

Defense Nuclear Facilities Safety Board

Washington, DC 20004

Policy Statement

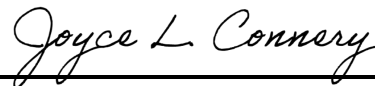
Date: April 19, 2021

Subject

Policy Statement on
Recommendations.

Summary

This policy statement establishes the Board's policy on the development of Recommendations to the Secretary of Energy (pursuant to 42 U.S.C. § 2286a(b)(5)) for ensuring the adequate protection of public health and safety, the execution of and the Board's oversight of the Department of Energy's response to and implementation of Recommendations, and the Board's closure of Recommendations.



Joyce L. Connery
Chair

I. Purpose/Objectives

This Policy Statement establishes the Board's policy on the following: the development of Recommendations to the Secretary of Energy (pursuant to 42 U.S.C. § 2286a(b)(5)) for ensuring the adequate protection of public health and safety, the execution of and the Board's oversight of the Department of Energy's response to and implementation of Recommendations, and the Board's closure of Recommendations. This Policy Statement replaces PS-1, *Criteria for Judging the Adequacy of DOE Responses and Implementation Plans for Board Recommendations*.

II. Scope/Application

The Board shall make such Recommendations to the Secretary of Energy with respect to defense nuclear facilities that the Board determines are necessary to ensure adequate protection of health and safety. This Policy Statement outlines the formulation of potential Recommendations, the use of closed meetings and/or non-public collaborative discussions (NCDs) for the purposes of discussing potential Recommendations, the transmittal of approved Draft and Final Recommendations, actions in the event of a Department of Energy (DOE) rejection of a Recommendation, the evaluation of DOE Implementation Plans for Recommendations, and the assessment for closure of Recommendations.

III. Policy

Recommendation Development

If, during oversight activities, either the Board (or Board Member) or agency staff determines that there may exist a situation in relation to a DOE defense nuclear facility, either discretely or in concert with other conditions, that potentially poses a threat to the adequate protection of public health and safety, the Board may enter into a process to develop and consider a Recommendation. The staff may propose a Recommendation outline, use another process for conveying the information to the Board, or the Board may convene a closed meeting or a non-public collaborative discussion (NCD) in accordance with the Atomic Energy Act of 1954, as amended, (AEA) and the Government in the Sunshine Act.

During a closed meeting or NCD, the Board will determine whether to direct agency staff to develop a written Draft Recommendation for review, or continue to monitor the situation, or determine another course of action.

Recommendation Voting

Board Members will use closed meetings and/or NCDs and its folder process to comment on, edit, and amend Draft Recommendations. These processes will be conducted in accordance with the AEA and the Sunshine Act.

Pursuant to the AEA, the Board determines issues of adequate protection and whether to issue a Recommendation to the Secretary of Energy.

Upon receiving a majority vote after the establishment of a quorum of the Board Members, the Draft Recommendation will be transmitted to the Secretary of Energy in accordance with the AEA. Appropriate notifications to relevant congressional committees will be made at that time.

Communications with DOE during Draft Process

The Board's staff will maintain records of written communications between DNFSB and DOE regarding a Draft Recommendation. Additionally, notes regarding communications that have a material impact on the Board deliberations or Final Recommendation will be maintained as a part of the Draft/Recommendation file.

The Board views the purpose of the Draft process as an opportunity for DOE to clarify technical elements of the Recommendation and to provide additional pertinent information to the Board, not to negotiate content or a response.

DOE requests for an extension to respond to a Draft Recommendation, as provided for in the AEA, will be evaluated by the Board, and a response will be provided in writing.

Final Recommendation

The Board will consider any pertinent information provided by DOE in response to a Draft Recommendation, make any changes to the document it deems necessary, and vote on a Final Recommendation.

Final Recommendations will be transmitted to DOE and the Board will make appropriate notifications to Congress. Once the Board has confirmed that the Secretary of Energy has received the Final Recommendation, the Recommendation and any related correspondence from the Secretary will be posted on the Board's public website and published in the Federal Register. As required by the AEA, the Board's Federal Register notice will provide interested persons with 30 days in which to submit comments, data, views, or arguments to the Board concerning the Recommendation.

The Board or agency staff will be prepared and made available to brief congressional staff, members of Congress, or outside groups seeking additional information.

