March 29, 2007

EA-06-236

Mr. David B. Edwards, Plant Manager
Honeywell International, Inc.
P. O. Box 430
Metropolis, IL 62960

SUBJECT: ISSUANCE OF ORDER IMPOSING FINGERPRINTING AND CRIMINAL HISTORY CHECK REQUIREMENTS FOR ACCESS TO SAFEGUARDS INFORMATION

Dear Mr. Edwards:

On August 18, 2004, the U.S. Nuclear Regulatory Commission (NRC) issued, to Honeywell International, Inc., an Order requiring that you implement Additional Security Measures (ASMs) for licensed materials. The required ASMs and your implementing procedures were designated as Safeguards Information (SGI).

Section 652 of the Energy Policy Act of 2005 (EPAct), enacted on August 8, 2005, amended the fingerprinting requirements of the Atomic Energy Act (AEA). Specifically, the EPAct, amended Section 149 of the AEA to require fingerprinting before anyone is given access to SGI. Section 149, as amended, also requires a Federal Bureau of Investigation (FBI) identification and criminal records history check based on the fingerprints. The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAct fingerprinting and criminal history check requirements for access to SGI were immediately effective on enactment of the EPAct. Although the EPAct permits the Commission, by rule, to except certain categories of individuals from the fingerprinting requirement, which the Commission has done [see 10 CFR 73.59, 71 *Federal Register* 33989 (June 13, 2006)], it is unlikely that licensee employees will be excepted from the fingerprinting requirement by the "fingerprinting relief" rule. Individuals relieved from fingerprinting and criminal history checks, under the relief rule include: Federal, State, and local officials and law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress and certain employees of members of Congress or Congressional Committees; and representatives of the International Atomic Energy Agency or certain foreign government organizations. In addition, the NRC has determined that individuals who have active federal security clearances, or who have had a favorably-decided U.S. Government criminal history check within the last five (5) years, have already been subjected to fingerprinting and criminal history checks, and thus have satisfied the EPAct fingerprinting requirement.

Therefore, the NRC is issuing an Order (see Enclosure 1) regarding fingerprinting and criminal history checks for individuals who seek access to SGI. Thus, before a licensee grants an individual access to SGI that is in the licensee's possession, the licensee must submit the fingerprints of the individual to the NRC for an FBI criminal history check. The results of the FBI criminal history check will be provided to the licensee and that information must be considered in conjunction with the information obtained in response to the trustworthiness and reliability determination requirements found in Attachment 2 to the Order (Enclosure 1), when making a determination of whether an individual, who has a need-to-know SGI, may be given access to SGI (see Attachment 1 to the Order and Enclosure 2).

In order to implement the enclosed Fingerprinting Order, licensees must nominate an individual who will review the results of the FBI criminal history check, in conjunction with the other relevant trustworthiness and reliability information, to make SGI access determinations. This individual, referred to as the "reviewing official," must be someone who has previously been granted access to SGI, and who seeks continued access to SGI. Based on the results of the FBI criminal history check, the NRC staff will determine whether this individual may continue to have access to SGI. If the NRC determines that the individual may not be granted access to SGI, the enclosed Order prohibits that individual from obtaining access to <u>any</u> SGI. The NRC process that will govern this determination, and the rights of the individual nominated to be the "reviewing official," are described in Enclosure 3. Once the NRC approves a reviewing official, that reviewing official, and only that reviewing official can make SGI access determinations for other licensee employees who have been fingerprinted and have had a criminal history check. The reviewing official can only make SGI access determinations for other individuals, but cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official; therefore, if a licensee wishes to have a new or additional reviewing official, the NRC must approve that individual before they can act in that capacity.

In the event that the individual nominated as the licensee's initial reviewing official is not approved by the NRC to have access to SGI, the individual may appeal this decision by following the procedures in Enclosure 3. The licensee may then nominate a different individual to be the reviewing official. If the licensee decides to withdraw the nomination of a reviewing official after submitting fingerprints to the FBI through the NRC, the NRC will still complete the review process for determining access to SGI. If the NRC denies this individual access to SGI, they may appeal the NRC's decision by following the procedures in Enclosure 3.

This Order does not obviate the need for licensees to continue to meet the requirements of previous Orders. These requirements, which will remain in effect until the Commission determines otherwise, supplement, but do not replace existing requirements concerning access to SGI.

Licensees are required to submit fingerprints in accordance with the enclosed Order. The current processing fee is $27.00 per submission, and payment must accompany the request. Details regarding fingerprint submittals and payment of fees are found in Attachment 1 to the Order.

In light of the EPAct, the Commission has concluded that these additional fingerprinting and FBI criminal history check requirements for access to SGI should be embodied in an Order, consistent with the established regulatory framework. The enclosed Order is effective immediately. These requirements will remain in effect until the Commission determines otherwise.

The enclosed Order requires that licensees respond to the Order within twenty (20) days of the date of the Order, and implement the requirements of the Order before providing access to SGI to any individual. Please contact Breeda Reilly at (301) 415-8103, or via email to BMR@nrc.gov, to facilitate resolution of any issues or questions related to compliance with the requirements of the enclosed Order.

Licensee responses to the Order (not fingerprint cards) must be submitted to the Director, Office of Nuclear Material Safety and Safeguards, and should be addressed to the attention of Breeda Reilly, Mail Stop T-8F42. The following mailing addresses should be used:

For normal postal delivery, mail to:

Director, Office of Nuclear Material Safety
and Safeguards
U. S. Nuclear Regulatory Commission
Washington, D.C., 20555-0001
Attn: Breeda Reilly, Mail Stop T-8F42

For delivery services requiring a street address, mail to:

Director, Office of Nuclear Material Safety
and Safeguards
U. S. Nuclear Regulatory Commission
Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738
Attn: Breeda Reilly, Mail Stop T-8F42

Please include the docket number listed below in all your correspondence to the NRC. In addition, licensee responses shall be marked as "Security-Related Information - Withhold Under 10 CFR 2.390." The enclosed Order has been forwarded to the Office of the *Federal Register* for publication.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at http://www.nrc.gov/reading-rm/adams.html (the Public Electronic Reading Room).

Sincerely,

/RA/

Michael F. Weber, Director
Office of Nuclear Material Safety
and Safeguards

Docket No.: 40-3392
License No.: SUB-526

Enclosures:
1. Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information
2. Guidance for Licensee's Evaluation of Access to Safeguards Information With the Inclusion of Criminal History (Fingerprint) Checks
3. Process to Challenge NRC Denials or Revocations of Access to Safeguards Information

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at http://www.nrc.gov/reading-rm/adams.html (the Public Electronic Reading Room).

Sincerely,

/RA/

Michael F. Weber, Director
Office of Nuclear Material Safety
and Safeguards

Docket No.: 40-3392
License No.: SUB-526

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