



Supplementary Agreement for
Memorandum of Understanding Between the
U.S. Department of Energy and the Defense Nuclear
Facilities Safety Board

June 2022

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On February 17, 2022, the U.S. Department of Energy (DOE) and the Defense Nuclear Facilities Safety Board (DNFSB) (collectively, the Parties) entered into a Memorandum of Understanding (MOU) in furtherance of certain provisions of the Atomic Energy Act of 1954, as amended (AEA), that are applicable to DOE defense nuclear facilities, 42 U.S.C. §§ 2286-2286I. The Parties agreed in the MOU that they would implement it via a supplementary document to be agreed to by career staff of the Parties. This Supplementary Agreement (Agreement) constitutes that supplementary document.

The Parties further agreed in the MOU that the supplementary document would be reviewed at least every two years after the MOU's effective date, which was February 17, 2022. This Agreement may be modified at any time by mutual written agreement of the career staff of both Parties. In any case where conflict exists between this Agreement and the MOU, the MOU shall control. This Agreement is effective on the date it is signed by representatives of the career staff of both Parties or, if signed on different dates, on the last of the dates identified in the signature block below. Each staff representative signing this agreement warrants that he or she has authority to execute it on behalf of the staff of the Party for which he or she signs. This Agreement will remain in effect unless and until it is terminated by one or both Parties by providing 90 days' advance written notice to the other party.

This Supplementary Agreement does not apply to DNFSB safety investigations conducted in accordance with 10 CFR 1708, Procedures for Safety Investigations.

SIGNATORIES

For DNFSB:



Christopher J. Roscetti
Technical Director
Defense Nuclear Facilities Safety Board

Date:

1 JUNE 2022

For DOE:



Joe Olencz
Departmental Representative to the DNFSB
Department of Energy

Date:

JUNE 1, 2022

Table of Contents

Topic #1: Resident Inspectors	4
Topic #2: Access to Information, Facilities, & Personnel	7
Topic #3: Headquarters and Site Interactions	9
Topic #4: DOE Directives and Regulations Interface.....	12
Topic #5: Board and Department Written Communications.....	14
Topic #6: Recommendations and Implementation Plans	15
Topic #7: Board Public Hearings, Meetings, and Briefings	16
Topic #8: Escalation Process	18

Acronyms

AEA	Atomic Energy Act
ATD	Associate Technical Director
CFR	Cod of Federal Regulation
DNFSB	Defense Nuclear Facility Safety Board
DOE	Department of Energy
DR	Departmental Representative
EDO	Executive Director of Operations
HSPD	Homeland Security Presidential Directive
IP	Implementation Plan
LOI	Lines of Inquiry
MOU	Memorandum of Understanding
NNSA	National Nuclear Security Administration
OPI	Office of Primary Interest
ORPS	Occurrence Reporting and Processing System
POC	Point of Contact
PSO	Program Secretarial Office
QFR	Questions for the Record
Revcom	Directives review and comment system
TD	Technical Director

Topic #1: Resident Inspectors

MOU #1: DOE will provide DNFSB Resident Inspectors with access to facilities, personnel, and information in a manner equivalent to site employees, such as Facility Representatives, Cognizant System Engineers, and other employees with access to defense nuclear facilities.

1. For purposes of this section, the term DNFSB Resident Inspectors includes those DNFSB staff members assigned to be Resident Inspectors, and others performing Resident Inspector-like duties (e.g., augmentation, training, temporary details), such as DNFSB Cognizant Engineers for sites without Resident Inspectors, and DNFSB headquarters staff, as appropriate.
2. Because variations exist among sites, DOE and DNFSB staff will determine and document, as appropriate, the process for access to information (unclassified and classified), services, and facilities for each site. The examples in Attachment 1 are provided to guide this effort.
3. DOE will support the use of DNFSB computing equipment and internal network access in appropriate locations.
4. DNFSB Resident Inspectors will comply with site/facility security, training, and safety requirements.
5. DNFSB Resident Inspectors will provide draft copies of weekly/monthly reports to site DOE and contractor leadership and liaisons for purposes of their awareness, as well as to solicit any comments concerning factual accuracy. This will follow the review process as described in Topic #5: Board and Department, Written Communications.

