

Sean Sullivan, Chairman
Bruce Hamilton, Vice Chairman
Jessie H. Roberson
Daniel J. Santos
Joyce L. Connery

**DEFENSE NUCLEAR FACILITIES
SAFETY BOARD**

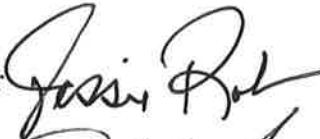
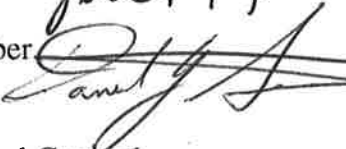
Washington, DC 20004-2901



MEMORANDUM

August 11, 2017

TO: Sean Sullivan, Acting Chairman
Bruce Hamilton, Acting Vice Chairman
Joyce Connery, Board Member

FROM: Jessie Roberson, Board Member 
Daniel J. Santos, Board Member 

C: James Biggins, DNFSB General Counsel
Glenn Sklar, DNFSB General Manager
Steve Stokes, DNFSB Technical Director
Joe Olencz, Departmental Representative to the DNFSB,
U.S. Department of Energy

SUBJECT: OBJECTION TO MEMORANDUM OF AGREEMENT WITH DOE/NNSA

This memorandum is to document our previously communicated strong objection to the Defense Nuclear Facilities Safety Board (DNFSB) entering into an arrangement to deploy technical staff to the National Nuclear Security Administration (NNSA) or the Department of Energy's (DOE) External Affairs or Congressional Affairs offices or any other office in DOE whose duties are external advocacy on behalf of the organizations and functions the DNFSB is required by statute to independently evaluate.

The DNFSB's mission is to *provide independent analysis, advice, and recommendations to the Secretary of Energy* (emphasis added). The DNFSB must ensure the credibility, objectivity, and independence of its work or the DNFSB risks providing no discernable value to DOE/NNSA, Congress, or the public.

As has been previously demonstrated, we support the development of all staff. However, we believe the DNFSB should exercise careful judgement regarding this type of arrangement and explore/pursue other alternatives when concerns are identified. This is particularly the case when those concerns are associated with our statutory requirements. This is not the first time the

DNFSB has considered similar potential staff details to DOE/NNSA, and the DNFSB's response has been consistent with the position we are taking.

This action diminishes the DNFSB's execution of its mission by unnecessarily raising doubts about the objectivity and independence of the work of the DNFSB, which directly relies on the objectivity of the work of the technical staff.

We have enclosed a sanitized copy of the Memorandum of Agreement (Enclosure 1) that was provided upon request. Although the Memorandum of Agreement was signed by DOE/NNSA on August 4, 2017, we have underlined specific language that underpins our concern.

Enclosure

Enclosure 1

ADMINISTRATIVE MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE DEFENSE NUCLEAR FACILITIES SAFETY BOARD AND THE U.S. DEPARTMENT OF ENERGY (DOE)/ NATIONAL NUCLEAR SECURITY ADMINISTRATION (NNSA)

1. **GENERAL:** The purpose of this administrative agreement is to document the assigning, tracking, and accounting of an employee detailed to the Department of Energy/National Nuclear Security Administration. This document also stipulates the roles and responsibilities of the employing element, gaining element, and employee on detail assignment.
 - A The employee _____ will be detailed to the **National Nuclear Security Administration** on a non-reimbursable basis for a period not-to-exceed 120 days. Upon completion of the interagency assignment _____ will return to the Defense Nuclear Facilities Safety Board.
 - B This agreement may be terminated by the Parent Agency or the Host Agency with 15 calendar days' notice in writing indicating intention to terminate the assignment. Termination of the assignment due to exigent needs of the Parent Agency or the Host Agency, or a personal emergency of the employee, will be negotiated by the Parent and Host Agencies as necessary.
 - C The NNSA will not reassign the individual to any other position or agency without prior coordination with the Defense Nuclear Facilities Safety Board.
 - D **EMPLOYEE:**
 - E Name of Parent Agency: **Defense Nuclear Facilities Safety Board**
 - F Name of Host Agency: **U.S. Department of Energy, National Nuclear Security Administration, Associate Administrator for Management and Budget, Congressional Affairs**
 - G **Effective Date of Agreement: Monday, August 21, 2017**
- I. **ADMINISTRATIVE:**
 - A Name and addresses of participating agencies:

Defense Nuclear Facilities Safety Board
ATTN:
625 Indiana Avenue, N.W., Suite #700
Washington, D.C 20004

U.S. Department of Energy/National Nuclear Security Administration
ATTN: Director, Office of Human Capital Management Programs
1000 Independence Avenue, SW
Washington, D.C. 20585
 - B. **CURRENT DIRECTORATE/COMPONENT/Etc.:** Office of the Technical Director, Nuclear Facilities Design and Infrastructure

C. CURRENT POSITION TITLE: Engineer

D. NEW ASSIGNMENT:

1. Directorate/Component/Etc.: NNSA Office of External Affairs (NA-EA)
2. Position Number/Grade: DN-IV
3. Position title: Congressional Affairs Specialist
4. Begin date of Assignment: Monday, August 21, 2017
5. End date of Assignment: Monday, December 19, 2017
6. Duration of Assignment: Not-to-Exceed 120 days (approx.)

