Monica Orendi

From: Seeley, Shawn [Shawn.Seeley@maine.gov]
Sent: Monday, April 07, 2008 4:34 PM
To: Monica Orendi
Cc: Hyland, Jay
Subject: Maine's response to FSME-08-005 Fingerprinting implementation plan
Attachments: maine fingerprinting letter 4 7 08.doc; maine fingerprinting lc for new licensees.doc; maine fingerprinting lc for existing licensees.doc

Ms. Orendi,

Please find attached the letter and supporting documents Maine intends to issue to its Increased Control licensees. We will not issue these until we get an approval back from NRC. Please let us know if you need any additional information. Thank you.

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An Office of the Department of Health and Human Services

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April 7, 2008

To: All Licensees Requiring the Conditions of Increased Controls
From: The Radiation Control Program
RE: Implementation of Fingerprinting for Personnel Authorized to Use Radionuclides of Concern Under Increased Controls

Dear Licensee:

The U.S. Nuclear Regulatory Commission (NRC) and its Agreement States are in the process of amending the increased controls requirements for licensees that possess certain radioactive materials in quantities of concern. The NRC has determined that additional requirements must be implemented to supplement the existing regulatory requirements in 10 CFR §§ 20.1801-1802 [SMRRRP10-144A CMR 220, The State of Maine Rules Relating to Radiation Protection (SMRRRP)], "Security and Control of Licensed or Registered Sources of Radiation." These amended increased controls requirements are a matter of compatibility with the NRC and must be implemented in the time specified by the NRC.

On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149 of the Atomic Energy Act (AEA) to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and a 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."

Your radioactive materials license has been identified as authorizing possession of certain radioactive materials in one or more of the affected categories. Therefore, in accordance with the, your license has been amended to require compliance with the fingerprinting requirements as identified in Attachment 1. Guidance for the evaluation of FBI identification and criminal history records checks for allowing unescorted access to certain radioactive material is provided in Attachment 2. The U.S. Nuclear Regulatory Commission Order (EA-07-305), issued on December 5, 2007, is provided to you in Attachment 3. The corrected Agency Conditions for Increased Controls is provided to you in Attachment 4. Your newly amended license is provided in Attachment 5.

A. Time Requirements for Reporting and Implementation:

1. Within **ninety (90) days** of the date you receive this letter, you shall establish and maintain a fingerprinting program that meets the requirements of Attachment 1 for individuals that require unescorted access to certain radioactive materials.

2. Within **ninety (90) days** of the date you receive this letter, you 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 "Table 1: Radionuclides of Concern," is deemed trustworthy and reliable as required in paragraph B.2 of this letter.

3. You shall, in writing, within **sixty (60) days** of the date you receive this letter, notify the Agency, (1) if you are unable to comply with any of the requirements described in this letter or in Attachment 1 to this letter; (2) if compliance with any of the requirements is unnecessary in your specific circumstances; or (3) if implementation of any of the requirements would cause the you to be in violation of the provisions of any Agency regulation or your license. The notification shall provide your justification for seeking relief from or variation of any specific requirement

4. You shall complete implementation of the program established in accordance with paragraph A.1 of this letter by **[180 days, 2008].** In addition to the notifications in paragraphs 2 and 3 above, you shall notify the Agency within **twenty-five (25) days** after you have achieved full compliance with the requirements described in Attachment 1 to this letter. If by **[180 days, 2008]**, you are unable, due to circumstances beyond your control, to complete implementation of this letter, you shall submit a written request to the Agency explaining the need for an extension of time to implement the requirements. The request shall provide your justification for seeking more time to comply with the requirements of this letter.

5. You shall notify the Agency at 207-287-5676 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.

B.

1. Except as provided in paragraph E for individuals who are currently approved for unescorted access, you shall grant access to radioactive material in Table 1 in accordance with the requirements of IC.1. of the corrected Agency Increased Controls document provided in Attachment 4.

2. The T&R Official, if he/she does not require unescorted access, must be deemed trustworthy and reliable by the Licensee in accordance with the requirements of IC.1. of the corrected Agency Increased Controls 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 the FBI criminal history check as a component in approving a T&R official.

C. Prior to requesting fingerprints from any individual, you shall provide a copy of these conditions, including attachments, to that person.

D. Upon receipt of the results of FBI identification and criminal history records checks, you shall control such information as specified in the "Protection of Information" section of EA-07-305 (Attachment 3) of these Agency conditions and in requirement IC.5. of the Increased Controls (Attachment 4).

E. You shall make determinations on continued unescorted access for persons currently granted unescorted access, by **[180 days, 2008],** based upon the results of the fingerprinting and FBI identification and criminal history records check. You may allow any individual who currently has unescorted access to certain radioactive materials in accordance with the IC Order to continue to have unescorted access, pending a decision by the T&R Official. After **[180 days, 2008]** no individual may have unescorted access to radioactive materials 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.

