UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

(FSME-08-005, January, Program, Chronology, Fingerprinting)

January 10, 2008

ALL AGREEMENT STATES, MICHIGAN, NEW JERSEY, PENNSYLVANIA, VIRGINIA

ACTION: REVISION OF THE CHRONOLOGY OF NRC AMENDMENTS INCLUDING THE SUMMARY OF CHANGE DOCUMENT FOR NRC AMENDMENTS, "ORDER IMPOSING FINGERPRINTING AND CRIMINAL HISTORY RECORDS CHECK REQUIREMENTS FOR UNESCORTED ACCESS TO CERTAIN RADIOACTIVE MATERIAL (NRC ORDER EA-07-305)". [RATS ID 2007-4] (FSME-08-005)

Purpose: To provide the Agreement States with the chronology of the U.S. Nuclear Regulatory Commission (NRC) Amendments including the addition, RATs ID 2007-4, Implementation of Fingerprinting Requirements (effective date December 5, 2007, **Agreement State Adoption Date: June 5, 2008),** and three sample license conditions to assist with incorporating RATS ID: 2007-4.

Contents:
- Sample License Conditions to incorporate RATS ID: 2007-4 for new and existing licensees
- Chronology of NRC Amendments
- NRC Order EA-07-305 with enclosures

Background: The NRC issued EA-05-090 for Implementation of Increased Controls (IC) to NRC licensees via a public health and safety based Order on November 14 and December 22, 2005. The Commission determined that Implementation of IC was an immediate mandatory Category “B” matter of Compatibility for Agreement States. 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. Section 652 of the Energy Policy Act of 2005 (EPAct), enacted on August 8, 2005, amended the fingerprinting requirements of the Atomic Energy Act (AEA). Specifically, the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and 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.” Therefore, in accordance with section 149 of the AEA, as amended by the EPAct, the Commission is imposing the fingerprinting and FBI identification and criminal history records check requirements set forth in Order EA-07-305 on all IC licensees which are currently authorized to possess radioactive materials in quantities of concern. These revisions have also been designated a mandatory Category “B” matter of Compatibility for Agreement States.

The final Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material (EA-07-305) is posted in the *Federal Register,* 72 FR 70901 and can be accessed through this website: http://www.gpoaccess.gov/fr/index.html. The chronology is enclosed in its entirety and includes final regulations adopted through RATs ID 2007-4, as maintained by the Office of Federal and State Materials and Environmental Management Programs (FSME).

The chronology is for your use to plan rulemaking actions that are needed to satisfy the compatibility and health and safety category designations of the NRC regulations. This document will also be used by the Integrated Materials Performance Evaluation Program teams during upcoming program reviews. In addition sample license conditions to assist in adopting RATs ID 2007-4 are enclosed.

Agreement States should submit their legally binding requirements, for new and existing licensees, for review based on the procedures set forth in FSME Procedure SA-201. Legally binding requirements include license conditions, orders, and regulations. Additional information on submission of legally binding requirements can be found on the FSME website under the Regulation Toolbox: http://nrc-stp.ornl.gov/regtoolbox.html. Additional information and guidance on the fingerprinting requirements can be found on the FSME website under the IC toolbox: http://nrc-stp.ornl.gov/controls.html. **Agreement States should issue equivalent requirements no later than June 5, 2008.**

NRC Point of Contact: If you have any questions regarding this correspondence, please contact me or the individuals named below.

For questions regarding Compatibility requirements, State adoption, or how to submit legally binding requirement packages for review

POINT OF CONTACT:	Monica Orendi	INTERNET:	Mlo1@nrc.gov
TELEPHONE:	(301) 415-3938	FAX:	(301) 415-3502

For questions regarding the Order

POINT OF CONTACT:	Christian Einberg	INTERNET:	cee1@nrc.gov
TELEPHONE:	(301) 415-5422	FAX:	(301) 415-5955

/R. Lewis for RA/

Janet R. Schlueter, Director
Division of Materials Safety
and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

Enclosures:
1. Sample License Conditions to Incorporate 2007-4
2. Chronology of NRC Amendments
3. NRC Order EA-07-305 with enclosures

LICENSE CONDITION REQUIRING FINGERPRINTING FOR **NEW LICENSEES**

XX. The licensee shall comply with the requirements described in Order EA-07-305 (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 **[AS nomenclature]** 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 Agency **[AS nomenclature]** 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**
(Example 1)

XX. The licensee shall comply with the requirements described in Order EA-07-305 (the Order). The licensee shall complete implementation of said requirements by **[180 days, 2008]**. The licensee shall notify the **[AS nomenclature]** 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 Agency **[AS nomenclature]** 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**
(Example 2)

XX. The licensee shall comply with the requirements described in **[insert requirement]**, dated **[insert date of requirement]**, and the document (NRC Order EA-07-305 with attachments dated December 5, 2007) entitled "Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material." The requirements listed in the NRC Order shall be implemented as part of the trustworthiness and reliability program of the Increased Controls requirements.

