

**DEFENSE NUCLEAR FACILITIES
SAFETY BOARD**

Washington, DC 20004-2901



April 29, 2026

The Honorable Chris Wright
Secretary of Energy
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585-1000

Dear Secretary Wright:

The Defense Nuclear Facilities Safety Board (Board) writes to convey its concerns regarding unresolved access requests submitted to the Department of Energy (DOE). Pursuant to 42 U.S.C. § 2286c(b)(2)(B)(i), these matters will be reported to Congress in the Board's July 2026 biannual report if they remain unaddressed. The Atomic Energy Act (AEA) of 1954¹, as amended, requires DOE to provide prompt and unfettered access to facilities, personnel, and information that the Board deems necessary to carry out its statutory nuclear safety oversight responsibilities such that the Board can provide timely and comprehensive advice to the Secretary of Energy to ensure adequate protection of public health and safety at DOE defense nuclear facilities.

Since the Board's most recent biannual [report to Congress in January 2026](#), DOE provided responses for two reporting requirements, but has not addressed seven of the Board's reporting requirements and implementation plan deliverables for safety recommendations (Enclosure A). In addition, DOE has begun to rescind some of the Board's staff longstanding access to meetings and electronic systems (Enclosure B) in a manner that is inconsistent with the existing memorandum of understanding between our agencies². As set forth in the Board's March 17, 2026, letter to the Department, DOE is seeking widespread revisions to nuclear safety standards with no identified method for the Board to perform its statutory oversight.

Some DOE career officials have asserted that the Department's lack of response to certain outstanding requests is due to the Board's lack of quorum. Contrary to this position, the Department's statutory obligation to fully cooperate with the Board, including responses to access requests and reporting requirements, is not contingent upon the Board maintaining quorum. As set forth in the Board's October 17, 2025, letter to the Department, certain authorities

¹ 42 U.S.C. § 2286 et seq.

² [Memorandum of Understanding Between the U.S. Department of Energy and the Defense Nuclear Facilities Safety Board](#), signed February 17, 2022, and [Supplementary Agreement for Memorandum of Understanding Between the U.S. Department of Energy and the Defense Nuclear Facilities Safety Board](#), signed June 1, 2022.

of the Chairperson have been expressly delegated. Further, certain Board functions have been delegated to the Board's staff, consistent with the AEA.

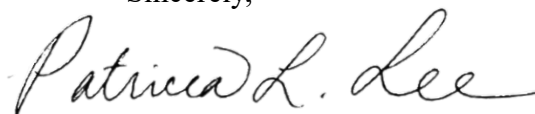
In addition, the Board recently became aware of the March 10, 2026, DOE senior leadership memorandum, entitled *Clarifying Instructions Regarding Interface with the Defense Nuclear Facilities Safety Board* (Enclosure D). The Board is concerned that certain assertions and directions in this memorandum are inconsistent with the AEA (Enclosure C) and that it has been cited by DOE personnel as a basis for additional limits to existing Board access and a lack of response to new access requests. These concerns and the underlying safety and legal rationales are described in greater detail in the enclosed materials.

The Board is encouraged by recent productive engagements but is concerned about impediments to our mandated safety oversight authority at a time when DOE is increasing production and accelerating cleanup activities to meet its critical national priorities. The Board hopes to re-establish periodic discussions with DOE leadership to continue our longstanding safety partnership to accomplish the nation's nuclear deterrence goals without hidden risks that could derail those goals.

To ensure transparency and accurately represent DOE's position in the Board's upcoming biannual report to Congress—and pursuant to 42 U.S.C. § 2286b(d)—the Board requests that DOE provide, within 30 days of receipt of this letter, a report describing:

1. DOE's path forward for addressing remaining open Board reporting requirements and implementation plan deliverables for recommendations, as outlined in Enclosure A.
2. DOE's plan to fulfill the Board staff's access requests described in Enclosure B, or the Secretarial determination that any such requests are denied pursuant to 42 U.S.C. § 2286c(b)(1).
3. DOE's response to the Board's concerns regarding the March 10, 2026, memorandum, as discussed in Enclosure C.