Attachment 1 to Topic #1: Examples of Information, Services, and Facilities

This list is intended to cover Resident Inspectors. The list is expected to be tailored appropriately for Cognizant Engineers for sites without Resident Inspectors and DNFSB headquarters staff performing Resident Inspector like duties.

1. Information

- a. Documents without a request form
- b. DOE and contractor personnel, including meetings
- c. DOE and contractor information systems, including but not limited to:
 - i. Databases
 - ii. Document management systems
 - iii. Issue management systems
 - iv. Electronic logs
 - v. Performance indicators
- d. Correspondence distribution lists, including but not limited to:
 - i. Safety basis submittals and approvals
 - ii. Project documents and approvals
 - iii. Startup notification reports, readiness assessment related documents
 - iv. Emergency Planning Hazard Analyses
 - v. Contracting direction related to safety matters
- e. Automated notifications/calendars, including but not limited to:
 - i. Abnormal events (i.e., sub-ORPS report), including emergencies
 - ii. Fact-findings or critique type events
 - iii. Facility paging
 - iv. All-hands messages
 - v. Drills and exercises
 - vi. Oral boards
 - vii. Specialty notifications (e.g., radiological control, criticality safety, safety basis)

2. Services

- a. Site “manager” for approvals
- b. Telecommunications approved for site spaces (phones, cellphones, pagers, etc.)
- c. Computing equipment for site network (desktop, tablet, printer, etc.)
- d. Onsite training coordination and courses
- e. Occupational medicine, including but not limited to:
 - i. Dosimetry
 - ii. Bioassay
 - iii. Respirator services
 - iv. Medical examinations and care, including vaccinations
- f. Disposal/destruction of sensitive documents and equipment
- g. Normally pooled personal protective equipment (anti-c’s, respirators, etc.)
- h. Photography equipment or services, where required
- i. Classification review
- j. Simple supplies
- k. Badging and HSPD-12 servicing

3. Facilities

- a. Unescorted access to defense nuclear facilities and supporting facilities
 - i. Human Reliability Program sponsorship, when applicable
 - ii. Keys or codes, when appropriate
 - iii. Changeroom lockers
- b. Suitable office space
 - i. Furniture
 - ii. Utilities, including telecommunications
 - iii. Acceptable locking features
 - iv. Provision to use meeting space
 - v. Access to classified repository, computing, and telecommunications, as needed
- c. Access to the Emergency Operations Center, including during emergencies
- d. Vehicle fueling stations and tire inflation services, where available

Topic #2: Access to Information, Facilities, & Personnel

MOU #2: DNFSB staff will follow site/facility access requirements, as well as processes agreed upon pursuant to this MOU, when requesting access to DOE facilities, personnel, and information.

This section defines the process that will be used when DNFSB headquarters staff request access to facilities, personnel, and information from DOE for routine staff interactions. This section does not apply to DNFSB Resident Inspectors.

1. DNFSB and DOE will actively communicate to ensure timely access to facilities, personnel, and information, and any impediments to access will be identified as soon as possible.
2. DNFSB staff will follow site/facility access requirements when requesting access to DOE facilities, personnel, and information.
3. DNFSB will notify the DOE Departmental Representative regarding all access requests.
4. Access to Information
 - a. DNFSB and DOE will use a standardized process (i.e., the request for information process) for existing DOE and DOE contractor documents to be transmitted to, received by, or obtained by DNFSB headquarters.
 - b. DNFSB may also request information through interactions with DOE and DOE contractor personnel (e.g., in-person discussions, phone calls, emails, status meetings). DNFSB will typically use this process to request information that is readily attainable (e.g., status of safety basis document submittal, information associated with an occurrence report). DNFSB also requests information through lines of inquiry, which is discussed in more detail under Headquarters and Site Interactions.
 - c. DOE will strive to provide information as soon as practicable and consistent with DNFSB's requested delivery date, which will be commensurate with the complexity and volume of the request; normally 15 business days for unclassified information and 20 business days for classified information.
 - d. If additional time is needed to provide information, DOE will inform DNFSB as soon as possible. In these cases, DNFSB may identify a revised delivery date in consultation with DOE.
 - e. DNFSB and DOE will protect documents commensurate with the appropriate requirements.

