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**DEFENSE NUCLEAR FACILITIES
SAFETY BOARD**
Washington, DC 20004-2901



June 29, 2017

The Honorable John M. Mulvaney
Director
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503
[Transmitted via email]

Dear Director Mulvaney:

This is my initial high-level draft of my Agency Reform Plan as required by Executive Order 13781 of March 13, 2017, "Comprehensive Plan for Reorganizing the Executive Branch" and OMB Memorandum M-17-22 of April 12, 2017, "Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce." Although the Defense Nuclear Facilities Safety Board ("DNFSB" or "Board") is a collegial Board of five Members appointed by the President, the views expressed in this correspondence are mine alone and do not reflect the collective opinion of the Board.

I offer two proposed plans. My primary proposal would require legislative action. My secondary proposal is an Agency Reform Plan that the Board can undertake without any new legislation. I have shared this correspondence with all Members of the Board, and I believe I would receive at least majority support to effect the changes articulated in my Secondary Proposal.

Primary Proposal

I propose elimination of the DNFSB by amending the Atomic Energy Act. The DNFSB is a relic of the Cold War-era defense establishment, the history of which is described briefly in Attachment 1.

Although the Board may have been helpful in providing for the adequate protection of public health and safety during its early years, that value today is provided only on the margins, while in the meantime the Board's independence permits the Board to create myriad unnecessary costs for the Department of Energy. In the almost three decades since the creation of the Board in 1989, the Department of Energy has developed a robust regulatory structure. DOE also has

established its own internal oversight capabilities through the Office of Enterprise Assessments, duplicating the role of the DNFSB. The Board's elimination saves approximately \$31M in direct costs and ends the un-measured costs to DOE from responding to Board activities.

The President's executive order seeks elimination or reorganization of redundant executive branch functions. The DNFSB is an independent executive branch agency with a statutory mission "to provide independent analysis, advice, and recommendations to the Secretary of Energy" on safety matters at defense nuclear facilities. As is to be expected, the Secretary of Energy has many DOE employees dedicated to analysis, implementation, and oversight of safety at defense nuclear facilities. Thus in one sense the DNFSB is redundant to a function within DOE. On the other hand, to the extent that independence from the Secretary of Energy is judged by the President and Congress to be necessary, the DNFSB is not redundant. The DNFSB is the only agency providing independent analysis, advice, and recommendations.

Nuclear safety requires oversight, but whether that oversight needs to be independent depends on conditions within the entity exercising authority and control. In other words, the mere fact that the safety at issue is *nuclear safety* does not alone demand independent oversight. The Naval Nuclear Propulsion program, for example, has an enviable safety record but no independent oversight (the program is expressly excluded from DNFSB jurisdiction).

While conditions within DOE in the late 1980's caused Congress to decide that independent oversight was needed, the changes that have occurred since then make it unlikely that Congress would call for a DNFSB today if one did not already exist.

Complete elimination of this agency, however, might be susceptible to political blowback. The direct savings are small, likely raising questions from those who assume without evidence that an added layer of independent nuclear safety oversight is de facto worth the cost. I am not in a position to calibrate a political decision, but should the President decide straightforward elimination carries excessive political risk, there is a good alternative. The Agency's technical staff, who are exceptionally talented, could be retained and transferred to DOE, either as a discrete organizational component of the Office of Enterprise Assessments or as a semi-autonomous unit reporting directly to the Secretary of Energy (similar to the semi-autonomous nature of the National Nuclear Security Administration). The five-member Board and the administrative and legal staff would be eliminated, with a direct cost savings of approximately \$10M. The activities of the technical staff would no longer be independent of the Secretary of Energy, thus allowing a greater check on unnecessary DOE costs those activities may impose. Retaining the technical staff as an identifiable unit within DOE would also allay concerns raised by the public or other interested parties that a nuclear safety oversight agency is being eliminated. In future years, internal re-organizations authorized by the Secretary of Energy could result in gradual absorption of the technical staff into DOE.

