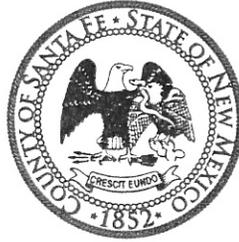


Henry P. Roybal
Commissioner, District 1

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

Memorandum

Date: March 12, 2019

To: Board of County Commissioners

Via: Katherine Miller, County Manager

From: Anna C. Hansen, Santa Fe County Commissioner, District 2

Subject: Resolution No. 2019-____, A Resolution Requesting the U.S. Department of Energy Rescind or Substantially Revise Order 140.1 to Remove Restrictions on the Defense Nuclear Facility Safety Board's Access to Information

Background and Summary:

The Defense Nuclear Facilities Safety Board (DNFSB or the Board) is an independent oversight organization, created by Congress in 1988 to monitor public health and safety issues at the defense nuclear facilities managed by the Department of Energy (DOE) and advise the Secretary of Energy to provide adequate protection of public health and safety at such facilities, which include the Los Alamos National Laboratories (LANL).

The Department of Energy (DOE), on May 14, 2018, issued, without public notice or opportunity to comment, Order 140.1, "Interface with the Defense Nuclear Facilities Safety Board," (the Order), which cancels 2001 DOE M 140.1-1B and purports to govern DOE and DOE Contractors' interaction with the DNFSB and DNFSB's access to information regarding the design, construction, operation, and decommissioning of the DOE's defense nuclear facilities. The Order limits the DNFSB's access to information that is required to fulfill its statutory oversight responsibility to make recommendations to the Secretary to help ensure the health and safety of local communities and workers at DOE's defense nuclear facilities.

Any weakening of the DNFSB or restriction of its access to critical information regarding operations at LANL or other DOE defense nuclear facilities could be detrimental to the overall health of Santa Fe County residents.

Action Requested:

Commissioner Hansen respectfully requests the Board of County Commissioners support and approve this resolution.

**THE BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY
RESOLUTION NO. 2019 - _____**

**A RESOLUTION REQUESTING THE U.S. DEPARTMENT OF ENERGY RESCIND OR
SUBSTANTIALLY REVISE ORDER 140.1 TO REMOVE RESTRICTIONS ON THE
DEFENSE NUCLEAR FACILITY SAFETY BOARD'S ACCESS TO INFORMATION**

WHEREAS, the Defense Nuclear Facilities Safety Board (DNFSB or the Board), an independent oversight organization within the executive branch, was created by Congress in 1988 to monitor public health and safety issues at the defense nuclear facilities managed by the Department of Energy (DOE), and to inform and advise the Secretary of Energy in providing adequate protection of public health and safety at such facilities, which include the Los Alamos National Laboratories (LANL); and

WHEREAS, the DNFSB is charged with reviewing and evaluating the content and implementation of health and safety standards, as well as other requirements, relating to the design, construction, operation, and decommissioning of the DOE's defense nuclear facilities; and

WHEREAS, the amendments to the Atomic Energy Act that created the DNFSB requires the Secretary of Energy to "fully cooperate with the Board and provide the Board with ready access to such facilities, personnel, and information as the Board considers necessary to carry out its responsibilities under this subchapter" (42 U.S.C. Section 2286c(a)); and

WHEREAS, the DOE, on May 14, 2018, issued, without public notice or opportunity to comment, Order 140.1, "Interface with the Defense Nuclear Facilities Safety Board," (the Order), which purports to govern DOE and DOE Contractors' interaction with the DNFSB and the DNFSB's access to information regarding the design, construction, operation, and decommissioning of the DOE's defense nuclear facilities, and

WHEREAS, the Order as written could limit or impede the DNFSB's access to information related to the public health and safety at DOE's defense nuclear facilities and changes the process by which the DOE and DOE contractors will interface with and provide information to the DNFSB, and which cancelled DOE Directive 2001 DOE M 140.1-1B; and

