

Thomas A. Summers, Acting Chairman
Jessie H. Roberson
Joyce L. Connery

**DEFENSE NUCLEAR FACILITIES
SAFETY BOARD**

Washington, DC 20004-2901



September 25, 2020

The Honorable Dan Brouillette
Secretary of Energy
US Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585-1000

Dear Secretary Brouillette:

On February 20, 2020, the Defense Nuclear Facilities Safety Board issued Recommendation 2020-1, *Nuclear Safety Requirements*, to strengthen DOE's regulatory framework for ensuring adequate protection of the public, including workers. In particular, the Board recommended that DOE revise some aspects of its regulations in 10 CFR 830, *Nuclear Safety Management*. On August 8, 2018, DOE published its intention to change that rule. The Board understands that DOE plans to publish the final rule soon.

There was very little engagement between DOE and the Board regarding DOE's revisions to 10 CFR 830. On October 5, 2018, we submitted comments via the public comment process and transmitted these same comments to you via letter. The Board received no formal response from DOE about our comments on the rulemaking. After determining portions of the rule needed to be modified to continue to ensure adequate protection, the Board issued Recommendation 2020-1.

On June 11, 2020, DOE rejected all of the sub-recommendations related to revising 10 CFR 830 without providing a substantive technical basis or analysis. In some cases, DOE stated that it "rejects this sub-recommendation because DOE is considering this matter in the current rulemaking." In other cases, DOE stated that it "rejects this sub-recommendation because this topic is outside the scope of the current rulemaking to amend 10 CFR 830." These are the primary reasons that DOE provided for rejecting the Board's sub-recommendations.

The Atomic Energy Act states that the "Board shall review and evaluate the content and implementation of the standards related to the design, construction, operation, and decommissioning of defense nuclear facilities of the Department of Energy (**including all applicable Department of Energy orders, regulations, and requirements**)" (bold added for emphasis). The Atomic Energy Act further states that the "Board shall make such recommendations to the Secretary of Energy with respect to Department of Energy defense nuclear facilities, including operations of such facilities, **standards**, and research needs, as the

Board determines are necessary to ensure adequate protection of public health and safety” (bold added for emphasis).

It is therefore the Board’s duty and responsibility to review DOE’s regulations and to recommend any revisions that the Board deems necessary to ensure adequate protection of public health and safety. The Administrative Procedure Act and other laws do not prohibit a technical and/or substantive response to Board recommendations related to regulations that are the subject of rulemaking prior to the issuance of a final rule. The Board expects DOE to accept or reject Board recommendations based on technical substance, and to consider remedies that address the underlying safety issues upon acceptance of the recommendation.

The Board is continuing to assess the entirety of DOE’s response to Recommendation 2020-1, and will communicate further in the future.

Yours truly,

Thomas A. Summers

Thomas A. Summers
Acting Chairman

c: Mr. Joe Olencz