



New Mexico State Senate

State Capitol
Santa Fe

September 6, 2018

SENATOR JEFF STEINBORN

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P.O. Box 562
Las Cruces, NM 88004

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COMMITTEES:

VICE CHAIR:
• Rules

MEMBER:
• Public Affairs

INTERIM COMMITTEES:

CHAIR:
• Radioactive & Hazardous
Materials Committee

Bruce Hamilton, Acting Chair
Defense Nuclear Facilities Safety Board
625 Indiana Ave. NW, Suite 700
Washington, DC 20004


Dear Acting Chair Hamilton:

I have been advised that the Defense Nuclear Facilities Safety Board has authorized holding hearings outside of Washington, DC, to provide stakeholders and the public information concerning U.S. Department of Energy (DOE) Order 140.1, "Interface with the Defense Nuclear Facilities Safety Board", and to gather public input. I respectfully request that the board hold a meeting in Santa Fe or Los Alamos, New Mexico, to provide local stakeholders the opportunity to participate in person in this important process.

Northern New Mexico is home to Los Alamos National Laboratory (LANL), which is of preeminent importance to the nation's nuclear weapons program. Since its inception, the Defense Nuclear Facilities Safety Board has played a critical role in ensuring the safety of LANL operations and issuing recommendations to adequately protect the public health and safety. Because the State of New Mexico in general, and the communities surrounding LANL in particular, have a distinct interest in understanding and providing input on the objectives of DOE Order 140.1, a public meeting in New Mexico would ensure greater participation of affected communities.

I thank you for your consideration of this request.

Sincerely,



JEFF STEINBORN

JS:ar

cc: Senator Tom Udall
Senator Martin T. Heinrich
Congressman Ben R. Luján
Congresswoman Michelle Lujan Grisham
Congressman Steve Pearce

United States Senate

WASHINGTON, DC 20510

September 14, 2018

The Honorable Bruce Hamilton, Acting Chair
And Board Members
Defense Nuclear Facilities Safety Board
625 Indiana Ave, NW, Suite 700
Washington, D.C. 20004

Dear Acting Chairman Hamilton and Board Members:

We write to urge the board to schedule a public hearing in New Mexico on the Department of Energy's (DOE) new Order 140.1, "Interface with the Defense Nuclear Facilities Safety Board." The new order severely limits the Defense Nuclear Facilities Safety Board's (DNFSB) statutory oversight responsibility to ensure the safety of local communities and workers at DOE's defense nuclear facilities. As the home of two nuclear security laboratories, Los Alamos and Sandia, and the Waste Isolation Pilot Plant (WIPP), we believe the board should hear directly from New Mexicans at a public hearing on the potential health and safety impact of DOE's order.

The DNFSB was established 30 years ago to provide independent oversight of health and safety at DOE's nuclear facilities. Because the nation's defense nuclear facilities are largely unregulated by any other state or federal agency, DOE must not impair the board's ability to provide independent analysis, advice, and recommendations to the secretary. The work of the board helps DOE fulfil its mission and provides the public assurance that our nuclear facilities are designed, constructed, and operated safely.

The protection of public health and safety at our state's two national laboratories and WIPP continues to be our top priority. We believe a public hearing in New Mexico would help the board gather the information it needs to fully and openly assess the impact of the changes DOE's order imposes on the board's oversight responsibility. Also attached is a letter from State Senator Jeff Steinborn, chair of the New Mexico State Legislature's Radioactive and Hazardous Material Committee, in support of a public hearing in New Mexico.

We respectfully ask that you give our request your full and careful consideration.

Sincerely,



TOM UDALL
United States Senator



MARTIN HEINRICH
United States Senator

Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

September 25, 2018

The Honorable Rick Perry
Secretary
U.S. Department of Energy
1000 Independence Avenue
Washington, DC 20585

RE: Call for Suspension of Order 140.1

Dear Secretary Perry:

On behalf of the Santa Fe County Board of County Commissioners of Santa Fe County, I write to express our strong support for, and agreement with, Senators Udall and Heinrich's September 5, 2018 letter to you regarding the Department of Energy's (DOE) new Order 140.1. We join in Senator Udall and Heinrich's call to suspend the implementation of Order 140.1 to allow the Defense Nuclear Facilities Safety Board (DNFSB), Congress, affected state and local governments, and the public sufficient time to review and comment on Order 140.1.

Given that Santa Fe County borders Los Alamos National Laboratory (LANL) to Santa Fe County, to the east and southeast and the fact that many county residents work at or near LANL, the ability of DNFSB to perform its statutory duty to ensure the safety of communities and workers at nuclear security labs and the Waste Isolation Pilot Plant (WIPP) is of paramount importance to Santa Fe County and its residents. We echo Senators Udall and Heinrich's strong support for the mission of the DNFSB, and share their concerns about DNFSB staff's difficulties in accessing information regarding recent safety issues at LANL. We unreservedly stand with our Senators in opposition to any action by DOE that would weaken or restrict the DNFSB's statutory authority to help protect our residents.

We join our Senators in urging you to suspend Order 140.1, and to receive and give due consideration to comments and suggestions from members of the DNFSB and Congress, as well as to concerns expressed by the public at public hearings at DOE facilities located across the country. We support the public's request that DOE hold three hearings in New Mexico—near WIPP, Sandia National Laboratories, and Los Alamos National Laboratory. Thereafter, we request that you reissue a revised order that does not in any way impinge upon the DNFSB's statutory authority to perform its critical mission of helping ensure

the health and safety of Santa Fe County residents and all New Mexicans who live near or work at federal nuclear facilities in our state.

Sincerely,

A handwritten signature in black ink that reads "Anna Hansen". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

Anna Hansen, Chair
Board of County Commissioners for Santa Fe County

cc: Senator Tom Udall
Senator Martin Heinrich
Defense Nuclear Facilities Safety Board

United States Senate

WASHINGTON, DC 20510

October 4, 2018

The Honorable Rick Perry
Secretary
U.S. Department of Energy
1000 Independence Ave. SW
Washington, D.C. 20585

Dear Secretary Perry:

We write to follow-up on our recent letter to you regarding DOE's new Order 140.1, which imposes severe limitations on the Defense Nuclear Facilities Safety Board's statutory oversight responsibility to ensure the safety of communities and workers at New Mexico's two nuclear security labs and the Waste Isolation Pilot Plant. In our letter of September 5, 2018, we urged you to suspend the implementation of the order while the members of the board, Congress and the public have time to review and offer constructive feedback on how to maintain and enhance the board's critical safety role.

