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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
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BRIEFING ON SENSITIVE UNCLASSIFIED
NON-SAFEGUARDS INFORMATION (SUNSI) POLICY

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THURSDAY,
FEBRUARY 2, 2006

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The Commission convened at 1:30 p.m., Nils J. Diaz, Chairman,
presiding.

- COMMISSIONERS PRESENT:
NILS J. DIAZ, Chairman
EDWARD MCGAFFIGAN JR., Commissioner
JEFFREY S. MERRIFIELD, Commissioner
GREGORY B. JACZKO, Commissioner
PETER B. LYONS, Commissioner

1 STAFF PRESENTERS:

2 LUIS A. REYES, EDO

3 JACQUELINE SILBER, DEDIA/CIO

4 EDWARD BAKER, Director, OIS

5 WILLIAM DEAN, AO/OEDO

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PROCEEDINGS

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CHAIRMAN DIAZ: Good afternoon. The Commission meets this afternoon to hear from the NRC staff on issues associated with its recently implemented policy on handling, marking, and protecting sensitive unclassified non-safeguards information. The purpose of this meeting is for the Commission to better understand the SUNSI task force process and recommendations, as well as issues associated with the recent implementation of the new SUNSI guidance.

I want to express the Commission's appreciation for the hard work of the task force in putting this complex matter together and getting to the point that we could be able to make some serious decisions on the subject.

This public meeting is conducted as part of our positions in conducting regulatory duties as much as possible in the open. We must also, however, prevent the inadvertent release of information that could harm public, commercial, financial, or personal privacy interest.

I look forward to our discussions on this issue today, unless my fellow Commissioners have any comments.

COMMISSIONER MCGAFFIGAN: Mr. Chairman, I'm happy to have this meeting. I want to commend Commissioner Jaczko, he's the one who originally converted this paper from an information paper to a voting paper. We're still voting, and it's not that we haven't voted, but we're voting on some version of the SRM, and I guess the purpose of this meeting is to help us figure out how to vote on that.

I believe that this is SUNSI I, whatever it is, and there will

1 be a SUNSI II, and there probably will be a SUNSI III, and I'm a little
2 concerned, given the thrust of where the SRM stands at the moment, that
3 the staff has been implementing something that isn't exactly what the
4 Commission wants.

5 But that's what the purpose of the meeting is presumably,
6 to talk about all of that.

7 CHAIRMAN DIAZ: Thank you. Commissioner Merrifield.

8 COMMISSIONER MERRIFIELD: Mr. Chairman, I agree.
9 I'm glad we're having an opportunity to meet here today. As you know, this
10 is a meeting I requested because of my own efforts to try to sort out what
11 the staff intends and where the Commission ought to go relative to these
12 SUNSI issues.

13 This is an important issue and the issue that we deal with
14 here is really a sense of balance. In our Strategic Plan, we have an
15 element related to openness, which is clearly a critical component of what
16 we have tried to do at this agency for a long, long time.

17 Balanced against that obviously is the need to protect
18 information that shouldn't otherwise get into the public, and how we craft
19 that, how we set safeguards in place and the guidance in place for our staff
20 to do the right thing, balancing both of those two issues, is important. I
21 think the dialogue that we can have with the staff today in this open
22 meeting is important to helping us accomplish that.

23 And obviously there are some portions of that which we
24 will be hearing from in the non-public portion of this meeting where we can
25 go perhaps a little bit further into depth in terms of the internal issues we'll

1 have to grapple with, but I think that this is a timely meeting. I'm certainly
2 looking forward to having this help me inform my vote going forward.

3 CHAIRMAN DIAZ: Thank you.

4 Commissioner Jaczko.

5 COMMISSIONER JACZKO: Thank you.

6 I just wanted to make a few brief comments. I do
7 appreciate Commissioner Merrifield suggesting that we have this meeting.
8 I think it's a good opportunity to talk about some of these things which
9 we've been discussing among the Commissioners in terms of how we're
10 dealing with the paper that's before us.

11 I think the staff has certainly done a good job to get it to
12 this point, to try and sort out what I think ultimately is a very complicated
13 and important process now. I think the entire Federal government is
14 engaged in looking at how we deal with information and meeting the kind
15 of double goals of protecting information where it's appropriate and
16 providing information where it's appropriate to the public to make them
17 aware of our regulatory activities.

18 I do think unfortunately some of this may be perhaps a bit
19 of an administrative bandage to what is ultimately, I think, a legislative
20 wound, and that some of these problems can ultimately be better solved
21 if we had greater statutory clarity or guidance from Congress in terms of
22 protecting information that in the past is not necessarily information that
23 has been protected for security reasons or other types of reasons.

24 So I think that what we have before us is, as I said, I think
25 a way to try and deal with some of those issues, and I look forward to

1 hearing from the staff about their thoughts and how we move forward.

2 CHAIRMAN DIAZ: Thank you.

3 Commissioner Lyons.

4 COMMISSIONER LYONS: I would just add to the
5 comments that my fellow Commissioners have already made. I appreciate
6 Commissioner Merrifield's request for this meeting, and I look forward to
7 this meeting in helping me also evaluate my response on the SRM.

8 We're dealing with an important subject. Openness is
9 critical to the Commission, as is appropriately protecting some types of
10 information. I look forward to the meeting.

11 CHAIRMAN DIAZ: Thank you.

12 Mr. Reyes.

13 MR. REYES: Mr. Chairman and Commissioners, it is,
14 indeed, my pleasure to be here this afternoon to brief the Commission on
15 the staff's actions regarding sensitive unclassified non-safeguards
16 information.

17 Before we start our presentation, I just want to make some
18 brief comments. I just want to reflect on the fact that this government
19 agency compared to others has a very small number of Freedom of
20 Information Act requests. One of the reasons is we have a large amount
21 of information available readily electronically to the public.

22 So we provide a lot of information that's readily available,
23 and we can see it in that we receive compared to other government
24 agencies a very small number of requests formally as a consequence of
25 how much information available the average U.S. citizen does not have to

1 go through the Freedom of Information Act processing to get the
2 information.

3 For those that we get, we respond in a very timely fashion.
4 We are among the best in terms of government agencies, in terms of
5 turnaround responding to Freedom of Information Act requests.

6 So it is our desire to continue to be a very open agency,
7 to provide all information that's needed and remain open in terms of the
8 American public. We do have a responsibility to also protect sensitive
9 information, and to that effect we put some effort together and
10 recommended to the Commission some actions.

11 I'm going to turn over the meeting to Jackie to start the
12 presentation for this afternoon.

13 Jackie.

14 MS. SILBER: Thank you, Luis.

15 Can we get the first slide, please?

16 Thank you, Chairman and Commissioners, for the
17 opportunity to address the issue of sensitive unclassified information with
18 you, or as we now refer to it, SUNSI.