- By [**insert date 90 days after the date of this license amendment**] of the effective date of this license condition, the licensee shall provide under oath or affirmation, a certification that the Trustworthiness and Reliability Official is deemed trustworthy and reliable by the licensee as required in paragraph B.2. of the U.S. Nuclear Regulatory Commission (NRC) Order EA-07-305, published in the Federal Register on December 13, 2007 [72 FR 70901].

- All fingerprints obtained by the licensee pursuant to this requirement must be submitted to the NRC for transmission to the U.S. Federal Bureau of Investigation (FBI). Additionally, the licensee's submission of fingerprints shall also be accompanied by a certification, under oath and affirmation, of the trustworthiness and reliability of the Trustworthiness and Reliability Official as required by paragraph B.2. of NRC Order EA-07-305.

- The licensee shall complete implementation of the fingerprinting requirements by **[insert date 180 days after the date of this license amendment]**. The licensee shall notify the Agency [**AS nomenclature]** when they have achieved full compliance with the requirements described in the NRC Order. The notification shall be made within **twenty-five (25) days** after full compliance has been achieved.

- The licensee shall notify the Agency **[AS nomenclature]** 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.

Chronology of NRC Amendments

NRC Chronology Identification	FR Notice Number (State Implementation Due Date)	RATS ID
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1
ASNT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2
Standards for Protection Against Radiation-Part 20	56 FR 23360; 56 FR 61352; 57 FR 38588; 57 FR 57877; 58 FR 67657; 59 FR 41641; 60 FR 20183; (1/1/94)	1991-3
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30,35	57 FR 45566; (none)	1992-2
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618; (none)	1994-1
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards - Part 40	59 FR 28220; (7/1/97)	1994-2
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3
Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use-Parts 30, 32, 35	59 FR 61767; 59 FR 65243; 60 FR 322; (1/1/98)	1995-1
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983; (3/1/98)	1995-3
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4

NRC Chronology Identification	FR Notice Number (State Implementation Due Date)	RATS ID
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724; (4/1/99)	1996-1
One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 70	61 FR 1109; (none)	1996-2
Termination or Transfer of Licensed Activities: Recordkeeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1
Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State-Part 150	62 FR 1662; (2/27/00)	1997-2
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations-Parts 30, 34, 71, 150	62 FR 28947; (6/27/00)	1997-5
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773; (2/12/01)	1998-1
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees-Parts 30, 40, 70	63 FR 29535; (none)	1998-2
License Term for Medical Use Licenses-Part 35	63 FR 31604; (none)	1998-3
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059; (7/9/01)	1998-4
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20	63 FR 39477; 63 FR 45393; (10/26/01)	1998-5
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6

NRC Chronology Identification	FR Notice Number (State Implementation Due Date)	RATS ID
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1
Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31	64 FR 42269; (none)	1999-2
Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55524; (2/2/03)	1999-3
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1
Revision of the Skin Dose Limit-Part 20	67 FR 16298; (4/5/05)	2002-1
Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; (10/24/05)	2002-2
Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1
Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments – Part 71.	69 FR 3697; (10/01/07)	2004-1
Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1
Medical Use of Byproduct Material - Recognition of Specialty Boards - Part 35	70 FR 16336; (4/29/08)	2005-2
Increased Controls for Risk - Significant Radioactive Sources (NRC Order EA-05-090)	70 FR 72128 (12/01/05)	2005-3
Minor Amendments -Parts 20, 30,32, 35, 40, 70	71 FR 15005 (03/27/09)	2006-1
National Source Tracking System - Serialization Requirements Part 32 (with reference to Part 20 Appendix E)	71 FR 65685 (02/06/07)	2006-2