- f. As practicable, DOE and DOE contractors as directed by DOE, will include the appropriate DNFSB headquarters staff (e.g., cognizant engineers) on distribution for unclassified safety related documents (e.g., safety basis documents, startup/restart documents, emergency response documents) and will provide notification of similar classified documents.
- g. As practicable, DOE will provide the appropriate DNFSB headquarters' staff (e.g., cognizant engineers) with notifications of abnormal events and related meetings (e.g., fact findings, evacuations, fire events).

5. Access to Facilities

- a. DNFSB will provide DOE headquarters and site liaisons with information regarding planned facility visits as soon as practicable and prior to the visit.
- b. Upon receiving notification of a planned DNFSB visit to a DOE site, DOE will provide DNFSB with applicable site/facility access requirements as soon as possible. DNFSB personnel will comply with site/facility access requirements prior to gaining access.
- c. As practicable, DOE will provide DNFSB headquarters staff who are fully qualified for unescorted defense nuclear facility access with the same onsite notification of emergency events as is provided to DOE field office personnel who are similarly qualified for unescorted access.

Topic #3: Headquarters and Site Interactions

MOU #3: DNFSB will provide DOE reasonable advance notice of upcoming DNFSB oversight visits and reviews, along with information needed to establish that the DNFSB employees and/or contractors meet the access requirements for the site. Whenever practicable, DNFSB will provide an agenda in advance for an oversight visit or review, including details on its scope and schedule.

MOU #4: DOE will support DNFSB oversight activities by providing access to facilities, personnel, information, and appropriate resources as necessary to address items in DNFSB agendas.

1. DNFSB Reviews and Board Site Visits

- a. DNFSB will normally provide notice to DOE of upcoming reviews of DOE Headquarters or DOE sites and Board or staff site visits, including information on scope and timing, prior to agenda transmittal.
- b. As practicable, the DNFSB Technical Director (TD) will notify the DOE Departmental Representative in advance of all reviews that involve 3 or more sites, or involve multiple DOE Program Offices.
- c. Following transmittal of the agenda for a staff review or Board site visit, DNFSB and DOE will discuss the agenda scope, schedule, and any Lines of Inquiry (LOIs) needing clarification to ensure that appropriate resources are available to support the staff review or Board site visit.
- d. DNFSB will transmit an agenda prior to DNFSB requested dates for review interactions or Board site visits. The period between transmittal of the agenda and the requested scheduled dates will be dependent on the length and complexity of the review (e.g., 4 weeks for large or complex reviews). DOE will strive to schedule review interactions and Board site visits consistent with the DNFSB requested schedule. DOE and DNFSB will communicate regarding any schedule delays as soon as possible.
- e. DOE will exercise its best efforts to ensure resources are available and personnel are prepared to support the DNFSB review or Board site visit, including tour escorts and operational and technical experts, as requested in the agenda. All participants will be provided final copies of the agenda in advance of the interaction or visit.
- f. For reviews and site visits with observation and walkdown components, DOE will work with DNFSB staff to coordinate the timing of activities to be observed. DNFSB may have discussions with facility personnel during observations and facility walkdowns, consistent with safe operations of the facility.

