



Roll-out Information & Training

**DOE Order 140.1, *Interface with the
Defense Nuclear Facilities Safety Board (DNFSB or Board)***

Issued on May 14, 2018

Prepared by the Office of the Departmental Representative to the DNFSB (DOE-AU-1.1)
Office of Environment, Health, Safety and Security





Agenda



- Background information for the development of Order 140.1
- DOE Integrated Project Team (IPT)
- Order 140.1 roll-out communication and training
- Clarifications on DOE-DNFSB interface
- Eleven specific training and discussion topics, to include the following:
 - Cooperating with the DNFSB
 - Co-located workers and members of the public
 - Definition of “adequate protection”
 - Exemption of Hazard Category 3 Nuclear Facilities from the Order
 - “Program Interface” and “Departmental Site Liaison” Personnel



Background



- DOE's Regulatory Reform activities under Executive Order 13777, *Enforcing the Regulatory Reform Agenda*
 - Deputy Secretary of Energy charged DOE to take steps to address concerns with the impacts of DOE's responses to, and interactions with, the DNFSB
 - Develop a DOE Order codifying Departmental expectations including re-alignment of the Department's roles and responsibilities with the DNFSB enabling statute
 - ✓ Goal is to improving DOE operating contractors efficiency and decreasing cost while adhering to legislative requirements and maintaining appropriate level of DOE oversight
- Secretarial Memorandum entitled, *Relationship with the Defense Nuclear Facilities Safety Board*, issued on October 13, 2017
 - Sets expectations about roles, responsibilities and accountability of DOE line managers



Integrated Project Team for Order 140.1



- DOE convened an Integrated Project Team (IPT) to develop Order 140.1
 - Order would reflect the October 13, 2017, Secretarial Memorandum
 - Order would also reflect DOE General Counsel's interpretation of the DNFSB's enabling statute in the Atomic Energy Act to ensure all areas of the Order are consistent with the October 13, 2017, memorandum
 - Order would address the full breadth of DOE's interface with the DNFSB, including both the field and headquarters
 - IPT members included Co-Chairs from NNSA and the DOE-SC, with IPT members from NNSA, EM, GC, MA, AU, and the National Labs (LANL-NNSA, PNNL-SC, and SRNL-EM)
 - IPT received input from all DOE Program and Field Offices with defense nuclear facilities, field management council, and national laboratories
- Directives Review Board approved the Order on March 7, 2018
- Deputy Secretary approved the Order on May 14, 2018



Order 140.1 Roll-out Communication and Training



- DOE's Communication and Training Plan involves senior level briefings and Site briefings on the emphasis areas in the Order – as discussed in this presentation
- Develop a new web page on the Departmental Representative site to assist in the implementation of this order
 - <https://ehss.energy.gov/deprep/>
 - Desk Reference document to support the implementation of Order 140.1
- Departmental Representative will work with field liaisons as appropriate



Clarifications on DOE-DNFSB Interface Order 140.1



- Emphasizes the responsibility and duty of the Department in carrying out the mission in a safe, secure, and environmentally responsible way
- Specifically, the responsibilities and accountability of DOE personnel to execute its mission in a way that provides reasonable assurance of adequate protection to public health and safety and to accept responsibility for the outcome of our decisions
 - Establishes requirements and responsibilities when working with the DNFSB
 - Distinguishes between DOE's roles/responsibilities as operator and regulator versus the DNFSB's role as an external, independent agency that provides analyses, advice, and recommendations to the Secretary
 - ✓ The legislation requires that DOE cooperate with the Board and to provide ready access to appropriate facilities, personnel, and information
 - ✓ Preserves the Departmental obligation to thoughtfully consider information and advice from the Board and Board staff and emphasizes the Department's obligation to make decisions based upon all the sound technical expertise and risk analysis available for consideration