19 In our presentation today, I'll be providing you some
20 background on what motivated the staff to reexamine our processes for
21 handling SUNSI.

22 Ed Baker will then be sharing with you some information
23 about the processes followed both by the first task force which developed
24 recommendations for modifications to our guidance, and then the task
25 force that worked on implementing those ideas.

1 And finally, Bill Dean will discuss some of the challenges
2 that we're seeing as we move forward, the lessons we're already learning.

3 Before I move to the next slide, I'd like to acknowledge
4 both task force members, many of whom are present here today and some
5 of whom are sitting right here behind me. They made a real contribution
6 in helping us to move forward, and we really appreciate the work that they
7 did.

8 If I could have Slide 3.

9 In looking at the motivation or what led us to reexamine
10 how we were approaching SUNSI, what I'd like to do is just give you some
11 context into that.

12 Over time, the EDO's office and the staff had recognized,
13 particularly in a number of reviews we did to look at root causes for the
14 inadvertent release of information. What we found was there were
15 common themes particularly that we were hearing from the staff, and these
16 included that a large share of our documents were being marked "official
17 use only."

18 So one issue that we wanted to address is, is there too
19 much, are these the appropriate things to be so marked.

20 There was inconsistent treatment in document markings,
21 and one of the things we heard from the staff was that guidance in many
22 cases was either not clear or was disparate. So there were office
23 procedures. There was a management directive and staff was looking for
24 some clearer guidance on how to proceed with that.

25 What also we were made aware of is that in reality we

1 were performing what I would describe as inappropriate predetermination
2 of Freedom of Information Act reviews in order to determine as we were
3 preparing a document to become an official record how that document
4 should be handled in terms of release.

5 And finally, with the post 9/11 emphasis on security
6 information, one of the things that we were hearing was that it might be the
7 right time to have clearer roles and responsibilities for the handling of
8 safeguards and classified information as compared with SUNSI
9 information.

10 In December of 2003, the Assistant for Operations, Bill
11 Dean's position, and the CIO co-sponsored leadership for the EDO the
12 establishment of a task force to address the issue of managing sensitive
13 unclassified information. What we asked the task force to do was to limit
14 its focus to the management and handling of sensitive unclassified
15 information and also asked them to use a consensus approach to come up
16 with a set of recommendations for the EDO's consideration.

17 And that group delivered a set of recommendations for us,
18 well thought out, took opportunities throughout their process to start to
19 make information available on the Web to staff, so that even before there
20 was any change in the guidance there was more information for the staff
21 so they could make a better informed decision as they classified
22 documents.

23 The goal of the task force was to simplify the classifying,
24 the handling, and the marking of SUNSI, and it was with that goal in mind
25 that the task force provided us their recommendations.

1 I'm going to hand it over to Ed, and he's going to share
2 with you a little more information about what came out of the work of each
3 of the task forces.

4 MR. BAKER: Thank you.

5 Slide 4, please.

6 The sensitive unclassified information task force had a
7 scope to cover all internally and externally generated categories of
8 sensitive unclassified information except safeguards. So they weren't
9 dealing with safeguards.

10 And as Jackie said, the objective was to analyze current
11 population of sensitive unclassified information, develop recommendations
12 to improve and simplify the management of that information.

13 In terms of the findings of that task group, they found we
14 handled 21 different categories of sensitive unclassified information. From
15 that you can gather why this was considered a root cause for some of the
16 inadvertent disclosures. And, again, as Jackie said, the existing guidance
17 is scattered and incomplete.

18 Slide 6, please.

19 Handling requirements, for externally generated sensitive
20 unclassified information have evolved through work processes. By that I
21 mean groups working with information developed processes that weren't
22 necessarily documented outside the group.

23 This evolving policy was causing confusion with the staff.

24 Slide 7.

25 Contrary to agency requirements, nonsupervisory staff

1 was designating information as OOU, and the official policy was that that
2 was a supervisory responsibility, being informed by the staff, but it was a
3 supervisory decision, and that information was not being properly or
4 consistently marked.

5 Slide 8.

6 The procedures for handling sensitive unclassified
7 information in an electronic environment were lacking or not easily
8 acceptable. That was one of their findings.

9 COMMISSIONER MERRIFIELD: Just a quick question.
10 Did we look outside the agency as well? Was the task force tasked with
11 the task of -- there's no other way of phrasing it -- to see how other
12 agencies and departments were dealing with this issue?

13 MS. SILBER: They talked with other agencies. Yes.

14 COMMISSIONER MERRIFIELD: Okay.

15 MR. BAKER: Then moving on to the recommendations
16 from those findings on page 9, the first recommendation was to separate
17 the guidance for safeguards from the guidance for SUNSI. This had all
18 been in some management directive prior to that.

19 To link protections from marking and handling
20 requirements to the risk of harm that is reasonably foreseeable if the
21 information was disclosed.

22 As we had said previously, they did reduce the number of
23 categories of sensitive unclassified information from 21 down to seven,
24 and you have the seven there: allegation information, investigation,
25 proprietary, Privacy Act information, security related, which was a new

1 category mainly coming out of the sensitive information screening project
2 review, sensitive internal information which includes pre-decisional, and
3 then externally generated where other agencies are setting the
4 requirements, but it's requirements for sensitive unclassified information.

5 So they did reduce and simplify the process.

6 Slide 11.

7 The recommendation was to adopt the policies that
8 document marking is normally sufficient. This is with a header and footer
9 versus a cover page.

10 However, because of the sensitivity of allegation
11 information and investigatory information, both the IG and for the Office of
12 Investigations, they determined they would keep cover sheets for those.
13 That was a general consensus, although I wouldn't say it was a unanimous
14 decision within the group, but that was the general consensus to move in
15 that direction.

16 MS. SILBER: And one of the things I would add on this
17 is that we're dealing at this point with much more availability of technology
18 that could help us do the marking as opposed to what was available at the
19 time that we originally took cover sheets as the right approach

20 MR. BAKER: By that you could create templates that
21 were easily imported into documents that had the proper headers and
22 footers on a page basis, whereas before what you would have is a cover
23 sheet and pages would not necessarily be marked.

24 And I've already covered Slide 12 which said there were
25 exceptions for allegations and investigation information.

1 Page 13, it was also recommended that we stop linking
2 the use of cover pages to the FOIA exemptions, and that we develop a
3 table, which is on our Website, that presents the 11 major areas of
4 handling requirements. So it has very visible, easily followed process for
5 marking and handling, and as I said, that's been posed on our internal Web
6 Page.

7 COMMISSIONER MERRIFIELD: Can you just explain in
8 a little bit more detail and clarify what you mean by stopping the linking and
9 the use of cover sheets with FOIA exemptions? What does that
10 effectuate?

