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

OFFICE OF THE
GENERAL COUNSEL

March 29, 2005

MEMORANDUM TO: Irwin B. Rothschild
Assistant General Counsel for
Legal Counsel, Legislation and Special Projects

FROM: Karen D. Cyr *Karen D. Cyr*
General Counsel

SUBJECT: ESTABLISHMENT OF TASK FORCE TO CONSIDER FOIA
ISSUES RAISED BY REVIEW OF NATIONAL ACADEMY OF
SCIENCES STUDY

By a Staff Requirements Memorandum issued on March 22, 2005, the Commission directed that a Task Force with representatives from the Office of the General Counsel and the Executive Director for Operations (EDO) be established to review the application of Freedom of Information Act (FOIA) exemptions as part of the recent internal review of the National Academy of Sciences (NAS) report entitled, "Safety and Security of Commercial Spent Nuclear Fuel Storage" and to make recommendations to the Commission regarding future categorization of information that can be withheld from public disclosure under FOIA. The Commission has stated that its objective when categorizing information that could be withheld from public disclosure under a FOIA exemption is to ensure that NRC strikes the appropriate balance between making information publicly available and protecting information for homeland security reasons. The Commission has asked the staff to review previous application of the FOIA exemptions, applicable law and interpretations of the FOIA exemptions in light of the Commission's objective. The Commission also expressed a particular interest in the extent to which information can be withheld from public disclosure using current legal guidance in caselaw and from the Department of Justice under a compilation or mosaic approach applied either to Safeguards Information or sensitive unclassified information.

After consultation with the EDO's Office, I am appointing you as head of the Task Force. Using members of your staff as appropriate, and with the assistance of staff members designated by the Office of the EDO from the Office of Information Services, Information and Records Services Division, FOIA Privacy Team and the Office of Nuclear Security and Incident Response, Division of Nuclear Security, Information Security Section, the Task Force should develop a report for the Commission with recommendations for revising the standards for review of future reports developed for or by the NRC and the appropriate mechanism to ensure that, once approved by the Commission, the standards will be used by the staff in the categorization of information contained in future reports. The Task Force should pay particular attention to terminology and avoid misuse of the term "classified" to apply to information designated as Safeguards Information or Official Use Only. The standards finally approved by the Commission will be made publicly available to ensure the transparency of the staff's process for identifying information appropriately exempt from FOIA disclosure.

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The Task Force report is due to the Commission on May 20, 2005. Please develop a schedule for delivering a final report to the Commission which includes sufficient time for appropriate coordination and internal review.

cc: Luis A. Reyes, EDO
William Kane, OEDO
Roy Zimmerman, NSIR
Edward Baker, OIS
SECY