Sincerely,



Dr. Patricia L. Lee
Board Member

Enclosures

c: Mr. Joe Olencz, Director, Office of the Departmental Representative to the Board

ENCLOSURE A

Lack of Responses to Defense Nuclear Facilities Safety Board (Board) Reporting Requirements and Safety Recommendations

PREVIOUSLY COMMUNICATED CONCERNS WITH ACCESS TO INFORMATION

In the past four months, the Department of Energy (DOE) provided one of the five items discussed in the Board's biannual [report to Congress dated January 6, 2026](#). DOE has not responded or otherwise communicated to the Board on the following:

1. DOE's [implementation plan deliverables for the Board's Recommendation 2020-1, Nuclear Safety Requirements](#).
2. The Board's reporting requirement for a semiannual briefing on DOE's workforce changes outlined in a [letter dated July 25, 2025](#).
3. The Board's attempt to open a dialogue on the path forward for completing open reporting requirements to the Board discussed in a [letter dated August 5, 2025](#).
4. The Board's staff's written technical review agenda request on the fire protection strategy for the Principal Underground Laboratory for Subcritical Experimentation discussed in a [letter dated October 17, 2025](#). As indicated in the Board's letter, this agenda has been overcome by actions taken by the National Nuclear Security Administration.

NEWLY MISSED REPORTING REQUIREMENTS

Additional reporting requirements have been missed without explanation from DOE since Board's biannual [report to Congress dated January 6, 2026](#). These include:

5. **Annual report and briefing on metrics associated with nuclear criticality safety due on January 31, 2026:** In a [letter dated January 6, 2022](#), the Board established an annual reporting requirement on this unique hazard that is associated with some nuclear materials and can result in worker fatality. Nuclear criticality safety is a challenging field in which DOE has experienced performance issues in the past and often struggles to maintain sufficient expertise.
6. **Annual report and briefing regarding safety improvements at the Savannah River Tritium Enterprise due on April 4, 2026:** In a [letter dated October 4, 2023](#), the Board requested that DOE provide a report and briefing annually on the progress it has made to upgrade safety systems and complete analytical initiatives to improve the safety of co-located workers in the event the Savannah River Tritium Enterprise experienced

significant accidents, like a seismically-induced fire. This letter and reporting initiative are a result of DOE rejecting the Board's [Recommendation 2019-2, Safety of the Savannah River Site Tritium Facilities](#).

7. **Report and briefing responding to the Board's formal safety investigation due on April 15, 2026:** In a [letter dated October 17, 2025](#), the Board transmitted the results of its formal safety investigation, stemming from worker allegations concerning the quality assurance processes used to manufacture components that ensure the safety of nuclear explosives while they are assembled, disassembled, and refurbished at the Pantex Plant. The Board identified 19 opportunities to improve safety and highlighted the five most significant to bolstering assurance that nuclear weapon safety components are fabricated, procured, and installed in a manner commensurate with their safety function.

8. **Report and briefing responding to the Board's request to communicate proposed changes to [DOE Standards of Interest to the DNFSB](#), DOE's desired process to communicate such proposed changes, and provide draft versions of such proposed revisions due on April 16, 2026:** In a [letter dated March 17, 2026](#), the Board provided DOE with its annual directives letter and noted that DOE was engaged in revisions to safety regulations and directives that intersect with the Board's statutory mandate to advise DOE. However, DOE stopped using its established system for review and comment on directives. This process enabled DOE's safety experts and the Board to provide feedback on proposed changes. Additionally, DOE stopped adhering to commitments regarding interface on directives and regulations contained in the Memorandum of Understanding and its Supplementary Agreement³ developed at the direction of Congress.

³ [Memorandum of Understanding Between the U.S. Department of Energy and the Defense Nuclear Facilities Safety Board](#), signed February 17, 2022, and [Supplementary Agreement for Memorandum of Understanding Between the U.S. Department of Energy and the Defense Nuclear Facilities Safety Board](#), signed June 1, 2022.

ENCLOSURE B

Denials of Access Requests from the Defense Nuclear Facilities Safety Board's (Board) Staff

For more than three decades, the Board's staff has requested that the Department of Energy (DOE) provide access to information—including documents, meetings, and databases—in support of the Board's nuclear safety oversight mission. DOE and its contractors have historically granted this access without hesitation. In the rare instances where staff level access requests were not fulfilled, the Board elevated the matter directly to the Secretary of Energy.

Since October 2025, however, the Board's staff has encountered a growing number of unfulfilled access requests from the National Nuclear Security Administration (NNSA) sites. In early 2026, NNSA also unexpectedly revoked several longstanding access provisions, including some tied to implementation of a memorandum from senior DOE leadership dated March 10, 2026. These unfulfilled requests are summarized below for resolution with the Secretary.

