

## **Implementing Guidance for Service Provider Licensees that are not Manufacturers or Distributors**

### A. Initial Actions

1. The U.S. Nuclear Regulatory Commission (NRC) issued a Regulatory Issue Summary (RIS 2007-15) informing all NRC licensees that are non-manufacturer and distributor (non-M&D) service providers, and all Agreement State Radiation Control Program Directors and State Liaison Officers about the non-M&D Service Provider Order.
2. Each non-M&D service provider licensee should review the RIS and determine if a need exists for its service representatives to have unescorted access to radioactive material in quantities of concern at client facilities.
3. If the licensee determines that unescorted access is required the licensee must request, in writing, that NRC issue the Order.

### B. NRC Issues Order in Response to the Licensee's Request

1. After receiving the Order, the licensee selects a candidate Reviewing Official. As part of the selection, the licensee must perform a trustworthiness and reliability review per the requirements in Attachment 3 of the Order. NOTE: the Reviewing Official MUST BE an individual that requires unescorted access to radioactive material in quantities of concern as part of his/her job duties.
2. The licensee designates the Reviewing Official to NRC by submitting the individual's fingerprints and processing fee.
3. NRC processes the fingerprints through the Federal Bureau of Investigation, and reviews the results of the criminal history investigation. If the investigation does not find disqualifying information, NRC will authorize the designated individual to serve as the licensee's Reviewing Official.
4. The Reviewing Official performs the trustworthiness and reliability reviews for other licensee service representatives that require unescorted access to radioactive material in quantities of concern. The Reviewing Official must submit the fingerprints of the service representatives to NRC and receive the criminal history investigation results. The reviews must be performed per the requirements in Attachment 3 of the Order and Enclosure 4 of the transmittal letter. Based on the information and investigation results, the Reviewing Official determines if the service representative is trustworthy and reliable and that the service representative may be granted unescorted access to radioactive materials in quantities of concern.
5. The Reviewing Official prepares, on company letterhead, an attestation or certification that indicates the service representative (by name) has been determined to be trustworthy and reliable in accordance with the NRC security Order for non-M&D Service Providers. The Reviewing Official signs and dates this document.

6. Client licensees may accept the signed and dated document in lieu of conducting their own trustworthiness and reliability review of the named service representative.

### C. NRC Actions during Future Inspections

1. During future inspections, both the service provider licensee and the client licensee will be audited to assure compliance with the Order requirements and the implementation process.

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

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

The information on how to respond to the NRC Order requiring implementation of the fingerprinting requirements is contained in the Order itself. The NRC Orders are not considered sensitive information. Examples of previous Orders can be found by searching ADAMS or NRC's website.

Licensee responses to the Order are considered sensitive information and should be marked appropriately at the top of the page with **"Security Related Information - Withhold Under 10 CFR 2.390."**

- 2. Does a National Agency Check (NAC) satisfy the provisions of the Order?**

If the NAC has been conducted within the past five (5) calendar years and the employee can provide documentation of favorable results to the NRC or licensee's Reviewing Official, as appropriate, then this would satisfy the provisions of the Order.

- 3. Can the Human Resources department be designated as the licensee's Reviewing Official to review criminal history records? Do they have to be fingerprinted to be able to review and approve others?**

The requirements for fingerprinting and criminal history records should be incorporated into the licensee's current program of reviewing and approving background information of its employees. The duties of a Reviewing Official can be delegated to the Human Resources department or any other appropriate department as long as the individual(s) involved in the determining of an employee's trustworthiness and reliability have been determined themselves to be trustworthy and reliable by the licensee, are permitted to have unescorted access to radioactive material in quantities of concern as part of their job duties, and have been approved by the NRC to be the licensee's Reviewing Official.

- 4. What is a Reviewing Official? Who can be a Reviewing Official?**

A Reviewing Official is an NRC-approved individual that requires unescorted access to radioactive material in quantities of concern as part of his/her job duties, and who shall make the trustworthiness and reliability determinations of other Licensee employees to determine whether the individual may have, or continue to have, unescorted access.

**5. I was only provided a few fingerprint cards, where can I get more?**

You can request more fingerprint cards by writing to the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555, by calling (301) 492-3531, or by e-mail to [forms@nrc.gov](mailto:forms@nrc.gov).

