

FINGERPRINTING AND CRIMINAL BACKGROUND CHECK REQUIREMENTS FOR UNESCORTED ACCESS TO CERTAIN RADIOACTIVE MATERIAL

**ISSUED PURSUANT TO
NRC ORDER EA-07-305**

by:

N.C. RADIOACTIVE MATERIALS BRANCH

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INTRODUCTION

The agency is providing this document to certain licensees who are currently complying with the provisions of the Increased Controls (The "ICs"), which were instituted *en masse* in North Carolina in October, 2005. Our implementation of this program was in response to an Order issued by the U.S. Nuclear Regulatory Commission (NRC) to their licensees and to the Agreement States. At that time, the NRC had determined that additional requirements needed to be implemented to supplement existing regulatory requirements in 10 CFR § 20.1801 - .1802 (rules similar to 15A NCAC 11 .1622). The increased controls are a matter of compatibility with NRC and must be implemented in a time frame desired by the NRC and with essentially identical content to those being used by NRC for its licensees.

The implementation for these new requirements is no different. The NRC issued an order to their licensees effective December 5, 2007 and to the North Carolina (and all other Agreement States) on January 10, 2008. Our implementation of the requirements for fingerprinting and criminal background checks will be done in a time frame desired by the NRC and with essentially identical content.

The information contained in this document has been derived from the NRC Order (EA-07-305). The agency has taken every effort to ensure that all regulatory and statutory references are accurate and that the information reflects not only the spirit of the NRC order, but also the high standards of the existing Increased Controls program in North Carolina.

This document is referenced in the condition placed on your license and should be kept available for reference at all times. The information is available on our website <[click here](#)> as both a single document (this current format) and in individual document files (for Q&A, implementing guidance, etc.). The agency is also moving more towards a web-based implementation of certain aspects of our program. You will be asked to provide e-mail address(es) to our agency as a part of this process. This document and all other documents we create related to the ICs will be posted on our website.

We now have access to list-serv capabilities so that notifications can be completed efficiently and expediently. You will be receiving notifications from the "list" when new documents are posted to the "TOOLBOX" or when announcements are made.

As we move forward with the implementation of these additional security measures, one thing remains constant – CHANGE. We have seen change in how the "ICs" are interpreted by the NRC and the Agreement States, how inspections are required to be conducted, etc. The Radioactive Materials Branch will strive to maintain contact with all licensees subject to these ICs and alert you to the inevitable changes that will occur.

SECTION I – Radionuclides and Quantities of Concern & Guidance For Aggregation of Sources

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-226⁵	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 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 , $A(i,n)$, to the quantity of concern for radionuclide n , $Q(n)$, listed for that radionuclide exceeds one. $[(\text{aggregated source activity for radionuclide A}) \div (\text{quantity of concern for radionuclide A})] + [(\text{aggregated source activity for radionuclide B}) \div (\text{quantity of concern for radionuclide B})] + \text{etc.} \dots \geq 1$

⁵ On August 1, 2005, the NRC issued a waiver, in accordance with 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 07, 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>

Section I – Radionuclides and Quantities of Concern and Guidance on Aggregation...

Use the following method to determine which sources of radioactive material require increased controls (ICs):

- Include any single source larger than the quantity of concern in Table 1
- Include multiple co-located sources of the same radionuclide when the combined quantity exceeds the quantity of concern
- For combinations of radionuclides, include multiple co-located sources of different radionuclides when the aggregate quantities satisfy the following unity rule: $[(\text{amount of radionuclide A}) \div (\text{quantity of concern of radionuclide A})] + [(\text{amount of radionuclide B}) \div (\text{quantity of concern of radionuclide B})] + \text{etc.} \dots \geq 1$