F.

1. The requirements of the Increased Controls Order (EA-05-090) 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 and fingerprinting and an FBI identification and criminal history records check.

2. The requirements of the Increased Controls Order (EA-05-090) IC 1.c. 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."

3. "Table 1: Radionuclides of Concern" has been revised to include Ra-226.

Responses to Items A.1, A.2, A.3, and A.4 above shall be submitted to the **Manager, Radiation Control Program, 286 Water Street, Key Plaza, 4th Floor, 11 SHS, Augusta, ME 04333-0011**. Since this license amendment relates to security concerns, your response is exempt from the public records law or Freedom of Information Act as "records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the State. The Manager, Radiation Control Program, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

Table 1: Radionuclides of Concern

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

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

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

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

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

[5] As of January 1, 2008, NRC has authority to regulate discrete sources of Ra-226 (72 Fed. Reg. 55865, October 1, 2007)). For licensees who only possess Ra-226 in quantities of concern, this Order becomes effective as of January1, 2008.

ATTACHMENT 1

Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks

The new fingerprinting requirements supplement previous requirements issued by the Increased Controls letter.

Licensees currently have a program to grant unescorted access to individuals. As required by Condition A.1 of this letter, you shall modify the current trustworthiness and reliability program to include the following:

1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted unescorted access to risk significant radioactive materials equal to or greater than the quantities listed in "Table 1, Radionuclides of Concern." The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) identification and criminal history records check and ensure that the provisions contained in the subject letter and this attachment are satisfied.
2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the "Right to Correct and Complete Information" section of this attachment.
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 equivalent agreement state regulation, 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 such as a National Agency Check, Transportation Worker Identification Credentials check 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 assessment for possession and use of select agents and toxins in accordance with 42 CFR Part 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Patrol's Free and Secure Trade Program[1] check within the last five (5) calendar years, or any person who has an active federal security clearance (provided in the latter two cases that they make available the appropriate documentation[2]). Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.

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

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

4. All fingerprints obtained by the Licensee pursuant to this letter must be submitted to the Commission 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 B.2 of this letter.
5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements of the IC letter in making a determination whether to grant unescorted access to certain radioactive materials.
6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to risk significant radioactive materials equal to or greater than the quantities listed in "Table 1: Radionuclides of Concern."
7. The Licensee shall document the basis for its determination 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: Radionuclides of Concern."

Prohibitions

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

A Licensee shall not use information received from a criminal history check obtained pursuant to this 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 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 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 this letter 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 Agency to determine compliance with the regulations and laws.
5. The Licensee shall retain all fingerprint and criminal history records from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or determination of unescorted access to certain radioactive material (whether unescorted access was approved or denied). After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this letter, Licensees shall:

1. Submit one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) for each individual seeking access to unescorted access to certain radioactive material.

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

3. **Include the name and address of the individual (T&R Official) to whom the criminal history records should be returned.**

4. Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR § 73.61, or any person who has been favorably-decided by a U.S. Government program involving fingerprinting and an FBI identification and criminal history records check. These include the National Agency Check, Transportation Worker Identification

Credentials check 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 assessment 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[3] check within the last five (5) calendar years, or any person who has an active federal security clearance (provided in the latter two cases that they make available the appropriate documentation[4]). Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.

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

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

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

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

Licensees shall make payments for processing before submitting applications to the NRC. Combined payment for multiple applications is acceptable. Licensees shall include the Pay.gov payment

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[3] 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 AEA by submitting to fingerprinting and an FBI identification and criminal history records check.

receipt(s) along with the application(s). For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415-7404]. The application fee (currently $36) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint submissions. 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 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 2

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

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

Unescorted access determinations require an evaluation of a person's trustworthiness and reliability. When a person's life history shows evidence of unreliability or untrustworthiness, questions arise whether the person can be relied on and trusted to exercise the responsibility necessary for working with risk-significant radioactive materials. The purpose of the T&R determination requirement, for unescorted access, is to provide reasonable assurance that those individuals are trustworthy and reliable, and do not constitute an unreasonable risk to the public health and safety, including the potential to commit or aid theft and/or radiological sabotage. This is a Licensee's business decision as to what criteria it uses for the bases of the trustworthiness and reliability determination. Some indicators that Licensees should consider for what may be a trustworthiness and reliability concern can be found in Increased Control guidance in Q and A #22 at the following web address: http://www.nrc.gov/reading-rm/doc-collections/enforcement/security/2005/ml053130233.pdf.