NRC Chronology Identification	FR Notice Number (State Implementation Due Date)	RATS ID
National Source Tracking System Part 20	71 FR 65685 (11/15/07 Cat I and 11/30/07 Cat II)	2006-3
Medical Use of Byproduct Material - Minor Corrections and Clarifications Parts 32 and 35	72 FR 45147, 54207 (10/29/10)	2007-1
Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements Parts – 30, 31, 32, and 150	72 FR 58473 (12/17/10)	2007-2
Requirements for Expanded Definition of Byproduct Material Parts – 20, 30, 31, 32, 33, 35, 61, and 150	72 FR 55864 (11/30/10)	2007-3
Order Imposing Fingerprinting Requirements and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material (Order EA-07-305)	72 FR 70901 (06/05/08)	2007-4

ENCLOSURE 3

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

December 5, 2007

EA-07-305

Holders of Material Licenses Authorized
To Possess Radioactive Material Quantities of Concern
As listed in Attachment 1 to Enclosure 1

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

You have previously received an Order (or applicable license condition) from the U.S. Nuclear Regulatory Commission (NRC or Commission) 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.

Section 652 of the Energy Policy Act of 2005 (EPAct), enacted on August 8, 2005, amended the fingerprinting requirements of the Atomic Energy Act (AEA). Specifically, the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and 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." Thus, the NRC is issuing the enclosed Order (Enclosure 1, with attachments) to expeditiously implement, in part, these additional requirements as enhancements to the existing trustworthiness and reliability requirements of the IC Order.

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 and complete their review of the FBI criminal history records for all individuals currently authorized unescorted access under the IC Order.

Licensees 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 to 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 quantities 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 Director, Office of Federal and State Materials and Environmental Management Programs, and should be addressed to the attention of Christian Einberg. Responses to the Order are acceptable electronically, by fax, or mail. Electronic submissions must be signed and sent as an attachment in ".pdf" format and should be sent to ICfigerprint@nrc.gov. Signed faxes should be sent to (301) 415-5955. For normal postal delivery, mail to:

Director, Office of Federal and State Materials and Environmental Management Programs
U.S. NRC
Washington, D.C., 20555-0001
ATTN: Christian Einberg, Mail Stop T8E24

For delivery services requiring a street address, mail to:

Director, Office of Federal and State Materials and Environmental Management Programs
U.S. NRC
Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738
ATTN: Christian Einberg, Mail Stop T8E24

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 T-6E46

Please include the docket number listed in Attachment 1 to the enclosed Order in all your correspondence with NRC. In addition, Licensee responses shall be marked as "Security-Related Information - Withhold Under 10 CFR 2.390."

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 Fingerprinting for Increased Controls Support at (301) 415-3340. You may also send questions to ICfingerprint@nrc.gov.

The enclosed Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

Charles L. Miller, Director
Office of Federal and State Materials
and Environmental Management Programs

Enclosures:
1. Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material
2. Procedures for Processing Fingerprint Checks
3. Guidance for Evaluating FBI Identification and Criminal History Records Check for Allowing Unescorted Access to Certain Radioactive Material
4. Questions and Answers with Regards to Fingerprinting and Criminal History Records Checks

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
LICENSEES AUTHORIZED TO	)	EA-07-305
POSSESS RADIOACTIVE MATERIAL	)	
QUANTITIES OF CONCERN	)	

ORDER IMPOSING FINGERPRINTING AND CRIMINAL HISTORY RECORDS CHECK REQUIREMENTS FOR UNESCORTED ACCESS TO CERTAIN RADIOACTIVE MATERIAL (EFFECTIVE IMMEDIATELY)

I

The Licensees identified in Attachment 1[1] to this Order hold licenses issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC or Commission), authorizing them to possess items containing radioactive materials in quantities of concern. These materials and the quantities of concern are identified in Attachment 2 to this Order. Section 652 of the Energy Policy Act of 2005 (EPAct), which became law on August 8, 2005, amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and 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." NRC has decided to implement this requirement, prior to the completion of a future rulemaking, which will implement these provisions of the EPAct, because a deliberate malevolent act by an individual with unescorted access to these radioactive materials has the potential to result in significant

[1] Attachment 1 contains sensitive information and will not be released to the public.

adverse impacts to the public health and safety. Individuals or classes of individual listed in 10 C.F.R. § 73.61 (72 Fed. Reg. 4945 (February 2, 2007)) are relieved from the fingerprinting and FBI identification and criminal history records check requirements of Section 149. Individuals listed in Attachment 3, Paragraph 3 have already satisfied the requirements of Section 149 of the AEA and therefore do not need to take additional action. Therefore, as set forth in this Order and in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for unescorted access to certain radioactive material.