Clarifications on DOE-DNFSB Interface Order 140.1 , continued



- Provides clarifications on how DOE will cooperate with the DNFSB, while exercising our responsibilities
 - ✓ Establishes the Secretary's authority to deny requests for pre-decisional or otherwise privileged records (Evaluated on a case by case basis)
 - ✓ Establishes requirement for DOE to formulate consolidated DOE positions on policy prior to DNFSB and DNFSB staff engagement
 - ✓ Establishes the Secretary's authority to deny requests for information not having a reasonable relationship to the statutory mission of the DNFSB
 - ✓ Ensure that DOE contractors only respond to requests for information, access or other requests from the DNFSB when formally tasked to by the appropriate Departmental Site Liaison
- In keeping with the statutory Board mission of ensuring adequate protection of the public health and safety at defense nuclear facilities, the Order is applicable only to Hazard Category 1 and 2 defense nuclear facilities.
 - ✓ By definition, Hazard Category 3 nuclear facilities have the potential for only significant localized risks, as opposed to risks to the public, and are therefore exempted by the Order.
 - ✓ Discussions of "public" and "co-located workers" are presented in subsequent slides of this presentation



Clarifications on DOE-DNFSB Interface Order 140.1, continued



- Other exemptions consistent with the enabling legislation are specifically included, such as facilities or activities involved with the transportation of nuclear explosives or nuclear material.
 - ✓ This exemption is from the legislation and is not a new issue, but has been an ongoing point of discussion with the Board
- Emphasizes that DOE contractor personnel use established protocols when interfacing with DNFSB members and staff; the Contract Requirements Document requires:
 - ✓ All requests for information or access related to DNFs made by DNFSB or its staff be referred to the appropriate DOE Departmental Site Liaison for response
 - ✓ The contractor to only respond to requests for information, documentation or access when formally tasked by an authorized DOE Manager or DOE Departmental Site Liaison
 - ✓ The contractor not to make commitments to or discuss potential actions related to DNFSB and/or DNFSB staff interactions, site reviews, etc. with the DNFSB or its staff



Training and Discussion Topics



The remainder of this presentation focuses on the following 12 training and discussion topics:

1. Drivers for Conversion of Manual 140.1-1B to Order 140.1
2. Cooperation with the DNFSB
3. Definition of "Adequate Protection"
4. Definition of Co-Located Workers
5. Co-Located Workers and Members of the Public
6. Exemption of Hazard Category 3 Nuclear Facilities from the Order
7. "Program Interface" and "Departmental Site Liaison" Personnel
8. Request for Information
9. Access to Information
10. Providing and ensuring that pre-decisional information are properly marked
11. Ensuring that DOE contractors' interaction with DNFSB are coordinated with DOE personnel
12. Defined Terms in Order 140.1



1. Drivers for Conversion of Manual 140.1-1B to Order 140.1



- DOE's Regulatory Reform Initiative
 - September 1, 2017, Memorandum for Heads of Departmental Elements entitled, *DECISIONAL: Authorize Changes to align Defense Nuclear Facilities Safety Board scope and role with original Congressional intent*
 - The National Laboratory Director's Council and DOE program offices proposed a re-alignment of the Department's engagement with the DNFSB to improve laboratory efficiency and decreasing cost while maintaining an appropriate level of DOE oversight
- Need to align DOE Directives with the Secretarial Memorandum entitled, *Relationship with the Defense Nuclear Facilities Safety Board*, dated October 13, 2017
- Focus on Requirements – moved guidance and best practices to desk reference



2. Cooperation with the DNFSB



- Legislation requires that the Secretary “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”
- This Order does not hinder cooperation with the Board or to prevent them from accomplishing their safety oversight responsibilities
 - The Order aligns directly with legislative requirements of roles and responsibilities for the Secretary
 - By statute, the Board is required to review and evaluate the content and implementation of health and safety standards, as well as other requirements, relating to the design, construction, operation, and decommissioning of DOE defense nuclear facilities
 - The Board will request information, reports, procedures, and safety basis information that they believe is relevant to their mission and functions
 - The Board has the right to request information to review the Department’s determination on facility categorization



