

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Board Operating Practices and Procedures

SUMMARY: The Defense Nuclear Facilities Safety Board has unanimously adopted Operating Practices and Procedures which summarize how the Board members conduct business and execute their health and safety oversight responsibilities pursuant to 42 U.S.C. § 2286.

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EFFECTIVE DATE: January 25, 2013

SUPPLEMENTARY INFORMATION: The Defense Nuclear Facilities Safety Board issues recommendations to the Secretary of the Department of Energy (DOE) and to the President regarding public health and safety at DOE's defense nuclear facilities. The Board is composed of five members appointed by the President, by and with the advice and consent of the Senate, from among United States citizens who are respected experts in the field of nuclear safety with a demonstrated competence and knowledge relevant to the independent investigative and oversight functions of the Board. From those five members, the President designates a Chairman and Vice Chairman of the Board. The Chairman serves as the chief executive officer of the Board and, subject to such policies as the Board may establish, shall exercise the functions of the Board with respect to:

- a) The appointment and supervision of employees of the Board;
- b) The organization of any administrative units established by the Board; and
- c) The use and expenditure of funds.

The Board members are supported in their oversight responsibilities by scientific, technical, legal, and administrative staff, as well as outside experts under contract to the Board. Since October 1989, the Board has developed the necessary internal practices and procedures to manage the orderly flow of Board business with the goals of maintaining transparency of operations, independence of technical review, and an overall commitment to act collegially. These Operating Practices and Procedures document many of the Board's existing procedures for conducting Board business, establish revised review and recordkeeping procedures for Board business, and clarify the roles and responsibilities of Board members. This document also clarifies the vital role the Board's staff and outside experts serve in assisting the Board members in accomplishing their health and safety oversight mission. These Operating Practices and Procedures will assist both new and existing Board members, as well as the staff that supports the Board's operations, in fulfilling their duties and responsibilities for independent oversight of the DOE nuclear weapons complex and defense clean-up operations.

1.11 The Board

- a) The Defense Nuclear Facilities Safety Board is composed of five members, one of whom is designated by the President as Chairman and one of whom is designated by the President as Vice Chairman.
- b) Under 42 U.S.C. § 2286(c)(2), the Chairman shall be the chief executive officer of the Board and, subject to such policies as the Board may establish, shall exercise the functions of the Board with respect to:
 - The appointment and supervision of employees of the Board;
 - The organization of any administrative units established by the Board; and
 - The use and expenditure of funds.
- c) In addition to the above statutory language, the Chairman has the authority and responsibility for the following executive and administrative functions necessary to support the Board's mission:
 - selecting, appointing, and fixing the compensation of the Board's employees, including salary and incentive awards;
 - supervising personnel employed by or assigned to the Board, including issuing performance evaluations, promotions, and disciplinary actions;
 - approving or delegating approval authority for official travel performed by Board members and Board staff to ensure consistency with the statutory mission of the Board and Federal Travel Regulation. The Office of the General Manager will review and approve or disapprove all travel requests. For official travel of Board Members or members of the Senior Executive Service, the Office of the General Counsel must provide concurrence;
 - assigning and organizing Board employees in work units, and distributing work supporting the Board's oversight mission at headquarters and in the field;
 - procuring services from outside experts and consultants in accordance with the Board's statute and the Federal Acquisition Regulation;
 - using and expending all funds appropriated to the Board;
 - approving Board Directives needed to support the administrative requirements of a Federal establishment in accordance with applicable laws and regulations; and
 - serving as the official spokesperson for the Board.

