



NUCLEAR ENERGY INSTITUTE

**Felix M. Killar**  
SENIOR DIRECTOR  
FUEL SUPPLY/MATERIAL LICENSEES  
NUCLEAR GENERATION DIVISION

January 11, 2008

Mr. Brian W. Smith  
Chief, Enrichment and Conversion Branch  
Office of Nuclear Material Safety and Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

**Subject:** Proposed INFOSEC Orders for Licensees who Possess or Use Classified Technologies

**Project Number: 689**

Dear Mr. Smith:

The Nuclear Energy Institute (NEI)<sup>1</sup> would like to extend its appreciation to you, Tom Allen, Keith Everly, Alan Frazier, Marshall Kohen, and Douglas Hase for taking the time out of your busy schedule to meet with the industry and discuss the proposed INFOSEC Orders for licensees who possess or use classified technologies. The industry found the meeting to be very helpful and informative. It allowed the industry participants to further their understanding of the Nuclear Regulatory Commission's (NRC) concerns with the protection of the classified equipment and technology. We share the NRC's desire to ensure adequate protection of classified matter at licensee facilities and recognize the underlying benefit of the programmatic elements identified in the proposed Orders. In that regard, we accept your offer to meet with the industry again as the NRC moves closer to completing the preliminary work for the Orders. We believe that further discussions prior to NRC finalizing the Orders will help meet the mutual goal of developing a workable set of requirements that achieve the desired level of additional protection.

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<sup>1</sup> NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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Based on the information from the meeting, NEI would like to take this opportunity to provide some additional input. As discussed, the industry does not believe there exists any imminent need to issue the Orders to capture the additional programmatic elements that do not currently exist in 10CFR95. In fact, a number of the programmatic elements that are proposed for inclusion in the Orders have been discussed with licensees and in several cases have been already addressed in approved security plans. The industry is particularly concerned with the prescriptive nature of the proposed Orders. In general, they lack a performance basis that will allow licensees to implement protection strategies in the most cost effective manner, while addressing the perceived shortcoming in the existing regulations for classified matter protection. Moreover, due to the nature of the proposed Orders, there has not been and, with the issuance of Orders, there will not be a public opportunity to discuss whether the additional requirements are truly justified. In addition, the issuance of Orders circumvents the question of cost-benefit that is built into the rulemaking process. These comments are on industry wide issues. There are also individual comments on specific topics that are too detailed to include in this letter but have been previously submitted by licensees and should not be ignored.

NEI has the following comments on specific sections of the proposed Order:

The proposal for the government to review each facility and provide a government written and approved TEMPEST plan is not acceptable. First, the industry's limited experience with government reviews of technical security matters at licensee sites has resulted in unacceptable assessments. Unless the reviewer is very familiar with day-to-day operations, they can not provide a viable plan. Secondly, the industry believes it has the capability to prepare facility-specific plans which will meet the intent of TEMPEST as provided in the National Industrial Security Program Operating Manual (NISPOM). Moreover, licensees must have the ongoing capability to maintain compliance should conditions at the facility change, without the burden of reliance on a few trained TEMPEST practitioners within the government. The body of knowledge concerning TEMPEST requirements must be made available to appropriately cleared and trained licensee personnel. Consistent with other security plans, licensees would submit their proposed plan to meet TEMPEST requirements to NRC for review and approval. Should NRC have questions, the request for additional information process, which each licensee is very familiar with, would provide the avenue to address any necessary clarifications or additions. If the NRC does not believe that NISPOM is adequate, the industry would be interested in NRC's perspective on any identified short comings.

The industry commends the NRC for revising its position in the use of DOE Orders. DOE Orders do provide detailed guidance but should not be the only acceptable means of meeting any of the new requirements. Based on industry's experience, DOE Orders typically are not stand alone documents

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but rather have multiple references that bring additional requirements with them. For DOE contractors that must meet the DOE Orders, a contract is in place which establishes the specific Order requirements that are applicable. The contract also includes exclusion provisions for parts of the Order that may not be applicable. In the case of a licensee, the mechanism for excluding portions of a DOE Order that are unnecessary for achieving the desired level of protection would not be in place. Therefore, a blanket use of a DOE Order is not appropriate.

The industry commends the NRC for modifying its position on Classified Item Control. We believe it is a step in the right direction to give a licensee a choice of either providing for "Full Exit Search" or "Classified Item Control." However, we believe this can be further enhanced by making the requirements more performance-based, allowing the licensee to use a combination of protection strategies based on the physical layout of the facilities and the items being controlled. Item control is very practical when addressing equipment or subcomponents, while full exit search is practical where small items are more prevalent. Therefore, the industry requests the NRC consider "either or a combination" as applicable.

For TSCM, as proposed, the NRC will provide a list of acceptable contractors. The industry believes this approach is too restrictive. The NRC should provide the performance requirements of a TSCM contractor. This would allow for the licensee to perform the work itself, provided it can demonstrate it meets the performance requirements, or the licensee can seek competitive bids based on the performance specifications. This will provide a means of meeting the NRC's expectation and not limit licensee to compete for a small pool of contractors.

As discussed in the meeting, there are a number of issues with an armed response to alarms or to assist in investigation of compromise. The industry does not understand how this additional requirement for armed response improves the protection of classified technology. Only a very few of the many scenarios for response to information compromise would involve a need for the timely use of deadly force, creating uncertain liability and risk to licensees for minimal protective benefit. Rather than emphasizing and mandating an armed response, additional emphasis on and strengthening of licensee procedures for response to potential information compromise could be the desired objective. The NRC needs to clarify both the objectives and the expectations for the additional response requirements. Again, the basis for this perceived need should be further articulated, including the details of credible threat scenarios that would be used to derive response times, so that an appropriate performance-based strategy may be devised that meets the NRC's expectations.

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NEI does not have any issues with the goal the NRC is trying to achieve; in fact, we fully support the protection of classified matter, both from a commercial and national security standpoint. However, we don't believe, as proposed, the Orders will accomplish the intended goal the NRC has envisioned. We would be glad to continue discussions with the NRC at its convenience. Thank you again for meeting with the industry.

If you have any questions regarding these comments, please contact me at 202-739-8126; [fmk@nei.org](mailto:fmk@nei.org).

Sincerely,



Felix M. Killar, Jr.

c: Mr. Roy P. Zimmerman, Director, NSIR, NRC  
Mr. Michael F. Weber, Director, NMSS, NRC  
Mr. Keith J. Everly, Jr., Senior Program Manager (Licensees Security), NRC  
Mr. Alan L. Frazier, Team Leader, NRC  
Mr. Douglas W. Hase, Program Manager, NRC  
Mr. Marshall D. Kohen, U.S. Nuclear Regulatory Commission  
Mr. Tom R. Allen, U.S. Nuclear Regulatory Commission