

Defense Nuclear Facilities Safety Board

Washington, D.C. 20004

Policy Statement

PS-1

Date: October 19, 1990

Subject

CRITERIA FOR JUDGING THE
ADEQUACY OF DOE RESPONSES
AND IMPLEMENTATION PLANS
FOR BOARD RECOMMENDATIONS

Summary

This policy statement, the Board's first, establishes the criteria which the Defense Nuclear Facilities Safety Board will use in judging the adequacy of DOE Responses and Implementation Plans for Board Recommendations. The criteria are derived from the legal requirements contained in the Board's enabling legislation.

Criteria for Judging the Adequacy of DOE
Responses and Implementation Plans for
DNFSB Recommendations

The Board's authorizing statute requires the Secretary of Energy to respond to each Board recommendation and to subsequently prepare an implementation plan for those portions of the recommendation that DOE accepts. The statute allows the Board to use its discretion and judgment in assessing the adequacy of DOE responses and implementation plans.

I. Evaluating DOE Responses

The statute requires the Secretary of Energy to "transmit his response to the Board within 45 days after the date of publication [in the Federal Register] ... of the notice with respect to such recommendation or within such additional period, not to exceed 45 days, as the Board may grant." The Act anticipates responses which accept the Board's recommendations, and responses which reject the Board's recommendations, in whole or in part. As we have already learned from DOE's responses to the Board's first six recommendations, however, there is a whole range of possible written responses that the Board must be prepared to deal with in the future.

For example, DOE may choose to rely upon a response letter which simply states that the Secretary agrees with or accepts a recommendation of the Board. Such action constitutes an unconditional acceptance of the Board's recommendation, and acquiesces in the Board's interpretation of the recommendation's terms and requirements. Any subsequent contradiction or retrenchment from the response's unconditional acceptance in the implementation plan will ordinarily be unacceptable to the Board. Therefore, it is far preferable to air any real differences that DOE may have with the recommendation in the response itself. Moreover, preliminary discussions between the Board, its staff, and DOE prior to the Secretary's issuance of a final response can avoid confusion, disputes, misunderstanding, and wasted effort later in the process.

It should be noted that a response which rejects portions of a recommendation may be an adequate response if, in the Board's judgment, sound reasons are given for rejecting the recommendation, and alternative means of protecting public health and safety are specified. On the other hand, an evasive, nonresponsive, ambiguous, or unclear response which is labeled an acceptance by DOE is not adequate. The Board recognizes that a flawed response, if left uncorrected, will only lead to further problems in the implementation plan.

The following types of DOE responses may be encountered by the Board:

1. A response which says it is an acceptance, but by its language or terms in fact rejects part of the recommendation.

2. Ambiguous responses that could be interpreted either as acceptance or rejection of the recommendation.
3. Failure to address certain issues.
4. Unqualified rejection of the entire recommendation.
5. Silence, or no response.
6. Unconditional acceptance of the entire recommendation consistent with the terms set by the Board.

Comparing DOE responses against this list of response types will assist the Board in sorting out actual DOE acceptances from rejections. A valid acceptance is filed in a timely manner and exhibits three key features: (1) an understanding of what is being asked or recommended; (2) a commitment by DOE to take action to meet the recommendation; and (3) specification of what DOE intends to do so that the Board can determine if all material terms of the recommendation will be met, rather than avoided.

DOE's response need not be detailed or long, provided the Board is satisfied that DOE understands what is being asked and intends to accomplish the recommended action in a timely manner. If a response satisfies the above three requirements, however, it need not present the details of **how** and **when** the recommendation will be met-- that is the purpose of the implementation plan.

II. Evaluating DOE's Implementation Plan

As with responses, the statute, for the most part, gives the Board discretion to use its judgment in assessing the adequacy of implementation plans. The statutory language expresses one major **substantive measure** of an implementation plan's effectiveness, which is perhaps self-evident. Since the Secretary must ordinarily "carry out" and "complete" implementation in one year, it necessarily follows that the plan must schedule, and otherwise assure, that action is taken to accomplish the recommendation. The statute also imposes two **procedural requirements**. First, the Secretary must "transmit the implementation plan to the Board within 90 days after the date" of the Secretary's final decision on the recommendation. If additional time is necessary to write the plan, the Secretary may take an additional 45 days, provided he submits the reasons for the delay to the appropriate congressional committees. Second, if the Secretary cannot carry out and complete the implementation plan within one year, he must report the reasons for the delay to the appropriate congressional committees.

The purpose of the implementation plan is to provide a basis and a schedule for assuring that accepted recommendations are accomplished.

A. SUBSTANTIVE CRITERIA

1. Does DOE understand the Board's recommendation?

DOE's responses give the first indication of whether or not the Board's recommendations have been communicated and understood. If a response is adequate, the implementation plan should track the response in this regard and clearly demonstrate an understanding of the recommendation. If there is a clear restatement by DOE in the implementation plan of the recommendation's goals, or of the underlying issues or problems identified by the recommendation, the Board can then reasonably assume that its initial recommendation was understood. DOE, however, maintains latitude to implement recommendations in a wide variety of ways so long as the Board's recommendations are achieved. Ultimately, the totality of all the terms of plan will exhibit the level of DOE's understanding and acceptance of the recommendation.

