



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

November 16, 2016

COMSECY-16-0026

PLEASE RESPOND BY:
December 5, 2016

MEMORANDUM TO: Chairman Burns
Commissioner Svinicki
Commissioner Baran

FROM: Victor M. McCree */RA/*
Executive Director for Operations

SUBJECT: REVISED DELEGATION OF AUTHORITY TO THE EXECUTIVE
DIRECTOR FOR OPERATIONS TO INITIATE AND SIGN TWO
FINAL RULES TO AMEND THE NUCLEAR LIABILITY
INSURANCE AMOUNT AND FREEDOM OF INFORMATION ACT
PROVISIONS

The purpose of this memorandum is to request that the Commission provide explicit delegation of authority to the Executive Director for Operations (EDO) to authorize the EDO to initiate and sign two final rules, one to amend the U.S Nuclear Regulatory Commission's (NRC) maximum amount of primary nuclear liability insurance, and the other to amend certain regulations that relate to the Freedom of Information Act (FOIA) provisions. These final rules are nondiscretionary and must be issued by the end of calendar year 2016.

Part 140 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Financial Protection Requirements and Indemnity Agreements" implements the financial protection requirements for certain licensees and other persons under the Price-Anderson Amendments Act of 1988 (Pub. L. 100-408) (Price-Anderson Act). For each nuclear reactor that is licensed to operate, is designed for the production of electrical energy, and has a rated capacity of 100,000 electrical kilowatts or more, the Price-Anderson Act requires primary financial protection to be "the maximum amount available at reasonable cost and on reasonable terms from private sources" (Price-Anderson Act, section 170(b)). On June 15, 2016, the American Nuclear Insurers, the underwriter of American nuclear liability policies, acting on behalf of its member companies, notified the NRC that it will be increasing the "maximum amount of primary financial protection from \$375 million to \$450 million effective on January 1, 2017" (Agencywide Documents Access and Management System Accession No. ML16239A254). To reflect the increase, the NRC must amend its regulations at 10 CFR 140.11, "Amounts of financial protection for certain reactors," to revise the maximum amount of primary nuclear liability insurance from \$375 million to \$450 million and make conforming changes throughout the part to make reference to that maximum amount. To be effective January 1, 2017, the NRC must publish the final rule in the *Federal Register* no later than December 2, 2016, in order to be consistent with the Price-Anderson Act.

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On June 30, 2016, Congress enacted the FOIA Improvement Act of 2016, Pub. L. 114-185, 130 Stat. 538 (FOIA Improvement Act). The FOIA Improvement Act requires all agencies to review and update their FOIA regulations in accordance with its provisions. The FOIA Improvement Act addresses a range of issues. It requires agencies to establish a minimum of 90 days for requesters to file an administrative appeal and to provide dispute resolution services at various times throughout the FOIA process. The FOIA Improvement Act also amends FOIA Exemption 5, codifies the foreseeable harm standard, imposes restrictions on FOIA fees agencies may charge to requesters when agencies miss FOIA deadlines, and adds two new elements to the agency annual FOIA reports. The staff has identified the provisions within 10 CFR Parts 2 and 9 that must be amended to comply with the FOIA Improvement Act. The FOIA Improvement Act requires agencies to "issue regulations" that conform with the amendments made by the Act by December 27, 2016.

In the staff requirements memorandum (SRM) for SECY-15-0129 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16034A441), dated February 3, 2016, the Commission directed the staff to submit a rulemaking plan for Commission approval for all rulemakings except those that had already been explicitly delegated to the staff. Therefore to ensure consistency with the Commission's SRM, and because these final rules are statutorily mandated, do not present policy decisions, and do not require public comment, the staff is requesting that the Commission explicitly delegate authority to the EDO to initiate and sign these final rules amending the NRC's maximum amount of primary nuclear liability insurance and FOIA regulations. The staff will provide the Commission with the customary 5-day notice before these final rules are transmitted to the Office of the Federal Register for publication. Finally, the staff is drafting a memorandum for the Commission's consideration regarding rulemaking plan requirements for future statutorily required rulemakings.

SECY, please track.

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| cc: SECY | NRR |
| OGC | NRO |
| OCA | NMSS |
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| OCFO | NSIR |

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ADAMS Accession Number: ML16312A390

***via e-mail concurrence**

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|--------|--------------|----------------|------------|----------------------------|----------------|----------|
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| DATE | 11/8/16 | 11/10/16 | 11/10/16 | 11/10/16 | 11/ 16 /16 | |

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