1. Draft action plan for the Plutonium Pit Production Matrixed Execution Team to improve pit production.
 - a. **Safety rationale:** On August 19, 2025, the acting NNSA Administrator issued a charter memorandum for this effort. The memorandum outlines several areas that potentially impact nuclear safety, including reducing safety basis requirements, streamlining waste policy, and evaluating nuclear criticality safety analyses and controls.
 - b. **Status:** This document was requested for delivery by October 24, 2025, and NNSA has not provided it.
2. List of the DOE regulations being considered for sunset as identified in an appointment for the NNSA's bimonthly operations and safety call.
 - a. **Safety rationale:** DOE may terminate regulations that impact nuclear safety.
 - b. **Status:** This document was requested for delivery by December 18, 2025, and DOE has not provided it.
3. The most recent version of any draft revisions currently being considered for Title 10 Code of Federal Regulations (10 CFR) Part 835, *Occupational Radiation Protection*, including any supporting documentation or memoranda.
 - a. **Safety rationale:** This is a DOE regulation that is foundational for protecting workers from radiation hazards at defense nuclear facilities.
 - b. **Status:** This document was requested for delivery by December 18, 2025, and DOE has not provided it.

4. Secretary of Energy (S-1) memorandum regarding potential revisions to 10 CFR Part 835, *Approval to Eliminate ALARA [As Low As Reasonably Achievable] from All DOE Directives and Regulations* (per EXEC-2025-013258 or similar).
 - a. **Safety rationale:** This is a DOE regulation that is foundational for protecting workers from radiation hazards at defense nuclear facilities.
 - b. **Status:** This document was requested for delivery by January 6, 2026, and DOE has not provided it.
5. Report from the DOE Office of Enterprise Assessments developed in response to a memorandum from Deputy Secretary James Danly regarding a special 120-day study of the plutonium pit production mission dated August 11, 2025.
 - a. **Safety rationale:** NNSA has emphasized that a culture of production and pit production is inherently hazardous. The report's recommendations potentially may impact nuclear safety requirements and controls.
 - b. **Status:** This document was requested for delivery by February 13, 2026. DOE has completed the report, but has not provided it.
6. Invitation to observe virtually NNSA's bimonthly safety and operations call with its sites.
 - a. **Safety rationale:** This call is a means for NNSA to communicate safety issues across its field operations. The Board's staff oversight is appropriate to assess awareness of the topics communicated and the effectiveness of the call.
 - b. **Status:** On January 28, 2026, NNSA denied a request to restore access after it revoked longstanding access, indicating that the call was only for NNSA personnel and its contractors. NNSA provided written presentation materials shared during the call; however, these written materials do not contain the full details of content shared on the call.
7. The Board's staff review agenda assessing safety of electrical testers used in the assembly, disassembly, and refurbishment of nuclear explosives at the Pantex Plant (Pantex). This review agenda was supported by requests for 4 documents from NNSA Headquarters, 16 documents from the Pantex Plant, and 13 documents from Sandia National Laboratories (SNL).
 - a. **Safety rationale:** These electrical testers are part of a credited safety management program in the Pantex safety basis. Sending errant electrical energy into a nuclear explosive device can cause significant hazards. These testers also confirm the operability of certain nuclear weapon safety components relied upon in the Pantex safety basis.