Guidance for Aggregation of Sources

NRC supports the use of the IAEA's source categorization methodology as defined in TECDOC-1344, "Categorization of Radioactive Sources, (July 2003) (see http://www-pub.iaea.org/MTCD/publications/PDF/te_1344_web.pdf) and as endorsed by the agency's Code of Conduct for the Safety and Security of Radioactive Sources, January 2004 (see <http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004.pdf>). The Code defines a three-tiered source categorization scheme. Category 1 corresponds to the largest source strength (greater than 100 times the quantity of concern values listed in Table 1.) and Category 3, the smallest (equal or exceeding one-tenth the quantity of concern values listed in Table 1.). Increased controls apply to sources that are greater than the quantity of concern values listed in Table 1, plus aggregations of smaller sources that add up to greater than the quantities in Table 1. Aggregation only applies to sources that are collocated.

Licensees who possess sources in total quantities that exceed the Table 1 quantities are required to implement increased controls. Where there are many small (less than the quantity of concern values) collocated sources whose total aggregate activity equals or exceeds the Table 1 values, licensees are to implement increased controls.

Some source handling or storage activities may cover several buildings, or several locations within specific buildings. The question then becomes: When are sources considered co-located for purposes of aggregation? For purposes of the additional controls, sources are considered co-located if breaching a single barrier (e.g., a locked door at the entrance to a storage room) would allow access to the sources. Sources behind an outer barrier should be aggregated separately from those behind an inner barrier (e.g., a locked source safe inside the locked storage room). However, if both barriers are simultaneously open, then all sources within these two barriers are considered to be collocated. This logic should be continued for other barriers within or behind the inner barrier.

Section I – Radionuclides and Quantities of Concern and Guidance on Aggregation...

The following example illustrates the point: A lockable room has sources stored in it. Inside the lockable room, there are two shielded safes with additional sources in them. Inventories are as follows:

The room has the following sources outside the safes:

Cf-252,	0.12 Tbq	(3.2 Ci)
Co-60,	0.18 TBq	(4.9 Ci)
Pu-238,	0.3 Tbq	(8.1 Ci).

Application of the unity rule yields:

$$(0.12 \div 0.2) + (0.18 \div 0.3) + (0.3 \div 0.6) = 0.6 + 0.6 + 0.5 = 1.7.$$

Therefore, the sources would require increased controls.

Shielded safe #1 has a 1.9 Tbq (51 Ci) Cs-137 source and a 0.8 Tbq (22 Ci) Am-241 source. In this case, the sources would require increased controls, regardless of location, because they each exceed the quantities in Table 1.

Shielded safe #2 has two Ir-192 sources, each having an activity of 0.3 Tbq (8.1 Ci). In this case, the sources would not require increased controls while locked in the safe. The combined activity does not exceed the threshold quantity of 0.8 TBq (22 Ci)

Because certain barriers may cease to exist during source handling operations (e.g., a storage location may be unlocked during periods of active source usage), licensees should, to the extent practicable, consider two modes of source usage – “operations” (active source usage) and “shutdown” (source storage mode). Whichever mode results in the greatest inventory (considering barrier status) would require increased controls for each location.

SECTION II - FINGERPRINTING AND CRIMINAL HISTORY RECORDS CHECK REQUIREMENTS FOR UNESCORTED ACCESS TO CERTAIN RADIOACTIVE MATERIAL

(Excerpted from NRC Order EA-07-305)