11 MR. BAKER: The previous guidance, you would actually
12 have on the back of the cover sheets a description of the exemptions
13 under which they could be withheld for FOIA. When you go through the
14 sensitive information, sensitive unclassified non-safeguards information,
15 in particular, when you think about it in terms of the security related
16 sensitive information, as you know from the discussions we've had from
17 SISF, that information may end up having to be disclosed under a FOIA
18 request.

19 So we would not have an exemption, but we would not be
20 voluntarily disclosing that information. So you've got that category of
21 information where in our operations we consider it sensitive. We're not
22 going to voluntarily disclose that information. You can't make a link in some
23 cases to a FOIA exemption, whereas that had been the practice in the
24 cover sheet on the back side where it is discussed, the FOIA exemptions
25 that could be applied. I wouldn't necessarily say they were always

1 appropriate, but those were the ones that could be applied.

2 COMMISSIONER MERRIFIELD: So previously every time
3 you had a document that was classified as sensitive, it was also a FOIA
4 screen that had occurred at the same time.

5 MR. BAKER: That was the point that Jackie made, and
6 the process before, while not called out in procedure, by the fact that you
7 had those on the back of the cover page and in the interim process that we
8 had where, in fact, there was a little block where you filled out what
9 exemption would you pick, the staff was going through that process.

10 MR. BURNS: Could I offer a thought on that? I think one
11 of the things that that did is probably at least as a touchstone: is this really
12 something that if you had a FOIA request for would be exemption eligible?

13 The other thing is the significance in terms when you
14 actually get the FOIA request, whether or not it's exempt from disclosure
15 is really a determination that's made then by the officials assigned that
16 responsibility within the agency, and in terms of what our legal arguments
17 are, they're really determined at that point in time.

18 And so I think some of what I recall seeing, and
19 particularly I'll come back to an example, in the security area is
20 designations at that time which might not necessarily be accurate because
21 they're not undergoing legal review at that time.

22 The other thing I's say in the security area, post 9/11 the
23 Attorney General in issuing, reissuing or reaffirming FOIA policy also made
24 the point that one of the exemptions in Exemption 2 was something that
25 the Justice Department was much more interested in terms of using as a

1 basis for exemption, and this is in Exemption 2, the high 2, and that's been
2 a developing thing, and also when we look at security information, it
3 becomes a much more complicated thing than just safeguards, and
4 particularly when you're below the safeguards level.

5 So I think that's one of the things that's also fed into that.

6 MR. BAKER: The other thing I would add to that, and I
7 have to be careful because the staff was not actually doing a FOIA review
8 because that would have meant they would have had to mark things that
9 would be subject to OGC review or could be withheld and what we would
10 not consider sensitive and would release, and we weren't going to that
11 extent.

12 But we were, in fact, going through the mental process
13 that if this was requested, what would it fit under.

14 COMMISSIONER JACZKO: Mr. Chairman, let me just a
15 very brief thought. Did every document that was marked OOU have a box
16 that had a FOIA exemption on it or was it an option for the office not to
17 have it?

18 MR. BAKER: For an interim period of time, the answer is
19 yes. And I can't give you that time. I'd have to go back and look at when
20 we started and when we stopped. It stopped after we finished the SISF
21 reviews and the SUNSI guidance came out.

22 There was a period of time where, in fact, we weren't
23 doing that. It was not -- off the top of my head, it was on the order of a
24 couple years, not longer than that, my recollection.

25 COMMISSIONER JACZKO: Okay.

1 MR. BAKER: Continuing with the recommendations, it
2 was recommended that the agency have a policy on providing SUNSI to
3 external government bodies and associated handling requirements, and
4 again, as you know, we went through fairly extensive discussion on the
5 sensitive information screening project, and what we would do is security
6 related information.

7 They also recommended that we develop procedures for
8 handling SUNSI in an electronic environment and that we develop
9 guidance implementing EDO approved recommendations of the sensitive
10 unclassified information task force.

11 That then became the subject of the second task force,
12 and I apologize. I'm now up to Slide 16. I'm sorry. Slide 15.

13 The SUNSI implementation task force charter was to
14 develop the guidance for implementing the EDO approved
15 recommendations of the sensitive unclassified information task force. So
16 they were then to move forward in doing the guidance of implementing
17 those. And I'll have Jackie confirm this, but I think they adopted all but one
18 of the recommendations, I believe.

19 MS. SILBER: Right. The EDO, after his review, adopted
20 all except for one recommendation, and that recommendation was to leave
21 as an option using cover sheets, and the advice from the committee was
22 that although that was reached in consensus, they felt that to really gain
23 the kind of efficiency they believed we could with this process, it was
24 important to start to change the culture and use the electronic approach of
25 marking the headers and footers.

1 COMMISSIONER MCGAFFIGAN: Could I just ask was
2 there any thought given -- was this early, mid-last year? Was there any
3 thought given to consulting with the Commission at that point as to whether
4 you were on the right track?

5 MS. SILBER: Well, actually if I'm remembering correctly,
6 it was about 2003 that we actually got the report.

7 MR. DEAN: No, no. The task force started their work in
8 2003. This would have been about a mid-2004 time frame where this
9 issue came up.

10 MS. SILBER: Okay.

11 COMMISSIONER MCGAFFIGAN: So the second task
12 force begins its work in mid-2004.

13 MS. SILBER: Correct.

14 COMMISSIONER MCGAFFIGAN: And the product comes
15 to the Commission.

16 MR. DEAN: Not, it wasn't until near the end of 2004 that
17 we formed the implementation task force.

18 COMMISSIONER MCGAFFIGAN: And the product comes
19 to the Commission in early November of 2004 with an implementation date
20 of December.

21 MR. BAKER: 2005.

22 COMMISSIONER MCGAFFIGAN: 2005.

23 MR. BURNS: They submitted on May 18th, 2005, SECY-
24 05-0091 Task Force Report on Public Disclosure of Security Related
25 Information.

1 COMMISSIONER MCGAFFIGAN: But they didn't tell us
2 what they were going to do with it.

3 MR. BURNS: Well, it says to obtain Commission
4 approval. I don't have the SRM with me.

5 COMMISSIONER MCGAFFIGAN: SECY 05?

6 MR. BURNS: Zero, five, zero, zero, nine, one.

7 MR. BAKER: Steve, I think that's the result of the SISp
8 group that's going forward. Yeah, yeah.

9 One point I would make, Commissioner, is that when you
10 look at what was in 12.6 and 12.5, aside from the issue of cover sheets,
11 very little changed other than consolidation and a simplification.

