate.dphe.state.co.us>, "Steve Tarlton" <starlton@smtpgate.dphe.state.co.us>

Mail Envelope Properties (47F0F98D.C05 : 15 : 23557)

Subject: RESPONSE TO IC QUESTIONS - STATE OF COLORADO
Creation Date Mon, Mar 31, 2008 10:47 AM
From: "James Jarvis" <jsjarvis@smtpgate.dphe.state.co.us>

Created By: jsjarvis@smtpgate.dphe.state.co.us

Recipients

nrc.gov

TWGWPO03.HQGWDO01
 MLO1 (Monica Orendi)

smtpgate.dphe.state.co.us
 starlton CC (Steve Tarlton)
 jsvranka CC (JOE Vranka)

Post Office

TWGWPO03.HQGWDO01

Route

nrc.gov

smtpgate.dphe.state.co.us

Files	Size	Date & Time
MESSAGE	7203	Monday, March 31, 2008 10:47 AM
Letter to Licensees on Fingerprinting ICs - FINAL.doc		200192
Mime.822	283173	

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 COLORADO

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

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

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Laboratory Services Division
8100 Lowry Blvd.
Denver, Colorado
(303) 692-2000



Colorado Department
of Public Health
and Environment

April 1, 2008

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

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

**LETTER IS ALSO TIED-DOWN IN A
LICENSE CONDITION.**

Attention [RSO]:

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

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

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

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

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

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

Prepared by: __JJ__ Reviewed by: _____ Reviewed by: _____ Reviewed by: _____ Mailed by: _____ file
Date: _____ Date: _____ Date: _____ Date: _____ Date Mailed: _____
License # _____ File 4.2 "NRC / Increased Controls Fingerprinting Requirements" - NOTE - license file copy does not include attachments

Increased Controls and Fingerprinting Requirements
[LICENSEE NAME]

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

1. By _____, 2008 [60 days] the licensee shall, in writing, notify the Department:
 - a) if it is unable to comply with any of the requirements described in this letter, the enclosures,
or the requirements of the license;
 - b) if compliance with any of the requirements is unnecessary in its specific circumstances; or
 - c) if implementation of any of the requirements would cause the licensee to be in violation of the provisions any Department regulations or its license. The notification shall provide the licensee's justification for seeking relief from or variation of any specific requirement.
2. By _____, 2008 [90 days] the licensee shall establish and maintain a fingerprinting program that meets the requirements of Annex A of the license for all individuals who have unescorted access to radioactive materials in Quantities of Concern.
3. By _____, 2008 [90 days] the licensee shall provide under oath or affirmation, a certification that the Trustworthiness and Reliability Official is deemed trustworthy and reliable by the licensee. The process of certification of the T&R official is described in the enclosures to this correspondence.

4. By _____, 2008 [180 days] the licensee shall complete implementation of the fingerprinting requirements. The licensee shall notify the Department when they have achieved full compliance with the requirements described in the amendment. The notification shall be made within **five (5) days** after full compliance has been achieved. If by _____, 2008 [180 d] the Licensee is unable, due to circumstances beyond its control, to complete implementation of these requirements, the Licensee shall submit a written request to the Department explaining the need for an extension of time to implement the requirements. The request shall be made as soon as the licensee becomes aware of a delay and prior to [____ 180 d DATE] and shall provide the Licensee's justification for seeking more time to comply with the requirements.

Individuals who are currently granted unescorted access under the IC requirements issued prior to [April __, 2008 – DATE OF THIS LETTER] may continue to have unescorted access pending a determination by the T&R Official. The determination for continued unescorted access shall be based upon fingerprinting, an FBI identification and criminal history records check and a previous trustworthiness and reliability determination.

Individuals requiring unescorted access to radioactive material quantities of concern (QOC) and who are hired on or after [April __, 2008]:

- (a) cannot be approved under IC requirements issued prior to [April __, 2008]; and
- (b) must meet all requirements of the enclosed Annex A prior to being granted unescorted access to radioactive materials QOC.

Increased Controls and Fingerprinting Requirements
[LICENSEE NAME]

After [180 d DATE], no individual may have unescorted access without a determination by the T&R Official based upon the requirements of Annex A (dated April __, 2008) of the license, unless an extension has been specifically granted in writing by the Department.

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

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

Sincerely,

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

Attachments:

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

ENCLOSURE 1 - CERTIFICATION PROCESS FOR THE TRUSTWORTHY AND RELIABLE OFFICIAL

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

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

1. Using a notary public to authenticate oaths or affirmations and to certify that the information provided is correct and true; or
2. Use the following unsworn declaration¹ to satisfy the oath or affirmation requirement:

I declare [or certify, verify, state] under penalty of perjury that the foregoing is true and correct.