- A.
1. The Licensee shall, within **ninety (90) days** of the date of Agency letter dated March 20, 2008, establish and maintain a fingerprinting program that meets the requirements of SECTION III of this document for individuals that require unescorted access to certain radioactive materials.
 2. Within **ninety (90) days** of the Agency letter dated March 20, 2008, 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 "Table 1: Radionuclides of Concern") is deemed trustworthy and reliable by the Licensee as required in paragraph B.2 below.
 3. Within **sixty (60) days** of the date of Agency letter dated March 20, 2008, the Licensee shall, in writing, notify the Agency, (1) if it is unable to comply with any of the requirements described in this Section or in SECTION III of this document, (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 Agency 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 above by **September 22, 2008**. In addition to the notifications in paragraphs 2 and 3 above, the Licensee shall notify the Agency within **twenty-five (25) days** after they have achieved full compliance with the requirements described in SECTION III of this document. If by **September 22, 2008**, the Licensee is unable, due to circumstances beyond its control, to complete implementation of Agency letter dated March 20, 2008, the Licensee shall submit a written request to the Agency 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 Agency letter dated March 20, 2008.
 5. Licensees shall notify the Agency at (919) 571-4141 (Monday – Friday, 08:00 a.m. – 5:00 p.m. or via Emergency Management at (919) 733-3943 or (800) 858-0368 at all other times) 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 "Table 1: Radionuclides of Concern" in accordance with the requirements of IC.1. of the Increased Controls [SECTION VII of this document] and the requirements of Agency letter dated March 20, 2008.
 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 [SECTION VII of this document] 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.

Section II – Fingerprinting and Criminal History Records Check Requirements...("The Fingerprinting Order")

- C. Prior to requesting fingerprints from any individual, the Licensee shall provide a copy of Agency letter dated March 20, 2008 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" subsection of SECTION III of this document and in requirement IC.5 of the Increased Controls [SECTION VII of this document].
- E. The Licensee shall make determinations on continued unescorted access for persons currently granted unescorted access, by **September 22, 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 existing IC procedures to continue to have unescorted access, pending a decision by the T&R Official. After **September 22, 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 Agency letter dated March 20, 2008 is also the recipient of the Increased Controls [SECTION VII of this document], paragraph IC 1.b is superseded by the following:

"For individuals employed by the licensee for three years or less, and for non-licensee personnel, such as physicians, physicists, house-keeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, personal references, and fingerprinting and the review of an FBI identification and criminal history records check. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e. seeking references not supplied by the individual). For individuals employed by the licensee for longer than three 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 Agency letter dated March 20, 2008 is also the recipient of Increased Controls [SECTION VII of this document], Paragraph IC 1.c of that [prior Order] is superseded by, the following:

"Service provider licensee employees shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation. Written verification attesting to or certifying the person's trustworthiness and reliability shall be obtained from the licensee providing the service."
 - 3. For Licensees who have previously received the Increased Controls [SECTION VII of this document], "Table 1: Radionuclides of Concern" is superseded by SECTION I of this document, to include Ra-226. The previous Increased Controls [SECTION VII of this document] will, therefore, also apply to Ra-226 as noted in [SECTION I of this document].

Licensee responses to A.1, A.2., A.3. and A.4., above shall be submitted to **IC Coordinator, Radioactive Materials Branch, 1645 Mail Service Center, Raleigh, NC 27699-1645**. Licensee responses shall be marked as *"Withhold from Public Disclosure Under N.C.G.S. 104E-9(a)(4)"*

The Radiation Protection Section, Radioactive Materials Branch, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

Section II – Fingerprinting and Criminal History Records Check Requirements...(“The Fingerprinting Order”)

Pursuant to 15A NCAC 11 .0108, Licensees shall return the completed form “Certification of Compliance” to the agency no later than the date referenced in “Part I” of the form. As provided by N.C. General Statutes §150B, you have an opportunity to request a hearing to contest this action. Any licensee or other party affected by this Order may file a request for a contested case hearing within sixty (60) days of the date of the Order. Your request must be in the form of a written petition, conforming to Chapter 150B of the North Carolina General Statutes. An original and one copy of the form prescribed by N.C. General Statutes §150-23, must be filed with:

The Office of Administrative Hearings
6714 Mail Service Center
Raleigh, North Carolina 27699-6714

A copy of the petition must also be served on the Department as follows:

Mary Penny Thompson
Registered Agent and General Counsel
Department of Environment and Natural Resources
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

SECTION III - SPECIFIC REQUIREMENTS PERTAINING TO FINGER-PRINTING AND CRIMINAL HISTORY RECORDS CHECKS

The new fingerprinting requirements supplement previous requirements issued by the agency regarding "Increased Controls" (The "IC") issued October, 2005.