12 COMMISSIONER MCGAFFIGAN: Maybe
13 oversimplification.

14 MR. BAKER: What's that?

15 COMMISSIONER MCGAFFIGAN: It could possibly be an
16 oversimplification.

17 MR. BAKER: Well, I guess that's what we will discuss.

18 COMMISSIONER MERRIFIELD: Yeah, I mean, there's
19 different views on that.

20 COMMISSIONER MCGAFFIGAN: We're having an open
21 meeting. We might as well outline our views.

22 COMMISSIONER MERRIFIELD: Right. I mean, I happen
23 to be on the opposite end of the perspective. I thought that they made
24 good recommendations in terms of getting rid of a lot of the cover sheets.

25 MS. SILBER: But in answer to your question, we really

1 viewed this more in terms of the mechanics of pre-existing policy. When
2 we look back at the current version of 12.6, which has not been updated
3 as yet to reflect this, which was issued in 1998, the underlying policy in our
4 view really did not change. It was the mechanics of how do you manage,
5 as I said, the markings and what you do with those documents once
6 they're marked.

7 So that was the thinking that gave us, in our view, the
8 comfort level to move forward.

9 MR. BAKER: Since I'm on the clock and running down in
10 time, I'm going to quickly go through the key changes. I think you're aware
11 of most of those. Starting on page 17, as I said, we reduced the number
12 of categories from 23 to seven; eliminated the cover sheets as I discussed,
13 except for two categories.

14 Slide 18.

15 We required the marking of headers and footers of each
16 page for SUNSI including the subcategory; eliminated the link to the FOIA
17 exemption --

18 COMMISSIONER MCGAFFIGAN: Do you really do that
19 for the Privacy Act? You have headers and footers on Privacy -- I
20 understood I raised an issue with the EDO recently about a document that
21 I thought was Privacy Act that wasn't marked, and the answer came back
22 from Mr. Dean that Privacy Act stuff doesn't have to be marked because
23 it otherwise, since all of our Social Security numbers and all of that, it
24 would just tie up the financial system in knots. So they don't bother to
25 mark anything that's Privacy Act.

1 MR. DEAN: The SUNSI guidance provides an option. It
2 doesn't require that it be marked if it's Privacy Act information. It gives you
3 an option currently. The guidance gives you an option of marking it as
4 sensitive Privacy Act information.

5 COMMISSIONER MCGAFFIGAN: Which gets to the
6 issue if you're not marking it, you know. I can understand the financial
7 people not wanting to get tied up in knots about marking every one of our
8 pay slips or whatever, but in that particular case when you sort of go
9 outside that world and provide information about the employment status of
10 somebody or whatever this memo is about, there's always the possibility
11 that a person will mistakenly -- I mean the whole point you said earlier of
12 this stuff, somebody will mistakenly disclose it. McGaffigan will hand it out
13 at the corner of Marinelli and Rockville Pike because he doesn't know. He
14 doesn't know, you know, the inner workings of all this stuff.

15 But Privacy Act information, I have an existence proof
16 because there's a memo that was sent to the Commission and I was told
17 it was Privacy Act information, but it didn't have to be marked, didn't have
18 to be marked.

19 MR. BAKER: In any fashion or wasn't marked as SUNSI?

20 COMMISSIONER MCGAFFIGAN: Wasn't marked as
21 anything, unmarked.

22 MR. REYES: That is an opinion.

23 COMMISSIONER MCGAFFIGAN: But you had better
24 make sure all 3,250 employees of the institution understand that, that
25 there's Privacy Act information floating around that isn't marked, and if they

1 think something might be Privacy Act, they had better check. Because in
2 this particular case, I don't know that everybody who received that
3 information would have known that it was Privacy Act protected.

4 MS. SILBER: We'll take that away to make sure the
5 guidance is clear.

6 MR. BAKER: Continuing with the key changes, clarifying
7 that the most restrictive requirements apply if more than one category
8 applies.

9 It reemphasized that the need to know information applies
10 before it is shared. It clarified that portion markings are not required, and
11 it also clarified that encryption was required when SUNSI was transmitted
12 electronically.

13 Even that is discussed in 12.6, where it says that sensitive
14 information needs to be transmitted over protected systems. So even
15 though, although it didn't specifically say encryption, when you went further
16 and you looked at the definition of protected systems, it would include
17 encryption if it was not otherwise protected.

18 COMMISSIONER MCGAFFIGAN: Could I just have a
19 clarifying question?

20 How did that get past the lawyers and the people who
21 have to deal with external agencies on a daily basis?

22 MR. BAKER: You must ask OGC that question because
23 they were on the task force.

24 COMMISSIONER MCGAFFIGAN: Because I think the
25 Commission is going to tell you that's unimplementable, and therefore, you

1 know, shouldn't have been.

2 MS. SILBER: In answer to that let me say what I can
3 share with you is the process. We have had all of the key offices as part
4 of the task force, including OGC, and other offices, and I mentioned earlier
5 the lessons we're learning. We are now seeing some challenges in that.
6 We were just going to turn over to Bill Dean who's going to talk about our
7 challenges, and encryption is one of them.

8 And I think stating my view, I firmly believe that encryption
9 is the right answer. I think we need to be reexamining how quickly we
10 move on that and when we move on that. And Billy was going to discuss
11 that.

12 CHAIRMAN DIAZ: I'd rather go ahead and finish.

13 MS. SILBER: Yes.

14 CHAIRMAN DIAZ: And then the Commission will proceed.

15 MR. DEAN: Thank you, Commissioners.

16 I just want to reiterate one thing that Jackie mentioned and
17 the fact that the two task forces, I think, did a great service to this agency
18 in taking what we felt was a morass of inconsistent and not collected in
19 one place guidance and making some sense of it.

20 And I think they achieved the goal that Commissioner
21 Merrifield noted in terms of achieving an appropriate sense of balance in
22 terms of protecting information while still facilitating the exchange and
23 transfer of that information.

24 However, despite their best efforts, it's not unexpected that
25 in an area that is as complex as this that we would have some

1 implementation issues, and the Commission has certainly helped point out
2 some of these, and we also have received feedback from a number of the
3 staff about some implementation issues.

4 So as Commissioner McGaffigan noted, there will be a
5 SUNSI II. This is really an extension of Management Directive 12.6, which
6 there are several versions of that.

7 So clearly, we always learn from utilization of guidance,
8 and we will have the opportunity to fix implementation issues as we go
9 along.

10 The issue we were just talking about in terms of
11 encryption, clearly that is a challenge. I think maybe we found ourselves
12 on the cutting edge government-wide in terms of trying to utilize encryption
13 for transmission of this information electronically, and our efforts have
14 found that perhaps the rest of the government is not quite ready to receive
15 that.