Attached is a letter we received from the Honorable Anna Hansen, Chair of the Board of County Commissioners for Santa Fe County, New Mexico. The county borders Los Alamos National Laboratory and is where a number of the lab's employees live. On behalf of the board, Chair Hansen calls on you to suspend the implementation of Order 140.1. Her letter also expresses Santa Fe County's strong opposition to any action by DOE that would weaken or restrict the board's statutory authority to protect county residents.

We respectfully request your careful consideration of the views expressed by Santa Fe County in the letter. In light of the county's letter and other concerns with the changes made by Order 140.1, we again urge you to suspend implementation to give the members of the board an opportunity to provide comments and feedback, including issues raised by stakeholders at the board's next two planned public hearings. DOE should then reissue an order that fully complies with DNFSB's legal authority to continue to protect workers and the community.

Sincerely,



TOM UDALL
United States Senator

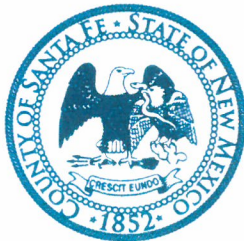


MARTIN HEINRICH
United States Senator

Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Rudy N. Garcia
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

January 25, 2019

Honorable Bruce Hamilton, Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Avenue NW, Suite 700
Washington, DC 20004-2901

Re: Request for Meeting before or after February 21, 2019 Public Hearing in Albuquerque, NM

Dear Chairman Hamilton:

I understand that the DNFSB will conduct a public hearing in Albuquerque, New Mexico on the evening of Thursday, February 21, 2019, on the Department of Energy's (DOE) Order 140.1, *Interface with Defense Nuclear Facilities Safety Board*. I greatly appreciate the Board's action to conduct a hearing on Order 140.1 in Albuquerque. While I was Chair, the Board of County Commissioners conveyed its serious concerns about the effect of Order 140.1 on the DNFSB's ability to monitor and report on safety issues at DOE's sites in New Mexico. These concerns were expressed in the attached letter to DOE Secretary Perry dated September 25, 2018. In the letter, we joined in the call of both New Mexico Senators Udall and Heinrich to suspend the implementation of the Order 140.1 to allow meaningful review and comment on the Order. As stated in our letter to Secretary Perry, "[w]e unreservedly stand with our Senators in opposition to any action by DOE that would weaken or restrict the DNFSB's statutory authority to help protect our residents."

I anticipate great public interest in the hearing and a correspondingly high level of participation. While representatives of Santa Fe County will be in attendance, I respectfully request that myself or another member of our Board of Commissioners be allowed to meet with a representative of the DNFSB to discuss our concerns either before or after the public hearing on February 21, 2019. Please let me know a time and locations that would be convenient.

I look forward to your reply.

Sincerely,

A handwritten signature in cursive script that reads "Anna Hansen".

Anna Hansen, Commissioner
Board of County Commissioners for Santa Fe County

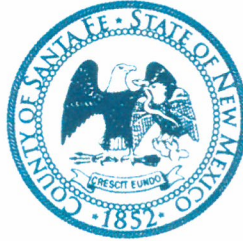
Attachment

cc: Senator Tom Udall, Senator Martin Heinrich, Representative Ben Ray Lujan,
Representative Deb Haaland

Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Rudy N. Garcia
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

January 25, 2019

Matthew B. Moury
Associate Undersecretary for Environment, Health, Safety and Security
U.S. Department of Energy
1000 Independence Avenue
Washington, DC 20585

Re: Request for Meeting before or after February 21, 2019 Public Hearing in Albuquerque, NM

Dear Mr. Moury:

Thank you for your November 28, 2018 letter responding to the September 25, 2018 letter to Secretary Perry from the Santa Fe County Board of County Commissioners (SFBCC). The attached SFCBCC letter conveyed the Commission's serious concerns about the effect the Department of Energy's (DOE) Order 140.1, *Interface with Defense Nuclear Facilities Safety Board (DNFSB)*, on the DNFSB's ability to monitor and report on safety issues at DOE's sites in New Mexico, and the Order's impact on the DNFSB's role in helping ensure the health and safety of the employees and neighbors of defense nuclear facilities in our state.

I understand that the DNFSB will conduct a public hearing in Albuquerque, New Mexico on the evening of Thursday, February 21, 2019, on Order 140.1 and its potential effects on the work of the DNFSB. We anticipate great public interest in the hearing and a correspondingly high level of participation. In the past, DOE representatives have attended other DNFSB hearings in New Mexico, and we hope DOE will be represented at this hearing by senior-level staff from Washington. Accordingly, I respectfully request that myself or another member of our Board of Commissioners be allowed to meet with you or another representative of DOE before or after the public hearing on February 21, 2019 to discuss our concerns either before or after the public hearing on February 21, 2019. Please let me know a time and locations that would be convenient.

I look forward to your reply.

Sincerely,

A handwritten signature in cursive script that reads "Anna Hansen".

Anna Hansen, Commissioner
Board of County Commissioners for Santa Fe County

cc: Senator Tom Udall, Senator Martin Heinrich, Representative Ben Ray Lujan,
Representative Deb Haaland

SUBJECT: INTERFACE WITH THE DEFENSE NUCLEAR FACILITIES SAFETY BOARD

1. **PURPOSE.** The purpose of this Order is to emphasize line management accountability and establish clear requirements and responsibilities when working with the Defense Nuclear Facilities Safety Board (DNFSB).
2. **CANCELLATION.** DOE M 140.1-1B, *Interface with the Defense Nuclear Facilities Safety Board*, dated 03-30-01. Cancellation of a directive does not, by itself, modify or otherwise affect any contractual or regulatory obligation to comply with the directive. Contractor Requirements Documents (CRDs) that have been incorporated into a contract remain in effect throughout the term of the contract unless and until the contract or regulatory commitment is modified to either eliminate requirements that are no longer applicable or substitute a new set of requirements.
3. **APPLICABILITY.**
 - a. **Departmental Applicability.** The requirements in this Order apply to DOE personnel, including employees of the National Nuclear Security Administration (NNSA), who administer, oversee, and/or are responsible for a “Department of Energy (or DOE) Defense Nuclear Facility,” as defined in this Order. This is consistent with 42 U.S. Code (U.S.C.) § 2286a, *Mission and Functions of Board*, which states, “The mission of the Board shall be to provide independent analysis, advice, and recommendations to the Secretary of Energy to inform the Secretary, in the role of the Secretary as operator and regulator of the defense nuclear facilities of the Department of Energy, in providing adequate protection of public health and safety at such defense nuclear facilities.”