In either path, the Atomic Energy Act of 1954 (as amended) should be amended to eliminate the Board's enabling statute. If the technical staff is retained as a unit and moved to DOE, statutory language should further authorize the Secretary of Energy to eliminate that unit and re-assign the

staff within DOE's organization at some future point with Congressional notification, thus allowing the Secretary to decide its ultimate fate.

Lastly, the notion that regulatory authority for defense nuclear facilities might be transferred to the U.S. Nuclear Regulatory Commission has been proposed from time-to-time. I again considered this, and I remain decidedly opposed. An independent regulator with enforcement powers is not appropriate for defense nuclear facilities since it could overrule the President and Congress on issues of paramount national security, not only undermining the viability of our weapons program but causing other entities to doubt or question the credibility of our nation's nuclear deterrent. Under no circumstances should any regulatory authority for any defense nuclear facilities be transferred to the NRC.

Secondary Proposal

*I propose an Agency Reform Plan to restructure by reducing the size of the workforce and relocating most of the technical staff to defense nuclear facility sites.*¹ In the early years of the DNFSB, the majority of the technical staff had considerable field experience before they were hired by the Agency. Over time, these experience people were replaced by a younger cohort of employees who were exceptionally well-educated and talented but who lacked significant field experience. The current Washington, D.C.-based staff has become enlarged and ineffective, and there is limited opportunity for them to gain field experience from rotational assignments through our current small number of Resident Inspector posts. The number of SES-level managers is well beyond what is needed, and layers of headquarters bureaucratic processes and procedures have developed gradually over nearly three decades which do not add value to the Board's mission. Key elements of this Agency Reform Plan are:

- Reduce agency SES positions to 5 from the current 11 by
 - Downgrading the Deputy General Counsel from SES to GS and
 - Eliminating five Associate Technical Director positions;
- Reduce the headquarters technical staff positions (including the Director and Deputy Director) to about 22 from the current 80; and,
- Increase excepted-service positions in the field to about 30 from the current 10, six each at following DNFSB Field Offices: Oak Ridge, TN; Los Alamos, NM; Savannah River Site, SC; Pantex, TX; Hanford, WA. The positions would be a mix of cognizant engineers for those sites and Resident Inspectors. In addition to those sites, the field employees would have responsibility for the sites without Resident Inspectors, namely, the Waste Isolation Pilot Plant, NM, Sandia National Laboratory, NM, the National

¹ This paragraph addresses the "What" from Appendix 4 of OMB guidance on the reform plan, provided at <https://go.max.gov/omb/govreform>.

Nuclear Security Site NV, Idaho National Laboratory, ID, and Lawrence Livermore National Laboratory, CA.

²By placing most of the technical staff in the field, this plan would increase oversight of defense nuclear facilities, improve practical knowledge of the staff through field experience, improve the likelihood of hiring of new employees from a pool of those with DOE federal or contract experience, and reduce the bureaucratic inertia which has gradually built up within the headquarters staff. I recognize that headquarters bench strength would be thinner, but this disadvantage would be overshadowed by the benefits. Relationships with stakeholders, primarily the Department of Energy, would be improved as well, having more people in the field face-to-face with the operators of defense nuclear facilities rather than isolated at headquarters.

³Implementation of this plan can be accomplished over a twelve to eighteen month period. The new positions in the field would be advertised and filled, initially by existing headquarters personnel and then by new applicants. Early retirement opportunities would be offered concomitantly. Once the field positions were staffed and early retirements facilitated, the remaining technical staff at headquarters would be down-sized through the standard OPM process. Risks include lack of mission focus during the restructuring process and the potential for a budget shortfall due to un-programmed employee moving expenses. Some disorder with physical assets at headquarters would occur while downsizing office space by as much as 50%, however, any increased costs for field office space would be offset by reduced operating costs at headquarters.