16 I think the only government agency that we're aware of,
17 and there may be some others, that has a significant encryption policy and
18 utilizes encryption is the Department of Treasury. There may be some
19 others, but we know that organization, indeed, does utilize encryption of
20 sensitive information that they send outside their organization and expect
21 people they send it to to be able to receive that information.

22 On December 16th, the President issued a memorandum
23 talking about standardization government wide on the protection of
24 sensitive but unclassified information, but he called SBU information, which
25 is akin to our SUNSI.

1 And clearly one of the points that he made in that
2 guidance or in that letter was that we need to have or that there is a lack
3 of government-wide encryption policy, and so that was identified in that
4 letter as being something that needs to be looked at.

5 So, we believe as Jackie noted, that perhaps we need to
6 take a second look right now because the rest of the government is not
7 quite ready to receive encrypted messages from us, and that perhaps this
8 government wide policy that will be developed relative to SBU will provide
9 us some insights and some direction in how to go forward on that.

10 So we look forward to the guidance that's going to
11 emanate hopefully from the White House in the near future relative to this
12 SBU policy.

13 And that pretty much addresses the first two bullets on
14 that page, the fact that there's no government-wide policy, and we have
15 found that using our tool, which is Secure Zip for encrypting is not a tool
16 that can be accepted by some agencies, that it gets blocked by firewalls,
17 and so obviously there's some technological issues that have to be worked
18 out.

19 The last bullet on the slide talks about issues related to
20 compliance with guidance on the disposal of hard copies of documents,
21 and I want to reiterate the point that Jackie made about Management
22 Directive 12.6.

23 This was the guidance that was in Management Directive
24 12.6. This is not new guidance that you dispose of properly, information
25 that's marked back then as OUO and now would be SUNSI.

1 And so what I think is that what might be happening in
2 some parts of the organization is that a refocus on this guidance has
3 probably brought to light some practices that should have been engaged
4 in all along that perhaps over the passage of time and the last version of
5 Management Directive 12.6, perhaps we have fallen into some practices
6 that aren't correct.

7 So that is something that has emanated from the staff in
8 terms of some organizations having issues with that.

9 So that pretty much covers, I think, some of the key
10 challenges that we're facing. Obviously there's other ones, and other than
11 that I'll turn it back to Luis and Jackie.

12 MR. REYES: That completes the prepared remarks of the
13 staff. We're available for questions.

14 CHAIRMAN DIAZ: All right. Well, thank you.

15 Obviously this is an issue that is not only ongoing, but it
16 will be ongoing for some time.

17 Commissioner Jaczko.

18 COMMISSIONER JACZKO: I just had one quick question
19 in the beginning. I don't need an answer for now, but if you could perhaps
20 provide it because it's kind of a numbers question. Do you have a handle
21 on how many documents were marked "official use only" prior to
22 September 11th and then post September 11th?

23 If you could just get that back to me, I don't need an
24 answer today. I guess later there would be SUNSI or whatever the
25 appropriate designation would be.

1 One of the issues that was important for me as I looked
2 through the SUNSI proposal is how we deal with information in the future
3 or information that has currently been marked SUNSI and how that gets
4 dealt with in the future.

5 I understand classified information, national security
6 information, when that information is marked or classified, it is required to
7 have a review date or, I think, an automatic release date. Either one of
8 those two things needs to be implemented.

9 Does the staff have an approach right now for how this
10 information, in particular, the security related information, how that is going
11 to be reviewed or whether it should be reviewed to insure that an
12 appropriate day in the future it can be made available?

13 MR. BAKER: Commissioner, that was addressed in the
14 sensitive information screening project, and the Commission's decision on
15 that topic was that we would not voluntarily release sensitive security
16 related information without a Freedom of Information Act request. That
17 was the Commission's decision on both the paper that came up from NRR
18 on reactor related information, and that was the position that came up on
19 the materials related paper.

20 Now, following a request --

21 COMMISSIONER JACZKO: That applied to all SISF
22 information?

23 MR. BAKER: Sensitive security related information.

24 COMMISSIONER JACZKO: Okay. That was in the SISF
25 decision?

1 MR. BAKER: Yes, it was in the SRM that came out on the
2 SISP effort. I keep trying to move the people away from that because that
3 was a review. The information is, in fact, security related, sensitive,
4 sensitive security related information that fits under SUNSI. The SISP
5 acronym was just the project to do the review.

6 COMMISSIONER JACZKO: Okay. I mean certainly, I
7 mean, I appreciate that, and it's certainly something that I think would be
8 helpful to take a look at. I think that there's a class of information certainly
9 that perhaps at least needs to be reviewed on a periodic basis.

10 I don't know what that periodicity is that's appropriate. In
11 particular, we have other classes of information that came out of the
12 SUNSI review, one of which is the so-called sensitive internal information,
13 which is one, again, where there's a little bit of clarity that could be applied
14 to that category to help better insure that we're making that right
15 determination about what gets marked and what doesn't.

16 Again, this is a class of information that I also think falls
17 into this category or needing to have a look at for review for potential
18 further demarcation for whatever we might want to call it for some
19 documents.

20 And one of the things I wanted to ask on that under this
21 sensitive internal information, one of the goals of the SUNSI task force as
22 I understand was to provide greater consistency and clarity. Under this
23 sensitive internal information, one of the examples that was in there
24 providing guidance to the staff was this is information that should be --
25 information in this category is information sent to the Commission marked

1 sensitive, and I kind of looked at that and it almost seemed to be a little bit
2 of a circular argument there about what is sensitive information.

3 Maybe you could just give me a little bit of an explanation
4 of what was intended by that and what kind of information that's intended
5 to capture in that one category.

6 MS. SILBER: I can try, and I'd have to go back and look
7 at the wording. Not looking at it, I wouldn't argue with you that our choice
8 of words may have created that, but our experience has shown that there
9 are documents that go to the Commission that really are internal for their
10 information, for decision-making, that really could create some concern
11 about how it would be used if released.

12 However, it does not fall clearly into the other categories.
13 And in any of these things, there is a judgment being made by the
14 originator, particularly their supervisor, about how some things would be
15 handled, but traditionally we have seen things where in our view it's
16 entirely appropriate that the Commission would agree they wouldn't want
17 it released, and it's just to broaden their information, provide them with
18 background, and that is what that designation is intended to do.

19 MR. BAKER: Just to add an amplification to that, part of
20 what you see in that is while this Commission is a particular five
21 individuals, the staff through experience with a number of Commissions
22 and feedback from those Commissions has a collective judgment in terms
23 of what kinds of things the Commission has said we'd like to keep that
24 internal, and that is what Jackie is talking about in terms of what the staff
25 is applying.