II

Subsequent to the terrorist events of September 11, 2001, the NRC issued the Increased Controls (IC) Orders (EA-05-090)[2] to certain Licensees (IC Licensees, Licensees) who are authorized to possess radioactive material in quantities of concern. These Orders increased the Licensees' control over their sources in order to prevent unintended radiation exposure and malicious acts. One specific requirement imposed by the IC Orders required Licensees to conduct background checks to determine the trustworthiness and reliability of individuals needing unescorted access to radioactive materials. "Access" to these radioactive materials means that an individual could exercise some physical control over the material or devices containing the material. Prior to the enactment of the EPAct, the NRC did not have the authority, except in the case of power reactor Licensees, to require Licensees to submit fingerprints for FBI identification and criminal history records checks of individuals being considered for unescorted access to radioactive materials subject to NRC regulations. The Commission has determined that radioactive materials possessed by IC Licensees are considered of such significance to the public health and safety as to warrant fingerprinting and

[2] Subsequently, the IC Order requirements were imposed through license condition on new or amended NRC licenses authorizing the possession of radioactive materials in quantities of concern as identified in Attachment 2 to this Order.

FBI identification and criminal history records checks for such persons. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing the fingerprinting and FBI identification and criminal history records check requirements, as set forth in this Order, including those requirements identified in Attachment 3 to this Order on all IC Licensees identified in Attachment 1 to this Order, which are currently authorized to possess radioactive materials in quantities of concern. These requirements will remain in effect until the Commission determines otherwise.

In addition, pursuant to 10 CFR 2.202, because of the potentially significant adverse impacts associated with a deliberate malevolent act by an individual with unescorted access to radioactive materials quantities of concern, I find that the public health and safety require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 81, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Parts 30 and 33, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT ALL LICENSEES IDENTIFIED IN ATTACHMENT 1 TO THIS ORDER SHALL COMPLY WITH THE REQUIREMENTS OF THIS ORDER AS FOLLOWS:

A.

1. The Licensee shall, within **ninety (90) days** of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of Attachment 3 of this Order for individuals that require unescorted access to certain radioactive materials.

2. Within **ninety (90)** days of the date of this Order, the Licensee 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 Attachment 2) is deemed trustworthy and reliable by the Licensee as required in paragraph B.2 of this Order.

3. The Licensee shall, in writing, within **sixty (60) days** of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in this Order or in Attachment 3 to 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 the Licensee to be in violation of the provisions of any Commission regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

4. The Licensee shall complete implementation of the program established in accordance with paragraph A.1 of this Order by **June 2, 2008.** In addition to the notifications in paragraphs 2 and 3 above, the Licensee shall notify the Commission within **twenty-five (25) days** after they have achieved full compliance with the requirements described in Attachment 3 to this Order. If by **June 2, 2008**, the Licensee is unable, due to circumstances beyond its control, to complete implementation of this Order, the Licensee shall submit a written request to the Commission explaining the need for an extension of time to implement the requirements. The request shall provide the Licensee's justification for seeking more time to comply with the requirements of this Order.

5. Licensees shall notify the NRC's Headquarters Operations Office at 301-816-5100 within 24 hours if the results from a FBI identification and criminal history records

check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

B.

1. Except as provided in paragraph E for individuals who are currently approved for unescorted access, the Licensee shall grant access to radioactive material in Attachment 2 in accordance with the requirements of IC.1. of the Increased Controls Order (EA-05-090) 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 by the Licensee in accordance with the requirements of IC.1. of the Increased Controls Order (EA-05-090) 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 fingerprinting and the review of an FBI identification and criminal history records check as a component in approving a T&R Official.

C. Prior to requesting fingerprints from any individual, the Licensee shall provide a copy of this Order to that person.

D. Upon receipt of the results of FBI identification and criminal history records checks, the Licensee shall control such information as specified in the "Protection of Information" section of Attachment 3 of this Order and in requirement IC.5 of the Increased Controls Order (EA-05-090).

E. The Licensee shall make determinations on continued unescorted access for persons currently granted unescorted access, by **June 2, 2008,** based upon the results of the fingerprinting and FBI identification and criminal history records check. The Licensee 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 **June 2, 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 Licensee shall comply with; and to the extent the recipient of this Order is also the recipient of the Increased Controls Order (EA-05-090), paragraph IC 1.b is superceded 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 Licensee shall comply with; and to the extent the recipient of this Order is also the recipient of Increased Controls Order (EA-05-090), Paragraph IC 1.c of that prior Order is superceded 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 (EA-05-090), "Table 1: Radionuclides of Concern" is superceded by Attachment 2 to include Ra-226. The previous Increased Controls Order (EA-05-090) 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 Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Licensee responses shall be marked as "Security-Related Information - Withhold Under 10 CFR 2.390."