- b. **Status:** NNSA supported two interactions with the Board’s staff on January 28-29, 2026, at Pantex and February 10, 2026, with SNL. However, on March 11, 2026, NNSA stated that it was pausing its support of the review, including providing the requested documents, while evaluating whether the review scope was within the Board’s legal jurisdiction.
- 8. Biweekly reports from the Assistant Manager for Environment, Safety and Health and Assistant Manager for Operations and Engineering at the NNSA Nevada Field Office, as well as start-up notification reports.
 - a. **Safety rationale:** These reports provide operational awareness of activities at the Nevada National Security Site that aid the Board’s staff safety oversight efforts.
 - b. **Status:** On January 29, 2026, NNSA revoked longstanding access and stopped distribution without notifying the Board’s staff. The Board’s staff re-requested access on March 19, 2026, and NNSA began providing the reports with “non-DNF [defense nuclear facility]” information redacted per the DOE memorandum dated March 10, 2026, regarding clarifying instructions for interface with the Board. The Board’s staff asserts that redactions are inappropriate, inefficient, and may obscure important information that impacts nuclear safety at DOE’s defense nuclear facilities.
- 9. Electronic access to existing site databases provided previously by the NNSA Nevada Field Office, in accordance [with the DOE-Board supplementary agreement dated May 27, 2022, for the memorandum of understanding dated May 27, 2022.](#)
 - a. **Safety rationale:** These databases provide operational awareness of activities at the Nevada National Security Site that inform the safety oversight by the Board’s staff.
 - b. **Status:** NNSA revoked longstanding access to these databases in February 2026 without informing the Board’s staff. The Board’s staff re-requested access on March 11, 2026. NNSA has not provided access and indicated the Board’s staff access request was under review.
- 10. Invitation to observe virtually biweekly meetings on safety bases (i.e., safety basis development forum, and a safety basis interface meeting with personnel from NNSA Nevada Field Office and its site contractor).
 - a. **Safety rationale:** These meetings provide operational awareness of activities at the Nevada National Security Site that inform the safety oversight by the Board’s staff.
 - b. **Status:** On March 16, 2026, NNSA revoked longstanding access to these meetings without informing the Board. The Board’s staff re-requested access on March 16, 2026. NNSA has not provided access.

11. Safety basis biweekly schedule for NNSA Nevada Field Office and its site contractor.

- a. **Safety rationale:** These schedules provide operational awareness of activities at the Nevada National Security Site that informs the safety oversight by the Board's staff.
- b. **Status:** NNSA revoked longstanding access to these schedules without informing the Board's staff. The Board's staff re-requested access on March 19, 2026. NNSA provided the report dated March 16, 2026, with "non-DNF" information redacted per the DOE memorandum dated March 10, 2026, regarding clarifying instructions for interface with the Board. The Board's staff asserts that redactions are inappropriate, inefficient, and may obscure important information that impacts nuclear safety at DOE's defense nuclear facilities.

12. Y-12 Field Office "Weekly Highlights" report.

- a. **Safety rationale:** These reports provide operational awareness of activities at the Y-12 National Security Complex that informs the Board's safety oversight.
- b. **Status:** On March 26, 2026, NNSA revoked longstanding access to these reports. NNSA stated that this was because the reports contained information that is deliberative or predecisional in nature, and removal from distribution was needed to align with the DOE/NNSA memorandum dated March 10, 2026, regarding clarifying instructions for interface with the Board. The Board re-requested access on March 27, 2026, and was denied on April 13, 2026.

ENCLOSURE C

Concerns with the Department of Energy's Memorandum dated March 10, 2026, Concerning Interface with the Defense Nuclear Facilities Safety Board (Board)

The Defense Nuclear Facilities Safety Board (Board) has reviewed the Department of Energy's (DOE) attached March 10, 2026, memorandum concerning the interface with the Board, signed by the Associate Principal Deputy Administrator for Operations (NA-3) and the Associate Principal Deputy Assistant Secretary for Field Operations (EM-3). The Board has significant concerns that certain assertions and directions in the memorandum are inconsistent with the Atomic Energy Act of 1954, as amended (AEA) (42 U.S.C. § 2286 et seq.), congressional intent, and longstanding DOE directives that acknowledges the Board's statutory authority. The March 10 memorandum risks impairing the Board's ability to carry out its independent safety oversight mission at DOE defense nuclear facilities. Without the requisite prompt and unfettered access required by the AEA, the Board's cannot provide timely and comprehensive advice to the Secretary of Energy to ensure adequate protection of public health and safety at DOE defense nuclear facilities.

The Board's Acting General Counsel conveyed the legal concerns below to the General Counsels for DOE and the National Nuclear Security Administration (NNSA) on March 18, 2026, and requested a meeting to discuss. As of the date of this letter, DOE and NNSA General Counsels have not provided a response to the legal concerns with the March 10 memo or scheduled the meeting with the Board's Acting General Counsel.

The Board's specific concerns are set forth below.

- 1. Jurisdictional Determinations.** The March 10 memorandum asserts that the Secretary of Energy has the authority to deny the Board access to facilities, personnel, and information on the basis of a lack of jurisdiction, as determined independent of the Board.

This position is contrary to the AEA, which explicitly requires that the Secretary "shall fully cooperate with the Board and provide prompt and unfettered access to such facilities, personnel, and information *as the Board considers necessary* to carry out its responsibilities" [emphasis added]. The AEA grants the Secretary only limited authority to deny access to an individual who either (1) lacks an appropriate security clearance, or (2) does not need such access in connection with their duties. The AEA does not authorize the Secretary to overrule the Board's judgment and determine what access is necessary for the Board to perform its statutory functions.

