



POLICY ISSUE **(Information)**

October 28, 2019

SECY-19-0107

FOR: The Commissioners

FROM: Margaret M. Doane
Executive Director for Operations

SUBJECT: U. S. NUCLEAR REGULATORY COMMISSION MEMORANDUM
OF UNDERSTANDING WITH THE DEFENSE NUCLEAR
FACILITIES SAFETY BOARD

PURPOSE:

This paper discusses a new memorandum of understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the Defense Nuclear Facilities Safety Board (DNFSB) concerning how the DNFSB may obtain technical assistance from the NRC staff and the Advisory Committee on Reactor Safeguards (ACRS) on matters pertaining to the DNFSB's responsibilities, as well as administrative support for the DNFSB's activities. The new MOU continues the practice established by the first MOU, signed in 1990, for the Executive Director for Operations (EDO) to serve as the signature of authority for the NRC.

BACKGROUND:

The DNFSB was established by Chapter 21 of the Atomic Energy Act of 1954, as amended (AEA) (42 U.S.C. §§ 2286–2286I). The DNFSB's mission is to provide independent analysis, advice, and recommendations to the Secretary of Energy regarding the adequate protection of public health and safety at defense nuclear facilities. Section 2286b of the AEA authorizes the DNFSB to obtain the advice and recommendations of the NRC staff and the ACRS on matters pertaining to the DNFSB's responsibilities with the consent of and under appropriate

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support arrangements with the NRC. In addition, the NRC will, consistent with the NRC's mission, provide the DNFSB with requested administrative support. These technical and administrative support services shall be provided under the authority of the Economy Act of 1932, as amended (31 U.S.C. § 1535).

On June 22, 1990, the NRC and the DNFSB entered into the first MOU (55 FR 33969; Aug. 20, 1990), signed by the Chairman of the DNFSB and the NRC EDO. The content of that MOU was based on SECY-90-182, "Memorandum of Understanding with the Defense Nuclear Facilities Safety Board," dated May 23, 1990, and the associated staff requirements memorandum (SRM), dated June 18, 1990. In the SRM the Commission did not object to the language of the MOU as proposed in SECY-90-182, subject to two modifications.

First, as permitted by AEA § 2286b, the SRM excluded from the MOU requests for assistance from the ACRS. Although AEA § 2286b authorizes the DNFSB to obtain advice and recommendations from both the NRC staff and the ACRS, NRC consent is required. The language in the 1990 MOU thus reflects the Commission's decision to exclude requests for ACRS assistance from the 1990 MOU.¹ A review of past practice indicates that two DNFSB requests for ACRS assistance in 2001 and 2014/15 were sent directly to the ACRS. These requests were authorized under the ACRS Charter and fell outside the scope of the 1990 MOU. In the new MOU, the DNFSB has proposed to include requests for assistance from the ACRS. Under the new MOU, DNFSB requests for assistance from the ACRS would be made to the NRC liaison, who would then forward such requests to the Advisory Committee Management Officer (ACMO). The ACMO would inform the DNFSB liaison if and when the ACRS determined to provide advice or recommendations.

Second, the SRM clarified that requests for support of an ongoing nature that would be covered by an appendix to the MOU must be approved by the Commission as a whole.² Accordingly, on November 28, 1990, the Commission approved one appendix to the original MOU to cover Employee Assistance Program (EAP) support to the DNFSB (55 FR 50790; Dec. 10, 1990).

DISCUSSION:

The NRC staff has proposed this new MOU to:

1. Discontinue EAP services to the DNFSB, and thus delete Appendix A to the 1990 MOU, as the DNFSB has developed its own EAP and no longer needs such services.

¹ Staff Requirements Memorandum of Understanding SECY-90-182 with the Defense Nuclear Facilities Safety Board (June 18, 1990) (ADAMS Accession No. ML12292A846).

² This clarification was the result of a modification to the MOU proposed by then-Commissioner Curtiss. In his vote, Commissioner Curtiss noted that arrangements for ongoing NRC support of the DNFSB could involve a substantial amount of NRC resources. Therefore, Commissioner Curtiss proposed to modify the MOU to require the full Commission's review and approval of any appendix to the MOU authorizing ongoing NRC support. Memorandum from Commissioner Curtiss to Samuel J. Chilk, "Memorandum of Understanding with the Defense Nuclear Facilities Safety Board (SECY-90-182)" (June 4, 1990) (ADAMS Accession No. 9409010221).

2. Identify the NRC and the DNFSB points of contact by position.
 - As discussed in the enclosed MOU, the NRC liaison is the Assistant for Operations, Office of the EDO (OEDO). The DNFSB liaison is the General Manager or his/her designee.
3. Include the basis for the DNFSB to obtain advice and recommendations from the ACRS on matters pertaining to the DNFSB's responsibilities.
 - As discussed in the enclosed MOU, the DNFSB will direct all requests for NRC or ACRS assistance to the NRC liaison.
4. Eliminate the provision that states that the Chairman will approve requests for assistance likely to exceed 100 hours.
 - The original MOU states that the NRC Chairman must approve requests for assistance likely to exceed 100 hours. This provision can be eliminated consistent with the authority delegated to the EDO under Section 2 of the Reorganization Plan No. 1 of 1980 and based on past practice. The authority delegated to the EDO under the Reorganization Plan No. 1 of 1980 includes administrative functions of the Commission as well as the distribution of business among personnel and among administrative units and offices of the Commission (e.g., distributing business among the offices that report to the OEDO and executing contracts, agreements, or interagency actions subject to the limitations in Section III.B.2 of Management Directive 9.17, "Organization and Functions, Office of the Executive Director for Operations"). Further, a review of past requests for assistance shows that, DNFSB's requests have generally required less than 4 hours of work by NRC staff.³ Although the record does not indicate the original reason for establishing the 100-hour threshold in the 1990 MOU, past experience suggests that requests for assistance exceeding 100 hours are unlikely. Accordingly, pursuant to the delegation of functions to the EDO under the Reorganization Plan No. 1 of 1980 and based on prior experience, requests from the DNFSB for NRC support would be handled as set forth in the enclosed MOU. To keep the Commission informed, the NRC staff shall continue to notify the Commission of requests from the DNFSB.

RESOURCES:

No additional resources are required. The NRC staff continues to assess the resources associated with these activities as part of the normal budget development process.

³ Issues associated with appropriations law regarding longer term interactions, if any, will be considered on a case-by-case basis.

COORDINATION:

The enclosed MOU has been coordinated between the NRC and the DNFSB, including management and legal counsel. The Office of the General Counsel has reviewed this paper and has no legal objection.



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Executive Director
for Operations

Enclosure:
New MOU with DNFSB

cc: SECY
OGC
OCA
OPA
CFO

SUBJECT: UPDATE TO THE U. S. NUCLEAR REGULATORY COMMISSION MEMORANDUM OF UNDERSTANDING WITH THE DEFENSE NUCLEAR FACILITIES SAFETY BOARD, DATED OCTOBER 28, 2019

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