1 Certainly, this body can make a different decision.

2 COMMISSIONER JACZKO: Certainly one of the
3 frustrations I think we found or certainly that I've found in dealing with
4 some of this is often information comes up perhaps in that category, and
5 it's often information that gets, I think, confused in the pre-decisional
6 moniker, which means it's sensitive until the Commission acts on it.

7 And one of the things that was very important for me in
8 this whole process is that somehow we identify what that information is so
9 that once the Commission acts on it, we don't have to go through a
10 process of getting it released, but that the intention was for it to be
11 released once the Commission acts, then it gets released, and I think that
12 that issue with some of the sensitive information has fallen into that
13 category.

14 I think my time is up.

15 CHAIRMAN DIAZ: You have two extra minutes.

16 COMMISSIONER JACZKO: Oh, okay. So that is certainly
17 one that I think, again, if the intent here is to provide greater guidance and
18 clarity to the staff, it's certainly one of the things I think the Commission will
19 intend to do to help provide better guidance in that category so that it's
20 clear what the intention is there.

21 Another area, and again, you brought this up, I think,
22 we've had a lot of, I think, activities that have gone on in this area. We had
23 the SUI task force originally and then we had the SUNSI task force. We
24 also had the SISP review process that was going on, and then we also had
25 a third task force or fourth, I guess, that dealt specifically with some of the

1 issues involved with some documents from the National Academy of
2 Sciences and how the process we went through to review those.

3 So we had a task force to review some markings and how
4 we were applying certain criteria in that case. I'm wondering if you can tell
5 me how all of those things fit into this process.

6 There's one other thing that came out of some of those
7 reviews that had to do with how we're dealing with the issue of the inner
8 relationship between FOIA and kind of the expectation that something
9 might have a FOIA exemption versus not having a FOIA exemption.

10 And so I'm wondering if you can explain to me how all of
11 those task forces in their various conclusions kind of fed into where we've
12 gone on SUNSI, if there was any real nexus.

13 MR. BAKER: I can tell you in my view I think they're
14 consistent because as we went forward with the SISP review and then we
15 had the group that looked at -- particularly from OGC -- who looked at the
16 National Academy of Science, in my view the decisions that were made
17 and what went into or what came out of the sensitive information, the
18 SUNSI implementation task group, I think are consistent throughout that.

19 Those papers were available and the group was made
20 aware of those as we went forward. So my reaction to your question is
21 that I think they're consistent.

22 COMMISSIONER JACZKO: Okay. Thank you.

23 CHAIRMAN DIAZ: Thank you.

24 Commissioner Lyons.

25 COMMISSIONER LYONS: If I look back to some of my

1 experiences before here and back to Los Alamos and involvement with
2 DOE programs, I remember how terribly confusing it was to staff as more
3 and more different categories of unclassified information were invented,
4 and I guess just as a general feeling for me at least, I hope we can keep
5 the number of categories to an absolute minimum and try to minimize, if
6 you will, the number of different "gotcha" ways in which staff can misapply
7 rules. I worry as the rules become more complex and as the number of
8 categories grow.

9 Another comment would be that I very much appreciate
10 Commissioner Jaczko's pointing out the sunseting issue, and I don't
11 pretend to know what the answer might be on trying to come up with
12 sunset provisions on certain classes of SUNSI documents. From my own
13 standpoint I'd be very interested in staff proposals as to how to both come
14 up with a credible sunseting policy, and there may be categories that don't
15 have a sunset date, but at least have a policy that spells out how we will
16 handle sunseting and hopefully how we can do it with the absolute
17 minimum of staff effort.

18 If we get into a situation where staff is going back and re-
19 re-reviewing every document on a periodic basis, I can well imagine that
20 we're building sort of a nightmare. I don't want to do that, but I do think
21 that it's important that we look at ways to build sunseting capabilities into
22 this.

23 By way of a couple of specific questions, on page 10 in
24 your slides, as you talk about the seven categories, you talk about
25 externally generated being one of the categories, and I was curious if that

1 was the area where we anticipated that licensee generated or other NRC
2 contractor information where would that fall?

3 MR. BAKER: That would fall in any of the others. It could
4 fall in the categories of proprietary, Privacy Act, security related. Those
5 would be the primary categories that we would see licensee material
6 coming in.

7 The externally generated was for those things like -- I've
8 got to get the acronym right -- unclassified controlled nuclear information
9 (UCNI) and NNPI.

10 MR. REYES: External government agencies.

11 MR. BAKER: Right. DHS' critical infrastructure would be
12 another example.

13 COMMISSIONER LYONS: Okay. Perhaps a somewhat
14 related question on page 14 or Slide 14 where you're talking about
15 providing SUNSI to external government bodies. Do you envision that
16 we're going to have to set up MOUs with other agencies? This may get
17 back to the comment that also I think Commissioner Jaczko made about
18 not having a strong legislative framework, but how will we share or how will
19 other agencies share with us documents in these various categories?

20 MR. BAKER: Well, Steve may want to interject here, but
21 since we don't have a legal framework for this, this was basically, I want
22 to call it a gentleman's agreement at this point. We weren't looking at
23 MOUs to share information with agreement states or other agencies. We
24 generally inform them of how we would like the information handled, but
25 we really hadn't considered at this point entering into MOUs because other

1 agencies have policies on OOU, which this really another name for that.

2 COMMISSIONER LYONS: I would be interested if you
3 have a comment.

4 MR. BURNS: It's really a question of reciprocity among
5 agencies now. Again, agencies are subject to the same information laws
6 and protection disclosure laws as we are, and the reciprocity goes until we
7 understand what status of each other's records are that we share. But
8 whether there's something else in terms of facilitating process wise
9 between agencies --

10 COMMISSIONER LYONS: Well, put me down at least as
11 being nervous if we're talking about doing it on the basis of a gentleman's
12 agreement.

13 MR. BAKER: Well, I think the basis is really the one Steve
14 said, which is the general legislation that covers at least all Federal
15 agencies. I can't speak for State agencies.

16 MR. BURNS: State agencies are often more complicated
17 because state agencies often do not, and actually I recall some of the post
18 9/11 a couple of months we had a couple of issues because of States
19 either looking for cover because they had to rely on Federal information
20 protection cover because of broader State requirements.

21 COMMISSIONER MERRIFIELD: If I can jump in, I specifically
22 remember that one. There were some States -- we were attempting to
23 share information with them that was of a sensitive nature, and some of
24 them had issues with their own Sunshine Act laws that prevented them
25 under certain circumstances from keeping that information, and I think it

1 may be a take-away from this meeting, but I agree with Commissioner
2 Lyons. I think that that is an issue that we need to clarify because of the
3 longstanding nature of our relationship with Organization of Agreement
4 States, CRCPD.