Licensees currently have a program to grant unescorted access to individuals. As required by condition A.1 of the IC, 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 Table 1. The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) identification and criminal history records check and ensure that the provisions contained in the Agency document entitled "Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material" 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" portion of this Section (see below).
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 Program¹) 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 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.

¹The 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.

²This 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.

Section III – Specific Requirements Pertaining to Fingerprinting...

4. All fingerprints obtained by the Licensee pursuant to agency document entitled “Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material” 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 Section II of this document.
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 (SECTION VII of this document), 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 SECTION I of this document.
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 SECTION I of this document.

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

Section III – Specific Requirements Pertaining to Fingerprinting...

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

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.

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.

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.

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.

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.

SECTION IV - PROCEDURES FOR PROCESSING FINGERPRINT CHECKS

For the purpose of complying with "The Fingerprinting 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 Program³) 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 documentation⁴). Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.

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

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

³The 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.

⁴This 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.

Section IV – Procedures for Processing Fingerprint Checks

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](http://www.pay.gov) and someone from [Pay.gov](http://www.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).

SECTION V - 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 Question and Answer (Q&A) #22 at the following either the agency's "[IC Toolbox](#)" web page or <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:

Section V –Guidance for Evaluating FBI Identification and Criminal History Records Checks...

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.

Section V –Guidance for Evaluating FBI Identification and Criminal History Records Checks...

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 N.C. Radioactive Materials Branch at (919) 571-4141 (Monday – Friday 8:00 a.m. – 5:00 p.m.) or the N.C. Division of Emergency Management Operations Center [(919) 733-3943 or (800) 858-0368] (after 5:00 p.m. weekdays and on weekends) 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.

SECTION VI - QUESTIONS AND ANSWERS (Q&A) WITH REGARDS TO FINGERPRINTING AND CRIMINAL HISTORY RECORDS CHECKS (INCLUDING SUPPLEMENTAL Q&A)

Modified for N.C Licensees

Version 04/16/2008

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Section VI – Questions and Answers...(Including Supplemental Q&A)

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 N.C.G.S. 104E-9(a)(4)"*.

2. Why is the Agency 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.

NOTE: 6., 7., and 8., have been Superseded by Supplemental Q&A S3

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 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?

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 license is amended.

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.

Section VI – Questions and Answers...(Including Supplemental Q&A)

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 license is amended) 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 Agency (in consultation with 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 Program⁵ 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 documentation⁶). 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.

⁵ 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.

⁶ 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 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 re-evaluation period?

At the moment there is no reevaluation period. The re-evaluation of criminal history records will be addressed during the NRC’s (and ultimately North Carolina’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 or Agency 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.

S1. What is the process for appointing a Trustworthiness and Reliability (T&R) Official if they require unescorted access to radioactive materials?

[Section II](#), Paragraph A.2 of Agency document “Fingerprinting and Criminal Background Check Requirements for Unescorted Access to Certain Radioactive Material” states:

“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.”

Paragraph B.2 states in part:

“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.”

The Licensee must also consider the three minimum requirements of the Increased Controls (i.e. employment history, education and, personal references) in approving a T&R official.

Procedure for appointing a T&R Official who requires unescorted access to radioactive material:

- Step 1:** The Licensee should submit one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) for the individual nominated to be the T&R Official and who requires unescorted access to radioactive materials.
- Step 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.
- Step 3:** Include the name and address of the individual to whom the nominated T&R Official’s criminal history records should be returned for review. The results and information should be reviewed by someone other than the nominated T&R Official and should be the individual who will be submitting the certification under oath and affirmation. The reviewer would preferably be the same person who initially approved the T&R Official for the original Increased Controls requirements, but may be the custodian or initiator of the license.
- Step 4:** Once the NRC receives the FBI identification and criminal history records check results, it will forward the results to the individual identified in Step 3.
- Step 5:** Once the Licensee receives the information, they should consider the results of the fingerprinting along with the trustworthiness and reliability requirements of IC. 1. of the Increased Controls Order (EA-05-090 or applicable license condition) in determining the trustworthiness and reliability of the T&R Official.
- Step 6:** If the nominated T&R Official is deemed trustworthy and reliable by the licensee, the licensee must submit to the NRC, under oath or affirmation, a certification that the named T&R Official is deemed trustworthy and reliable as required by Order EA-07-305.