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within thirty (30) days of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within thirty (30) days of the date of the Order. Where good

cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The E-Filing Final Rule was issued on August 28, 2007, (72 Fed. Reg. 49,139). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at http://www.nrc.gov/site-help/e-submittals/install-

viewer.html. Information about applying for a digital ID certificate also is available on NRC's public website at http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at http://www.nrc.gov/site-help/e-submittals.html. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC website at http://www.nrc.gov/site-help/e-submittals.html or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 C.F.R. 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service

to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for

requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received.

AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated this 5th day of December, 2007.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Charles L. Miller, Director
Office of Federal and State Materials
and Environmental Management Programs

Attachments:
1. List of Applicable Materials Licensees
2. Table 1: Radionuclides of Concern
3. Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks

List of Applicable Materials Licensees

Redacted

Attachment 1

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] On August 31, 2005, the NRC issued a waiver, in accordance to Section 651(e) of the Energy Policy Act of 2005, for the continued use and/or regulatory authority of Naturally Occurring and Accelerator-Produced Material (NARM), which includes Ra-226. The NRC plans to terminate the waiver in phases, beginning November 30, 2007, and ending on August 7, 2009. The NRC has authority to regulate discrete sources of Ra-226, but has refrained from exercising that authority

until the date of an entity's waiver termination. For entities that possess Ra-226 in quantities of concern, this Order becomes effective upon waiver termination. For information on the schedule for an entity's waiver termination, please refer to the NARM Toolbox website at http://nrc-stp.ornl.gov/narmtoolbox.html.

Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks

The new fingerprinting requirements supplement previous requirements issued by the Increased Controls Order (EA-05-090).

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 2. 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 Free and Secure Trade Program[1]) 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

[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.

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 (EA-05-090), 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 2.
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 2.

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 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 NRC to determine compliance with the regulations and laws.
5. The Licensee shall retain all fingerprint and criminal history records from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or determination of unescorted access to certain radioactive material (whether unescorted access was approved or denied). After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, 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 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 (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[1]) 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.

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

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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.

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 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).

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 of the Increased Controls Order) 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 could be grounds for denial of unescorted access.

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

The Licensee's T&R Official is required to evaluate all available information in making a T&R determination for unescorted access to radioactive materials, including the criminal history records information pertaining to the individual as required by the NRC Order. The FBI identification and criminal history records check is used in the determination of whether the individual has a record of criminal activity that indicates that the individual should not have unescorted access to radioactive materials subject to 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 checks information involving an arrest more than 1 year old for which there is not information on the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

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

The FBI identification and criminal history records check is used to evaluate whether the individual has a record of criminal activity that may compromise his or her trustworthiness and reliability. Identification of a criminal history through the FBI criminal history records check does not automatically indicate unreliability or lack of trustworthiness of the employee. The licensee will have to judge the nature of the criminal activity, length of employment, and recency 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.

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

Questions and Answers with Regards to Fingerprinting and 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?**

   For NRC Licensees, the information on how to respond to the NRC Order requiring implementation of the fingerprinting requirements is contained in the Order itself. For Agreement States Licensee, the information on how to respond will be provided separately by each Agreement State licensing organization, based on the method chosen to execute legally binding requirements. 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 fingerprinting Order is considered sensitive information and should be marked appropriately with **"Withhold From Public Disclosure Under 10 CFR 2.390."**

   Agreement State licensee responses to the fingerprinting requirements should be marked in accordance with applicable Agreement State authority for withholding of sensitive security or proprietary information.

2. **Why is the NRC/Agreement State now requiring fingerprinting and criminal history records checks as part of the Increased Controls trustworthiness and reliability requirements?**

   The requirement for fingerprinting for unescorted access to radioactive materials quantities of concern was included in Section 652 of the Energy Policy Act of 2005. The NRC has determined that the requirement for fingerprinting should not wait for rulemaking and should be issued as Orders or legally binding requirements.

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

   If the NAC has been conducted within the past five calendar years and the employee can provide documentation of favorable results to the licensee's T&R Official, then this would satisfy the provisions of the Order.

4. **Can the Human Resources department be designated as the licensee's Trustworthiness and Reliability (T&R) Officials 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 T&R Official can be delegated to the Human Resources department or any other appropriate department as long as the individuals involved in the determining of an employee's trustworthiness and reliability have been

determined themselves to be trustworthy and reliable by the licensee. T&R Official shall only be fingerprinted if his/her duties require unescorted access to radioactive materials quantities of concern.