The Administrator of the NNSA must assure that NNSA employees comply with their responsibilities under this Order. Nothing in this directive will be construed to interfere with the NNSA Administrator’s authority under section 3212(d) of Public Law (P.L.) 106-65 to establish administration-specific policies, unless disapproved by the Secretary.
 - b. **DOE Contractors.** Except for the equivalencies/exemptions contained in paragraph 3.c., the CRD (see Attachment 1 of this Order) sets forth requirements of this Order that will apply to contracts that include the CRD. The CRD, or its requirements, must be inserted into all contracts that require design, construction, management, operation, decontamination, decommissioning, or demolition of one or more DOE defense nuclear facilities, as defined in this Order.
 - c. **Exemptions/Exceptions.** Equivalencies and exemptions to this Order are processed in accordance with DOE O 251.1, *Departmental Directives Program*, current version.

- (1) Exemption. In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 U.S.C. sections 2406 and 2511, this Order does not apply to the DOE NNSA Naval Reactors Propulsion Program. [42 U.S.C. § 2286g(1)(A)]
- (2) Exemption. This Order does not apply to DOE Nuclear Hazard Category 3 or Below Hazard Category 3 facilities, as defined in DOE-STD-1027. (If requested, the DNFSB shall be provided access to the information that led to the DOE determination that a facility is less than Hazard Category 2 to allow the DNFSB oversight into that determination.) (42 U.S.C. § 2286a)
- (3) Exemption. This Order does not apply to nuclear facilities or activities at DOE defense nuclear facilities, as defined in this Order, that do not adversely affect or have the potential to adversely affect public health and safety. (42 U.S.C. § 2286a)
- (4) Exemption. This Order does not apply to any facility or activity involved with transportation of nuclear explosives or nuclear material. [42 U.S.C. § 2286g(1)(B)]
- (5) Exemption. This Order does not apply to any facility that does not conduct atomic energy defense activities. [42 U.S.C. § 2286g(1)(C)]
- (6) Exemption. This Order does not apply to a nuclear waste storage facility developed pursuant to the Nuclear Waste Policy Act of 1982 and licensed by the Nuclear Regulatory Commission. [42 U.S.C. § 2286g(2)]
- (7) Exemption. This Order does not apply to functions relating to the safety of atomic weapons. [42 U.S.C. § 2286a(c)]
- (8) Exemption. This Order does not apply to nuclear facilities or activities subject to regulation by the Nuclear Regulatory Commission (NRC).

4. REQUIREMENTS.

- a. The Department of Energy (DOE) is responsible for the safe operations of its facilities and sites, and has the responsibility and duty to:
 - (1) Carry out the DOE mission in a safe, secure, and environmentally responsible way.
 - (2) Provide reasonable assurance of adequate protection to public health and safety.
 - (3) Perform its role as facility operator and regulator, as well as steward for the taxpayer, in accomplishing DOE's legally mandated missions.

- (4) Consider information, ideas, and technical advice from the DNFSB and its staff.
- (5) Formulate consolidated DOE positions on policy (to include directives and standards) prior to DNFSB and DNFSB staff engagement so that DOE speaks with one voice.

To fulfill these obligations, DOE must make sound technical decisions, drawing on all reasonably available information, including advice and observations from the DNFSB, and accept responsibility for the outcomes of its decisions, including appropriately managing the risks associated with its operations.

b. When executing these requirements, Departmental Elements must:

- (1) Cooperate with the DNFSB and provide the DNFSB with ready access to such facilities, personnel, and information as necessary to carry out its statutory responsibilities, to include providing access to:
 - (a) Completed documents representing DOE's decisions related to the safe design and operations of defense nuclear facilities and supporting the statutory requirements of the DNFSB. This would include, for example, safety basis documents, safety design strategies, documented safety analyses, safety evaluation reports, and similar documentation, as well as completed Standards related to the design, construction, operation, and decommissioning of facilities.
 - (b) Defense nuclear facilities to observe operations and maintenance activities, including DOE's formal review processes, to demonstrate readiness of the contractor and DOE to support safe operations. This would include, for example, contractor and federal readiness assessments and reviews, as well as routine operations and maintenance related to providing adequate protection of public health and safety.
 - (c) Completed documents representing any event or practice at a defense nuclear facility which the DNFSB considers may adversely affect public health and safety. This would include, for example, approved results of fact-finding reviews and investigations associated with defense nuclear facilities.
- (2) In accordance with direction from the Secretary, or the Secretary's designee, may deny access for the following reasons:
 - (a) The person requesting the information has not been granted an appropriate security clearance or access authorization by the Secretary.