5 I think we need to get some OGC clarification on how this
6 will integrate with those relationships.

7 COMMISSIONER LYONS: I very much agree with
8 Commissioner Merrifield, and my next comment was going to be that even
9 if we have clarity with Federal agencies, we still have to worry about the
10 States.

11 COMMISSIONER MCGAFFIGAN: Mr. Chairman, just for
12 the history, my recollection is the Commission by majority vote decided to
13 continue to make this information available to the States, even risking --
14 the information we're mostly talking about is early versions of Commission
15 papers, and the republic will not shake in its boots if one of the Agreement
16 States should have an early version of the Commission -- a totally
17 nonsensitive Commission paper eventually to be made public. We either
18 deprive ourselves of the State's input or we take the small risk that the
19 State might disclose it before we had ultimately disclose it, and we decided
20 we would take that small risk.

21 COMMISSIONER MERRIFIELD: I wouldn't disagree with
22 your recollection of what we decided. I would only say that since we are
23 looking at these issues afresh, we ought to consciously understand what
24 the nature of play is, and we may well and probably will decide to keep that
25 philosophy, but we at least ought to know full well where it takes us.

1 CHAIRMAN DIAZ: And one point, if I may add, since I
2 was part of that trio at the time, that we were making decisions to protect
3 the people of this country even if it implied getting information to
4 someplace that was not totally -- you know, have the right say for doing the
5 right things, but getting the information there was to us more important.

6 We did a lot of little things, but it is the right time, I agree
7 with my fellow Commissioner, to revisit this.

8 MR. BURNS: And, again, one of the things that I recall
9 from that time what it was is basically what the States would do if the
10 Federal government provided more robust coverage. It's a matter
11 essentially of assuring that, you know, assertion effectively that the Federal
12 coverage that they would receive, embraced under the umbrella. We run
13 into some issues but that can largely help things there.

14 Again, the only thing I go back to and just to make sure my
15 answer was clear before adding Ed's remarks is essentially that we follow
16 the marking of other Federal agencies and their storage practices, and
17 basically the reciprocity is we expect them to follow ours.

18 CHAIRMAN DIAZ: Okay. I have two questions. The first
19 question is, of course, we see the papers. Entering the discussion we
20 discuss with the manager, but I'd like to know in all of this discussion with
21 the staff and the training sessions and, comments that you have received,
22 is there some specific concerns that you're hearing regarding, how it is
23 being handled? Is there something you can tell us how the people are
24 going to be working with this day in and day out?

25 How do they see this?

1 MR. BAKER: I would say the use of encryption has been
2 one of the primary issues that they've raised, the practicality of other
3 agencies being able to decrypt the issues with getting it through the
4 firewall.

5 Another very good comment that we got was on whether
6 we had properly categorized or I would say properly documented and
7 implemented the requirements for marking and handling of naval nuclear
8 propulsion information and unclassified nuclear information, and we're
9 working on changing the documentation of how we do that to more closely
10 match what we've most recently gotten from the Navy.

11 CHAIRMAN DIAZ: You do understand what my comment
12 is, right? There are many times when the Commission makes a decision
13 we believe it's the right decision based on the information that we have,
14 and then we get there. It goes past the senior management, and they find,
15 you know, that yes, we're going to do it, but we have a problem doing it.

16 And I just really think that we need to know if there are
17 really problems that are coming out.

18 MR. BAKER: Well, those are the two primary ones. I
19 would say the tertiary one, is one of consistency with the disposal
20 requirements and, you know, whether there is adequate availability of
21 either the cabinets that hold the classified and otherwise sensitive
22 information in the copy rooms, the burn boxes, or providing shredders.
23 That's another one.

24 And there have been a number of other issues that have
25 come up that I would say have been developed as a result of

1 implementation. I wouldn't put them in the same context because they are
2 things that we've discovered along the way, but, for example, incoming
3 PDF files or JPEGs, there's not a way to mark those. In fact, we can't
4 mark those electronically. So there are issues there.

5 We have had suggestions, for example, for structuring
6 ADAMS to categorize and capture the SUNSI subcategories, and we're
7 going to work on doing that because right now all we capture is that it's
8 public or non-public or sensitive or nonsensitive. So that would be
9 extremely helpful. It would enable me to answer Commissioner Jaczko's
10 question with the push of a button, once we implement that for future
11 documents.

12 Your question is going to be hard to answer.

13 Another would be setting up viewer rights based on the
14 need to know categories. For example, right now you can specify
15 individuals that have access. You can specify all of the agency or you
16 have certain subgroups, but if you had inspection information or
17 specifically some security information you wanted to limit to groups, we're
18 looking at providing predetermined access rights for groups of people on
19 a need to know basis.

20 Those are the primary ones that have come out.

21 CHAIRMAN DIAZ: I think they're good ones.

22 MR. BAKER: The other good one is really the fact that the
23 government, not only does it not have a standard encryption, it doesn't
24 have a standard policy, and as Bill referred to the President's letter, he's
25 looking to have something in place by December of '06.

1 CHAIRMAN DIAZ: Okay. My second question is: are we
2 getting ahead of the rest of the government? Are we going to really have
3 to slow down our horses if you may and say, "Wait a minute, wait a minute,
4 we might not be able to do all of the kind of things that we have to do and
5 we might have to do something in between," because if we don't have a
6 federal policy that establishes how encryption is going to be done, it might
7 very well be that we're going to find that we can do this, but no other of the
8 agencies that we communicate with can. Certainly the States will not.

9 So appealing as a picture appears of solving the problem,
10 it might be that we might have to do this in a series – and I'm not going to
11 use the word "phase" --

12 (Laughter.)

13 CHAIRMAN DIAZ: -- stages.

14 MS. SILBER: Incrementally.

15 CHAIRMAN DIAZ: Incrementally. Is that --

16 MR. BAKER: Certainly I will say our current tool is not
17 easily used either internally or externally. I mean, the people internally
18 have said it's complicated. The people externally, we have issues with
19 firewalls and them having to take extra steps.

20 I will tell you that my staff has recently evaluated a new
21 tool which we're piloting, which we may be able to facilitate this, but at this
22 point in time I would agree with you. We are ahead. We are ahead of
23 government-wide policy, and certainly it's creating problems in terms of
24 communicating with States and other Federal agencies.

25 MR. REYES: I go back to my first opening comment. You

1 know, our documents are all electronically, and the default position has
2 been to make them available to everybody, and so we have some unique
3 circumstances that we need to be aware of because by being so open in
4 the electronic medium, it provides some challenges that some of our
5 colleagues in other government agencies don't have. So we're in a unique
6 situation.

7 CHAIRMAN DIAZ: Okay. Jackie.

8 MS. SILBER: Well, what I was going to say is certainly
9 since we have received the communication from the administration about
10 the move to a government-wide policy, we have really taken a step back.
11 As Ed said, we were already getting information from the staff about what
12 the implementation meant, but this has given us another reason to take a
13 step back and say are we moving too quickly. What's the right thing to do?
14 And we're going to take every opportunity to be actively involved as those
15 government-wide solutions develop.

