

Talking Points:

DOE Order 140.1 *Interface with the Defense Nuclear Facilities Safety Board*

- The Department of Energy's Order 140.1 *Interface with the Defense Nuclear Facilities Safety Board* is misguided and likely illegal because it acts contrary to the Board's 1988 enabling legislation. See <https://www.dnfsb.gov/sites/default/files/page/Enabling%20Legislation%20-%202016.pdf>
- The Defense Nuclear Facilities Safety Board's (DNFSB's) two decades of reporting and recommendations reflect the chronic safety problems endemic to the nuclear weapons complex. DOE Order 140.1 seeks to kill the messenger and muzzle the message that nuclear weapons research and production is inherently dangerous, requiring independent safety oversight to help keep workers and the public protected.
- DOE Order 140.1 is the nuclear weaponeers' latest attempts to cripple the DNFSB, previously attempted through legislation passed by the House Armed Services Committee. Those pieces of legislation sought to either cut the Board's budget or hogtie it with onerous reporting requirements but were rejected by Congress as a whole. This could possibly explain the genesis of DOE Order 140.1 as an attempt to do an end run around Congress.
- The Safety Board's observations and formal recommendations have slowed down the nuclear weaponeers agenda for exorbitant new production facilities and increased nuclear weapons production for a new arms race. What is DOE's completely misguided answer? It is to cripple DNFSB oversight, thereby increasing the chances for serious nuclear safety mishaps.
- DOE Order 140.1 "Formulate[s] consolidated DOE positions on policy... so that *DOE speaks with one voice.*" (emphasis added). This smacks of political control by DOE Washington DC headquarters that again seeks to kill the messenger rather than resolve nuclear safety issues. DOE's track record demonstrates that critical safety problems often get fixed only when they become locally disclosed and publicly known. In contrast, Order 140.1 will likely suppress local disclosure of potential dangers and discourage whistleblowers, possibly exposing them to added retaliation.
- As the Safety Board itself notes, "The Atomic Energy Act states, "The Secretary 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." The Order excludes the language "as the Board considers necessary" in requirements for Board access, thus indicating that DOE has the power to determine what access the DNFSB needs to carry out its responsibilities. The Board has the statutory authority to make determinations on the information it needs to carry out its responsibilities, not DOE." <https://ehss.energy.gov/deprep/2018/FB18S17A.PDF>
- Order 140.1 exempts DOE facilities that are Nuclear Hazard Category 3 or below from Safety Board oversight, which would be more than 75% of all DOE facilities (for context, a nuclear reactor would be Hazard Category 1). To illustrate the importance of these facilities, NNSA recently approved raising the plutonium inventory 10-fold to 400 grams in the Los Alamos Lab's Rad Lab, thus raising it to a Hazard Category-3 facility, in order to help facilitate the expanded production of plutonium pit triggers for nuclear weapons. This is in direct conflict with the Safety Board's

enabling legislation, which states “the Board shall investigate *any* event or practice at a Department of Energy defense nuclear facility which the Board determines has adversely affected, or may adversely affect, public health and safety.” (emphasis added)

- DOE Order 140.1 defines “public health and safety” as the “health and safety of individuals located beyond the site boundaries of DOE sites,” seeking to exempt onsite individuals and workers from the Board’s oversight. This is inconsistent with the Atomic Energy Act and with long-standing historical precedence. Thousands of workers were harmed in the past by nuclear weapons research, production and testing, with billions paid to date in compensation. It remains vital that the Safety Board keep occupational safety under its purview so that workers can be better protected. It then follows that public safety would be better protected as well.
- DOE Order 140.1 allows DOE to deny requests for access to pre-decisional documents, which could block Safety Board oversight of construction design for new nuclear weapons facilities. The Safety Board’s expressed seismic concerns over new plutonium facilities at the Los Alamos Lab and highly enriched uranium facilities at the Y-12 Plant near Oak Ridge, TN, played a large role in driving up estimated construction costs to where the original designs of both projects had to be abandoned. Perhaps this is a strong motivation for DOE Order 140.1, that is to cut off DNFSB review of new nuclear weapons facility designs.
- DNFSB’s enabling legislation explicitly states, “The Board shall review the design of a new Department of Energy defense nuclear facility before construction of such facility begins and shall recommend to the Secretary, within a reasonable time, such modifications of the design as the Board considers necessary to ensure adequate protection of public health and safety.” Therefore, DOE Order 140.1 is again in conflict with existing law.

What you can do:

- Attend the Defense Nuclear Facilities Safety Board’s Public Hearing, Thursday February 21, 2019, 5:30 - 9:00 PM, Albuquerque Convention Center, 401 2nd St NW, Albuquerque, NM.
- Pre-register to make public comment at the hearing by submitting an emailed request to hearing@dnfsb.gov or call 800.788.4016 by February 19.
- Citizens may also submit written comments to hearing@dnfsb.gov both prior to and at the hearing (and generally for 30 days after the hearing, i.e. March 19). For sample comments see <https://nukewatch.org/dnfsb-doe-o-140-1-sample-comment-ltr-2-14-19/>
- Can’t make it to the hearing? On February 21 DNFSB will provide a live web stream link to the hearing at <https://www.dnfsb.gov/public-hearings-meetings/february-21-public-hearing>
- Most importantly, write or call your congressional delegation. New Mexico Senators Tom Udall and Martin Heinrich have been good on this issue but are bucking against a Republican Senate majority that is not inclined to overturn DOE Order 140.1. They can use all the encouragement they can get to keep up the good fight against DOE unilaterally restricting Safety Board access. Udall 202.224.6621 Heinrich 202.224.5521
- New Mexicans should also write or call their congressional representatives. Rep. Ben Ray Lujan, NM-3 (202.225.6190), is now the #4 Democrat in House leadership. Both newly-elected Rep. Debbie Haaland, NM-1 (202.225.6316) and Rep. Xochitl Torres Small, NM-2 (202.225.2365), have been appointed to the powerful House Armed Services Committee.
- The entire New Mexican congressional delegation is well positioned to act against DOE Order 140.1, if sufficient constituent pressure motivates them to do so. Please contact them over this crucial issue. It could mean your future nuclear safety!

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