5. What is a Trustworthiness and Reliability (T&R) Official? Who can be a T&R Official?

A T&R Official is an individual who the licensee determines to be trustworthy and reliable, based on the three minimum requirements for background checks of the Increased Controls (i.e., employment history, education, and personal references). Fingerprinting and criminal history checks are only needed if the T&R Official has, or will have, unescorted access to radioactive material quantities of concern.

6. Can I take my own fingerprints or can someone else at my company fingerprint me?

Licensees cannot take their own employee fingerprints. Licensees must have their employee 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.

7. Can a notary act as a witness when I take my fingerprints?

No, fingerprints must be taken by local law enforcement (or a private entity authorized to take fingerprints).

8. Where can I have my fingerprints taken?

Most local law enforcement facilities can take your fingerprints.

9. 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) 415-5877, or by e-mail to forms@nrc.gov.

10. 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

11. 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.

12. How can I make sure that my fingerprints are classifiable (readable)?

There are instructions on the back of each fingerprint card on how to achieve classifiable fingerprints. Individuals that submit fingerprint cards that are not classifiable will have to submit new cards.

13. 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 T-6E46

14. Is there a fee associated with the NRC/Agreement States processing the fingerprints?

The current fee to process each fingerprint card is a $36.00 per card. Additional fees may be charged by the entity taking the fingerprints.

15. What method of payment does the NRC accept?

The NRC only accepts electronic payments through http://www.pay.gov. Please refer to the instructions on the Order for details on how to pay electronically.

16. My facility is currently not implementing the Increased Controls requirements because it does not possess radioactive materials quantities of concern. Can we implement the fingerprinting Order?

No. The requirements of Section 149 of the Atomic Energy Act only apply to facilities that have radioactive materials in quantities of concern, as identified by the Commission.

17. If I do not have the quantities of material in Table 1, in aggregate or individually, do I need to implement the requirements in this Order?

No. Implementation is only required if you possess radioactive material quantities of concern (i.e., at or above the thresholds of Table 1) individually or in aggregate. You may request that your license be amended to lower your possession limits below the Table 1 quantity so that requirements are not applicable. If you anticipate that you will exceed the Table 1 quantities, in aggregate or individually, you must implement the Increased Controls requirements (EA-05-090) and fingerprinting requirements prior to actual possession of the material.

18. When are licensees required to submit fingerprints to the NRC/Agreement States?

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 180 days after the Order is issued.

19. 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 T&R 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 Increased Controls.

20. Can employees continue to have unescorted access until they are approved or denied based on the results of their fingerprints?

During the implementation period (i.e., up to 180 days after the NRC Order is issued) employees who have unescorted access at the time the Order is issued may continue to have unescorted access in accordance with the requirements of the Increased Controls until they are fingerprinted and continued access is approved or denied based on the review of their FBI identification and criminal history record. After the expiration of the implementation period, no one may have unescorted access until they are fingerprinted and receive approval from the T&R Official based upon a review of their FBI identification and criminal history record.

21. 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 180-day 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 180-day implementation period and the appropriate compensatory actions that will be implemented until the fingerprints are processed.

22. Our radioactive material is in a room where several people have unescorted access, even though they do not work directly with the radioactive material (i.e. custodial staff), do they need to be fingerprinted?

Yes. Other personnel (both licensee and non-licensee) that have job duties that require unescorted access to the room where the materials are used or stored must be fingerprinted and determined to be trustworthy and reliable by the T&R Official based on the evaluation of the individual's criminal history record and the other trustworthiness and reliability requirements of the Increased Controls.

23. 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.

24. 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.

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

The NRC and Agreement States acknowledge 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.

26. At this time our Human Resources department make the trustworthy and reliability determination for unescorted access. Since they make this decision, do they need to be fingerprinted?

Only individuals that have unescorted access to radioactive materials quantities of concern are required to be fingerprinted. Therefore, individuals that make trustworthy and reliability determinations that do not have unescorted access do not need to be

fingerprinted. However, they are still required to be determined trustworthy and reliable per the requirements in the Increased Control Order (EA-05-090).

27. 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 with the Order. 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.

28. 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[1] 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.

[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.

29. 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 T&R determination.

30. 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 regulatory agency.

31. 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.

32. 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.

33. The Order requires that the licensee shall provide under oath or affirmation a certification that the T&R 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.