16 CHAIRMAN DIAZ: Thank you, Commissioner McGaffigan.

17 Thank you Mr. Chairman. I want to correct one thing that
18 Ed said in response to somebody's question, and that's that sensitive
19 Homeland Security information falls in the governmental category. It falls
20 in the security category according to the top of your Web page, I have
21 here, as does critical energy infrastructure information, as does sensitive
22 security information of the Transportation Security Administration.

23 Now, that would not be intuitively obvious, and I can
24 understand your intuition being the opposite, but going back to
25 Commissioner Lyons' comment about simplicity, there is never going to be

1 anything simple about sensitive but unclassified information. We're the
2 only one in government who is ever going to use SUNSI to describe that
3 because we're the only one in government that has safeguards
4 information, and you know, it just is complicated. There's a proliferation of
5 laws, and that's the way I think it's -- I brought the lights out -- that's the
6 way it's always going to be.

7 The question that -- I guess I'll start with the EDO. I mean,
8 I have great frustration on a daily basis. This header and footer stuff ain't
9 happening, or at least it ain't happening on anything that comes from you
10 to the Commission. I have this sort of repeated circumstance where I --

11

12 [EXPERIENCED POWER OUTAGE - PORTION OF
13 TRANSCRIPT UNAVAILABLE]

14

15 COMMISSIONER MERRIFIELD: I think to me I want to
16 go through a couple of things.

17 I think, Luis, you gave a very good opening statement and
18 I think really captured one of the elements we really have to remember,
19 and this goes back to the Chairman's comment. We do a very good job of
20 being open, and it is in our Strategic Plan. It is the focus of the staff. It is
21 the focus of the Commission. The fact that we have few FOIA requests,
22 the fact that we are quick in responding to those we do receive, I mean, I
23 think that's something to be celebrated.

24 We also have in the strategic plan the notion that we want
25 to be effective and efficient, and I think part of the intention of the task

1 force was to meet those elements of the Strategic Plan. How do you come
2 up with something that is going to be effectual and do it in a way that will
3 not be overly burdensome?

4 Commissioner McGaffigan is very right. It is a very
5 complicated issue, and there's always going to be those complications, but
6 if we can make it as simple as we can, I think that certainly ought to be a
7 goal.

8 You know, I think at least in my view, and it was what we
9 had to do in a post-9/11 environment, was really look again at some of
10 these documents. We had a real proliferation of "official use only", and I
11 think now that we've had a little bit of time to stand back, the task force has
12 made some recommendations. Hopefully we can do this in a way that
13 makes sense.

14 Now, as it relates to cover sheets, and there has been
15 some discussion about that, one of the things which is always -- and I think
16 it is appropriate that cover sheets are reserved for particularly sensitive
17 documents -- but the issue I think we got into before is you might have a
18 cover sheet on it, but once that cover sheet is separated, you might have
19 an underlying document that somebody could go out on Marinelli and
20 distribute.

21 I think the focus of the staff and the task force has put on
22 making sure we've got the right marking on each page of the document
23 itself is really going to put us in a better position to provide that
24 effectiveness, efficiency, and the security we need for these documents.

25 On the issue of user groups, I hear what you're saying, Ed.

1 You're talking about maybe we can create user groups in ADAMS and
2 make sure we can deal with need to know. I am a little troubled by that,
3 and the reason I'm troubled by that is we are talking about sensitive
4 unclassified information.

5 Correct me if I'm wrong. Every full-time member of our
6 staff has at least a secret security clearance. So we're not talking about,
7 you know, throwing things out there. We have a trusted staff. These are
8 all people who work for us who have got security clearances.

9 So I think that trying to create these little working groups
10 within our agency goes against efficiency and effectiveness, and my
11 personal view as a Commissioner, I don't think you should go too far down
12 that road. We've got trusted people here, and I think we ought to
13 remember that.

14 In terms of sunseting of documents, I agree with
15 Commissioner Lyons, and I know Commissioner Jaczko has weighed in
16 on this. We have Executive Orders issued by both President Clinton and
17 President Bush that talks about mandatory release of information that is
18 secret, top secret. If it's historical after 25 years or ten years and the
19 appropriate number of years, it would seem to me if we have as a nation
20 a process that automatically releases certain categories of secret and top
21 secret documents, the staff ought to be able to come up with something
22 that's user friendly where we can say after a certain period of time, this
23 stuff can go out.

24 But that will be a follow-up when we go upstairs.

25 Jackie, in terms of the encryption policy, I think it was the

1 right thing to do to step back a little bit in regards to the direction that the
2 President is going. I'm curious. Has the CIO council grabbed onto this?
3 Have they really recognized there is an issue here and will they really be
4 showing some leadership, and are you intending on talking about this issue
5 in that group?

6 MS. SILBER: I have not seen a lot of movement from the
7 CIO council until the President's memo came out, and now in our E-mails
8 back and forth, there's much more discussion of it.

9 So I think the group is definitely going to start taking that
10 on, and as I said, I intend to actively participate in that. So I'm sure that,
11 one, we're consistent, but, two, we're doing the right thing for the NRC.

12 COMMISSIONER MERRIFIELD: One quick question and
13 this is directed toward OGC. Ed talked about, I think it was the Chairman
14 who asked are there issues raised by the staff about implementation, any
15 concerns you've heard. We didn't get a chance to hear from you on that.
16 I didn't know if you had anything you wanted to add about some
17 generalized concerns that OGC may have about the implementation of
18 some of these SUNSI issues.

19 MR. BURNS: I think some of the ones that Ed went over
20 are ones we had raised with them. I think the encryption one was one in
21 terms of routine communications with the Department of Justice, for
22 example. We had government positions on briefs and, you know,
23 exchanging things which are not in the public. I'm not talking about final
24 briefs filed by the government. I'm talking about, you know, drafts and pre-
25 prosecution consultations and things like that, and they're not encrypting

1 that. So that's probably the most significant one we will raise with them.

2 COMMISSIONER MCGAFFIGAN: And the OMB, being
3 able to converse with OMB.

4 MR. BURNS: Yes, that's true, yes.

5 CHAIRMAN DIAZ: Okay. I believe that we have another
6 meeting. I want to thank the staff for quickly putting this presentation
7 together. I'm sure that there will be SUNSI II, III, IV, V, as many times as
8 it needs to be, we will revisit the issue. We will progress and do it right.

9 I appreciate all of the comments of my fellow
10 Commissioners.

11 And with that, we're adjourned.

12 (Whereupon, the Commission meeting was adjourned.)

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