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

Section VI – Questions and Answers...(Including Supplemental Q&A)

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 un-sworn declaration satisfy the requirement that such documents be submitted under oath or affirmation.

The initial certification must be submitted to the NRC within ninety (90) days of the date of the Agency letter dated March 20, 2008 via one of the acceptable methods specified in the letter. Certifications should be addressed to: I.C. Coordinator, Radioactive Materials Branch, 1645 MSC, Raleigh, NC 27699-1645.

In addition, a copy of this certification must be submitted with all subsequent fingerprints submitted to the NRC. Additionally, each time a new T&R Official is appointed, a new certification must be provided with the next submittal to the Agency.

S2. Can additional employees (e.g., new hires or existing employees changing positions within the company who did NOT have unescorted access prior to the date of the Order) be granted unescorted access to radioactive materials quantities of concern prior to the establishment of a fingerprinting program and certification that the Trustworthiness and Reliability Official is deemed trustworthy and reliable?

No. Prior to being granted unescorted access to material, all additional employees the licensee identifies after the Agency letter dated March 20, 2008 as requiring unescorted access, must be determined to be trustworthy and reliable based upon the requirements of the Increased Controls and the review of their FBI identification and criminal history records. The license condition also requires that within 90 days of the date of the Order that licensees establish a fingerprinting program and provide under oath or affirmation a certification that the Trustworthiness and Reliability Official (T&R Official) is deemed trustworthy and reliable by the licensee.

Only after the T&R Official has been certified to be trustworthy and reliable, can the T&R Official make trustworthiness and reliability determinations for any employee who requires unescorted access after the issuance of the Agency letter of March 20, 2008. Each submittal of fingerprints to the NRC must be accompanied with a copy of this certification. See [question 33](#) and [supplemental question S1](#) for guidance on appointing and certifying a Trustworthiness and Reliability Official.

****This Q&A (S3) supersedes Q&As 6, 7, and 8 above****

S3. Who can perform the task of fingerprinting for my employees?

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

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

- 1) Be trained to take fingerprints (*Training to take fingerprints is offered through the FBI, or may be available from local law enforcement agencies and some professional associations.*);
- 2) Verify the identity of the individual being fingerprinted by checking a government-issued picture identification (*e.g. a passport or driver's license*) and that the name on the card matches the government issued identification.
- 3) Sign the block on the fingerprint card labeled "SIGNATURE OF OFFICIAL TAKING THE FINGERPRINTS."

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

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

For additional related information, also see Q&A [9](#), [10](#), [11](#), [Section III](#) "Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks" and [Section IV](#) "Procedures for Processing Fingerprint Checks," of Agency document entitled "Fingerprinting and Criminal Background Check Requirements for Unescorted Access to Certain Radioactive Material".

****This Q&A (S3) supersedes Q&As 6, 7, and 8 above****

S4. How is the initial trustworthiness and reliability (T&R) determination and certification made (based on fingerprints and a criminal history record check) if the individual to be designated as the T&R official is also the license custodian, initiator, or applicant, and has unescorted access?

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

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

Where the licensee or applicant requires unescorted access and intends to designate himself or herself as the T&R Official, the licensee or applicant should submit fingerprints to the NRC and indicate that the results of the criminal history record check be returned directly to him or her, specifying the appropriate address. Once the criminal history information has been received by the licensee or applicant, the results must be reviewed and filed by the licensee or applicant and made available to NRC inspectors for ensuring compliance with the fingerprinting requirements.