- (b) The person requesting the information does not need such access in connection with his/her duties.
 - (c) The request is for predecisional or otherwise privileged records, for example, attorney-client, attorney work product, procurement-sensitive, or deliberative process draft documents that have not been approved for release; or to participate in deliberative meetings or discussions supporting the development of predecisional or other process draft documents that have not been approved for release. NOTE: Such documents should be considered on a case-by-case basis.
 - (d) Release of the requested information would violate the Privacy Act (5 U.S.C. § 552a).
 - (e) The requested information does not have a reasonable relationship to the functions of the DNFSB as enumerated in the Atomic Energy Act, such as information that does not pertain to a Department of Energy defense nuclear facility, as defined in Section 318 of the Atomic Energy Act, as amended (42 U.S.C. § 2286g).
- (3) Ensure that requests made to DOE contractors for information or access related to defense nuclear facilities or activities by the DNFSB, including DNFSB staff, are referred to the appropriate Departmental Site Liaison for response.
 - (4) Ensure that DOE contractors will only respond to DNFSB requests when formally tasked to do so by an authorized Departmental Site Liaison.
 - (5) Refer legal questions regarding the appropriateness of releasing information requested by the DNFSB or its staff to the DOE Office of General Counsel or the NNSA Office of General Counsel, as appropriate.
 - (6) Establish a response team for each recommendation provided by the DNFSB. Assign a Responsible Manager to lead the team, selected by and operating under the authority of a Cognizant Head of a Departmental Element.
 - (7) If warranted, provide comments on DNFSB draft recommendations within 30 days of receipt by DOE or, if additional time is granted by the DNFSB, within the time permitted by the DNFSB.
 - (8) Respond to DNFSB recommendations within 45 days after a recommendation is published in the Federal Register, or up to an additional 45 days if additional time is granted by the DNFSB, with a statement regarding whether the Secretary accepts or rejects, in whole or in part, the recommendation; a description of actions to be taken; and the

Secretary's views on the recommendation. Responses to DNFSB recommendations must be published in the Federal Register for a public comment period of 30 days.

- (9) Provide a final decision, including the Secretary's reasoning, within 30 days of receiving a notice of a DNFSB decision to reaffirm or revise a recommendation that had previously been rejected in whole or in part. The Secretary's final decision and reason therefore must be published in the Federal Register, and a report on that decision and its reasoning must be provided to the DNFSB and to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives; and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate.
- (10) Transmit an Implementation Plan to the DNFSB within 90 days of the date of publication of the Secretary's final decision on a recommendation in the Federal Register, if any part of that recommendation is accepted. This Implementation Plan must convey the Secretary's best judgment on how to address those issues identified in the DNFSB's recommendation within the context of DOE's overall nuclear safety program.
 - (a) An additional 45 days for which to transmit the Implementation Plan may be obtained upon submitting a notification explaining the reasons for the delay and describing the actions the Secretary is taking to prepare an Implementation Plan.
 - (b) This notification must be sent to the DNFSB and to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives; and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate.
 - (c) All significant revisions to the Implementation Plan must also be formally provided to the DNFSB.
 - (d) A notification by letter must be sent to the DNFSB, in lieu of a formal revision, for any minor revisions to an Implementation Plan.
- (11) For DNFSB recommendations involving imminent danger or severe threat to public health and safety, convene a response team within 24 hours of receipt of the recommendation and provide the Secretary's recommendation to the President.
- (12) Make available sufficient resources to satisfy the commitments, milestones, and corrective actions contained in Implementation Plans and other DOE correspondence to the DNFSB, subject to the availability of appropriated funds.

- (13) Fully implement Implementation Plans within one year of transmitting them to the DNFSB or, if an Implementation Plan cannot be implemented within that time, provide a report to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives; and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate, describing the reasons for delay and when implementation will be complete. (This requirement is typically satisfied in DOE's Annual Report to Congress on DNFSB-related activities.)
- (14) Provide notification to the President and the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives; and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate if implementation of any portion of an accepted recommendation is impractical because of budgetary considerations, or would affect the Department's ability to meet annual nuclear weapon stockpile requirements.
- (15) Respond to DNFSB reporting requirements, and, in cases where a completion date requested by the DNFSB cannot be met, transmit a letter to the DNFSB that includes an expected date for transmitting the report. Note: Responses to reporting requirements provide information to the Board and should not be the origin of actions for the Department.
- (16) At the same time the President submits the budget to Congress, provide an annual report to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives; and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate, that describes Department DNFSB-related activities from the previous fiscal year.

5. RESPONSIBILITIES.

a. Secretary of Energy.

- (1) Ensures cooperation with the DNFSB in support of the DNFSB's enabling statute.
- (2) Responds to DNFSB recommendations in accordance with the DNFSB's enabling statute.
- (3) Designates a Responsible Manager to develop, manage, and execute the Implementation Plan in response to each accepted recommendation.
- (4) Provides the DNFSB a copy of the Department's Implementation Plan for each accepted recommendation and approves any subsequent plan changes.

- (5) Provides annual reports to Congress concerning DNFSB-related activities of the Department.
- b. Deputy Secretary of Energy.
- (1) Ensures DNFSB issues are properly addressed within the Department.
 - (2) Resolves disagreements that cannot otherwise be resolved within the Department.
 - (3) Assigns lead responsibility for DNFSB-related issues to the cognizant Under Secretary.
- c. Under Secretaries.
- (1) Consistent with guidance from the Deputy Secretary, implement the Department's process with respect to the DNFSB via assignment to the cognizant Head of the Departmental Element.
 - (2) Delegate specific issues to Heads of Departmental Elements for information gathering and action for response.
- d. Heads of Departmental Elements.
- (1) Responsible for coordinating responses to DNFSB recommendations, correspondence, or other DNFSB issues; and designating and empowering individuals to manage the associated planning, response, and implementation activities, consistent with guidance provided.
 - (2) Coordinate with other affected Heads of Departmental Elements responsible for defense nuclear facilities in order to form an integrated Departmental position.
 - (3) Designate a point of contact (Program Interface) within their respective organizations, to represent their organizations and coordinate with the Departmental Representative and his/her staff on DNFSB-related matters.
 - (4) Identify contracts to which the CRD from this Order should apply and notify the cognizant Contracting Officers to incorporate the CRD from this Order into those contracts.
- e. Program Interface.
- (1) Performs responsibilities given to the Head of the Departmental Element under this Order, as delegated.
 - (2) Coordinates with other affected Program Interfaces and the Departmental Representative to support an integrated Departmental position.

