

(DATE)

(Licensee)  
ATTN: (Contact)  
(Address)  
(Address)  
(City), (State) (Zip Code)

**SUBJECT: ISSUANCE OF ORDER IMPOSING FINGERPRINTING  
AND CRIMINAL HISTORY RECORDS CHECK FOR  
UNESCORTED ACCESS TO CERTAIN RADIOACTIVE  
MATERIAL**

Dear (Contact):

You have previously received an Order from the Department of Health and Human Services requiring that you implement increased controls (IC) with respect to the possession of radioactive material quantities of concern. As part of the IC order, you were required to determine that each person who requires access to radioactive material quantities of concern to perform their job duties is sufficiently trustworthy and reliable. The IC Order includes direction and guidance on the specific factors which must be considered when making that determination.

The NRC has determined that additional orders are needed to supplement the existing orders. The IC and the orders imposing fingerprinting (enclosure 1) are a matter of compatibility with NRC and must be implemented in a time frame desired by the NRC and with essentially identical content to those being used by NRC for its licensees.

This Order does not obviate the need for Licensees to continue to meet the requirements of the IC Order, and to maintain the effectiveness of security measures taken in response to the events of September 11, 2001. In addition, the enclosed Order modifies sections 1.b., 1.c., and "Table 1: Radionuclides of Concern" of the IC Order to reflect recent NRC policies and regulations.

Licensees have 180 days from the date of this Order to submit fingerprints to the NRC and complete their review of the FBI criminal history records for all individuals currently authorized unescorted access under the IC Order.

Licenses are required to submit fingerprints in accordance with this Order. The current processing fee is \$36.00 per submission and payment must be made electronically through <http://www.pay.gov>. Details regarding fingerprint submittals and payment of fees are found in Enclosure 2 of this letter. Also enclosed is the guidance for evaluating FBI identification and criminal history records checks for allowing unescorted access to certain radioactive material (Enclosure 3) to aid Licensees in their review of criminal history records.

The enclosed Order requires that all Licensees respond to this Order within ninety (90) days of the date of its issuance, and 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 radioactive materials quantity of concern) is deemed trustworthy and reliable by the licensee. Licensee responses to the enclosed Order (not fingerprint cards) are required to be submitted to the Office of Radiological Health, Department of Health & Human Services, Division of Public Health at 301 Centennial Mall South, P.O. Box 95026, Lincoln, Nebraska, 68509.

In addition, your response shall be marked as “Security-Related Information – Withhold from Public Disclosure Under Neb. Rev. Stat. §7-3507(10)(c)”.

The Department may, in writing, relax or rescind any of the above conditions upon your demonstration of good cause.

This action will become final ninety days from the mailing of this notice unless you request in writing a hearing before that Director of the Department of Health & Human Services within such ninety days. If a hearing is requested, you will be provided with a notice of the time and location to appear and such other information as may be required by law. You may present any evidence that may be pertinent and may be represented by counsel, at your own expense, at such hearing. Copies of Department regulations governing procedures used for hearings, 184 NAC, are available upon request.

Licensee fingerprint cards are required to be submitted to the Director, Division of Facilities and Security, and should be addressed to the attention of the Criminal History Program, Mail Stop T-6E46. The following mailing address should be used:

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 T6E46

To facilitate resolution of any issues or questions related to compliance with the requirements in the enclosed Order, please refer to the list of questions and answers of Enclosure 4, or call the Department at (402) 471-2168 or (888) 242-1100 ext 8.

Sincerely,

Julia A. Schmitt, Manager  
Office of Radiological Health

Enclosures:

1. Order Imposing Fingerprinting and Criminal History Records Checks for Unescorted Access to certain Radioactive Material
2. Procedures for Processing Fingerprint Checks
3. Guidance for Evaluating FBI Identification and Criminal History Records Check
4. Questions and Answers with Regards to Fingerprinting and Criminal History Records Check
5. Amended License

**ORDER IMPOSING FINGERPRINTING AND CRIMINAL HISTORY  
RECORDS CHECK FOR UNESCORTED ACCESS TO CERTAIN  
RADIOACTIVE MATERIAL**

Your radioactive materials license (Lic #) has been indentified as authorizing possession of certain radioactive material in one of the affected categories. Therefore in accordance with 180 NAC 1-007, the Department orders your license to be amended to require you to comply with the fingerprinting and criminal history records check for unescorted access to certain radioactive material. The updated table of radionuclides of concern (Table 1), is provided at Attachment 1. You shall comply with the requirements of this order as follows:

A.

1. You shall, within **ninety (90) days** of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of Attachment 2 of this Order for individuals that require unescorted access to certain radioactive materials
2. Within **ninety (90) days** of the date of this Order, you shall provide under oath or affirmation, a certification that the Trustworthy and Reliability (T&R) Official (an individual with the responsibility to determine the trustworthiness and reliability of another individual requiring unescorted access to radioactive materials identified in Table 1) is deemed trustworthy and reliable by the licensee.
3. You shall, in writing, within **sixty (60) days** of the date of this Order, notify the Department, (1) if you are unable to comply with any of the requirements described in the Order or in Attachment 2 of this Order, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause you to be in violation of the provision of any Department 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 to paragraph A.1 of this Order by **(INSERT DATE)**. In addition to the notification in paragraphs 2 and 3 above, you shall notify the Department within twenty-five (25) days after you have achieved full compliance with the requirements described in Attachment 2 of this Order. If by **(INSERT DATE)**, you are unable, due to circumstances beyond your control, to complete implementation of this Order, you shall submit a written request to the Department explaining the need for an extension of time to implement the requirements. The request shall provide the justification for seeking more time with the requirements of the Order.