3. Definition of “Adequate Protection”



- As detailed in DOE’s July 19, 2012, letter to the Board, “Adequate protection” is defined as those measures that permit a facility to operate safely for its workers and the surrounding community
 - Adequate protection is partly demonstrated by meeting Departmental requirements with regard to the design of engineered safety systems and controls, which protect workers and the public from normal operations and possible accidents. These design aspects do not stand alone, but rather are supported by operational and management programs including training, conduct of operations, quality assurance, maintenance, and inspections
- DOE responsible line management has evaluated the safety measures, either currently in place or planned, to protect the public at defense nuclear facilities and has determined that these measures provide adequate protection
 - This conclusion is based on an evaluation of all protective measures in place at these facilities, including disciplined formal operations, training, safety management programs, control of materials, and layers of controls to prevent accidents and/or mitigate their consequences
- The DNFSB has not defined “Adequate Protection”



4. Definition of Co-Located Workers



- DOE-STD-5506-2007, *Preparation of Safety Basis Documents for Transuranic (TRU) Waste Facilities*, defined a co-located worker as follows: “The collocated worker is represented by a hypothetical onsite receptor located at a distance of 100 m from the point of release at which the maximum dose occurs”
- Similarly, DNFSB has defined co-located workers as: “individuals who are employees of DOE or of one of DOE's operating contractors or mission-related subcontractors at the nuclear site where the facility in question is located, but who spend little, if any, of their time in the facility.”
[DNFSB/TECH-20]
 - This definition is consistent with DOE’s usage
- The term “co-located worker” is relatively new; for example, DOE-STD-3009-94 (CN 3, March 2006), *Preparation Guide for U.S. Department of Energy Nonreactor Nuclear Facility Documented Safety Analyses*, uses the term “on-site workers”



5. Co-located Workers and Members of the Public



- DOE co-located workers are not members of the public
 - Title 10 C.F.R. 835 defines member of the public as: “an individual who is not a general employee”
 - ✓ The Rule also states that “an individual is not a ‘member of the public’ during any period in which the individual receives an occupational dose”
 - ✓ The rule also defines a general employee as: “an individual who is either a DOE or DOE contractor employee; an employee of a subcontractor to a DOE contractor; or an individual who performs work for or in conjunction with DOE or utilizes DOE facilities” and requires appropriate radiation safety training for employees
 - Emergency planning requirements address evacuation procedures and training of on-site workers
 - The NRC’s Task Force on External Regulation concluded that there is no substantive difference between DOE and NRC treatment of co-located workers. [NUREG-1708]
 - In performing accident analysis, DOE has traditionally treated its onsite workers as workers (or general employees) and those outside the site boundary as members of the public
 - ✓ Workers include those within the facility boundaries (facility workers) and those at co-located facilities within the site boundaries (co-located workers)



6. Exemption of Hazard Category 3 Nuclear Facilities from the Order



- Hazard Category 3 or below nuclear facilities have the potential for only localized risks to the workers, as opposed to risks to the public
- Order 140.1 specifies that the Board may access the information that supports the determination of the hazard categorization of any defense nuclear facility, including HC-3 or below HC-3
 - The Board staff may want to independently validate this determination
 - Issues identified by the Board regarding worker and co-located worker protection should be taken under consideration as appropriate



7. “Program Interface” and “Departmental Site Liaison” Personnel



- Expectations for “Program Interface” and “Departmental Site Liaison” personnel
 - These personnel provide a knowledgeable DOE staff to facilitate interactions with the Board and Board staff for his/her respective HQ Program Office and/or Site
 - These personnel are expected to promote cooperation by meeting the Departmental commitments, understanding recommendations and their technical basis and assisting as necessary to obtain information the Board has requested
 - The Departmental Site Liaisons assist Board staff in scheduling Board members’ site visits and/or DNFSB staff reviews
 - ✓ The liaison should also be knowledgeable of the concerns of the Board staff within their site or program and ensure those concerns are provided to the appropriate line manager for their information and/or action