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- g. DNFSB may request interviews with DOE personnel or DOE contractors and will coordinate these in advance with DOE to identify the DOE representative and/or union representative that may be present during the interviews. To the extent provided for in the Atomic Energy Act of 1954, Chapter 21, as amended 42 U.S.C. §2286c *Responsibilities of the Secretary of Energy*, DNFSB will determine who is permitted to attend any such interviews, considering DOE's input, depending on the specific circumstances and depending on the sensitivity of the issue(s).
 - h. For site visits by individual Board members or the full Board, DOE and DNFSB will generally follow the above planning process, recognizing the need for increased communications for additional flexibilities and greater accommodations for scheduling and access to personnel and facilities.
 - i. An entrance briefing will normally be held for reviews. Any entrance briefing will normally introduce key personnel, review the planned activities and schedule, identify protocols and procedures that will be used, and discuss any special arrangements that have been or need to be made.
 - j. Written responses to LOIs may be provided to DNFSB at DOE's discretion. If written materials are provided, DOE will strive to make them available in advance of the scheduled interaction in order to allow sufficient time for review of materials and a more complete discussion.
 - k. An exit briefing with the appropriate site personnel will normally be held for on-site reviews. Any exit briefing will address any follow-up requests for information and provide any relevant observations, as practicable.
 - l. DNFSB and DOE management will be informed as soon as practicable about any concerns that may have an immediate safety impact (e.g., life safety impact) that are discovered during a review or Board site visit.
 - m. The DNFSB staff review team will normally communicate to DOE their preliminary staff observations, including any significant issues identified by the DNFSB staff, for the purposes of ensuring the factual accuracy of the information and understanding DOE's perspective on any issues identified.
2. For the purposes of efficiency and to minimize duplicative efforts, a reasonable number of DNFSB staff with appropriate access authorizations will be granted the opportunity to observe DOE- or contractor-led reviews (e.g., Nuclear Explosive Safety Studies, Readiness Reviews, Enterprise Assessment reviews, Accident Investigations, etc.) with the same access as DOE or contractor assessment team members. DNFSB will communicate in advance, as early as practicable, when interested in observing a review.

3. Standard Interactions with DNFSB and DOE Management

- a. DOE and DNFSB Management may establish periodic meetings with each other or their representatives for the purposes of maintaining open communication, and sharing relevant information and activities occurring within their respective organizations.
- b. DNFSB Management includes, but is not limited to, the Technical Director, the Deputy Technical Director, and Associate Technical Directors (ATD). The General Manager or the General Counsel may be included in meetings requiring their areas of expertise.
- c. DOE Management includes, but is not limited to, the DOE Departmental Representative; the National Nuclear Security Administration (NNSA) Associate Administrator for Safety, Infrastructure & Operations; the Environmental Management Deputy Assistant Secretary for Safety, Security, and Quality Assurance; the Environment, Health, Safety & Security Director of the Office of Nuclear Safety; and the Enterprise Assessment Director of the Office of Environment, Safety and Health Assessments.

Topic #4: DOE Directives and Regulations Interface

MOU #5: DNFSB will review DOE directives that the Board believes may affect safety at defense nuclear facilities and may provide comments to DOE on its directives via written correspondence or via the DOE review and comment process. DNFSB may also communicate with DOE regarding the implementation of directives. DOE will consider DNFSB's feedback on the substance, implementation, and prioritization of directives.

MOU# 6: DOE will provide timely communication to DNFSB regarding any plans for new or updated regulations that have the potential to affect nuclear safety at DOE defense nuclear facilities. DNFSB may provide feedback to DOE on its plans for new or updated regulations that DOE will consider as it proceeds with rulemaking.

1. To maintain good interactions and improve communications relating to Directives interface:
 - a. DOE (Program Offices and Offices of Primary Interest (OPI)) and DNFSB will meet periodically to discuss OPI plans and schedules to develop, revise, and cancel Directives and Standards. DNFSB and DOE will also discuss opportunities for interactions before the review and comment (RevCom) process and for directives changes going through the fast track process, as appropriate.
 - b. DOE will notify DNFSB as soon as practicable of any revisions to directives under the fast track process that could affect nuclear safety at DOE defense nuclear facilities.
 - c. DNFSB may provide feedback to DOE OPIs on Directives and Standards plans.
 - d. DOE will provide DNFSB with electronic access to view all DOE and NNSA RevCom systems.
2. DNFSB will participate in the RevCom process for DOE Directives and Standards, as appropriate. This means DNFSB may obtain draft DOE documents, provide comments, and review comment resolutions and final drafts, consistent with the RevCom process.
3. When DNFSB requests attendance in DOE working group discussions on a specific Directive or Standard:
 - a. DNFSB will submit a request to the appropriate DOE OPI or working group lead, and copy the Departmental Representative to the DNFSB,
 - b. DOE will respond to the DNFSB request, and
 - c. DOE and DNFSB will agree on the level of DNFSB participation prior to DNFSB's attendance at the DOE working group discussion.