- d) The Board members will review and approve by majority vote of a quorum of three Board members the following actions:
- issuing Recommendations to the Secretary of Energy under 42 U.S.C. § 2286d, and accepting the Secretary's responses to each Recommendation as well as the associated implementation plan;
 - initiating investigations under 42 U.S.C. § 2286a(a)(2), appointing the Board's officer(s) designated to conduct the investigation, and delineating the Board's officers' authorities, such as recommending that the Chairman or his/her designee issue and serve subpoenas;
 - issuing new or revised regulations under 42 U.S.C. § 2286b(c) to carry out the Board's responsibilities;
 - scheduling public hearings under 42 U.S.C. § 2286b(a), including the date, time, location, subject matter, and list of potential witnesses;
 - issuing Board letters to the Secretary of Energy, DOE officials, and other Federal and state officials concerning health and safety matters under the jurisdiction of the Board;
 - issuing reporting requirements for the Secretary of Energy under 42 U.S.C. § 2286b(d);
 - initiating special studies, including studies performed by outside experts under contract to the Board pertaining to the adequate protection of public health and safety under 42 U.S.C. § 2286b(i), such as technical reports or Board-sponsored research projects not specifically directed by Congress;
 - issuing any Board policy statement defining how the Board will execute its statutory functions set forth in 42 U.S.C. § 2286a;
 - issuing the Board's Annual Report to Congress under 42 U.S.C. § 2286e(a);
 - approving any request for new Board funding before transmittal to the Office of Management and Budget or Congress; and
 - issuing the Board's Strategic Plan and Annual Performance objectives as required by the Government Performance and Results Act of 1993 and OMB Circular A-11.

1.12 Voting at Board Meetings

- a) Meetings of the Board are noticed under the provisions of the Board's Government in the Sunshine Act regulations (10 C.F.R. Part 1704). A quorum of three Board members is determined by including only the number of Board members participating who are voting to "Approve" or "Disapprove" an action, or have chosen to abstain from voting on a particular matter. A Board member who recuses himself/herself from participating in a particular matter in order to avoid any actual or apparent conflict of interest is not included for purposes of determining a quorum. Requests for Board action will not be approved if the total number of Board member votes to approve an action is tied with the number of votes to disapprove an action.
- b) At the conclusion of the Board voting process, the Board's Supervisory Executive Assistant will prepare an Affirmation Statement using the following template to document the outcome of each vote:

The Board, with Board member(s) [insert names] approving, Board member(s) [insert names] disapproving, Board member(s) [insert names] abstaining, and Board member(s) [insert names] recusing, have voted to [approve] [disapprove] [A description of the action voted upon by the Board members].

This Affirmation Statement will be circulated to each Board member for signature, confirming the correct recording of each vote. The completed Affirmation Statement for both approved and disapproved votes will be placed in the Board's public records. The action item for approved votes will also be placed in the Board's public records. If an action item is voted disapproved, a determination will be made pursuant to the Freedom of Information Act, and the Board's implementing regulations to that Act, as to whether the action item will be placed in the public record. Any concurring or dissenting professional opinions or comments submitted by Board Members with the Affirmation Statement, resulting from either an approved or disapproved vote, will also be placed in the public record.

- c) The Board has determined that a quorum includes Board members who are participating by video or audio link.

1.13 Voting Using the Board's Notational Review Process

- a) Notational voting is a procedure in which matters to be decided by the Board members are circulated to each Board member for review and approval. Using the Board's notational voting process, a vote of three Board members is required. Each Board member will indicate on the vote sheet attached to each proposed action one of the following positions within **five business days** of receipt of the action package:
 - Approve
 - Disapprove
 - Abstain
 - Recusal – not participating

The Board may waive this five-day review period if agreed to by a majority of the 5 Board members. The majority is determined by counting the “Approved” votes and the “Disapproved” votes. A Board member who chooses to abstain from voting on a particular matter or to recuse himself/herself from participation in a particular matter is not included in the majority determination. Requests for Board action will not be approved if the number of Board member votes to approve an action is tied with the number of votes to disapprove an action. If one or more Board members propose modifications to the document, the Office Director responsible for the document will poll the other Board members and determine a majority position with regard to the inclusion of the proposed changes in the document. Should the majority of the Board members agree with the proposed changes, the sponsoring Office Director will modify the document accordingly and restart the Board review process.

- b) At the conclusion of the notational voting process, the Board’s Supervisory Executive Assistant will prepare an Affirmation Statement using the following template to document the outcome of the voting process:

The Board, with Board member(s) [insert names] approving, Board member(s) [insert names] disapproving, Board member(s) [insert names] abstaining, and Board member(s) [insert names] recusing, have voted to [approve] [disapprove] [A description of the action voted upon by the Board members].