***With option to renew for an additional period upon agreement of all parties concerned.**

E. POSITION DESCRIPTION:

Incumbent supports the Associate Administrator for External Affairs and the Director of Congressional Affairs as follows:

- **Provides program and legislative advice and analysis;**
- **Coordinates legislative activities with congressional staff and supports the budget and policy interests of the NNSA's weapons activities and defense nuclear nonproliferation programs;**
- **Works closely with the Senate and House Appropriations and Armed Services Committees and tracks developments with the annual National Defense Authorization Act and Energy and Water Appropriations;**
- **Assists with the development of talking points, briefing memos, white papers, briefing books, and congressional hearing and briefing preparation activities.**

JUSTIFICATION:

Justification: The Department of Energy's National Nuclear Security Administration (NNSA) works closely with Members of Congress and staff from the House and Senate Armed Services and Appropriations Committees. A detail with NNSA's Office of External Affairs will provide critical support to NNSA's engagement activities with Members of Congress and key committee staff. **Several of these engagements involve advocating for and defending NNSA's FY2018 budget request and providing supplemental information to support the request.**

F. TIME AND ATTENDANCE:

_____ time and attendance records will be maintained by the Defense Nuclear Facilities Safety Board (DNFSB). _____ will continue to submit _____ bi-weekly timecard via DNFSB's Time and Attendance system, WebTA. Additionally, _____ will submit leave requests via e-mail to the DOE/NNSA supervisor, with a cc: to _____ DNFSB supervisor. Upon approval by the DOE/NNSA supervisor, _____ will submit an official request in WebTA for DNFSB supervisory approval. _____ will continue to accrue annual and sick leave in accordance with the regulations governing DNFSB employees.

G. SECURITY :

TOP SECRET/SI/TK access certification authority will be held by the Department of Energy on behalf of the NNSA during _____ assignment. Additional compartmented clearances will be granted by DOE/NNSA on an as-required basis for program access.

Routine security certifications will be obtained in accordance with the procedures established by DOE and DNFSB. This security certification should include the following information:

1. Who the selectee is employed by.
2. The date of the selectee's SCI indoctrination and a statement as to whether it is still current.
3. The date of the selectee's full scope background investigation or reinvestigation.
4. A statement that the selectee will abide by all US laws and applicable DOE/NNSA regulations.

H. MEDICAL: Not applicable.

I. TRAINING:

Related costs for training required and authorized by DOE/NNSA will be absorbed by NNSA's Office of External Affairs (NA-EA). Training related to DNFSB duties will be funded by DNFSB.

J. TRAVEL:

1. TDY - DOE/NNSA will be responsible for funding DOE/NNSA related official travel. Official travel on behalf of DNFSB will be funded by DNFSB.
2. Local Travel - NNSA-directed local travel expenses will be paid by NNSA according to NNSA's local travel claim procedures.
3. Travel, transportation, and related allowances will be authorized in accordance with the Federal Travel Regulations.

K. AWARDS: Either NNSA, or DNFSB may recommend non-monetary awards.

L. FINANCIAL/PAY:

(Non-Reimbursable): DNFSB will process _____ salary payments and is responsible for _____ salary.

M. PERFORMANCE EVALUATION:

The DNFSB may request input from _____ NNSA supervisor in order to complete performance appraisal(s). NNSA will prepare an end-of-tour written performance report if a period of 120 days has lapsed since annual evaluation.

N. CAREER DEVELOPMENT:

Responsibility for career development and promotion will remain at the DNFSB. The DNFSB will be responsible for the employee's annual performance evaluation.

1. ADDITIONAL PROVISIONS

2. NNSA will provide work space, information technology, equipment and expendables as required for execution of _____ duties.
3. _____ is subject to Federal conflict of interest statutes, the Standards of Ethical Conduct for Employees of the Executive Branch, including the supplemental regulations that apply to DOE employees, and the Hatch Act limitations on political activities.
4. If required to file an annual financial disclosure report, _____ will file the appropriate form with NNSA and a copy with DNFSB during the term of this rotational assignment. Additionally, _____ will complete the annual ethics training each year and provide evidence of completion to the Office of the Assistant General Counsel for General Law, DOE.
5. The Federal tort claims statutes and any other Federal tort liability statute shall apply. The rules and policies that govern the internal operations and management of DOE/NNSA are applicable.
6. Modification of MOA: This MOA may be amended by written agreement of DNFSB and NNSA.
7. Dispute Resolution: Any disputes relating to this MOA will be resolved by consultation between DNFSB and NNSA, subject to applicable law, Executive Orders, Directives, and Instructions.
8. This MOA is neither a fiscal nor a funds obligation document. Nothing in this MOA authorizes or is intended to obligate the parties to expend, exchange, or reimburse funds, services, or supplies, or transfer or receive anything of value.
9. This MOA in no way restricts either of the parties from participating in any activity with other public or private agencies, organizations, or individuals.
10. This MOA is strictly for internal management purposes for each of the parties. It is not legally enforceable and shall not be construed to create any legal obligation on the part of either Party. This MOA shall not be construed to provide a private right or cause of action for or by any person or entity.
11. Subject to the Freedom of Information Act (5 U.S.C. § 552), decisions on disclosures of DOE/NNSA information to the public regarding projects or programs referenced in this MOA shall be made by NNSA following consultation with the other Party.
12. This MOA shall become effective on the date when the last party to sign executes this MOA and sends notice to the other party that it has done so. It shall remain in effect for the length of the Liaison assignment, unless terminated earlier as provided herein.