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

(1) The nature, extent, and seriousness of the conduct;

(2) the circumstances surrounding the conduct, to include knowledgeable participation;

(3) the frequency and recency of the conduct;

(4) the individual's age and maturity at the time of the conduct;

(5) the extent to which participation is voluntary;

(6) the presence or absence of rehabilitation and other permanent behavioral changes;

(7) the motivation for the conduct;

(8) the potential for pressure, coercion, exploitation, or duress; and

(9) the likelihood of continuation or recurrence.

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

1. The T&R official should evaluate the information collected for consistency and adequacy.

2. True identity should be evaluated by comparing applicant provided identification and personal history data to pertinent information from the background check, and other data sources.

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 would be grounds for denial of unescorted access.

When a Licensee submits fingerprints to the NRC pursuant to an NRC Order or an amended license issued by an Agreement State, 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 Trustworthy and Reliability (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 record information pertaining to the individual as required by the NRC Order or the amended license issued by an Agreement State. The criminal history records check is used in the determination of whether the individual has a record of criminal activity that indicates that the individual should not have unescorted access to radioactive materials subject to this Order. Each determination of T&R for unescorted access to radioactive materials, which includes a review of criminal history information, must be documented to include the basis for the decision made.

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

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

The 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, indicate poor judgment, unreliability, or untrustworthiness.

These indicators are not meant to be all inclusive nor intended to be disqualifying factors. Licensees can also consider how recent such indicators occurred and other extenuating or mitigating factors in their determinations. Section 149.c.(2)(B) of the AEA requires that the information obtained as a result of fingerprinting be used solely for the purposes of making a determination as to unescorted access suitability. Unescorted access suitability is not a hiring decision, and the NRC 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-regulated activities.

ATTACHEMENT 3

NRC Order EA-07-305

Dated December 5, 2007

ATTACHMENT 4

INCREASED CONTROLS FOR LICENSEES THAT POSSESS SOURCES CONTAINING RADIOACTIVE MATERIAL QUANTITIES OF CONCERN (CORRECTED VERSION)

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

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

a. The licensee shall allow only trustworthy and reliable individuals, approved in writing by the licensee, to have unescorted access to radioactive material quantities of concern. The licensee shall approve individuals with job duties that require access to such radioactive material for unescorted access only. Personnel who require access to such radioactive material to perform a job duty, but who are not approved by the licensee for unescorted access, must be escorted by an approved individual.

b. For individuals employed by the licensee for three years or less, and for non-licensee personnel, such as physicians, physicists, house-keeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate the background information 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.

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

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

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

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

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

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

d. After initiating appropriate response to any actual or attempted theft, sabotage, or diversion of radioactive material or of the devices, the licensee shall, as promptly as possible, notify the Department of Health & Human Services, Radiation Control Program.

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

IC 3. a. In order to ensure the safe handling, use, and control of licensed material in transit via domestic highway or railway by a carrier other than the licensee, and for quantities that equal or exceed those in Table 1, but are less than 100 times Table 1 quantities, per consignment, the licensee shall:

1. Use carriers which:

A. Use package-tracking systems,

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

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

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

2. The licensee shall verify and document that the carrier employs the measures listed in IC 1.

3. Contact the recipient to coordinate the expected arrival time of the shipment.

4. Confirm receipt of the shipment.

5. Initiate an investigation to determine the location of the licensed material if the shipment does not arrive on or about the expected arrival time. When, through the course of the investigation, it is determined the shipment has become lost, stolen, or missing, the licensee shall immediately notify the Radiation Control Program. If, after 24 hours of investigating, the location of the material still cannot be determined, the radioactive material shall be deemed missing and the licensee shall immediately notify the Radiation Control Program.

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

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

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

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

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

1. Establish an expected time of delivery; and

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

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

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

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

b. For mobile devices;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Preparation, identification or marking, and transmission,

4. Access controls,

5. Destruction of documents,

6. Use of automatic data processing systems, and

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

ATTACHEMENT 5

AMENDED LICENSE

LICENSE CONDITION REQUIRING FINGERPRINTING
FOR NEW LICENSEES

The licensee shall comply with the requirements described in the Agency Letter, "Implementation of Fingerprinting for Personnel Authorized to Use Radionuclides of Concern Under Increased Controls," dated **[date]**. The licensee shall complete implementation of the 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 Letter. The licensee shall notify the Agency when they have achieved full compliance with the requirements described in the Letter. 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 Letter. The licensees shall notify the Agency within 24 hours if the results from a criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

LICENSE CONDITION REQUIRING FINGERPRINTING
FOR EXISTING LICENSEES

The licensee shall comply with the requirements described in the Agency Letter "Implementation of Fingerprinting for Personnel Authorized to Use Radionuclides of Concern Under Increased Controls," dated **[date].** The licensee shall complete implementation of the said requirements by **[180 days, 2008]**. The licensee shall notify the Agency when they have achieved full compliance with the requirements described in the Letter. The 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 Letter. The licensee shall notify the Agency within 24 hours if the results from a criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.