This Affirmation Statement will be circulated to each Board member for signature, confirming the correct recording of each vote. The completed Affirmation Statement for both approved and disapproved votes will be placed in the Board’s public records. The action item for approved votes will also be placed in the Board’s public records. If an action item is voted “disapproved”, a determination will be made pursuant to the Freedom of Information Act, and the Board’s implementing regulations to that Act, as to whether the action item will be placed in the public record. Any concurring or dissenting professional opinions or comments submitted by Board members with the Affirmation Statement will also be placed in the public record.

1.14 Board Information Briefings and Gatherings

- a) At the discretion of the Chairman, or in his/her absence, the Vice Chairman, briefings to Board members will be scheduled on the Board’s calendar to allow for the orderly presentation and exchange of information concerning any matters within the Board’s jurisdiction. Such informational briefings and gatherings may include:
- Technical, administrative, or legal briefings by the Board’s staff and/or outside experts under contract to the Board;
 - Briefings by DOE staff, contractors, or other persons/organizations; or
 - Briefings by concerned citizen groups.

- b) The purpose of these briefings is to ensure that all Board members have the most current information on health and safety issues in the DOE defense nuclear complex. Attendance by Board members at these briefings is at the Board members' discretion. If a Board member is unable to attend a scheduled briefing, the Board member will be provided with any written briefing material (e.g., printed copies of slides and handouts) in a timely manner.
- c) Under the requirements established by the Board's Government in the Sunshine Act regulations (10 C.F.R. Part 1704), Board members may also engage in informal preliminary discussions, ask clarifying questions, or exchange views at these information sessions that do not predetermine official action by the Board. The Board's General Counsel or his/her designee will attend and monitor all information sessions to ensure that these gatherings do not proceed to the point of becoming deliberations and "meetings" within the meaning of the Sunshine Act.
- d) Board members may also obtain any information and briefings from Board staff, as well as DOE staff, contractors, and other persons/organization at his/her discretion and schedule.

1.15 Confidentiality of Board Documents

- a) During the conduct of the Board's oversight work, Board members, employees of the Board, contractors, and subcontractors may have access to information that is not available to the public. Such information may include, but is not limited to safety-privileged information; Classified information; unclassified controlled nuclear information (UCNI); official use only information (OUO); patent rights; Privacy Act Personally Identifiable Information; and proprietary information, such as trade secrets or privileged/confidential commercial or financial information, and predecisional drafts. The Board has established administrative procedures for the access, storage, handling, and disposal of information as documented in the Board's Administrative Directives and Operating Procedures System. All Board members, employees, contractors, and subcontractors are required to maintain the confidentiality of all such data and follow the data disclosure requirements and protection procedures applicable to the data.
- b) Information and documents obtained during the course of an investigation and the investigative proceedings record are protected from disclosure under several provisions of federal statutes and court decisions, as well as the Board's investigative procedures.
- c) The Board members, working with the Board's staff and support contractors, develop a variety of draft documents that assist the Board in making informed decisions regarding public and worker health and safety throughout the DOE defense nuclear complex. Many of these documents are considered "works-in progress" and are labeled Draft – Not Reviewed for Public Release. These documents are internal, pre-decisional and must not be shared with individuals outside the Board.

- d) For actions being considered by the Board under Section 1.11 d), only the final Board-approved version can be shared, unless the Chairman specifically approves a request by a Board member or Office Director to discuss *specific elements of a document* under consideration outside the Board.

1.16 Confidentiality of Board Deliberations

The nature, substance, and timing of any proposed actions by the Board are confidential and shall not be divulged to anyone outside the Board by Board members, employees, contractors, or subcontractors. The Chairman has the exclusive responsibility and authority for authorizing the initial release of information concerning Board actions to individuals outside the agency.

1.17 Employee Ethical Conduct Standards and Financial Disclosure Regulations

Board members and employees of the Board are subject to executive branch-wide financial disclosure regulations at 5 C.F.R. Part 2634, the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. Part 2635, and the executive branch-wide employee responsibilities and conduct regulations at 5 C.F.R. Part 735.