The licensee or applicant must then submit a letter to the NRC certifying under oath and affirmation that he or she is the initial T&R official for the license. The licensee or applicant can then make T&R determinations for other employees who require unescorted access subject to the fingerprinting

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requirements, or designate other T&R officials for the purpose of reviewing criminal history information.

A letter certifying a T&R official under oath and affirmation must accompany each additional submission of fingerprints to the NRC. This letter must specify the name(s) and address of the T&R official(s) who will review the criminal history information from the FBI for a given lot of fingerprints.

- S5. Must the certification for the Trustworthiness and Reliability (T&R) Official required by Section II, Paragraph A.2. of Agency document “Fingerprinting and Criminal Background Check Requirements for Unescorted Access to Certain Radioactive Material” specifically identify the T&R Official by name, or can it apply generically to the position within the company that is designated as the T&R Official (e.g., the Security Officer or a Human Resources position)?**

The certification that the T&R Official is deemed trustworthy and reliable must specifically identify the name or names of the individual(s) designated as the T&R Official(s). This applies to the initial certification required by [Section II](#), Paragraph A.2. as noted above and the certification provided with each fingerprint submission required by [Section III](#), Item 4. of the “Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks.”

If the licensee has designated multiple individuals to serve as the T&R Official, the licensee may either provide separate certifications for each T&R Official, or provide a single certification that identifies each of the T&R Officials by name.

The certification provided with each fingerprint submission need only identify the T&R Official to whom the licensee specifies the results should be returned (see [Section IV](#), Item 3 “Procedures for Processing Fingerprint Checks”). A copy of the initial certification is acceptable if it includes the name of the specified T&R Official. If the name of the T&R Official changes, a new certification must be prepared that includes the name of the new T&R Official and be provided the next time fingerprints are submitted.

- S6. When completing the fingerprint cards, NRC Licensees should use their NRC docket number in the field “YOUR NO. OCA.” Since Agreement State Licensees do not have NRC docket numbers, what should they use to complete the field?**

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

- S7. When making a payment to the NRC through Pay.gov for processing of fingerprints, Pay.gov requires a TCN. What is a TCN and what information should go in this field?**

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

- S8. Can I submit my fingerprints electronically to the NRC?**

Yes. Some Licensees may choose to make arrangement with the NRC to submit fingerprints electronically to the NRC. However, for many Licensees this option may be prohibitive, due to the cost associated with the purchase of electronic fingerprinting equipment. To establish an electronic fingerprinting program with the NRC, please contact NRC’s Facility Security Branch at 301-415-6511.

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Please note that electronic submission of fingerprints to the NRC must come directly from the Licensee.

S9. If I submit fingerprints electronically, how should I provide an electronic copy of the oath or affirmation that is required to accompany each submission?

Copies of oaths or affirmations can be submitted by fax to 301-415-5118 or by email sent to Doreen.Turner@nrc.gov with a “.pdf” format attached. Each submittal should indicate the names of the individuals for whom the oath or affirmation is being provided.

S10. What happens to the fingerprint cards after the NRC receives it from the Licensee?

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

S11. Does the initial Trustworthiness and Reliability Official certification go to the Agreement State for Licensees in Agreement States?

Yes. Agreement State Licensees will implement fingerprinting requirements in response to a State’s legally binding requirements, such as license conditions. The Agreement State Licensees must submit their initial Trustworthiness and Reliability Official certification to the State regulatory authority or licensing agency that imposed the requirements.

S12. How should large companies that are licensed in multiple jurisdictions respond to the fingerprinting requirements?

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

S13. Whom should I notify if the results from a FBI identification and criminal history records check indicate that an individual is identified on the FBI’s Terrorist Screening Database?