- (3) Serves as the primary Program Interface for Responsible Managers.
 - (4) Integrates with Heads of Field Elements and Departmental Site Liaisons as appropriate to ensure Head of Departmental Element cognizance.
 - (5) Coordinates the resolution of matters within the Departmental Element that cannot otherwise be resolved by the Heads of Field Elements.
- f. Heads of Field Elements (with Responsibility for Defense Nuclear Facilities).
- (1) Designate a point of contact to serve as liaison with the Departmental Representative and his/her staff on DNFSB-related matters.
 - (2) Provide DNFSB staff with appropriate access (refer to paragraphs 4.a. and 4.b. of this Order) to defense nuclear facilities, personnel, and existing information at the site.
 - (3) Work with Heads of Departmental Elements to identify contracts to which the CRD from this Order should apply and notify the cognizant Contracting Officers to incorporate the CRD from this Order into those contracts.
- g. Departmental Representative to the DNFSB.
- (1) Represents the Secretary in regular and continuing interactions with the DNFSB.
 - (2) Advises Departmental officials on DNFSB priorities, concerns, actions, and plans.
 - (3) Manages Departmental interface activities and provides advice to line management on DNFSB-related matters.
 - (4) Coordinates with cognizant Departmental Elements to respond to DNFSB recommendations, DNFSB correspondence, or other DNFSB issues.
 - (5) Facilitates communication and cooperation with the DNFSB and its staff.
 - (6) Reviews DNFSB staff requests and Departmental written communications to the DNFSB for consistency and responsiveness.
 - (7) Transmits non-Secretarial correspondence to the DNFSB and DNFSB Staff.
 - (8) Manages DNFSB-related issues and DOE commitments and actions.
 - (9) Maintains awareness of Departmental commitments to provide information to the DNFSB.

- (10) Prepares reports on DNFSB-related activities for Departmental management, Congress, and the President.
- (11) Maintains and distributes a listing of key Departmental personnel for DNFSB-related activities.
- (12) Maintains the Department's central repository of official DNFSB communications and makes this information available to Departmental and contractor personnel.
- (13) Supports the Departmental Elements in conducting training, briefings, and presentations.
- (14) Supports the Departmental Directives Program in accordance with DOE O 251.1, current version, as the Office of Primary Interest (OPI) for this Order:
 - (a) Coordinates relevant directives reviews with the DNFSB.
 - (b) Provides the responsible parties with DNFSB comments through the process used by the Department.
 - (c) Facilitates communication between responsible parties and the DNFSB regarding DNFSB comments, if received prior to a directive's approval.
 - (d) Informs responsible parties of relevant DOE Implementation Plan provisions and Secretarial commitments to the DNFSB that impact directives of interest to the DNFSB.

h. Responsible Managers.

- (1) For each assigned DNFSB recommendation, reporting requirement, or letter requesting information, and for each Departmental commitment, manage the response, planning, implementation, tracking, and completion of the DOE Implementation Plan and/or response.
- (2) Provide status updates to the Departmental Representative to the DNFSB.
- (3) Keep Departmental leadership informed of any issues that need senior management attention.
- (4) For cross-organizational issues, coordinate with those impacted or affected.

i. Departmental Site Liaisons.

- (1) Participate in day-to-day DNFSB-related interactions with the Departmental Representative and his/her staff, other Departmental elements, and DNFSB staff.
- (2) Be cognizant of and coordinate day-to-day DNFSB-related activities, to include communicating and reporting to their management on the status of DNFSB activities at their site.
- (3) Provide requested support in responding to and executing DOE Implementation Plans and requests for information.
- (4) Prepare, coordinate, and conduct Departmental activities to support site visits by the DNFSB.
- (5) Be sufficiently knowledgeable of DNFSB practices to advise their organizations and assist their management in interfaces with the DNFSB and its staff.

j. Contracting Officer (CO).

- (1) For M&O contracts, after being notified by the cognizant Head of the Departmental Element, Head of the Field Element, or his or her designee, the CO must incorporate the CRD into the contract by the due date established by the official. The CO must incorporate the CRD without alteration unless the CRD permits alteration and the appropriate exemption/exception process is followed, or unless requirements are tailored per DEAR 970.5204-2.
- (2) For non-M&O contracts, after being notified by the Head of the Departmental Element, Head of Field Element, or his or her designee, the CO must, to the extent possible, incorporate the CRD, either bilaterally or unilaterally, if within the limitation established in the Federal Acquisition Regulation, into the contract by the due date established by the official. If it appears that incorporation will not occur by the due date, then the CO must consult with Head of the Departmental Element or Head of Field Element, as appropriate. The CO must incorporate the CRD without alteration unless the appropriate process for exemption/equivalency is followed.

k. All Departmental Personnel.

- (1) Cooperate with the DNFSB and DNFSB staff, subject to paragraphs 4.a. and 4.b. of this Order.

- (2) Coordinate DNFSB and DNFSB staff requests with the Departmental Representative, Departmental Site Liaisons, and Headquarters Program Offices.
- (3) Promptly bring to the attention of Departmental management (and the Departmental Representative, if appropriate) any conflict that arises with DNFSB staff.
- (4) Ensure requests from the DNFSB or its staff are appropriately documented and vetted through the Departmental Representative, Departmental Site Liaisons, and Headquarters Program Offices.

6. REFERENCES.

- a. Executive Order (E.O.) No. 12344, Naval Nuclear Propulsion Program, dated 2-1-82 (42 U.S.C. §7158 note).
- b. E.O. 13392, *Improving Agency Disclosure of Information*, dated 12-14-05 (published at 70 Fed. Reg. 75373).
- c. Atomic Energy Act of 1954, Sections 311-321, *codified at* Title 42, Chapter 23, *Development and Control of Atomic Energy*; Subchapter XVII.A, *Defense Nuclear Facilities Safety Board* (42 U.S.C. §§ 2286 - 2286i).
- d. Nuclear Waste Policy Act of 1982, 42 U.S.C. §§ 10101 et seq.
- e. Privacy Act of 1974, 5 U.S.C. § 552a.
- f. Title XXXII of the National Defense Authorization Act for Fiscal Year 2000, Pub. L. 106-65, as amended (“NNSA Act”).
- g. 10 Code of Federal Regulation (C.F.R.) Part 830, *Nuclear Safety Management*.
- h. Title 48, Federal Acquisition Regulations System, Part 43, *Contract Modifications*.
- i. DEAR 970.5204-2, *Laws, Regulations, and DOE Directives*.
- j. Deputy Secretary of Energy Memorandum, “Relationship with the Defense Nuclear Facilities Safety Board,” dated 10-13-2017.
- k. DOE O 251.1, *Departmental Directives Program*, current version.
- l. DOE O 252.1, *Technical Standards Program*, current version.
- m. DOE O 410.1, *Central Technical Authority Responsibilities Regarding Nuclear Safety Requirements*, current version.
- n. DOE O 474.2, *Nuclear Material Control and Accountability*, current version.