4. DOE will communicate to DNFSB any plans for new or updated regulations that have the potential to affect nuclear safety at DOE defense nuclear facilities at least 90 days prior to publication of any Notice of Proposed Rulemaking, as practicable. DOE's communication of its plans will include a description of the tentative scope of such proposed changes to the regulation and supporting basis for new or updated regulations. DNFSB may provide feedback to DOE on its plans for new or updated regulations that DOE will consider as it proceeds with rulemaking.

5. If DNFSB provides comments in response to a Notice of Proposed Rulemaking published by DOE for public comment [pursuant to the Administrative Procedure Act], DOE will respond to DNFSB on the substance of DNFSB's comments after DOE has made a final decision on the regulation, but prior to publication of the final rule in the Federal Register. This provision does not apply to recommendations.

Topic #5: Board and Department Written Communications

MOU #7: For Board correspondence addressed to the Secretary of Energy (including draft and final recommendations), the Secretary, or the Secretary's designee, will respond to the Board in writing as required by statute.

MOU #8: The Board will establish due dates associated with reporting requirements. If DOE believes it cannot meet a due date, the Secretary of Energy will inform the Board in writing that additional time is necessary to meet the Board's reporting requirement. The Board will inform the Secretary in writing if additional time will affect the Board's safety oversight.

1. DNFSB written communications (e.g., Board letters, Resident Inspector weekly reports, Cognizant Engineers monthly reports) will be released to the public unless the information is protected from disclosure by law.
2. As appropriate, prior to public disclosure DNFSB will provide draft written communications concerning DOE activities to the appropriate responsible DOE Headquarters or Field Office to review for content that is protected from disclosure by law. DOE will identify, in a timely manner, any specific legal basis (e.g., Atomic Energy Act, Executive Order 13526, 32 C.F.R. Part 2002) for withholding the draft written communications from public disclosure. DOE will identify specific portions of written communications that it believes are protected from disclosure by law. DNFSB will make a final determination regarding public disclosure of written communications given DOE's review.
3. DNFSB will endeavor to provide written communications related to time-sensitive matters, such as DOE design and construction project milestones, to DOE in a timely manner.
4. DNFSB may transmit letters with reporting requirements to DOE when DNFSB requires information or reports. DNFSB may also transmit letters to DOE that provide independent nuclear safety analysis, advice, and best practices.
5. For DNFSB letters without reporting requirements, DOE is not required to respond. DNFSB welcomes feedback on the value of its advice and observations. DOE may discuss items raised in these letters with DNFSB staff as DOE assesses the Board's advice and observation.
6. DNFSB and DOE will provide to each other copies of reports related to safety at defense nuclear facilities that are sent to Congress and other stakeholders (e.g., Government Accountability Office, Office of Management and Budget).
7. DNFSB and DOE may establish additional or alternate points of contact for communicating on the status of any DOE response to DNFSB correspondence.

Topic #6: Recommendations and Implementation Plans

MOU #9: DOE and DNFSB will communicate, as appropriate, following the issuance of recommendations and during implementation plan development, to provide clarification and address factual accuracy concerns.

MOU #10: Once the Secretary of Energy transmits an implementation plan (IP) to the Board, any significant IP revisions will be sent to the Board as soon as practicable. The Board, at its discretion, may communicate any issues related to IPs or IP revisions to the Secretary, and commits to do so promptly.

1. DOE and DNFSB will actively communicate during the Recommendation process.
2. DOE and DNFSB will each designate technical staff and management point(s) of contact (POC) after the Board transmits a Recommendation to DOE. These POCs should meet regularly to discuss Recommendation and Implementation Plan progress, and if DOE accepts the Recommendation, continue to meet until DOE completes Implementation Plan actions.
3. DOE and DNFSB will use the draft Recommendation process to provide clarifications, address factual accuracy concerns and share any new pertinent technical information. The draft recommendation process also allows DOE to share any technical issues associated with specific sub-recommendations.
4. DOE will communicate its Implementation Plan approach to DNFSB early in the process and consider DNFSB input. This communication should take the form of meetings while the draft Implementation Plan is being developed and may include the sharing of draft Implementation Plans.

Topic #7: Board Public Hearings, Meetings, and Briefings

MOU #11: The Board will identify to the Secretary of Energy the DOE and/or contractor personnel it seeks to participate in a Board hearing and/or meeting. The Secretary of Energy, or the Secretary's designee, will make every effort to resolve participation issues with the Board.