8. Request for Information, Access, etc.



- All Request for Information should be documented by DNFSB
- All Requests for information, access or reviews should be made to DOE
- DOE should provide the Board and staff with prompt feedback following a determination that information being requested is still in a deliberative or pre-decisional process
 - A determination that the requested information will not be provided should be coordinated with the appropriate HQ and Field Office management
 - Prior to a scheduled site review visit, the DNFSB's standard practice is to conduct a pre-visit teleconference with DOE to discuss document requests and review agenda; this may be a good time for DOE to discuss what information is considered pre-decisional
- It will be the Board's and Board staff's decision on whether they would like to proceed to conduct their review absent of the pre-decisional information



9. Access to Information



- For requests for information that appear to be outside of the Board’s jurisdiction/authority, DOE may request that the Board staff provide an explanation on how the requested information is relevant to the functions of the DNFSB to help DOE understand the need for the information
- If requested information appears to be beyond the scope (i.e., for facilities and activities that are exempt from this Order), DOE personnel should inform the appropriate HQ and Field Office management
 - Also provide notification to the DR Office – The DNFSB Technical Director may ask the DR about information access
- The Secretary or the Secretary’s designee may deny access to information for the reasons as listed in the Order in Section 4.b.(2)



9. Access to Information, Continued



- Recent examples of DOE denying DNFSB requests to participate in meetings, conduct reviews, and access to information:
 - Nuclear Explosive Safety Study Group deliberative meetings
 - Team meetings for the revision of 10 CFR 830, *Nuclear Safety Management*
 - Draft version of DOE Order 140.1, *Interface with the DNFSB*
 - SRS Tritium Facility updated DSA review
 - Proposed DNFSB on-site review of LANL Transportation Safety DSA



10. Appropriately Mark and Control Pre-decisional Information



- Programs and Field Offices may decide that it is appropriate to provide the Board with pre-decisional information
- The Department's position is not to provide incomplete information and the Order provides:
 - The authority to deny requests for pre-decisional or otherwise privileged records. This includes denying access to incomplete or draft documents that do not represent decisions by DOE management
 - That DOE will formulate consolidated DOE positions on policy prior to DNFSB and DNFSB staff engagement
- The Responsible DOE Authority may decide to provide preliminary, draft, or pre-decisional documentation that may be beneficial to a project
 - When draft or pre-decisional information is shared, DOE should inform the Board staff that it is pre-decisional and properly mark all documents. Access to databases or servers should be treated the same way with appropriate markings



11. Ensuring that DOE contractors' interaction with DNFSB are coordinated with DOE personnel



- The order requires DOE to “Ensure that DOE contractors will only respond to DNFSB requests when formally tasked to do so by an authorized DOE liaison”
 - Only authorized DOE personnel have the authority to direct work by DOE contractors
 - The CRD requirements ensure that there be an approved path at DOE sites to authorize release of information to the Board and staff
 - ✓ Sites may authorize several techniques based on the difficulty of obtaining the information, the extent of the information requested, and the timing requested
 - It may be acceptable for a Field Office to develop processes where Board requests for information go through knowledgeable support contractor liaisons (like DOE-SR) with access to resources
 - ✓ The Order does not dictate how contractor work authorization will be flowed down from the site leadership
 - ✓ The intent of the requirement is for all information to be coordinated through the Field Office
 - ✓ DOE is responsible for ensuring a consolidated and approved position is provided to the Board



12. Defined Terms in Order 140.1



- Section 7 provides definitions for terms used in the Legislation and in the Order
 - a. Atomic Energy Defense Activity
 - b. Deliberative process draft
 - c. DOE Defense Nuclear Facility
 - d. Department of Energy Nuclear Facility
 - 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”
 - f. Nonreactor nuclear facility
 - g. Production facility
 - h. Public Health and Safety



12. Defined Terms in Order 140.1, continued



- i. Quantities of Special Nuclear Material Determined to be “of Significance to the Common Defense and Security”
- j. Safety Class Structures, Systems, or Components
- k. Site boundary
- l. Special Nuclear Material
- m. Utilization facility



Wrap up



Any additional questions and discussion points