- o. DOE-STD-1027-92 Chg Notice 1, *Hazard Categorization and Accident Analysis Techniques for Compliance with DOE Order 5480.23, Nuclear Safety Analysis Reports*, dated 12-12-97, or subsequent version.
- p. DOE-STD-3009-2014, *Preparation of Nonreactor Nuclear Facility Documented Safety Analysis*, dated 11-2-14.
- q. Office of the Departmental Representative to the Defense Nuclear Facilities Safety Board (DNFSB) website, <https://www.energy.gov/ehss/departmental-representative-defense-nuclear-facilities-safety-board-dnfsb>.

7. DEFINITIONS.

- a. Atomic Energy Defense Activity. Any activity of the Secretary performed in whole or in part in carrying out any of the following functions:

- (1) Naval reactors development;
- (2) Weapons activities, including defense inertial confinement fusion;
- (3) Verification and control technology;
- (4) Defense nuclear materials production;
- (5) Defense nuclear waste and materials by-products management;
- (6) Defense nuclear materials security and safeguards and security investigations; and
- (7) Defense research and development.

(This term is broader than “DOE defense nuclear facilities” since the latter excludes specific “atomic energy defense activities,” for example, those related to naval reactors.)

- b. Deliberative process draft. Internal communications on Departmental policy issues that have not been adopted as DOE policy.
- c. Department of Energy Defense Nuclear Facility.
 - (1) A production facility or utilization facility (as defined in 42 U.S.C. §2014 [§ 11 of the Atomic Energy Act]) that is under the control or jurisdiction of the Secretary of Energy and that is operated for national security purposes, but does not include:
 - (a) Any facility or activity covered by Executive Order No. 12344, dated February 1, 1982 [50 U.S.C. § 2511 note], pertaining to the Naval nuclear propulsion program;

- (b) Any facility or activity involved with the transportation of nuclear explosives or nuclear material;
 - (c) Any facility that does not conduct atomic energy defense activities;
or
 - (d) Any facility owned by the United States Enrichment Corporation (now Centrus).
- (2) A nuclear waste storage facility under the control or jurisdiction of the Secretary of Energy, but not a facility developed pursuant to the Nuclear Waste Policy Act of 1982 and licensed by the Nuclear Regulatory Commission. (42 U.S.C. § 2286g)
- d. Department of Energy Nuclear Facility. A Department of Energy reactor or nonreactor nuclear facility where an activity is conducted for, or on behalf of, DOE, including any related area, structure, facility, or activity to the extent necessary to ensure proper implementation of the requirements established in 10 C.F.R. Part 830.
- e. Equipment or device capable of producing and/or utilizing special nuclear material in such a manner as to “affect the health and safety of the public.” Equipment or device (not including an atomic weapon) in or at a Hazard Category 1 or 2 “DOE nuclear facility,” as defined by 10 C.F.R. § 830.3, whose DOE-approved Documented Safety Analysis (DSA):
 - (1) Describes or otherwise identifies hazards from “special nuclear material,” (SNM), as defined in this Order; and
 - (2) Includes “safety class” structures, systems, or components, as defined by 10 C.F.R. § 830.3, for the protection of the public due to the hazards posed by the SNM utilized or produced in that facility.¹
- f. Nonreactor nuclear facility. Those facilities, activities, or operations that involve or will involve radioactive and/or fissionable materials in such form and quantity that a nuclear or a nuclear explosive hazard potentially exists to workers, the public, or the environment, but does not include accelerators and their operations and does not include activities involving only incidental use and generation of radioactive materials or radiation such as check and calibration sources; use of radioactive sources in research and experimental and analytical laboratory activities; electron microscopes; and X-ray machines.

¹ A determination that a DOE facility is a production facility and/or utilization facility is *not* by itself a determination that the facility is a “Department of Energy defense nuclear facility.” The statutory definition of “Department of Energy defense nuclear facility” (42 U.S.C. § 2286g) includes additional criteria that may impact the ultimate determination of whether a particular production facility and/or utilization facility is a DOE “defense nuclear facility.”

- g. Production facility.
- (1) Any equipment or device determined by DOE to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or
 - (2) Any important component part especially designed for such equipment or device as determined by DOE.
- h. Public Health and Safety. Health and safety of individuals located beyond the site boundaries of DOE sites with DOE Defense Nuclear Facilities.
- i. Quantities of Special Nuclear Material Determined to be “of Significance to the Common Defense and Security.” Those quantities of SNM that meet the minimum threshold quantities for categorization of the facility as a Hazard Category 2 nuclear facility, consistent with the latest version of DOE Technical Standard 1027.
- j. Safety Class Structures, Systems, or Components. The structures, systems, or components, including portions of process systems, whose preventive or mitigative function is necessary to limit radioactive hazardous material exposure to the public, as determined from safety analyses², as defined in 10 C.F.R. Part 830.
- k. Site boundary. For the purpose of implementing this Order, the DOE site boundary is a geographic boundary within which public access is controlled and activities are governed by DOE and its contractors, and not by local authorities. A public road or waterway traversing a DOE site is considered to be within the DOE site boundary if DOE or the site contractor has the capability to control, when necessary, the road or waterway during accident or emergency conditions.
- l. Special Nuclear Material. Plutonium; uranium-233; uranium enriched in the isotope 235, excluding source material; separated Am-241; separated Am-243; and separated Np-237.
- m. Utilization facility.
- (1) Any equipment or device, except an atomic weapon, determined by DOE to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity as to be of

² See Technical Standard 3009-94, *Preparation Guide for U.S. Department of Energy Nonreactor Nuclear Facility Safety Analysis, or successor document.*

significance to the common defense and security, or in such manner as to affect the health and safety of the public; or

- (2) Any important component part especially designed for such equipment or device as determined by DOE.