1. Public hearings/meetings with active DOE participation.
 - a. As soon as practicable, DNFSB will provide to DOE the public hearing/meeting topics, objectives, and requested participants. The general goal is to have the topics, objectives, and participants finalized and communicated to the Department, at least 20 business days in advance of the hearing/meeting.
 - b. DNFSB will determine the participants it deems necessary and will consider DOE feedback on the participants when finalizing the hearing/meeting agenda.
 - c. As practicable, DNFSB will share with DOE a detailed list of hearing/meeting topics, with sufficient information to support the appropriate level of preparation, at least 10 business days in advance.
 - d. DOE will provide DNFSB any presentation materials and/or exhibits 3 business days prior to the hearing/meeting, as practicable to ensure their availability at the hearing/meeting.
 - e. DNFSB may offer DOE participants a logistical walkthrough and familiarization session in advance of the hearing/meeting. This session will only be for technical and logistical purposes and will not involve any substantive discussion or rehearsal.
 - f. For public hearings, DNFSB will provide to DOE a list of any questions for the record (QFR) within 5 business days after the hearing and DOE will provide responses to the QFRs within 15 business days of receipt, as practicable. If DOE needs additional time, DOE will communicate such need as early as practicable.
 - g. For public meetings, DNFSB may provide to DOE a request for information regarding follow-up questions on topics discussed at the meeting.
 - h. If a transcript is developed, DNFSB will provide hearing/meeting transcripts to DOE for identification of transcription errors only.
2. DOE briefings to the Board
 - a. DNFSB and DOE will communicate regarding appropriate DOE participants in advance of scheduling the briefing.
 - b. DNFSB and DOE may communicate about specific briefing objectives or topics sufficiently in advance of the briefing to allow adequate preparation.

- c. DOE may (if developed) provide to DNFSB the briefing materials in advance of the briefing.
- d. DNFSB may publish an agenda of the briefing on its public website. DNFSB may publish on its public website the briefing materials that have been cleared by DOE for public disclosure.

Topic #8: Escalation Process

MOU #12: The Parties will make a good-faith effort to resolve all interface issues expeditiously and at the lowest possible level. However, the Board, the Secretary of Energy, and the Deputy Secretary of Energy will maintain open lines of communication and may at any point use such dialogue to resolve interface issues.

1. DNFSB and DOE will strive to resolve all interface issues at the lowest level (e.g., Site, Departmental Representative (DR), and Program Secretarial Officer (PSO) Liaisons as appropriate) prior to initiating the escalation process, whether at DOE headquarters or in the field.
2. Either DNFSB or DOE may initiate or escalate to the next step of the escalation process (as defined in 4a & 4b) if an interface issue cannot be resolved. The initiating party will communicate to the appropriate personnel from the other agency that it intends to escalate an issue.
3. DNFSB and DOE staff will keep their respective management—specifically, the DNFSB EDO/TD; DOE DR; PSO/DR Liaisons—informed of the status of the interface issue during the entirety of the escalation process.
4. As appropriate for the interface issue, DOE and DNFSB will make a concerted effort to resolve the interface issue within 20 business days, or prior to a scheduled activity related to the interface issue. Resolution of an interface issue may include a mutually agreed upon date for DOE to provide information or access to DNFSB.
 - a. **At Headquarters:** The appropriate DNFSB ATD/TD will work with the DOE Headquarters management responsible for the interface issue and the PSO/DR Liaison to resolve the interface issue. If the interface issue is not resolved, the PSO/DR Liaison will determine the appropriate DOE senior management to resolve the interface issue. DNFSB and identified DOE senior management will work to resolve the interface issue.
 - b. **In the Field:** The appropriate DNFSB ATD will work with the DOE Site Liaison/Field Element Management to resolve the interface issue. If the interface issue is not resolved, the DNFSB TD will work with the DOE Field Element Manager to resolve the interface issue. If the interface issue is still not resolved, the PSO/DR Liaison will determine the appropriate DOE senior management to resolve the interface issue. DNFSB and identified DOE senior management will work to resolve the interface issue.