North Carolina licensees are required to notify the Radioactive Materials Branch (RMB) within 24 hours after discovery as noted in the table below:

TIME	PHONE NO(s)	Ask for...
Monday – Friday 8:00 am – 5:00 pm	(919) 571-4141	Radioactive Materials Branch Manager
After hours or weekends	(919) 733-3943 (800) 858-0368	Tell operator that you need to speak with a representative of the RMB. The operator will take your contact information and a RMB member will call you back

North Carolina licensees should **not** call the NRC Operations Center to report this information.

SECTION VII – INCREASED CONTROLS FOR LICENSEES THAT POSSESS SOURCES CONTAINING RADIOACTIVE MATERIAL QUANTITIES OF CONCERN *(as amended by NRC Order EA-07-305)*

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

- IC 1. In order to ensure the safe handling, use, and control of licensed material in use and in storage each licensee shall control access at all times to radioactive material quantities of concern and devices containing such radioactive material (devices), and limit access to such radioactive material and devices to only approved individuals who require access to perform their duties.
- a. The licensee shall allow only trustworthy and reliable individuals, approved in writing by the licensee, to have unescorted access to radioactive material quantities of concern and devices. The licensee shall approve for unescorted access only those individuals with job duties that require access to such radioactive material and devices. Personnel who require access to such radioactive material and devices to perform a job duty, but who are not approved by the licensee for unescorted access, must be escorted by an approved individual.
 - b. For individuals employed by the licensee for three years or less, and for non-licensee personnel, such as physicians, physicists, house-keeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, 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.
 - c. 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.
 - d. The licensee shall document the basis for concluding that there is reasonable assurance that an individual granted unescorted access is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of radioactive material quantities of concern. The licensee shall maintain a list of persons approved for unescorted access to such radioactive material and devices by the licensee.
- IC 2. In order to ensure the safe handling, use, and control of licensed material in use and in storage, each licensee shall have a documented program to monitor and immediately detect, assess, and respond to unauthorized access to radioactive material quantities of concern and devices. Enhanced monitoring shall be provided during periods of source delivery or shipment, where the delivery or shipment exceeds 100 times the Table 1 values.

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- IC 2. a. The licensee shall respond immediately to any actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices. The response shall include requesting assistance from a Local Law Enforcement Agency (LLEA).
- b. The licensee shall have a pre-arranged plan with LLEA for assistance in response to an actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices which is consistent in scope and timing with realistic potential vulnerability of the sources containing such radioactive material. The pre-arranged plan shall be updated when changes to the facility design or operation affect the potential vulnerability of the sources. Pre-arranged LLEA coordination is not required for temporary job sites.
- c. The licensee shall have a dependable means to transmit information between, and among, the various components used to detect and identify an unauthorized intrusion, to inform the assessor, and to summon the appropriate responder.
- d. After initiating appropriate response to any actual or attempted theft, sabotage, or diversion of radioactive material or of the devices, the licensee shall, as promptly as possible, notify the **N.C. RADIOACTIVE MATERIALS BRANCH at (919) 571-4141 during normal business hours or through the N.C. DIVISION OF EMERGENCY MANAGEMENT OPERATIONS CENTER at (800) 858-0368.**
- e. The licensee shall maintain documentation describing each instance of unauthorized access and any necessary corrective actions to prevent future instances of unauthorized access.

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

1. Use carriers which:
 - A. Use package-tracking systems,
 - B. Implement methods to assure trustworthiness and reliability of drivers,
 - C. Maintain constant control and/or surveillance during transit, and
 - D. Have the capability for immediate communication to summon appropriate response or assistance.

The licensee shall verify and document that the carrier employs the measures listed above.