8. CONTACT. Questions concerning this Order should be addressed to the Office of the Departmental Representative to the DNFSB at 301-903-4586.

BY ORDER OF THE SECRETARY OF ENERGY:



DAN BROUILLETTE
Deputy Secretary

CONTRACTOR REQUIREMENTS DOCUMENT (CRD)
DOE O 140.1, INTERFACE WITH THE DEFENSE NUCLEAR FACILITIES
SAFETY BOARD

This CRD establishes the requirements for DOE contractors whose contracts involve defense nuclear facilities as defined in the Definitions section of DOE O 140.1. Regardless of the performer of the work, the contractor is responsible for complying with the requirements of this CRD. In accordance with DOE Acquisition Regulation 970.5204-2, *Laws, Regulations, and DOE Directives*, the contractor is responsible for flowing down the requirements of this CRD to subcontractors at any tier to the extent necessary to ensure the contractor's compliance with the requirements. Contractors whose contracts contain this CRD must:

1. Refer all requests for information or access related to defense nuclear facilities or activities made of DOE contractors by the DNFSB or its staff to the appropriate DOE Departmental Site Liaison for determinations regarding response.
2. Only respond to DNFSB requests for information or access when formally tasked by an authorized DOE Manager or Departmental Site Liaison.
3. Assign contractor DNFSB liaisons or designees to ensure adequate interface with their Departmental Site Liaison on DNFSB-related matters. Such interface includes, but is not limited to, the following:
 - a. Representing their company on day-to-day DNFSB-related issues and interactions with the Departmental Site Liaison on DNFSB-related matters.
 - b. Being cognizant of and coordinating day-to-day DNFSB-related activities as requested by their local Departmental Site Liaison.
 - c. Notifying their DOE counterparts and the Departmental Site Liaison within 2 working days of any requested or proposed briefings to, or other direct contact with, the DNFSB or its staff.
4. Not make commitments to or discuss potential actions related to DNFSB and/or DNFSB staff interactions, site reviews, etc., with the DNFSB or its staff.
5. Have a mechanism in place to expeditiously review and release contractor documents to support the DOE target date of providing existing information to the DNFSB. Work with the Departmental Site Liaison when the material may be delayed.
6. Ensure contractor personnel contacted by the DNFSB or its staff are aware of their responsibility to not provide any DOE and/or contractor documentation to the DNFSB or its staff without prior DOE direction. NOTE: DNFSB members and staff are required to submit written requests for information to the local Departmental Site Liaison and the Office of the Departmental Representative to the DNFSB.

7. Upon request by DOE, provide a representative at any entrance or exit briefings for site visits arranged by DNFSB representatives.
8. Upon request by DOE, comply with the personnel interview processes and procedures implemented by DNFSB representatives during a site visit. This must be done in a manner that does not compromise safety. Contractors must direct their personnel who perform safety-related functions, such as control room operators, to request that interviews be scheduled at mutually convenient times when safety-related duties cannot be compromised.¹

¹ Federal representatives have a right to attend contractor interviews.



Public Hearing on the Department of Energy's
Order 140.1, *Interface with the Defense Nuclear Facilities
Safety Board*

February 21, 2019

Session 1 – 5:30 – 7:00 pm

*DNFSB interface and access to information, facilities,
and personnel.*

Session 2 – 7:15 pm – 9:00 pm

Public Comments and Wrap-up



Exhibit 1 – Board Concerns with Order 140.1

- The Order provides a new definition of “public health and safety” that only includes individuals located beyond site boundaries, thereby excluding onsite individuals and workers from the Board’s oversight;
- The Order provides exemptions allowing DOE to deny access to Hazard Category 3 nuclear facilities or other facilities that DOE determines do not have the potential to adversely affect offsite public health and safety;
- The Order lacks a clear provision to provide the Board with ready access to such information, facilities, and personnel as the Board considers necessary to carry out its responsibilities; and
- The Order contains an allowance for DOE to deny Board requests related to deliberative documents, pre-decisional documents, or deliberative meetings.