2. What does DOE intend to do to accomplish the recommendation?

A clear acceptance of the Board's recommendation in DOE's response is the initial indicator that DOE is committed to achieving the recommended action. On the other hand, if an initial implementation plan incorporates a response which does not signal DOE's intent to fully meet the recommendation, the Board has grounds for serious concern. A specific description of DOE's intended course of action, in the implementation plan itself, is the best indicator of whether DOE is committed to the accomplishment of the recommendation. Such a description can also resolve questions raised by ambiguous or unclear DOE responses, and clarify how DOE has chosen to interpret the recommendation.

If DOE's response meets the terms of the recommendation, and that response is incorporated in the implementation plan by reference, or restated, the Board has reason to believe that DOE intends to comply. That intent must be confirmed, however, by a full review of the details of how DOE plans to accomplish the recommendation.

3. What are DOE's baseline assumptions?

The depth and type of baseline assumptions can vary greatly depending on the recommendation. Most implementation plans will be based on engineering or technical assumptions. Some implementation plans, if not all, will embrace administrative and legislative assumptions also, i.e. compliance provided sufficient funds are appropriated. Important assumptions should be presented in the plan.

4. Has DOE adequately outlined its approach?

DOE's approach must be outlined in sufficient detail to enable the Board to independently assess the approach without doing the underlying work. The plan should address the questions of how the goals relating to safety will be achieved and maintained. The Board should be able to assess whether the approach is reasonable and achievable within the specified time period.

5. Has DOE adequately justified a course of action proposed in the implementation plan?

The plan should contain a sound evaluation of the problem first identified in the recommendation, including a root cause analysis (or summary thereof), so that it is clear why DOE is taking the proposed action. The causes of any technical problems should be identified, when appropriate, not just the administrative controls (or lack thereof) that allowed the situation to occur. Reasons should be given for agreeing with the recommendation, based on DOE's own analysis.

6. Has the plan truly called for completion or closure?

The plan should clearly provide a method for demonstrating completion or closure in a manner that can be easily verified by the Board.

B. PROCEDURAL REQUIREMENTS

1. Has DOE submitted the plan to the Board in accordance with statutory deadlines?

2. Has DOE established a realistic and achievable schedule for completion?

Final deadlines, as well as intermediary milestones or checks and deliverables with measures of accomplishment, should be identified in the implementation plan.

3. Has DOE adequately provided for implementation course corrections or process change in appropriate cases?

Complex, long range plans must be flexible enough to accommodate change if necessary. A process should be defined for configuration management or change control so that the proposed action can be modified if additional information dictates, or changes in the assumptions occur.

4. Has DOE provided for quality assurance in appropriate cases?

The Board may require a plan to specify how the quality of the proposed action will be assured. Quality issues include qualifications of people involved, internal checks on the implementation as the task is completed, final verification, independent oversight, and chain of custody on records, samples, other critical data and documentation.

5. Does the Plan provide for adequate reporting in appropriate cases?

A reporting scheme and schedule should be specified to assure the Board remains informed of the status of the progress and any new related issues that may appear.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Criteria for Judging the Adequacy of DOE Responses and Implementation Plans for DNFSB Recommendations

AGENCY: Defense Nuclear Facilities
Safety Board.

ACTION: Notice of Board adoption of
policy guidance.

SUMMARY: The Defense Nuclear
Facilities Safety Board has unanimously
adopted a policy statement which
establishes the criteria that the Board
will use for judging the adequacy of
Department of Energy (DOE) responses
to, and implementation plans for, Board
recommendations.

FOR FURTHER INFORMATION CONTACT:
Robert M. Andersen, General Counsel,
Defense Nuclear Facilities Safety Board,
625 Indiana Avenue, NW., Suite 700,
Washington, DC 20004, (202) 208-6387.

SUPPLEMENTARY INFORMATION: The
Defense Nuclear Facilities Safety Board
issues recommendations to the
Secretary of the Department of Energy
and to the President regarding public
health and safety at DOE's defense
nuclear facilities. The Board's enabling
statute requires the Secretary of energy
to either accept or reject Board
recommendations and to subsequently
develop implementation plans for those
portions of Board recommendations
which are accepted. The Board has now
received DOE responses to six of the
first seven recommendations made to
the Secretary and has reviewed the first
five implementation plans submitted by
DOE.

This Defense Nuclear Facilities Safety
Board Policy Statement (PS-1), the
Board's first, will guide the board and its
staff in evaluating the adequacy of DOE
responses and implementation plans, as
well as assist the Board in structuring
appropriate follow-up action in the
event a recommendation is not fully or
adequately addressed in DOE's

response and implementation plan.
Furthermore, the statement formally
identifies, for the benefit of DOE and the
public, the Board's expectations
regarding the elements the Board
believes are necessary for an adequate
response and implementation plan.

Policy Statement

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John T. Coaway,
Chairman.

Appendix—Transmittal Letter to the Secretary of Energy

October 19, 1990.

The Honorable James D. Watkins, Secretary of Energy, Washington, DC 20585

Ref: DNFSB Policy Statement No. 1: Criteria for Judging the Adequacy of DOE Responses and Implementation Plans

Dear Mr. Secretary: Enclosed please find policy criteria which the Board unanimously adopted for judging the adequacy of DOE responses and implementation plans for Board recommendations. We have previously circulated draft criteria with DOE staff responsible for preparing responses and implementation plans. The use of the criteria, together with the close cooperation of DOE and Board staff, have resulted in more complete and sound responses and implementation plans.

Sincerely,

John T. Conway,

Chairman.

[FR Doc. 90-25507 Filed 10-26-90; 8:45 am]

BILLING CODE 6820-K0-M