**6. What information do I need to include on the card?**

Incomplete fingerprint cards will not be processed and will be returned to the licensee. Licensees need to include the following information on each card:

- a. Last name, first name, middle name
- b. Signature of person being fingerprinted
- c. Residence of person being fingerprinted
- d. Date
- e. Signature of official taking the fingerprints
- f. Employer and address
- g. Reason for being fingerprinted
- h. Aliases
- i. Citizenship
- j. Social security number and any of the other corresponding numbers requested on the card if applicable
- k. Date of birth
- l. Place of birth
- m. Sex
- n. Race
- o. Height
- p. Weight
- q. Eye color
- r. Hair color

**7. I was able to get more fingerprint cards from my local law enforcement agency, can I use those instead?**

No, because of problems that have been experienced in the past with some of the cards.

**8. Who do I send my fingerprints to?**

A completed fingerprint card should be sent to:

Director, Division of Facilities and Security  
U.S. NRC  
Two White Flint North  
11545 Rockville Pike  
Rockville, MD 20852-2738  
ATTN: Criminal History Program, Mail Stop TWB-05B32M

**9. Is there a fee associated with the NRC processing the fingerprints?**

The current fee to process each fingerprint card is a \$26.00 per card. Additional fees may be charged by the entity taking the fingerprints.

**10. What method of payment does the NRC accept?**

NRC's preferred method of payment is electronic payment through <http://www.pay.gov>. Please refer to the instructions (in Enclosure 3) included with the transmittal letter of the Order for details on how to pay electronically. NRC also accepts checks, cashier checks or money orders made out to the U.S. Nuclear Regulatory Commission along with the submission of fingerprint cards. Fingerprint cards along with checks, cashier checks or money orders should be sent 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 TWB-05B32M

**11. When are licensees required to submit fingerprints to the NRC?**

Licensees are required to fingerprint and review the criminal history results for all individuals who currently have, or will require, unescorted access to radioactive materials quantities of concern to the NRC within 90 days after the Order is issued.

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

Guidance is included with the Order documents; however, it will ultimately be the decision of the licensee's Reviewing Official to determine whether an individual should be granted unescorted access to the radioactive material, based on the results of the criminal records history check, and the other trustworthiness and reliability requirements of the Order.

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

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

period and the appropriate compensatory actions that will be implemented until the fingerprints are processed.

**14. What does unescorted access to the material mean?**

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

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

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

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

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

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

The criminal history records check provides information on all arrests since the individual's eighteenth birthday. Guidance on criminal offenses that could be considered is included in Enclosure 4 of the transmittal letter. However, the list of offenses is not inclusive. There may be additional offenses not listed in the guidance that the licensee wants to consider as part of unescorted access approval process. It is the licensee's ultimate business decision as to what criteria it uses for the bases of the trustworthiness and reliability determination.

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

Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR § 73.61, or any person who has been favorably-decided by a U.S. Government program involving fingerprinting and an FBI identification and criminal history records check (e.g., National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, Health and Human Services security

risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Patrol's Free and Secure Trade Program<sup>1</sup> within the last five (5) 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.

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

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

**20. How will compliance with the fingerprinting component be verified?**

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

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

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

**22. Will there be a reevaluation period?**

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

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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 Reviewing 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.

**23. The Order requires that the licensee shall provide under oath or affirmation a certification that the Reviewing Official is deemed trustworthy and reliable. What does it mean to submit documents to the NRC “under oath or affirmation”?**

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

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

Executed on [date] [Signature]

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

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

No. Prior to being granted unescorted access to material, all additional employees the licensee identifies after the date of the Order as requiring unescorted access, must be determined to be trustworthy and reliable based upon the requirements of the Order and the review of their FBI identification and criminal history records. The Order also requires that within 180 days of the date of the Order that licensees establish a fingerprinting program and within 90 days of the date of the Order provide under oath or affirmation a certification that the Reviewing Official is deemed trustworthy and reliable by the licensee.

Only after the Reviewing Official has been certified to be trustworthy and reliable by the licensee and approved by the NRC, can the Reviewing Official make trustworthiness and reliability determinations for any employee who requires unescorted access after the date of the Order. For administrative purposes, each submittal of fingerprints to the NRC should be accompanied by the name and address of the Reviewing Official to whom the criminal history records should be returned.

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

Licensees must have their fingerprints taken by an authorized official, such as a representative from a local law enforcement agency. However, an authorized official, for the purposes of taking fingerprints, could be available through private entities, contractors, or an established on-site fingerprinting program. If a licensee has fingerprints taken at a facility other than that of a recognized Federal, State, or local



law enforcement agency, the licensee should ensure that the prints are taken legibly and match the identity of the individual named on the fingerprint card.

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

1) Be trained to take fingerprints (*Training to take fingerprints is offered through the FBI, or may be available from local law enforcement agencies and some professional associations.*);

2) Verify the identity of the individual being fingerprinted by checking a government-issued picture identification (*e.g. a passport or driver's license*) and that the name on the card matches the government issued identification.