Exhibit 2—Staff Analysis of Candidate DOE Defense Nuclear Facilities

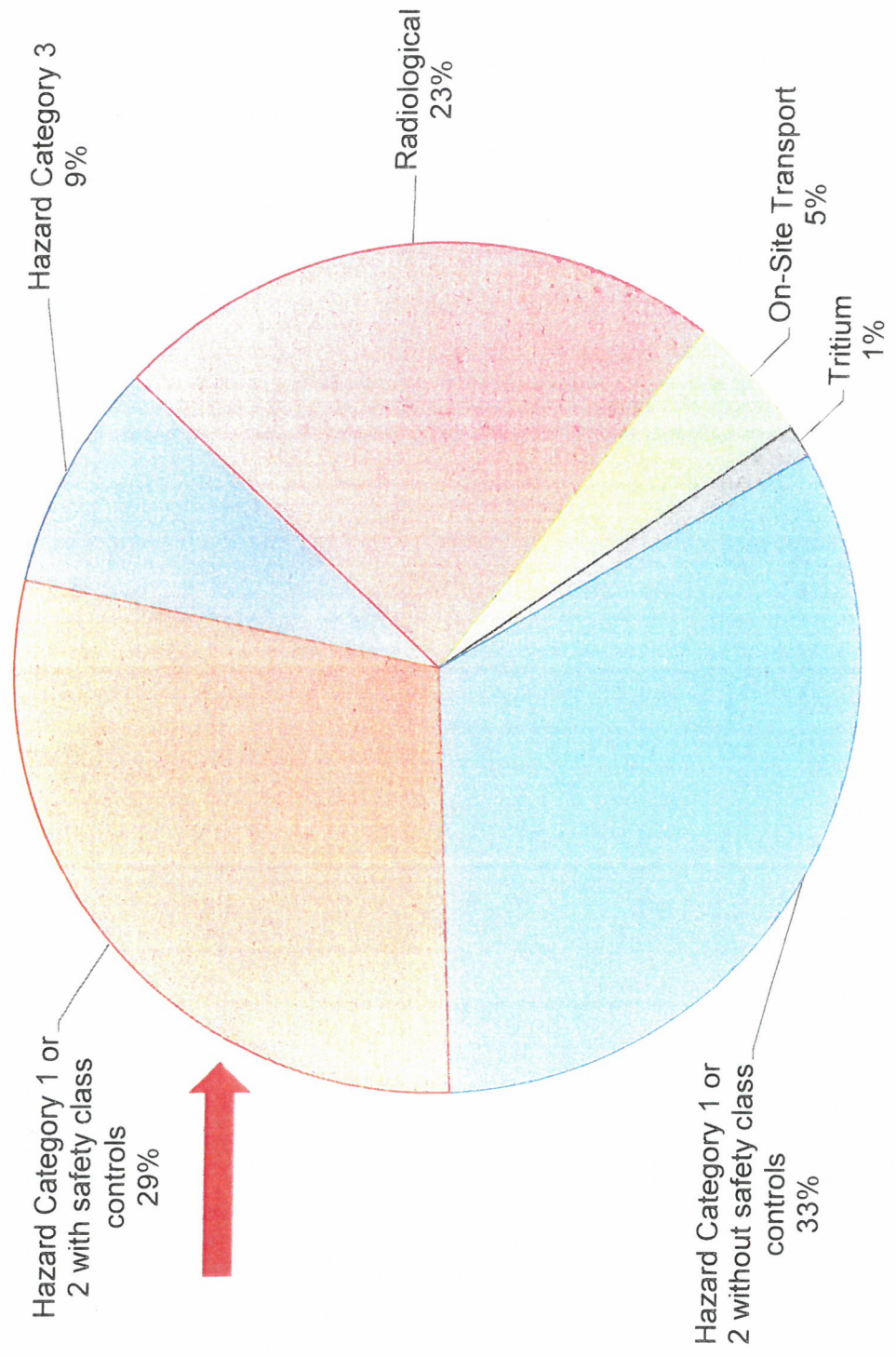
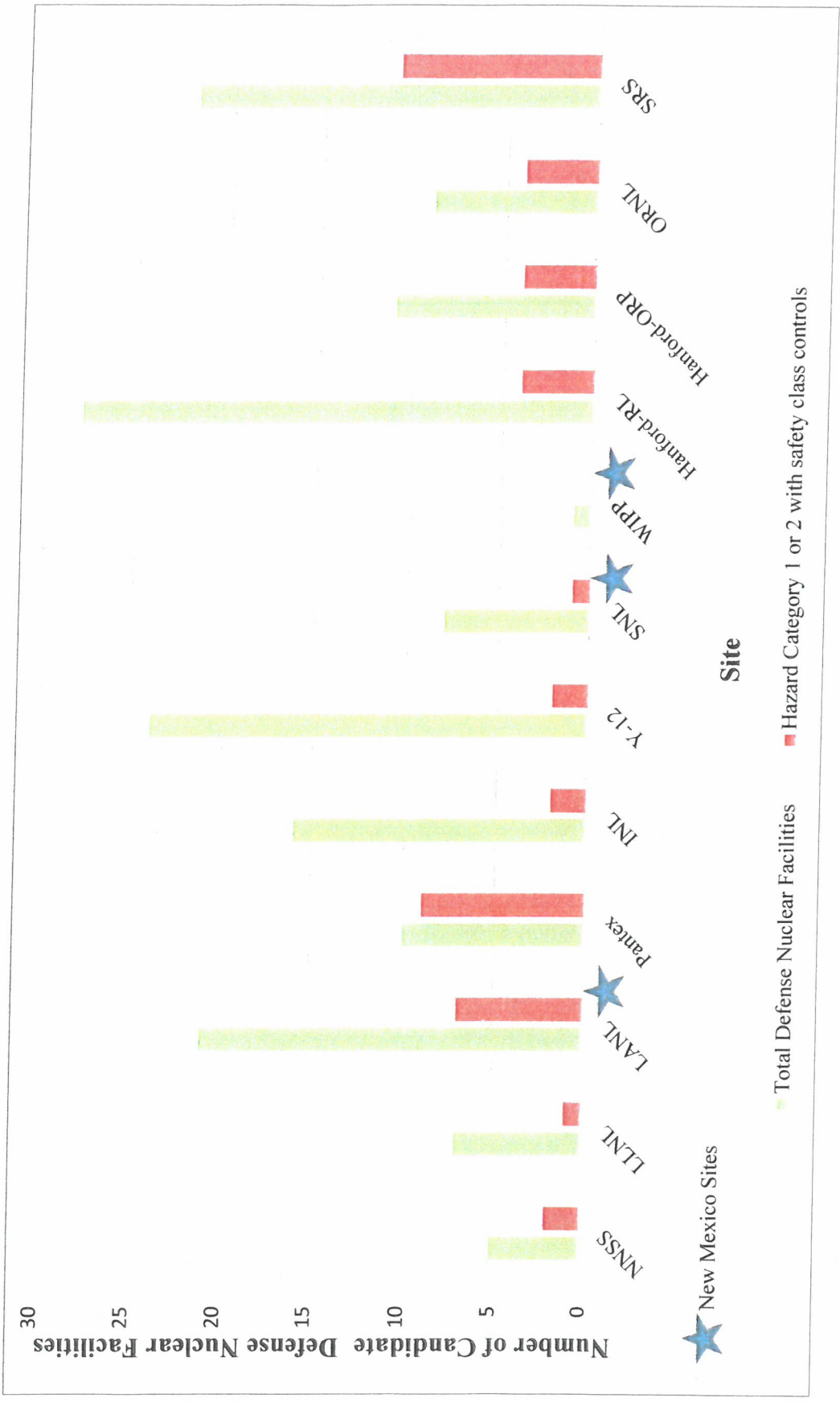




Exhibit 3—Staff Analysis of Potential Impacts of Facilities at each DOE Site





Questions Regarding Field Office Implementation

1. Is the new Interface Order currently applicable to your field office employees?
2. Have you developed supplemental guidance for your field office employees, such as a procedure or training documents, that describes how the Order will be implemented at your site?
3. Has the Order been added to your site's contract?
 - If not, when do you expect to do so?
 - Has your contractor developed any updated implementing procedures?