WHEREAS, the Order limits the DNFSB's access to information it requires to fulfill its statutory oversight responsibility to make recommendations to the Secretary to help ensure the health and safety of local communities and workers at DOE's defense nuclear facilities; and

WHEREAS, U.S. Senators Tom Udall and Martin Heinrich (D-New Mexico) and State Senator Jeff Steinborn expressed their deep concerns regarding the Order in a letter to the DNFSB and called for suspension of the Order pending public comment; and

WHEREAS, the Santa Fe County Board of County Commissioners issued a formal letter on September 25, 2018, calling for suspension of the Order pending an opportunity for members of the DNFSB and Congress, as well as the public to express their concerns at public hearings across the country; and

WHEREAS, the DNFSB held a public hearing in Albuquerque on February 21, 2019, at which Santa Fe County Commissioner Anna Hansen presented the attached comments (Exhibit A) that identify four mechanisms by which the Order could improperly impede or restrict the DNFSB's access to information it needs to perform its critical statutory function; and

WHEREAS, any weakening of the DNFSB or restriction of its access to critical information regarding operations at LANL or other DOE defense nuclear facilities could be detrimental to the overall health of the significant number of Santa Fe County residents who receive their water from the County water utility via the Buckman Direct Diversion which is downstream from LANL or who work at or near LANL.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Santa Fe County, that:

1. The Board shall send a letter, consistent with this resolution and the contents of Exhibit A, to the Department of Energy (DOE) Secretary urging him to suspend DOE Order 140.1 and reissue an order that fully complies with the Defense Nuclear Facilities Safety Board's (DNFSB) legal authority under statute to continue to protect workers and the community.

2. The County Manager shall submit copies to the New Mexico Federal Congressional delegation and to New Mexico Senator and Chair of the Radioactive & Hazardous Materials Committee Jeff Steinborn of both this Resolution and the letter submitted to the DOE in opposition to this Order.

PASSED, APPROVED, AND ADOPTED ON THIS 12th DAY OF MARCH, 2019.

THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY

Anna T. Hamilton, Chair

APPROVED AS TO FORM:



R. Bruce Frederick, County Attorney

ATTESTATION:

Geraldine Salazar, County Clerk

Anna Hansen
Commissioner, District 2



Katherine Miller
County Manager

Defense Nuclear Facility Safety Board Public Hearing on DOE ORDER 140.1

Albuquerque, New Mexico February 21, 2019

PUBLIC COMMENTS of ANNA HANSEN, Santa Fe County Commissioner, District 2

Good evening, Mr. Chair and members of the Board. My name is Anna Hansen and I am an elected member of the Santa Fe County Board of County Commissioners. I am here today on behalf of my constituents in District 2 of Santa Fe County, all of whom live in proximity to Los Alamos National Labs, a great many of whom receive their water from the County water utility via the Buckman Direct Diversion downstream from LANL, and a significant number of whom work at or near LANL. I want to express my very serious concerns about the potential effects of DOE Order 140.1 on the Defense Nuclear Facility Safety Board's ability to perform its critical statutory duty.

In order to fulfill its mission, the DNFSB must have access to a range of information regarding the design, construction, and operation of defense nuclear facilities such as the LANL. My general concern is that Order 140.1 would improperly impede the DNFSB's ability to obtain the information the it needs from DOE staff and DOE contractors in order to fulfill its statutory mandate. In particular, I am concerned that Order 140.1 could result in DOE or DOE contractors improperly restricting access to and information about defense nuclear facilities to the DNFSB.

I note that the enabling statute for the DNFSB at 42 U.S.C. Section 2286c(a), mandates that the Secretary of the Department of Energy "shall fully cooperate with the Board and provide the Board with ready access to such facilities, personnel, and information as the Board considers necessary to carry out its responsibilities under this subchapter." It stands to reason that this statutory requirement is there to ensure that the Board, its staff, and inspectors get the information and access **they** deem necessary to fulfill the DNFSB's mission. However, the following provisions of Order 140.1 appear to be in conflict with this statutory requirement for cooperation.