3) Sign the block on the fingerprint card labeled "SIGNATURE OF OFFICIAL TAKING THE FINGERPRINTS."

The licensee must ensure that complete and accurate information is provided in accordance with 10 CFR 30.9. available at:

<http://www.nrc.gov/reading-rm/doc-collections/cfr/part030/part030-0009.html>

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

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

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

Where the licensee or applicant requires unescorted access and intends to designate himself or herself as the Reviewing Official, the licensee or applicant should submit fingerprints to the NRC for approval. Once approved by the NRC, the licensee or applicant can then make T&R determinations for other employees who require unescorted access subject to the fingerprinting requirements.

- 27. When completing the fingerprint cards, NRC Licensees should use their NRC docket number in the field “YOUR NO. OCA.” Since Agreement State Licensees do not have NRC docket numbers, what should they use to complete the field?**

Agreement State Licensees should use their two letter State abbreviation followed by a dash and the Licensee’s license number (e.g. CA-123456).

- 28. When making a payment to the NRC through Pay.gov for processing of fingerprints, Pay.gov requires a TCN. What is a TCN and what information should go in this field?**

TCN stands for “Transaction Control Number” and it identifies payment for the processing of fingerprints for any given individual. The TCN is a tool for Licensees to track their submissions and may include any number of identifying information that would be useful for that purpose. For instance, Licensees can include the names of one or more individuals for whom payment is being made, Licensee’s name and/or date of submittal.

- 29. Can I submit my fingerprints electronically to the NRC?**

Yes. Some Licensees may choose to make arrangement with the NRC to submit fingerprints electronically to the NRC. However, for many Licensees this option may be prohibitive, due to the cost associated with the purchase of electronic fingerprinting equipment. To establish an electronic fingerprinting program with the NRC, please contact NRC’s Facility Security Branch at 301-492-3531. Please note that electronic submission of fingerprints to the NRC must come directly from the Licensee.

- 30. What happens to the fingerprint cards after the NRC receives it from the Licensee?**

The NRC scans the fingerprint cards to transmit to the FBI electronically. The cards are retained and secured for approximately a month after which time they are destroyed in accordance with federal guidelines.

- 31. How should large companies that are licensed in multiple jurisdictions respond to the fingerprinting requirements?**

The fingerprinting requirements are imposed based on the license, not the company. If a company holds multiple licenses subject to the fingerprinting requirements, it must respond for each license. For example, if a company holds two NRC licenses, it must respond for both licenses. If convenient, the company may submit a combined response covering both licenses, but the response must address each of the licenses (i.e., “Joe Smith, RSO for both of our licenses, will serve as the Reviewing Official for both licenses XX-XXXXX-01 and XX-XXXXX-02.”).

**32. The implementation deadline has passed and I have not completed the trustworthiness and reliability adjudication process for certain individuals because I have not received classifiable fingerprint/FBI criminal history check results. Should I submit a request for relief from the implementation deadline?**

A request for relief from the implementation deadline is not necessary if the initial fingerprint submissions for individuals requiring unescorted access to radioactive materials in quantities of concern were submitted to the Nuclear Regulatory Commission (NRC) by the implementation deadline. For these individuals, the trustworthiness and reliability adjudication process should be completed within a maximum of 35 days from the date of receipt of classifiable fingerprints and criminal history reports.

**33. What are the next steps in the process if the FBI rejects a Form FD-258 (fingerprint card) because the fingerprints are not classifiable? What options are available to licensees if an individual's fingerprints cannot be classified based on conditions other than poor quality after multiple attempts?**

The overwhelming majority of fingerprint cards are returned as classifiable (i.e., can be read by the FBI and used to identify the individual). If the initial fingerprint submission is returned by the FBI because the fingerprint impressions cannot be classified, the fingerprints may be retaken and resubmitted (i.e., new Form-258 or electronic submission) for a second attempt. The licensee will not be charged for the resubmission if the licensee provides a copy of the FBI response indicating the fingerprints could not be classified or the FBI Transaction Control Number (TCN).

If the FBI is unable to classify the second submission of fingerprints, the licensee can submit additional fingerprint impressions for the individual, as follows:

1. The third fingerprint card submission will require payment of an additional \$36 processing fee.
2. If the third submission is also returned as unclassifiable, the licensee may submit a fourth set of fingerprints. An additional fee is not required because the fee for the third submission includes one resubmission. As with the second submission, the FBI response or TCN should be included, or the submission may be treated as a new request and an additional fee may be charged.