Enclosure 1

5. You shall notify the Department within 24 hours if the results from the FBI identification and 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 listed in Table 1 in accordance with the requirements of IC.1. of the Increased Controls Order and the requirements of this Order.
  2. The T&R Official, if he/she does not require unescorted access, must be deemed trustworthy and reliable in accordance with the requirements of IC.1. of the Increased Controls Order before making a determination regarding the trustworthiness and reliability of another individual. If the T&R Official requires unescorted access, you must consider the results of fingerprinting and the review of the FBI identification and criminal history records check as a component in approving the T&R Official.
- C. Prior to requesting fingerprints from any individual, you shall provide a copy of this Order to that person.
- D. Upon receipt of the results of the FBI identification and criminal history records checks, you shall control such information as specified in the "Protection of Information" section of Attachment 2 of this Order and in requirements IC.5. of the Increased Controls Order.
- E. You shall make determinations of continued unescorted access for persons currently granted unescorted access, by **(INSERT DATE)**, 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 **(INSERT DATE)** no individual may have unescorted access to radioactive material of concern without a determination by the T&R Official (based upon fingerprinting, and FBI identification and criminal history records check and previous trustworthiness and reliability determination) that the individual may have unescorted access to such material.
- F.
1. You shall comply with; and to the extent the recipient of this Order is also the recipient of the Increased Controls Order, paragraph IC 1.b. is superseded by the following:

*“For individuals employed by the licensee for three years or less, and for non-licensee personnel, such as physicians, physicists, house-keeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, personal references, and fingerprinting and the review of an FBI identification and criminal history records check. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e. seeking references not supplied by the individual). For individuals employed by the licensee for longer than three (3) 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 Licensee shall comply with; and to the extent the recipient of this Order is also the recipient of Increased Controls Order, Paragraph IC 1.c. of that prior Order 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. For Licensees who have previously received the Increased Controls Order, "Table 1: Radionuclides of Concern" is superseded by Attachment 1 to include Ra-226. The previous Increased Controls Order will, therefore, also apply to Ra-226 as noted in Attachment 2.

Licensee responses to A.1, A.2., A.3., and A.4., above shall be submitted to the Office of Radiological Health, Department of Health & Human Services, Division of Public Health at 301 Centennial Mall South, P.O. Box 95026, Lincoln, Nebraska, 68509. Your responses shall be marked as “Security-Related Information -Withhold Under 10 CFR 2.390.”

The Manger, Office of Radiological Health, Department of Health & Human Services, Division of Public Health , may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

Attachments:

1. Table 1: “Radionuclides of Concern”
2. Specific Requirements Pertaining to Fingerprinting and Criminal History Records Check

Table 1: Radionuclides of Concern

Radionuclide	Quantity of Concern <sup>1</sup> (TBq)	Quantity of Concern <sup>2</sup> (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	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 <sup>3</sup>	See Footnote Below <sup>4</sup>	

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> If several radionuclides are aggregated, the sum of the ratios of the activity of each source,  $i$  of radionuclide,  $n$ ,  $A(i,n)$ , to the quantity of concern for radionuclide  $n$ ,  $Q(n)$ , listed for that radionuclide equals or exceeds one.  $[(\text{aggregated source activity for radionuclide A}) \div (\text{quantity of concern for radionuclide A})] + [(\text{aggregated source activity for radionuclide B}) \div (\text{quantity of concern for radionuclide B})] + \text{etc.} \dots \geq 1$

## **Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks**

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

Licensees currently have a program to grant unescorted access to individuals. As required by condition A.1. of the Order, Licensees shall modify its 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 Attachment 1. 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 Order 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 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

Attachment 2

Free and Secure Trade Program<sup>1</sup>) 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<sup>2</sup>). 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.

4. All fingerprints obtained by the Licensee pursuant to this Order 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 Order.
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 Order, 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 Attachment 1.
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 Attachment 1.

## **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.

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<sup>1</sup> 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

<sup>2</sup> 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.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order 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 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 this Order 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 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.

License Condition on existing licenses.

XX. The licensee shall comply with the requirements described in the Order Imposing Increased Controls (the Order). The licensee shall complete implementation of said requirements by **[INSERT DATE 180 days, 2008]**. The licensee shall notify the Department of Health & Human Services, Office of Radiological Health when they have achieved full compliance with the requirements described in the Order. The notification shall be made within **twenty-five (25) days** after full compliance has been achieved. This notification shall include a certification that the Trustworthiness and Reliability (T&R) Official (and any subsequent T&R Official) is themselves deemed trustworthy and reliable by the Licensee as required in paragraph B.2. of the Order. The licensee shall notify the Department 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 on new licenses.

XX. The licensee shall comply with the requirements described in the Order Imposing Increased Controls (the Order). The licensee shall complete implementation of said requirements by the first day that radionuclides in quantities of concern are possessed at or above the limits specified in "Table 1: Radionuclides of Concern" contained within the Order. The licensee shall notify the Department of Health & Human Services, Office of Radiological Health when they have achieved full compliance with the requirements described in the Order. The notification shall be made within **twenty-five (25) days** after full compliance has been achieved. This notification shall include a certification that the Trustworthiness and Reliability (T&R) Official (and any subsequent T&R Official) is themselves deemed trustworthy and reliable by the Licensee as required in B.2. of the Order. The licensees shall notify the Department 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.