⁴This restructuring would reduce agency employees at least 32%, down to 82 from the current 120. Further reductions might be achieved following an analysis of administrative support positions required for a smaller agency. Increased costs in office space in the field would be offset by reduced office space at headquarters. Annual budget would be reduced to around \$23.4M from the current \$30.6M, although determining the exact amount will require analysis as the restructuring progresses. Agency efficiency, effectiveness, and accountability would be improved as more DNFSB staff found themselves doing their oversight work at actual defense nuclear facilities concomitant with fewer staff in bureaucracy-vulnerable roles at headquarters.

⁵The Board has the authority to carry out these restructuring activities administratively without statutory changes.

⁶Performance goals for this plan include the rate at which new field positions are filled, the rate at which headquarters technical positions are eliminated, and a comparison between quantity and quality of field reports before and after the restructuring. My target date for beginning the implementation is October 1, 2017, with the implementation complete by April 1, 2019.

² Ibid, "Why."

³ Ibid, "How."

⁴ Ibid, "Costs & Savings."

⁵ Ibid, "Statutory, Regulatory, and Administrative Analysis."

⁶ Ibid, "Performance Goals."

Questions should be addressed directly to me at 202.694.7040, or to the Board's Vice Chairman, Bruce Hamilton at 202.694.7050.

Yours truly,

A handwritten signature in black ink, appearing to read 'Sean Sullivan', written in a cursive style.

Sean Sullivan
Chairman

Enclosure: Historical Summary of the Defense Nuclear Facilities Safety Board

Enclosure

Historical Summary of the Defense Nuclear Facilities Safety Board

The DNFSB was created as a result of hearings conducted by the Senate Committee on Armed Services (Sen. Sam Nunn) and Senate Governmental Affairs Committee (Sen. John Glenn) during the 100th Congress in 1987. The hearings addressed safety concerns about defense nuclear facilities managed by the Department of Energy and by its primary contractor for nuclear operations.

The Atomic Energy Commission had been created in 1947 both to encourage development and to oversee the safety of the technology. In 1974, when the AEC was split into the Nuclear Regulatory Commission and the Energy Research and Development Administration, safety oversight for the nuclear weapons complex was given to the newly-established ERDA, and the NRC was proscribed from overseeing defense nuclear facilities. ERDA became the U.S. Department of Energy in 1977. While the 1980s brought increasing public awareness of the environmental challenges created by the nuclear arms buildup, the 1986 Chernobyl accident in Ukraine radically underscored the risks associated with plutonium production reactors. The late-1980s re-start of some of the DOE's plutonium production reactors precipitated concern by Congress that there was no independent safety oversight for defense nuclear facilities. It was in this context that DNFSB was established, and its initial work on safety oversight was in fact focused on plutonium production reactor operations.

The Cold War's abrupt end, however, obviated the requirements for additional plutonium and the DOE's last operating production reactor was permanently shut in 1992. The DNFSB, however, re-invented itself, and while staying within in the limits of statutory authority, changed its focus from reactor operations to the far less risky parts for the nuclear weapons complex, including environmental cleanup and nuclear weapons development, refurbishment, or disassembly and disposal.

In the early years of the DNFSB's existence there were wide-ranging safety challenges throughout the defense nuclear facilities. Over the past nearly three decades, DOE achieved major improvements in safety culture and established a robust regulatory structure to maintain it. DOE also built in its own internal oversight organization. That structure exists today as the Office of Enterprise Assessments, responsible for monitoring safety and security in accordance with DOE Order 227.1A, *Independent Oversight Program*. The office provides an internal management assessment function that examines activities relating to the environment, health, safety (both nuclear and industrial), security (physical, information and cyber), and other critical functions for the DOE enterprise. This oversight, which includes DOE Federal and contractor operations, is an integral element of the Department's responsibility as a self-regulating agency to provide assurance of its safety and security posture to its leadership, its workers, and the general public. The Office duplicates, and in many cases exceeds, the safety contributions which come from the DNFSB.

Given today's DOE operations and self-regulation, it is unlikely that Congress would create such an entity as the DNFSB if it did not already exist.