Announcement to all employees

Please direct all replies to Carol Ann Reed (CAR2)

Subject: Freedom of Information Act

The purpose of this announcement is to notify employees of two changes to NRC's FOIA procedures.

1. As a result of the change in administration, a new standard has been set for the defense of FOIA law suits by the Department of Justice.

   The new standard: Attorney General Ashcroft's October 2001 policy states that DOJ will defend decisions to withhold information unless the use of a FOIA exemption lacks a sound legal basis, both factually and legally, or presents an unwarranted risk of adverse impact on the ability of other agencies to protect other important records.

   Impact on NRC's FOIA process: "Forseeable harm statements" will no longer be required when office FOIA coordinators submit records to be withheld based on application of a FOIA exemption.

2. As a result of the events of September 11, 2001, the Commission is reviewing its policies on what constitutes sensitive security information. This review will have implications for what types of information should be withheld from public disclosure in ADAMS, on the Web, and in response to FOIA requests. The new criteria for withholding information have not yet been finalized.

   Impact on NRC's FOIA process: When reviewing records, the staff should apply the FOIA exemptions the same way they were applied in the past. If information is withholdable because it is unclassified safeguards information, follow the normal procedures for this type of information.

   If the staff locates records that they believe contain sensitive security information (but not unclassified safeguards information), they should list these records separately and provide a statement explaining the sensitivity of the information. If it is not apparent from the record itself, please note who originated the record (NRC or an outside entity) and whether it has previously been made publicly available. The office FOIA coordinator's response must indicate that a senior office manager agrees that the records contain sensitive security information and with the sensitivity statement accompanying the recommendation to withhold the records.