Rejection/Reaffirmation Process

Should the Secretary of Energy reject a Recommendation, in part or in its entirety, the Board will, in consultation with agency staff, review the information provided by DOE. The Board may request a meeting with the Secretary, request a public meeting with DOE, hold a meeting of its own, or conduct a hearing to assist with deliberations in accordance with the Sunshine Act.

The Board will then decide, by a majority vote of the Board following the establishment of a quorum, whether to revise, reaffirm, or withdraw the Recommendation.

Implementation Plan

Once an Implementation Plan is received by the Board, the Board and its staff will review the Plan to ensure that upon completion, it will have addressed the concerns outlined in the Recommendation. Details on the evaluation of an Implementation Plan can be found in Appendix A of this Policy Statement.

Should an Implementation Plan not satisfy the concerns the Board outlined in the Recommendation, the Board will engage with DOE to address its concerns.

Any deliverables provided to the Board will be evaluated and acknowledged in writing.

Closure of a Recommendation

The Board will communicate to the Secretary of Energy that it is closing a Recommendation when it determines that the issues raised in the original Recommendation have been sufficiently addressed.

The Board may also close a Recommendation if it determines that the conditions encountered when the Recommendation was written are overtaken by events and further pursuit of the actions in the Recommendation are unwarranted.

The Board may issue a new Recommendation related to the subject of a prior Recommendation if DOE's Implementation Plan actions, in whole or in part, do not adequately address an issue of adequate protection. The Board will take this action only after exhausting efforts to address the issues directly with DOE during its execution of the Implementation Plan.

IV. Responsibility for Implementation

Board Members, Executive Director of Operations, General Counsel, and Technical Staff.

V. Monitoring and Compliance

ECIC should review the procedures in accordance with Directive 22.1, *Internal Control Program*.

VI. Status

Approved on: April 19, 2021

Appendix A: Evaluating DOE's Response and Implementation Plan

In reviewing Recommendation responses and Implementation Plans, the Board will evaluate DOE's analysis and understanding of the underlying safety issues, commitments to actions consistent with the Board's recommendations, commitments to determine the causes and take corrective actions to preclude recurrence, and plans for federal oversight of actions. DOE's responses and Implementation Plans should demonstrate a thorough understanding of the safety issues and a commitment to sustainable safety improvements in a timely manner.

Under the Atomic Energy Act, as amended (AEA), the Secretary of Energy accepts or rejects, in whole or in part, Recommendations received from the Board. The following types of DOE responses may be encountered by the Board:

Acceptance. An acceptance is unconditional if it accepts the entire Recommendation and is consistent with the Recommendation.

Rejection. In addition to outright rejections, the Board will also consider the following types of responses to be a rejection:

- A response that states it is an acceptance, but by its language or terms in fact rejects the Recommendation.
- Ambiguous responses that could be interpreted either as acceptance or rejection of the Recommendation.
- Failure to address Recommendations, including instances where DOE states it needs to evaluate the issues further.

Partial Acceptance. The Board will consider conditional acceptance of specific sub-recommendations in a manner consistent with the Recommendation to be a partial acceptance. The Board will also consider acceptance of specific sub-recommendations and rejection of others as a partial acceptance.

Implementation Plans provide a basis and a schedule for ensuring that accepted Recommendations are understood and fully acted upon. The Board will use the following criteria to evaluate Implementation Plans:

Comprehensive Understanding of Safety Issues. The Implementation Plan should demonstrate an understanding of the Recommendation and nuclear safety issues that precipitated the Recommendation. The totality of actions in the plan will be evaluated to assess the level of DOE's understanding and acceptance of the Recommendation.

Commitments Consistent with the Recommendation. The Implementation Plan should define DOE's overall objectives and specific actions that align with the Recommendation. The plan should define appropriate milestones and deliverables to demonstrate progress and completion of safety improvements. DOE's approach should be outlined in sufficient detail to enable the Board to independently assess the plan.

Causal Analysis. The Implementation Plan should include a causal analysis for the safety issues. The plan should commit to corrective actions to address appropriate causal analysis results that preclude recurrence of the safety issues.

Federal Oversight. Implementation Plans are often developed and executed by DOE's contractor personnel. Plans should include appropriate commitments for federal oversight of their execution and deliverables. All Implementation Plan deliverables should include documented federal evaluations that address whether completed actions are effective at achieving safety improvements.

Completion Criteria. The Implementation Plan should define clear criteria for completion including a DOE evaluation of the overall effectiveness of whether completed actions improve safety and achieve the objectives defined in the Plan.