In 2018, DOE took a similar position in [former DOE Order 140.1](#). In response, Congress revised 42 U.S.C. § 2286c(b) through the FY2020 National Defense Authorization Act (NDAA) to limit the Secretary's ability to deny access to the Board's staff. The Government Accountability Office ([GAO-21-141](#)) found subsequently that the former DOE Order 140.1 attempted inappropriately to assert that DOE, not the Board, was responsible for determining appropriate Board access.

- 2. Access to Deliberative/Predecisional Information.** The March 10 memorandum states that DOE and the National Nuclear Security Administration (NNSA) shall not provide the Board with predecisional or other draft copies of standards (including orders, regulations, or requirements) or executive deliberative information. The memorandum asserts further that the Board’s authority is limited to “currently applicable” standards.

This assertion is directly contrary to the AEA. In response to identical positions taken by DOE in former DOE Order 140.1, Congress amended the AEA in 2020 to confirm explicitly the Board’s entitlement to access deliberative process information. Specifically, 42 U.S.C. § 2286c(c) provides that the “Board may not publicly disclose information provided...if such information is otherwise protected from disclosure by law, **including deliberative process information**” [emphasis added].

GAO-21-141 noted that, even prior to the 2020 amendments, the AEA did not restrict the Board’s access to predecisional or deliberative information, and that the 2020 amendments confirmed the Board’s access. Following the FY2020 NDAA, DOE acknowledged this right in the revised [DOE Order 140.1A](#) (still in effect), the [DOE Desk Reference Supporting DOE Order 140.1A](#), and the [February 17, 2022, Memorandum of Understanding between DOE and the Board](#).

- 3. Access to Atomic Weapon Information.** The March 10 memorandum repeatedly references the exclusion in 42 U.S.C. § 2286a(c) and asserts that the Board is not entitled to access to information related to the “safety of atomic weapons,” claiming this is beyond the Board’s statutory authority.

The memorandum misconstrues the statutory exclusion by omitting key text. The full provision at 42 U.S.C. § 2286a(c) states: “The functions of the Board under this subchapter do not include functions relating to the safety of atomic weapons. ***However, the Board shall have access to any information on atomic weapons that is within the Department of Energy and is necessary to carry out the functions of the Board***” [emphasis added].

The legislative history of the AEA, as well as the historic practices of DNFSB and DOE, confirms Congress’ clear intent that the Board is responsible for oversight of safety and health issues related to the assembly and disassembly of nuclear weapons at facilities such as the Pantex Plant, while not being responsible for oversight of the original design or operational safety of the weapons. For example, the conference report for the NDAA for FY 1992–1993 states explicitly that “there may be occasions on which the Board may require access to atomic weapons information to carry out its statutory functions and expect the Secretary of Energy to provide such information as is necessary for the Board to carry out its responsibilities.” The Board’s position has acknowledged consistently that the Board does not oversee the design of nuclear weapons, but that it is entitled to access necessary information for oversight of nuclear weapons assembly, disassembly, and testing.

- 4. Prompt and Unfettered Access.** The March 10 memorandum provides guidance to DOE and NNSA field offices directing them not to provide access to the Board on any issue the

officials “believe may be outside [the Board’s] statutory authority.” The memo directs field office personnel to refrain from responding to such Board requests, and to elevate the requests internally.

These instructions are inconsistent with the AEA requirement that the Secretary “fully cooperate” and “provide prompt and unfettered” access to facilities, personnel, and information the Board considers necessary. The resulting actions by DOE and NNSA have led to an increase in denials and delays of access to Board staff, as outlined in this Board letter and attachments.