Executed on [date] [Signature]

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

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

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

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

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

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

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

ENCLOSURE 2 – PROCEDURES FOR PROCESSING FINGERPRINT CARDS

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

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

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

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

<http://www.cdphe.state.co.us/hm/rad/rml/rmlpubs.htm>

Licensees have the option to take their own fingerprints under certain conditions – refer to the Questions and Answers (FAQs) Pertaining Fingerprinting and Criminal History Records Document located on the Department website for additional information:

<http://www.cdphe.state.co.us/hm/rad/rml/rmlpubs.htm>

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

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

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

4. Include with **each** fingerprint submission to NRC:
 - a. the name and address of the T&R Official to whom the criminal history records results will be returned; and
 - b. a copy of the T&R Official declaration (described in Enclosure 1). The T&R Official declaration shall be marked as "Security Related Information – Withold from Public Disclosure under 10 CFR 2.390 or Under 24-72-204, Colorado Revised Statutes."
5. Submit:
 - a. the completed Form FD-258 fingerprint card(s) – include the prefix "CO" plus your radioactive material license number on **each** form FD-258 fingerprint card submitted. (Example: CO-9999-01). This number should be placed in the "Your No. OCA" box located near the center/top of form FD-258.
 - b. a receipt of the "pay.gov" payment (or cashiers check/money order) ;
 - c. a copy of the T&R Official declaration **MUST** be included with **each** fingerprint batch submission to the NRC

TO:

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

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

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

NOTE 3: The NRC will review submitted fingerprint cards for completeness. Any Form FD-258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. If for some reason fingerprint cards are not readable by the FBI, are rejected, or are lost in transit licensees will have only **one** opportunity to correct them without an additional \$36 fee being assessed. When resubmitting corrected fingerprint cards, include the FBI Transaction Control Number - received when fingerprints are rejected - with all resubmitted fingerprint cards.

Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR Part 73.61, or any person who has been favorably-decided by a U.S. Government program involving fingerprinting and an FBI identification and criminal history records check (e.g. National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572,

Customs and Border Patrol's Free and Secure Trade 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.

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

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

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

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

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

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.

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

The purpose of this guidance is to address the fingerprinting component of the T&R determination. Each Licensee is responsible for determining whether to grant any specific individual unescorted access to certain radioactive materials. The Licensee shall allow only trustworthy and reliable individuals, approved in writing by the Licensee, to have unescorted access to radioactive material quantities of concern (listed in Table 1 of the Increased Controls Annex to your license) and devices containing that radioactive material. The T&R determination, to grant an individual unescorted access to certain radioactive materials, is made by the Licensee's T&R Official, based on information gathered from all four elements of the background check and evaluated by the T&R Official. The minimum four background check elements are: 1) fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check, 2) verifying employment history, 3) verifying education, and 4) personal references. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements of Annex A of your license, in making a determination whether to grant unescorted access to certain radioactive materials.

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

<http://www.cdphe.state.co.us/hm/rad/rml/rmlimplementationqanda.pdf>

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

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

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

1. The T&R Official should evaluate the information collected for consistency and adequacy.
2. True identity should be evaluated by comparing applicant provided identification and personal history data to pertinent information from the background check, and other data sources.
3. The T&R Official should determine whether inconsistencies determined through review or investigation, are intentional, innocent, or an oversight. Willful or intentional acts of omission or untruthfulness could be grounds for denial of unescorted access.

When a Licensee submits fingerprints to the NRC pursuant to an NRC Order or legally binding conditions issued by an Agreement State (the Department), it will receive a FBI identification and criminal history record since the individual's eighteenth birthday. The Licensee will receive the information from the criminal history check of those individuals requiring unescorted access to radioactive materials, and the Licensee T&R Official should evaluate that information using the guidance below.

The Licensee's T&R Official is required to evaluate all available information in making a T&R determination for unescorted access to radioactive materials, including the criminal history records information pertaining to the individual as required by the NRC Order or legally binding conditions issued by the Department. The FBI identification and criminal history records check is used in the determination of whether the individual has a record of criminal activity that indicates that the individual should not have unescorted access to radioactive materials subject to legally binding conditions issued by the Department. Each determination of T&R for unescorted access to radioactive materials, which includes a review of criminal history information, must be documented to include the basis on whether to grant, or continue to allow unescorted access to risk significant radioactive materials equal to or greater than the quantities listed in Table 1 of Annex A of your license.

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

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

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

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

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

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

Licensees shall notify the Department at (303) 877-9757 and NRC's Headquarters Operations Office at (301) 816-5100 within **24 hours** if the results from a FBI identification and criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

Prohibitions

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

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

The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to risk significant radioactive materials equal to or greater than the quantities listed in Annex A of your license.

Right to Correct and Complete Information

Prior to any final adverse determination, the Licensee shall notify and make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of the contents of any criminal records must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537-9700 (as set forth in 28 CFR Part 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an Official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI identification and criminal history records check after the record is made available for his/her review. The Licensee may make a final unescorted access to certain radioactive material determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on unescorted access to certain radioactive material, the Licensee shall provide the individual its documented basis for denial. Unescorted access to certain radioactive material shall not be granted to an individual during the review process.

Protection of Information

1. Each Licensee who obtains a criminal history record on an individual pursuant to the Increased Controls requirements shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

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