1.18 DOE and Public Interactions with Board Members

Board members are independent officials and conduct their oversight responsibilities in accordance with the Board's enabling legislation and applicable Federal statutes and regulations. Board members routinely participate in public conferences and discussion forums, publish papers, and give interviews to trade publications and other media sources. Unless the Board has voted to issue official communications such as a Recommendation to the Secretary of Energy, letters to DOE officials, or technical reports, individual Board members need to ensure that their views on a subject are not construed as official Board positions. As such, the following advisory should be included in oral or written communications of individual Board members:

The views expressed herein are solely those of the author, and no official support or endorsement by the Defense Nuclear Facilities Safety Board or the U.S. government is intended or should be inferred.

1.19 DOE and Public Interactions with the Board's Staff

The Board documents its independent investigative and oversight findings in its Recommendations to the Secretary of Energy and other official communications such as letters, reports, and testimony. The Board's staff plays a vital role in the gathering of timely and factual information that is used by the Board members in their deliberations on actual or potential threats to public and worker health and safety. During interactions with the general public and DOE staff responsible for defense nuclear facilities and operations under the Board's oversight, the staff relies upon the Board's official communications as the basis for all actions and requests for information.

1.20 Reporting Fraud, Waste, Abuse, and Corruption in Board Programs; Cooperation with Official Inquiries

- a) Board members and employees shall, in fulfilling the obligation of 5 C.F.R. Part 2635.101(b)(11), report fraud, waste, abuse, and corruption in Board programs, including on the part of Board members, employees, contractors, and subcontractors, to their supervisor, the Board's General Counsel, or the U.S. Office of Special Counsel at 1-800-572-2249. Areas of potential concern include:
- Contract and procurement irregularities;
 - Conflicts of interest;
 - Theft and misuse of property;
 - Travel fraud;
 - Misconduct;
 - Time and attendance issues;
 - Misuse of government credit card;
 - Abuse of authority;
 - Program mismanagement;
 - Misuse of information technology resources;
 - Substantial and specific danger to public health and safety;
 - Computer crimes; and
 - Other violations of Federal laws and regulations.
- b) All alleged violations of the ethical restrictions described in Section 1.17 above that are reported in accordance with paragraph a) of this section to an appropriate authority within the Board shall in turn be reported by that authority to the Board's Designated Agency Ethics Official or to the Office of Government Ethics at (202) 482-9300.

1.21 Reporting Fraud, Waste, Abuse, and Corruption in DOE Programs; Cooperation with Official Inquiries

Board members and employees shall, in fulfilling the obligation of 5 C.F.R. Part 2635.101(b)(11), report fraud, waste, abuse, and corruption in DOE programs, including on the part of DOE managers, employees, contractors, and subcontractors to the Office of the Inspector General, U.S. Department of Energy at 1-800-541-1625, or the U.S. Office of Special Counsel at 1-800-572-2249. Issues that should be reported include, but are not limited to:

- Abuse of funds provided under U. S. laws;
- Contract, procurement, and grant fraud;
- Computer crimes;
- Product substitution and suspect/counterfeit parts;
- Bribery, kickbacks, and gratuities;
- False statements and false claims;
- Conflicts of interest and ethics violations;
- Theft and/or abuse of government property; and
- Other violations of Federal laws and regulations.

1.22 Responsibility for Implementation of this Policy

The Office of the General Manager (OGM) shall have primary responsibility for all administrative matters concerning implementation of this policy, to include overall direction and administration, coordination with appropriate OGM and Office of the Technical Director's staff, preparation of forms, tallying votes, and maintenance and disposition of records. The General Manager or his/her designee shall confer with the Office of the General Counsel to ensure that any action taken with respect to this policy satisfies legal requirements set forth in the Board's enabling legislation, the Government in the Sunshine Act, the Freedom of Information Act, and the Board's regulations implementing those Acts. Any interpretation of law with respect to this policy shall be performed by the Office of the General Counsel.

Dated: January 11, 2013

A handwritten signature in black ink, appearing to read "Peter S. Winokur". The signature is stylized and cursive.

Peter S. Winokur, Ph.D.
Chairman