ENCLOSURE D

March 10, 2026, DOE letter



Department of Energy

Washington, DC 20585

March 10, 2026

MEMORANDUM FOR FIELD OFFICE MANAGERS

FROM: **JAMES J. MCCONNELL MCCONNELL** Digitally signed by JAMES MCCONNELL
Date: 2026.03.11
08:37:20 -07'00'
ASSOCIATE PRINCIPAL DEPUTY ADMINISTRATOR
FOR OPERATIONS, NNSA

GREGORY GREGORY SOSSON Digitally signed by GREGORY SOSSON
Date: 2026.03.11
13:12:10 -04'00'
GREG SOSSON SOSSON
ASSOCIATE PRINCIPAL DEPUTY ASSISTANT SECRETARY
FOR FIELD OPERATIONS, EM-3
OFFICE OF ENVIRONMENTAL MANAGEMENT

SUBJECT: Information: Clarifying Instructions Regarding Interface with the
Defense Nuclear Facilities Safety Board (DNFSB)

PURPOSE: This memorandum provides clarifying instructions to all Department of Energy (DOE) and National Nuclear Security Administration (NNSA) Field Elements (hereafter DOE Field Elements) regarding the statutory authority and authorized activities of the Defense Nuclear Facilities Safety Board (DNFSB or Board). DNFSB provides independent recommendations and advice to the President and the Secretary of Energy regarding public health and safety issues at DOE defense nuclear facilities, including orders, regulations, and requirements that are presently applicable. DOE recognizes its obligation to facilitate DNFSB's mission.

Nevertheless, the President, the Secretary, and DOE are independently charged with protecting the health, safety, and security of these same facilities, as well as non-defense nuclear facilities, nuclear weapons, and non-nuclear facilities and activities. It is critical that DOE's interactions with the DNFSB—including DOE's physical and informational security obligations—are conducted consistent with that broader mission. DOE's own independence, including the Executive privileges of the President and the Secretary, must be recognized, asserted, and protected during interactions with the DNFSB.

DOE Field Elements have, at times, expressed concerns that Board staff has sought access, or asserted jurisdiction, beyond what is permitted by the [DNFSB's enabling legislation](#). DOE must fully cooperate with DNFSB activities authorized by statute. To assist DOE in identifying whether DNFSB staff may, however, be engaged in activities or requests outside those authorized by its statute, this memorandum notes subject matters and areas of concern. DOE employees are instructed to seek further advice and approval before granting access to facilities, personnel, or information in keeping with this memorandum.

BACKGROUND: The DNFSB was established by Congress in 1988 through 42 U.S.C. § 2286 as an independent body within the executive branch. The Board's core mission and function, as defined in the *Atomic Energy Act* codified in 42 U.S.C. § 2286a, is to review and evaluate standards at defense nuclear facilities (including presently applicable orders, regulations, and requirements), and provide independent analysis, advice, and recommendations to the Secretary of Energy for ensuring adequate protection of public health and safety, including the health and safety of employees and contractors.

DOE places the utmost importance on the safety of its operations and facilities. Ensuring the safety, protection, and well-being of our workforce, the public, and the environment are core tenets of our mission. DOE is dedicated to maintaining rigorous safety standards across all its defense nuclear facilities through stringent protocols, continuous improvement initiatives, and a robust safety culture designed to prevent accidents, mitigate risks, and respond effectively to any safety concerns that may arise.

Should you wish to review the specific legal authorities, they are primarily located in the *Atomic Energy Act of 1954*, as amended, at 42 U.S.C. §§ 2286-2286i.

STATUTORY LIMITS ON DNFSB AUTHORITY: DOE and NNSA shall endeavor to fully cooperate with the Board in the execution of its statutory function and responsibilities at defense nuclear facilities, and therefore maintain a constructive and open relationship with the Board and staff. It is nevertheless imperative that the Board's activities remain confined to the legal boundaries established by Congress. The DNFSB is an advisory agency; it is not a regulatory body with enforcement powers or authority to direct operations. The *Atomic Energy Act* recognizes that the Board or staff may, at times, request access to information that DOE may determine it appropriate to deny. *See* 42 U.S.C. § 2286c. The Secretary of Energy and DOE retain, and must at all times retain, all decision-making and action authority as owner and operator of defense nuclear facilities. Field staff must likewise ensure DOE's compliance with its broader missions and protect the deliberative prerogatives of the President and the Secretary.

DOE Field Elements should understand the functions and limitations of the Board's authority to ensure interactions are appropriate and productive.

Permitted DNFSB Functions: The Board's enabling statute authorizes DNFSB to perform specific functions to fulfill its mission. These are the primary avenues through which the Board shall conduct its oversight:

- **Review and Evaluation:** The Board is authorized to review and evaluate the content and implementation of health and safety standards currently applicable at DOE defense nuclear facilities. Health and safety standards include approved orders, regulations, and requirements, but do not include information involving excluded functions under 42 U.S.C. § 2286a(c), which excludes functions relating to the safety of atomic weapons from the Board's authority.
- **Investigations:** The Board may investigate an event or practice at a facility that meets the definition of "defense nuclear facility" that the Board determines has adversely affected, or may adversely affect, public health and safety, yet that is not an excluded

function under 42 U.S.C. § 2286a(c) or otherwise beyond the scope of the Board's statutory authority.

