

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Shutdown Plan in the Event of a Lapse in Appropriations (2023)

Lapse Plan Summary Overview	
Estimated time (to nearest half day) required to complete shutdown activities	0.5 days
Total number of agency employees expected to be on board before implementation of the plan:	118
Total number of employees to be retained under the plan for each of the following categories:	
Compensation is financed by a resource other than annual appropriations:	0 FTEs
Necessary to perform activities expressly authorized by law:	29 FTEs
Necessary to perform activities necessarily implied by law:	29 FTEs
Necessary to the discharge of the President’s constitutional duties and powers:	3 FTEs
Necessary to protect life and property:	14 FTEs
Brief summary of significant agency activities that will continue during a lapse:	
<p>The Defense Nuclear Facilities Safety Board (Board) will continue public health and safety oversight operations at DOE defense nuclear facilities for as long as possible using OMB approved apportioned funds (carryover) from the previous fiscal year. If the lapse continues to the point where no funding is available, the Chairperson may designate resident inspectors at designated DOE defense nuclear sites and a small number of headquarters staff as excepted employees to support continued safety oversight by the Board members (who are not subject to furlough) and to reconstitute operations after the lapse. If an urgent safety situation arises at a DOE defense nuclear facility, the Chairperson may declare additional staff to be excepted employees and recall them to duty.</p>	
Brief summary of significant agency activities that will cease during a lapse:	
<p>Once carryover funds are exhausted, the agency’s normal safety oversight of DOE defense nuclear facilities will cease, including reviews of standards, events, practices, design and operational data, and facility design and construction. Site visits by Board members and staff, reviews of documentation, formal investigations, inspections, and other ongoing fact-finding activities will cease. Posting of information on the safety conditions at DOE defense nuclear facilities on the Board’s public website will cease.</p>	

Background Information

The Board is an independent establishment within the Executive Branch that was created in 1988 to provide safety oversight of Department of Energy (DOE) defense nuclear facilities. DOE defense nuclear facilities are defined by statute to include (with certain exceptions):

- (1) nuclear production or utilization facilities under the control or jurisdiction of the Secretary of

Energy and operated for national security purposes; and (2) nuclear waste storage facilities under the control or jurisdiction of the Secretary of Energy. (42 U.S.C. § 2286g).

The Board reviews standards, events, practices, design and operational data, and facility design and construction related to DOE defense nuclear facilities and provides independent analysis, advice, and recommendations to the Secretary of Energy that are necessary for the adequate protection of public and worker health and safety. (42 U.S.C. § 2286a(b)). The Board obtains information used in developing analysis, advice, and recommendations from resident inspectors of the Board, frequent communication with DOE officials, site visits by Board members and staff, reviews of documentation, formal investigations, inspections, and other ongoing fact-finding activities.

The Board is required to submit draft recommendations to the Secretary of Energy to enable the Secretary the opportunity to provide comments prior to the Board's submission of final recommendations. (42 U.S.C. § 2286d(a)). The Secretary of Energy is then required to respond to final Board recommendations by transmitting to the Board, in writing, a statement on whether the Secretary accepts or rejects, in whole or in part, the recommendations, a description of the actions to be taken in response, and the Secretary's views on such recommendations. (42 U.S.C. § 2286d(c)). If, as a result of its reviews, the Board determines that an imminent or severe threat to public health and safety exists, the Board is required to transmit any related recommendations directly to the President as well as the Secretary of Energy, and to transmit a copy to the Secretary of Defense for information purposes. (42 U.S.C. § 2286d(h)).

General Strategy

The Board will assess if the ongoing situation exempts the Board from furloughing employees. If not, the Board's strategy will be to continue public health and safety oversight operations at DOE defense nuclear facilities for as long as possible using OMB approved apportioned funds (carryover) from the previous fiscal year. During this period, the Board will institute controls to exercise short-term fiscal restraint. These controls will be designed, for example, to minimize spending and delay procurements where possible.

If sufficient carryover is available, the Board will continue full operations. The Board will reevaluate its strategy weekly to determine if furloughs are necessary and to update spend plans. If necessary, priority will be given to keeping the Board's resident inspectors stationed at DOE defense nuclear facilities, and to keeping key staff personnel working to continue providing safety oversight at priority sites and maintaining essential agency administrative activities. If the Board reaches the point where no funding is available, normal safety oversight activities will cease, including receiving safety complaints from workers at DOE sites and the public. At this point, the Chairperson may designate the following as excepted employees: resident inspectors at designated DOE defense nuclear sites, four Office Directors, the Chief Financial Officer and one budget analyst, the Director of Human Resources and one human resources specialist, the Chief Information Officer and one cybersecurity specialist, one contracting specialist, and one security specialist. The designated sites are the Hanford site, the Pantex Plant, the Savannah River Site, the Y-12 National Security Complex/Oak Ridge National Laboratory, and Los Alamos National Laboratory.

