

Requirements for Service Provider Licensees Providing Written Verification Attesting to or Certifying the Trustworthiness and Reliability of Service Providers for Unescorted Access to Certain Radioactive Material at Customer Facilities, including Requirements for Fingerprinting and Criminal History Records Checks

A. General Requirements

Licensees subject to the provisions of this Order shall comply with the requirements of this attachment. The term “certain radioactive material” means the radionuclides in quantities equal to or greater than the quantities listed in Attachment 2 to this Order.

1. The Licensee shall provide the customer’s facility written verification attesting to or certifying the trustworthiness and reliability of an individual as a service provider only for employees the Licensee has approved in writing (see requirement A.3 below). The Licensee shall request unescorted access to certain radioactive material at customer licensee facilities only for approved service providers that require the unescorted access in order to perform a job duty.
2. The trustworthiness, reliability, and true identity of a service provider shall be determined based on a background investigation. The background investigation shall address at least the past three (3) years, and as a minimum, include fingerprinting and a Federal Bureau of Investigation (FBI) criminal history records check as required in Section B, verification of employment history, education, and personal references. If a service provider’s employment has been less than the required three (3) year period, educational references may be used in lieu of employment history.
3. The Licensee shall document the basis for concluding that there is reasonable assurance that a service provider requiring unescorted access to certain radioactive material at a customer facility is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of the radioactive material. The Licensee shall maintain a list of service providers approved for unescorted access to certain radioactive material.
4. The Licensee shall retain documentation regarding the trustworthiness and reliability of approved service providers for three years after the individual no longer requires unescorted access to certain radioactive material associated with the Licensee’s activities.
5. Each time the Licensee revises the list of approved service providers (see requirement 3 above), the Licensee shall retain the previous list for three (3) years after the revision.
6. The Licensee shall provide to a customer written certification for each service provider for whom unescorted access to certain radioactive material at the customer’s facility is required and requested. The written certification shall be dated and signed by the Reviewing Official. A new written certification is not required if an individual service provider returns to the customer facility within three years, provided the customer has retained the prior certification.

B. Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks

1. The Licensee shall fingerprint each service provider to be approved for unescorted access to certain radioactive materials following the procedures outlined in Enclosure 3 of the transmittal letter. The Licensee shall review and use the information received from the 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 Protection's Free and Secure Trade Program¹) 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 documentation²). Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.
4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.
5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements of Section A of

¹ The FAST program is a cooperative effort between the Bureau of Customs and Border Protection 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 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.

this attachment, in making a determination whether to approve and certify the individual for 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 certain radioactive materials.
7. The Licensee shall document the basis for its determination whether to approve the individual for unescorted access to certain radioactive materials.

C. Prohibitions

A Licensee shall not base a final determination to not provide certification for unescorted access to certain radioactive material for an individual 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 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.

D. 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.

E. 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 whether to verify the individual for 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 NRC to determine compliance with the regulations and laws.
5. The Licensee shall retain all fingerprints and criminal history records from the FBI, or a copy if the individual's file has been transferred:
 - a. for three (3) years after the individual no longer requires unescorted access, or
 - b. for three (3) years after unescorted access to certain radioactive material was 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.