

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Shutdown Plan in the Event of a Lapse in Appropriation (2015)

Background Information

The Defense Nuclear Facilities Safety Board (Board) is an independent establishment within the Executive Branch that was created in 1988 to oversee Department of Energy (DOE) defense nuclear facilities. DOE defense nuclear facilities are defined by statute to include (with certain exceptions): (1) nuclear production or utilization facilities under the control or jurisdiction of the Secretary of Energy and operated for national security purposes; and (2) nuclear waste storage facilities under the control or jurisdiction of the Secretary of Energy. (42 U.S.C. § 2286g).

The Board is charged with providing recommendations to the Secretary of Energy regarding public health and safety issues at DOE defense nuclear facilities. The Board reviews standards, events, practices, design and operational data, and facility design and construction related to DOE defense nuclear facilities and makes recommendations to the Secretary of Energy that are necessary for the adequate protection of public and worker health and safety. (42 U.S.C. § 2286a(b)). The Board obtains information used in developing recommendations from site representatives of the Board, frequent communication with DOE officials, site visits by the Board and its staff, reviews of documentation, formal investigations, inspections, and other ongoing fact-finding activities.

The Board is required to submit draft recommendations to the Secretary of Energy to enable the Secretary the opportunity to provide comments prior to the Board submission of final recommendations. (42 U.S.C. § 2286d(a)). The Secretary of Energy is then required to respond to final Board recommendations by transmitting to the Board, in writing, a statement on whether the Secretary accepts or rejects, in whole or in part, the recommendations, a description of the actions to be taken in response, and his views on such recommendations. (42 U.S.C. § 2286d(c)). If, as a result of its reviews, the Board determines that an imminent or severe threat to public health and safety exists, the Board is required to transmit any related recommendations directly to the President as well as the Secretary of Energy, with an information copy to the Secretary of Defense. (42 U.S.C. § 2286d(h)).

General Strategy

The Board will assess if the ongoing situation exempts the Board from furloughing employees. If not, the Board's strategy will be to continue public health and safety oversight operations at DOE defense nuclear facilities for as long as possible using OMB approved apportioned funds (carryover) from the previous fiscal year. During this period, the Board will institute controls to exercise short-term fiscal restraint. These controls will be designed, for example, to minimize spending and delay procurements where possible.

Initially, the Board will continue full operations. The Board will reevaluate its strategy weekly to determine if furloughs are necessary and to update spend plans. If necessary,

priority will be given to keeping the Board's site representatives stationed at DOE defense nuclear facilities, and key staff personnel working in order to continue providing oversight at priority sites and maintaining essential activities. If the Board reaches the point where no funding is available, all normal oversight activities will cease, including receiving safety complaints from workers at DOE sites and the public. However, at this point, the Chairman will designate site representatives at designated DOE defense nuclear sites and either the General Counsel or the Deputy General Counsel as excepted employees. The designated sites are Hanford, Pantex, Savannah River, Oak Ridge, and Los Alamos.

In the event of an emergency that may threaten public or worker health and safety at a DOE defense nuclear facility, the Chairman may declare additional Board staff to be excepted employees and recall them to duty. Additionally, if DOE executes a partial or total shutdown of DOE defense nuclear facilities as any portion of its response to a funding hiatus, the Chairman may identify excepted employees to monitor the DOE shutdown for safety purposes.

Specific Information Required by OMB Circular No. A-11

The Board estimates that it will take one-half day to complete shutdown operations.

The total number of Board employees expected to be on-board before implementation of this contingency plan is 110. This number includes Board members.

The total number of Board employees to be retained under this contingency plan 1) whose compensation is financed by a resource other than annual appropriations; 2) are necessary to perform activities expressly authorized by law; 3) are necessary to perform activities necessarily implied by law; or 4) are necessary to the discharge of the President's constitutional duties and powers is 0.

The number of Board employees to be retained to protect life and property when all previously appropriated funding is expended, is 10 (site representative at each designated DOE defense nuclear site and either the General Counsel or Deputy General Counsel). This number does not include Board members.

Designation of Excepted Activities in the Event of an Emergency

The following are considered by the Board to be required functions to respond to an emergency that may threaten adequate protection of the public or worker health and safety at a DOE defense nuclear facility during a funding hiatus.

1. Formal Action by the Board

Three of the five members of the Board (including the Chairman) are required to preserve the ability of the Board to respond to any unforeseen accident, emergency, or, in the words of our enabling statute, "imminent or severe threat" to public health and

safety at DOE defense nuclear facilities. As the Board members are appointed by the President, they are not subject to furlough.

2. Board Oversight Activities

The Board's oversight during a funding hiatus would be focused on detecting and responding to an "imminent or severe threat" to public health and safety, and maintaining adequate protection of the public and workers at DOE defense nuclear facilities.

3. Legal Matters

There is an ongoing need for legal advice to the Chairman regarding the disposition of formal agency business in accordance with the Government in Sunshine Act and the Board's enabling statute. Moreover, legal officers are necessary in the event that Board investigations require the use of subpoenas or appearances before courts to gain access to information or facilities in the event of an emergency. It is assumed that the courts will continue to operate during a funding hiatus. Finally, attorneys are needed in order to respond to lawsuits involving the Board and safety issues.

4. Administrative Matters

The Board must maintain a small group of administrative personnel capable of performing the full range of required administrative duties, such as building, computer, and document security; travel; and other administrative services in the event of any emergency.

5. Funds Certification and Contract Monitoring Activity

Sufficient personnel are required to authorize and monitor disbursement of previously committed funds, as well as those funds necessary to carry out the emergency activities that have been identified as having an impact on public health and safety.

Board Excepted Employees

In the event of an emergency that may threaten public or worker health and safety at a DOE defense nuclear facility during a funding hiatus, the Chairman may designate the following additional Board staff personnel to carry out excepted activities under the terms of the Antideficiency Act, 31 U.S.C. § 1341.

Chairman's Office: One clerical or administrative assistant.

Office of General Counsel: General Counsel or Deputy General Counsel and one administrative assistant. Other legal staff may be designated based on the nature of the ongoing legal needs of the office.

Technical Staff: Technical Director, Deputy Technical Director, and one administrative assistant. Other technical staff may be designated based on the nature of the emergency.

Office of General Manager: General Manager or Deputy General Manager, a financial officer, a contracting officer or specialist, a security officer, a human resources staff member, one administrative assistant, and one information technology specialist.

Contract Support

The Board may retain sufficient IT and administrative support personnel in order to operate the Board's IT enterprise and provide essential services such as mail operations in support of the Board members and excepted personnel, subject to availability of previously obligated funds.

Technical support consultants may be used, subject to availability of previously obligated funds.