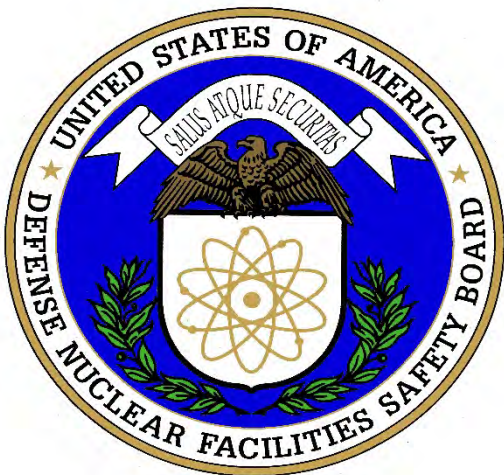


Defense Nuclear Facilities Safety Board

Washington, DC 20004

Policy Statement

Date: December 20, 2024



Subject

Policy Statement on Safety
Allegations and Formal Safety
Investigations

Summary

Through this policy statement, the Defense Nuclear Facilities Safety Board sets forth its policy on the evaluation and disposition of safety allegations, and on the use of Formal Safety Investigations.

Joyce L. Connery
Chair

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
BOARD POLICY STATEMENT ON SAFETY ALLEGATIONS AND
FORMAL SAFETY INVESTIGATIONS

I. Purpose/Objectives

This Policy Statement establishes the Board's policy on the following:

- Addressing allegations of current or potential unsafe conditions at Department of Energy (DOE) defense nuclear facilities, as defined in 42 U.S.C. § 2286g, (hereinafter referred to as "safety allegations") brought to the Board's attention by DOE employees, DOE contractors, and other members of the public; and
- The use of the Board's statutory authority (42 U.S.C § 2286a(b)(2)) to investigate any event or practices at a DOE defense nuclear facility which the Board determines have adversely affected, or may adversely affect, public health and safety.

II. Scope/Application

As indicated above, this policy statement applies to the Board's evaluation and disposition of safety allegations, as well as the Board's use of formal safety investigations. This policy statement does not apply to the routine safety oversight work or regularly directed reviews.

Pursuant to 10 C.F.R. § 1708.102(c), formal safety investigations are initiated upon a majority vote of the Board. If the Board has lost quorum and is operating under the Chair's authority pursuant to 42 U.S.C. § 2286(e), formal safety investigations may be initiated by the Chair with the concurrence of any other sitting Board Member. By statute, such an action, absent a quorum, would need to be reported to Congress.

The use of a formal safety investigation is discretionary authority of the Board, intended as a formal administrative investigatory process with procedural safeguards, to address events or practices that adversely affect or have the potential to adversely affect public health and safety. While a safety allegation may lead to a formal safety investigation, and a formal safety investigation may have its roots in a safety allegation, the two are not intrinsically tied, but are addressed together as a matter of convenience in this policy statement.

III. Policy Statement

- *Safety Allegations*

As noted, DOE Federal employees, DOE contractor staff, and other members of the public occasionally contact the Board or its staff to highlight safety concerns related to conduct, practices, or events at DOE defense nuclear facilities.

It is the policy of the Board to make it easy for parties to provide such safety allegations in a confidential manner, and to treat such safety allegations as an agency priority.

The Board's staff shall evaluate and disposition each safety allegation in a timely manner, whether it is made by a named individual, group of individuals, or anonymously. Staff shall keep the Board informed of all new safety allegations and shall update regularly the Board throughout the evaluation and disposition of each safety allegation.

All safety allegations will be taken seriously, and the individuals making the safety allegations will be treated professionally, courteously, and provided with timely feedback, if possible. In all cases, an alleged's privacy will be protected, except as required by law or necessary to address a safety concern. Further, all safety allegations will be fully vetted within the agency to verify the accuracy and credibility of all associated information.

In the event a safety allegation is determined to include matters outside of the Board's jurisdiction, the Board shall refer the matter to the appropriate body for further investigation or disposition.

The Board will keep the Congress informed of the number and nature of safety allegations it receives annually through its annual report to Congress.

The Board will prioritize safety allegations within its jurisdiction in a manner commensurate with the seriousness of the safety allegation and the weight of the supporting information. Once fully vetted and evaluated, the Board will apply the appropriate statutory tools to fulfill its obligation to provide independent analysis, advice, and recommendations to the Secretary of Energy on issues of adequate protection of public health and safety at defense nuclear facilities.

- *Investigations*

Typically, the Board's oversight is conducted by its technical staff via staff reviews, Resident Inspectors' daily oversight, and other routine methods. However, in certain circumstances, the Board may determine that a formal safety investigation is necessary to fully evaluate whether an event or practices at a DOE defense nuclear facility has adversely affected, or may adversely affect, public health and safety. In such a case, the Board may vote to conduct a formal safety investigation pursuant to its regulations at 10 C.F.R. Part 1708. If necessary, the Board may wish to deliberate via a closed meeting or a non-public collaborative discussion (NCD) to determine whether to support a formal safety investigation.

If the Board decides to conduct a formal safety investigation, the Board shall vote to issue an Order of Safety Investigation in accordance with 10 C.F.R. § 1708.102. The Order of Safety Investigation will outline the basis for the investigation, the matters to be investigated, the Investigating Officer(s) designated to conduct the investigation, and their authority. The investigatory record shall not be released outside of the DNFSB,

unless as deemed necessary and appropriate by the Board. The investigatory record includes the following:

- The Order of Safety Investigation,
- The Final Report of Safety Investigation,
- Notes or preliminary reports of the DNFSB investigatory team,
- Interview notes or recordings, and
- Other internal documents generated as part of the formal safety investigation.

The threshold determination as to whether a matter necessitates a formal safety investigation, as opposed to a less formal review, is a matter of discretion that will be determined by a vote of the Board. The individual Board Members should take into consideration the following factors, at a minimum:

- the severity of the situation,
- the facts relevant to the case,
- the extent of cooperation or lack of cooperation anticipated by DOE or its contractors, and
- the internal and external impacts of conducting a formal safety investigation.

Once the investigation is concluded, the Investigating Officer(s) shall provide a Final Report of Safety Investigation to the Board, including all relevant findings and conclusions. Pursuant to 10 C.F.R. §1708.115, the Final Report of Safety Investigation will be nonpublic as part of the investigatory record. However, the policy of the Board is to then prepare a final report that is publicly releasable to the fullest extent possible.

As appropriate, the Board may then take additional action, based on the findings of the Final Report of Safety Investigation, by using other statutory tools such as issuing a formal recommendation or convening a hearing.

The Board recognizes that the issuance of subpoenas is a significant exercise of its authority and is committed to using this tool judiciously in support of its mandate to ensure public health and safety. Subpoenas will be used if the Board determines that the information sought is essential to an investigation and that voluntary efforts to obtain the information have been unsuccessful or are unlikely to succeed within a reasonable amount of time. The Board may also issue subpoenas at the request of individuals or entities willing to provide information but requiring the formal protection or authority that a subpoena affords. The decision to issue subpoenas will be based on a majority vote of the Board, ensuring the use of this authority is deliberate and focused on fulfilling the Board's mission to protect public health and safety.