

- (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

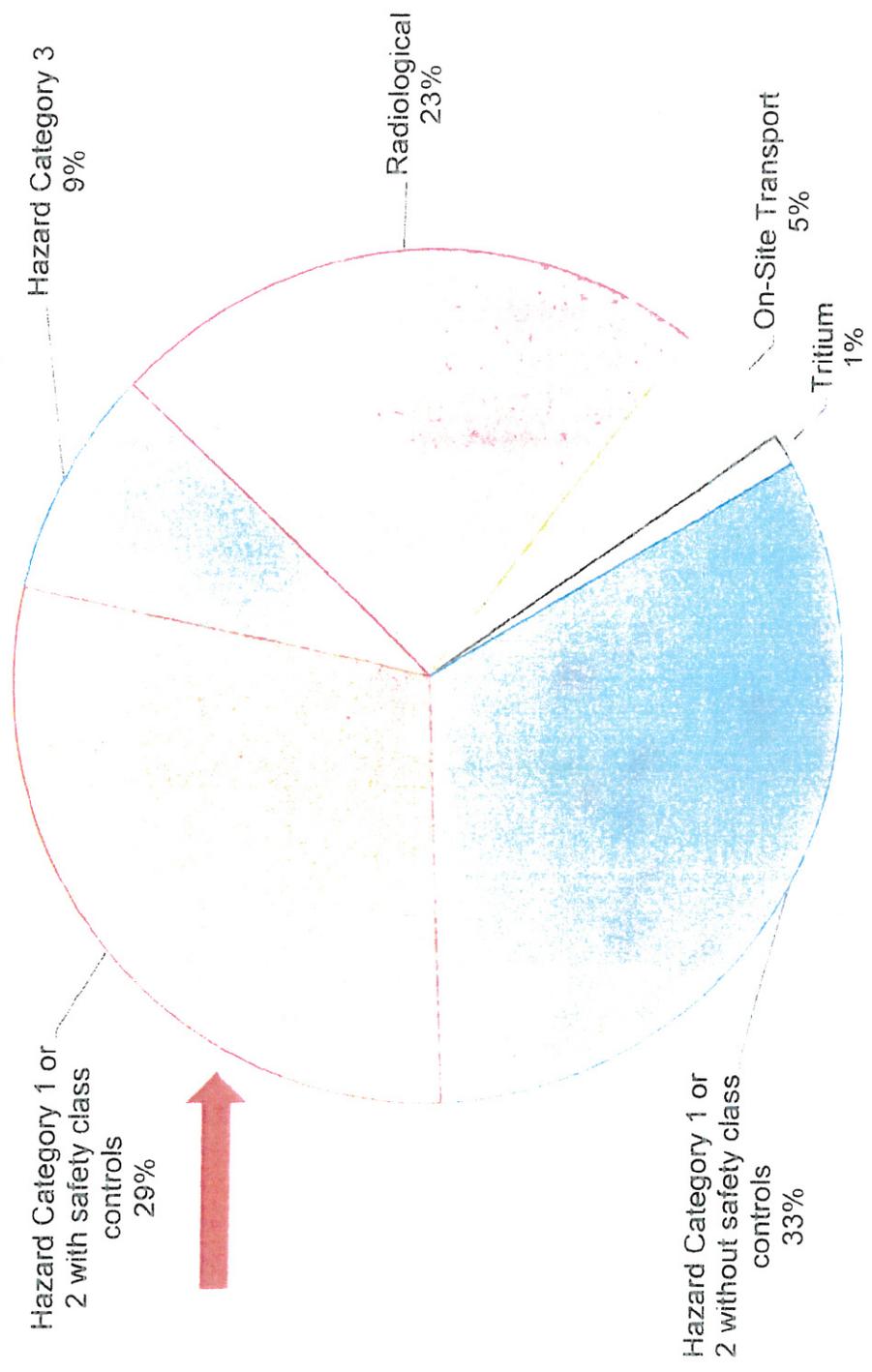
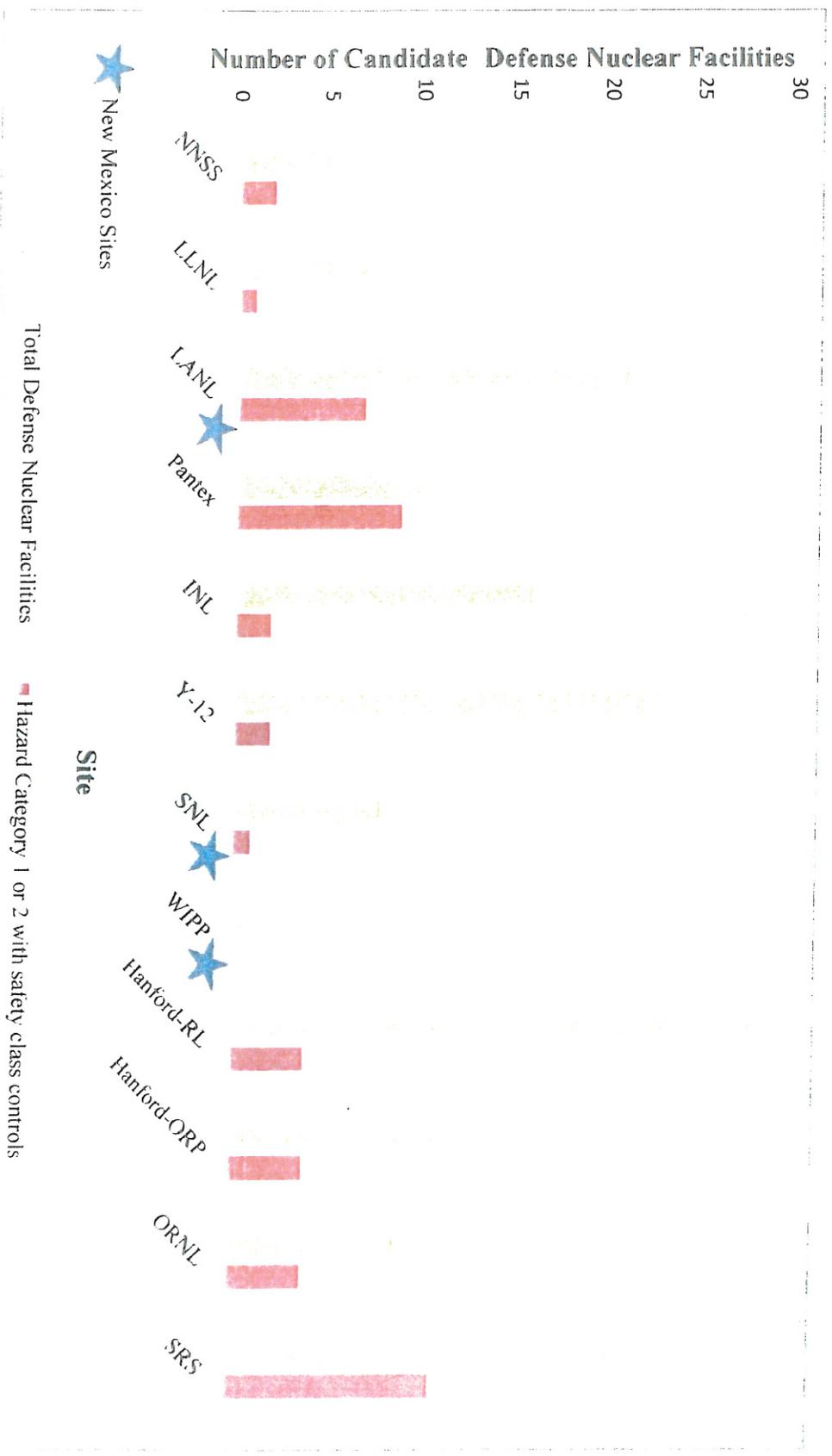




Exhibit 3—Staff Analysis of Potential Impacts of Facilities at each DOE Site





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?