In the event of an urgent or emergency situation that may threaten the adequate protection of public health and safety at a DOE defense nuclear facility, the Chairperson may declare additional Board's staff to be excepted employees and recall them to duty. Additionally, if DOE executes a partial or total shutdown of DOE defense nuclear facilities as any portion of its response to a funding hiatus, the Chairperson may identify excepted employees to monitor the DOE shutdown for safety purposes.

Specific Information Required by OMB Circular No. A-11

The Board estimates that it will take one-half day to complete shutdown operations.

The total number of Board employees expected to be on-board before implementation of this contingency plan is 118. This number includes Board members.

The total number of Board employees to be retained under this contingency plan 1) whose compensation is financed by a resource other than annual appropriations; 2) are necessary to perform activities expressly authorized by law; 3) are necessary to perform activities necessarily implied by law; or 4) are necessary to the discharge of the President's constitutional duties and powers is 0.

The number of Board employees to be retained to protect life and property, or perform activities expressly authorized or necessarily implied by law, when all previously appropriated funding is expended, is 26, not including the three current Board members. The 26 employees are: resident inspectors at each of the designated DOE defense nuclear sites, four Office Directors, the Chief Financial Officer and one budget analyst, the Director of Human Resources and one human resources specialist, the Chief Information Officer and one cybersecurity specialist, one contracting specialist, and one security specialist.

Designation of Excepted Activities in the Event of an Emergency

The following are considered by the Board to be required functions to respond to an emergency that may threaten adequate protection of the public or worker health and safety at a DOE defense nuclear facility during a funding hiatus.

1. Formal Action by the Board

Three of the five members of the Board (including the Chairperson) are required to preserve the ability of the Board to respond to any unforeseen accident, emergency, or, in the words of our enabling statute, "imminent or severe threat" to public health and safety at DOE defense nuclear facilities. As the Board members are appointed by the President, they are not subject to furlough.

2. Board Oversight Activities

The Board's oversight during a funding hiatus would be focused on detecting and responding to an "imminent or severe threat" to public health and safety and maintaining adequate protection of the public and workers at DOE defense nuclear facilities.

3. Legal Matters

There is an ongoing need for legal advice to the Chairperson regarding the disposition of formal agency business in accordance with the Government in Sunshine Act and the Board's enabling statute. Moreover, legal support is necessary in the event that Board investigations require the use of subpoenas or appearances before courts to gain access to information or facilities in the event of an emergency. It is assumed that the courts will continue to operate during a funding hiatus. Finally, legal support is needed to respond to lawsuits involving the Board and safety issues.

4. Administrative Matters

The Board must maintain a small group of administrative personnel capable of performing the full range of required administrative duties, such as facility management and security, information technology, human resources, finance, and other administrative services in the event of any emergency.

5. Funds Certification and Contract Monitoring Activity

Sufficient personnel are required to authorize and monitor disbursement of previously committed funds, as well as those funds necessary to carry out the emergency activities that have been identified as having an impact on public health and safety.

Board Excepted Employees

In the event of an emergency that may threaten public or worker health and safety at a DOE defense nuclear facility during a funding hiatus, the Chairperson may designate the following Board's staff personnel to carry out excepted activities under the terms of the Antideficiency Act, 31 U.S.C. § 1341.

Office of the Executive Director of Operations: Executive Director of Operations. Other staff may be designated based on the nature of the emergency.

Office of the General Counsel: General Counsel. Other legal staff may be designated based on the nature of the ongoing legal needs of the office.

Office of the Technical Director: Technical Director and Deputy Technical Director. Other technical staff may be designated based on the nature of the emergency.

Office of the General Manager: General Manager, the Chief Financial Officer and one budget analyst, the Director of Human Resources and one human resources specialist, the Chief Information Officer and one cybersecurity specialist, one contracting specialist, and one security specialist.

Contract Support

The Board may retain sufficient information technology and administrative support personnel to operate the Board's information technology enterprise and provide essential services such as mail operations in support of the Board members and excepted personnel, subject to availability of previously obligated funds.

Technical support consultants may be used, subject to availability of previously obligated funds.

Resumption of Operations

Furloughed employees will be directed to monitor the Office of Personnel Management website, the Board's website, and their personal email for updates on progress toward restoration of appropriations. Once appropriations are restored, the Board will notify furloughed employees via the employees' personal email and the Board's website and provide instructions on returning to work. Supervisors will have the flexibility to approve the use of accrued annual leave, compensatory time off, or credit hours by employees who have problems returning to work on the specified day. Office Directors will be instructed to evaluate whether any aspects of their offices' work plans for the remainder of the fiscal year need to be revised because of the lapse. The Board's General Manager, the Chief Financial Officer, and a contracting officer will oversee any actions related to the disbursement of funds for contracts and procurements impacted by the lapse.