Please note that a licensee can opt to take and submit the third and fourth sets of fingerprints together to avoid a potential delay in the response. If the third set is returned as unclassifiable, NRC will automatically resubmit the fourth set.

3. If the fourth submission is returned as unclassifiable, the licensee should submit six (6) additional fingerprint cards for the individual. All six cards will be forwarded to the FBI, who will take what they believe to be the best quality prints from each card to make a complete set of fingerprints. An additional \$36 processing fee is required and covers the processing of all six fingerprint cards, but does not include an additional resubmission.

4. If the FBI is unable to obtain classifiable fingerprints from the six cards, **based on conditions other than poor quality** (e.g., medical conditions or physical anomalies that prevent the taking of readable prints), then the NRC will automatically request a check based on a name search for the individual, and will forward the results to the licensee.
5. No further submissions will be required, and the licensee can consider the results of the name search-FBI identification and criminal history records check as a component in determining trustworthiness and reliability in accordance with the Order.

The NRC will consider licensee requests for deviation from the above process for good cause (e.g., a demonstrated history of difficulty providing classifiable fingerprints during other fingerprinting programs or a documented medical condition or physical anomaly that can prevent the taking of readable prints). Licensees may submit a request for consideration of alternatives, and provide the basis for the need for an alternative process to NRC's Facilities Security Branch in the Division of Facilities and Security (requests may be made by phone at 301-492-3531, mailed to the mailing address in Enclosure 3 to the Order, by FAX to the attention of Doreen Turner at 301-492-3448 with a cover sheet attached, or e-mailed to [Doreen.turner@nrc.gov](mailto:Doreen.turner@nrc.gov)). Please note that requests for an alternative to the above process will not affect a licensee's responsibility to fingerprint individuals for unescorted access or to comply with the trustworthiness and reliability requirements of the Order.

Licensees should be aware that Steps 3 and 4 do not occur often, and should take notice that Step 4 may only occur in instances where the FBI has determined that the fingerprints can not be classified based on conditions other than poor quality. Failure to provide quality fingerprint impressions may result in the individual not able to be considered for unescorted access.

Fingerprints may be unclassifiable for a number of reasons, including:

1. Incomplete impressions (fingers not completely rolled from one side of the nail to the other).
2. Left and right hands reversed on the fingerprint card.
3. The same hand or finger printed twice on the card.
4. Fingerprints are not clear and distinct (smudged, uneven, too dark or light, etc.).
5. Fingers on the card are missing or partially missing without an explanation.

To avoid rejection of fingerprints by the FBI as "unclassifiable," the person taking the prints should ensure they are of good quality and do not include any of these deficiencies, and follow the instructions on the back of the fingerprint card. Also, fingerprint cards with incomplete or missing information will be returned to the licensee to provide complete information, resulting in a delay in processing.

The FBI has provided guidance on the taking of fingerprints for submission to the FBI at <http://www.fbi.gov/hq/cjisd/takingfps.html>. This guidance also discusses special situations, such as fingerprinting an individual with abnormalities of the fingers, thumbs or hands, and the appropriate way to identify such situations on the fingerprint card. A checklist to verify that the fingerprint impressions meet the FBI's requirements is also included.

**34. Will guidance be provided on what determines trustworthiness and reliability?**

No, however, IC1(b) provides the minimum basis upon which a determination may be made. Alternative sources may be used depending on the information available to the licensee. It is the licensee's responsibility to make a trustworthiness and reliability determination for an employee granted unescorted access. This is a licensee's business decision as to what criteria it uses for the bases of the trustworthiness and reliability determination.

The trustworthy and reliability determination is designed to identify past actions to help verify one's character and reputation which provide reasonable assurance of an individual's future reliability.

The following are some indicators that licensees may want to consider for what may be a trustworthiness and reliability concern:

1. Impaired performance attributable to psychological or other disorders.
2. Conduct that warrants referral for criminal investigation or results in arrest or conviction.
3. Indication of deceitful or delinquent behavior.
4. Attempted or threatened destruction of property or life.
5. Suicidal tendencies or attempted suicide.
6. Illegal drug use or the abuse of legal drugs.
7. Alcohol abuse disorders
8. Recurring financial irresponsibility.
9. Irresponsibility performing assigned duties.
10. Inability to deal with stress, or having the appearance of being under unusual stress.
11. Failure to comply with work directives.
12. Hostility or aggression toward fellow workers or authority.
13. Uncontrolled anger, violation of safety or security procedures, or repeated absenteeism.
14. Significant behavioral changes, moodiness or depression.

These indicators are not meant to be all inclusive or intended to be disqualifying factors. Licensees can also consider extenuating or mitigating factors in their determinations.