First, the Order at Paragraph 4b(2)(b) authorizes DOE "Departmental Elements" acting at the direction of the Secretary or the Secretary's designee, to deny access to information "where the person requesting the information does not need such access in connection with his/her duties." This provision appears to grant the Secretary or the Secretary's designee blanket power to unilaterally determine what information the DNFSB needs to know to perform its independent advisory function.

Second, the Order at Paragraph 4b(2)(1) appears to improperly limit DNFSB access to only “completed documents” in two key areas. One is where the documents contain DOE decisions on the safe design and operations of defense nuclear facilities, with examples given of safety basis documents, safety evaluation reports, and design, construction, and operation Standards. The other is where the documents “represent[] any event or practice at a defense nuclear facility which the DNFSB considers may adversely affect public health or safety”, with the example provided of “approved results of fact-finding review and investigations”. The obvious concern here is that DOE could deny Board access to critical decisional and investigative documents indefinitely on the grounds that they are not yet completed or approved. This language could enable or even encourage stonewalling by DOE staff.

Third, the Order at Paragraph 4b(3) and (4) could prevent DOE contractors from responding to otherwise proper requests for information or access by the DNFSB without formal authorization from a designated DOE representative. Simply stated, these provisions amount to a “gag rule” and are contrary to the spirit if not the letter of 42 U.S.C. Section 2286c(a). DNFSB inspectors should have unfettered and unfiltered access to DOE contractors and their employees at defense nuclear facilities.

Fourth, I also note that the Order at Paragraph 7h provides a restrictive definition of “public health and safety” that appears to conflict with the provisions of the DNFSB’s enabling act. In the Order, “public health and safety” is limited to the “health and safety of individuals located beyond the site boundaries of DOE sites with DOE Defense Nuclear Facilities.” The Board’s enabling act in no way restricts the Board’s mission to advising the Secretary on protecting the public health and safety of individuals living and working outside a defense nuclear facility. 42 U.S.C. Section 2286a(a) in fact expressly states that the Board’s mission is to inform and advise the Secretary “in providing adequate protection of public and safety *at* such defense nuclear facilities”, and not just **outside** the facilities. I recognize and applaud the Board’s track record in documenting and making recommendations on health and safety issues that have arisen within the site boundaries at LANL, and oppose any attempt by DOE to limit the Board’s ability to serve that vital function.

At this point, I would also like to acknowledge and thank the Department for allowing me the opportunity to meet with Mr. LaPointe and Mr. Do of DOE yesterday and personally convey the concerns I expressed to you tonight. I was told that our concerns would be taken into consideration, and that a review of the Rule would take place at some point after it had been in effect for a year or so.

In conclusion, I would like to thank you for conducting a hearing on this critical topic today, and urge you to oppose any efforts by DOE or this Administration to any way restrict your access to any and all information you determine is needed to properly advise the Secretary on providing for the public health and safety at defense nuclear facilities.



New Mexico State Senate

State Capitol
Santa Fe

September 6, 2018

SENATOR JEFF STEINBORN

D-Doña Ana-36

P.O. Box 562
Las Cruces, NM 88004

Cell: (575) 635-5615
E-mail: jeff.steinborn@nmlegis.gov

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 cursive script that reads "Anna Hansen". The signature is written in black ink and is positioned below the word "Sincerely,".

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

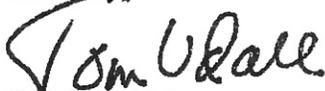
Dear Secretary Perry:

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,

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

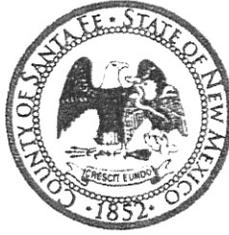
Attachment

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 SFBCC 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,

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

U.S. Department of Energy
Washington, DC

ORDER

DOE O 140.1

Approved: 05-14-2018

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.