- **Analysis:** The Board may analyze the design, construction, operation, and decommissioning of defense nuclear facilities within statutory parameters in 42 U.S.C. § 2286a(b), and subject to excluded functions identified in 42 U.S.C. § 2286a(c).
- **Recommendations:** The Board's primary tool is the issuance of formal recommendations to the Secretary of Energy under 42 U.S.C. § 2286a(b)(5). These recommendations are intended to inform the Secretary of measures the Board believes may ensure the adequate protection of public health and safety. In making these recommendations, the Board is required to specifically assess risk and the technical and economic feasibility of implementing the recommended measures. The Secretary is required to respond to these recommendations but retains the authority to accept or reject them.

Activities Outside DNFSB Statutory Authority: Other attempted DNFSB activity, outside the specific authorities granted by the *Atomic Energy Act*, is not permitted. DOE Field Elements should be diligent in identifying and appropriately handling requests or actions that may constitute overreach. Examples of activities generally understood to be outside the DNFSB's statutory scope include:

- **Operational Direction or Mandates:** The DNFSB is an advisory body. Its role is to advise and recommend to the Secretary, not to regulate or enforce. DNFSB staff do not have the authority to direct operational changes, particularly in real time during its investigative activities. Such real-time directions may be disregarded as DOE Field Elements may deem appropriate.
- **Deliberative Information:** DOE and NNSA shall not provide predecisional or other draft copies of standards (including orders, regulations, or requirements) or executive deliberative information to the DNFSB or its staff. DNFSB authority to investigate is limited to standards currently applicable at defense nuclear facilities.
- **Non-Defense / Non-Nuclear Facilities:** Not every facility on a DOE or NNSA site meets the definition for a "defense nuclear facility." The Board's jurisdiction is explicitly limited to "defense" "nuclear" facilities that meet certain criteria, per the definition in its enabling statute. It has no authority over non-defense, or non-nuclear activities or facilities.
- **Nuclear Weapons:** DOE and NNSA will not enable DNFSB's attempted exercise of excluded functions. DNFSB's functions generally do not extend to the safety of atomic weapons.

GUIDANCE FOR FIELD OFFICE INTERACTION: All personnel should continue to engage with DNFSB members and staff in a professional manner, and must continue to cooperate with DNFSB staff requests that comport with its recognized statutory authority. However, if you receive a request or directive from the Board or its staff that you believe may be outside their statutory authority described in Section 3.0, or if you are uncertain as to whether a request or directive is within DNFSB's scope of authority, you are instructed as follows:

1. Do not immediately commit DOE or NNSA resources or personnel to the request, nor provide such information.
2. Inform the DNFSB representative that you will need to review the request internally.
3. Immediately elevate the request through your management chain to the appropriate DOE or NNSA headquarters program office and the Office of the General Counsel for a formal review and determination.

Adherence to the legal framework governing the DOE-DNFSB relationship is mandatory. Activities outside the Board's statutory limit are not authorized. To the extent existing DOE Orders or guidance regarding DNFSB interaction are not in alignment with this guidance memorandum, DOE will expeditiously make changes to update Orders and guidance. Pending those updates, this guidance memorandum should control.

CONCLUSION: A clear understanding of the DNFSB's statutory mission is essential for maintaining our productive working relationship and ensuring that both agencies operate as Congress intended. DOE and NNSA have a broader public health, safety, and security mission than that delegated to the DNFSB by Congress. Proper execution of this mission requires that field staff appropriately limit the Board to its authorized purpose and functions. DOE and NNSA facilities, personnel, and information outside the scope of the Board's authority should be protected, and further guidance sought when needed. Your cooperation in implementing these clarifying instructions is appreciated.

Distribution

Raymond Geimer, Manager, Hanford Field Office
Ted Piedrok, Manager Pacific Northwest Site Office
Robert Boston, Manager DOE-Idaho
Charles Maggart, DOE-Idaho
Nicholas Balsmeier, Acting Manager Idaho Cleanup Project
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Stephanie Martin, EHSS-1
Amanda Lowery, EHSS-1
Larry Perkins, EHSS-1
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