2. Contact the recipient to coordinate the expected arrival time of the shipment;
3. Confirm receipt of the shipment; and
4. Initiate an investigation to determine the location of the licensed material if the shipment does not arrive on or about the expected arrival time. When, through the course of the investigation, it is determined the shipment has become lost, stolen, or missing, the licensee shall immediately notify the **N.C. RADIOACTIVE MATERIALS BRANCH at (919) 571-4141 during normal business hours or through the N.C. DIVISION OF EMERGENCY MANAGEMENT OPERATIONS CENTER at (800) 858-0368.**

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If, after 24 hours of investigating, the location of the material still cannot be determined, the radioactive material shall be deemed missing and the licensee shall immediately notify the NRC Operations Center or, for Agreement State licensees, the appropriate Agreement State regulatory agency.

- IC 3. b. For domestic highway and rail shipments, prior to shipping licensed radioactive material that exceeds 100 times the quantities in Table 1 per consignment, the licensee shall:
1. Notify the NRC[§], in writing, at least 90 days prior to the anticipated date of shipment. The NRC will issue the Order to implement the Additional Security Measures (ASMs) for the transportation of Radioactive Material Quantities of Concern (RAM QC). The licensee shall not ship this material until the ASMs for the transportation of RAM QC are implemented or the licensee is notified otherwise, in writing, by NRC.
 2. Once the licensee has implemented the ASMs for the transportation of RAM QC, the notification requirements of 3.b.1 shall not apply to future shipments of licensed radioactive material that exceed 100 times the Table 1 quantities. The licensee shall implement the ASMs for the transportation of RAM QC.
- c. If a licensee employs an M&D licensee to take possession of the licensed radioactive material and ship it under its M&D license, the requirements of 3.a. and 3.b above shall not apply.
- d. If the licensee is to receive radioactive material greater than or equal to the Table 1 quantities, per consignment, the licensee shall coordinate with the originating licensee to:
1. Establish an expected time of delivery; and
 2. Confirm receipt of transferred radioactive material. If the material is not received at the expected time of delivery, notify the originating licensee and assist in any investigation.
- IC 4. In order to ensure the safe handling, use, and control of licensed material in use and in storage each licensee that possesses mobile or portable devices containing radioactive material in quantities greater than or equal to Table 1 values, shall:
- a. For portable devices, have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.
 - b. For mobile devices:
 1. that are only moved outside of the facility (e.g., on a trailer), have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.
 2. that are only moved inside a facility, have a physical control that forms a tangible barrier to secure the material from unauthorized movement or removal when the device is not under direct control and constant surveillance by the licensee.

[§] Director, Office of Federal and State Materials and Environmental Management Programs
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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- IC 4. c. For devices in or on a vehicle or trailer, licensees shall also utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee.
- IC 5. The licensee shall retain documentation required by these increased controls for three years after they are no longer effective:
- a. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual’s employment ends.
 - b. Each time the licensee revises the list of approved persons required by 1.d., or the documented program required by 2, the licensee shall retain the previous documentation for three years after the revision.
 - c. The licensee shall retain documentation on each radioactive material carrier for three years after the licensee discontinues use of that particular carrier.
 - d. The licensee shall retain documentation on shipment coordination, notifications, and investigations for three years after the shipment or investigation is completed.
 - e. After the license is terminated or amended to reduce possession limits below the quantities of concern, the licensee shall retain all documentation required by these increased controls for three years.
- IC 6. Detailed information generated by the licensee that describes the physical protection of radioactive material quantities of concern, is sensitive information and shall be protected from unauthorized disclosure.
- a. The licensee shall control access to its physical protection information to those persons who have an established need to know the information, and are considered to be trustworthy and reliable.
 - b. The licensee shall develop, maintain and implement policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, its physical protection information for radioactive material covered by these requirements. The policies and procedures shall include the following:
 - 1. General performance requirement that each person who produces, receives, or acquires the licensee’s sensitive information, protect the information from unauthorized disclosure,
 - 2. Protection of sensitive information during use, storage, and transit,
 - 3. Preparation, identification or marking, and transmission,
 - 4. Access controls,
 - 5. Destruction of documents,
 - 6. Use of automatic data processing systems, and
 - 7. Removal from the licensee’s sensitive information category.