Comments on Department of Energy Order 140.1,
Interface with the Defense Nuclear Facilities Safety Board

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on Behalf of
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Thank you very much for the opportunity to participate in this hearing and to provide comments today on Department of Energy Order 140.1, The Interface with Defense Nuclear Facilities Safety Board. I am speaking today in affiliation with Tri-Valley Communities Against a Radioactive Environment. Tri-Valley CAREs was founded in 1983 by concerned neighbors living near the Lawrence Livermore National Laboratory and has worked for 35 years as a watchdog monitoring the nuclear weapons and environmental clean-up activities throughout the U.S. nuclear weapons complex.

I also am also delivering comments today about Order 140.1 on behalf of the Alliance for Nuclear Accountability. ANA is a national network of more than 30 organizations, including Tri-Valley CAREs, that addresses nuclear weapons production and waste cleanup issues. ANA was formed just over 30 years ago (around the same time as the Defense Nuclear Facilities Safety Board).

Tri-Valley CAREs and ANA are deeply concerned that Order 140.1 will constrain crucial oversight activities of the Safety Board and thereby endanger public and worker health and safety.

Degradation of Safety Board access and authority threatens to send us backwards - incrementally returning us to the days when major accidents, spills and releases were considered "routine" and justified in the service of a mentality of "production first, and safety second – at best."

In the two decades before the DNFSB was created, Livermore Lab suffered major tritium accidents, plutonium fires, a burst glove box, a nuclear criticality, and numerous other mishaps. And Livermore is neither unique nor the site of the worst nuclear accidents in the DOE nuclear weapons complex.

The Safety Board has played a vital role protecting public health and safety in carrying out its mission to provide independent analysis, advice, and recommendations to the Department of Energy. The DNFSB has identified numerous safety hazards like the build-up of explosive and flammable gasses in Hanford waste tanks, fire hazards at the Waste Isolation Pilot Plant, seismic dangers at Los Alamos, bulging and mislabeled waste storage drums at Oak Ridge, and much more. Advice from the Safety Board has led to changes in safety design for facilities like the

Uranium Processing Facility, and it has identified corrective actions and safety culture improvements at sites across the nuclear weapons complex. Stakeholders and community leaders have high praise for the information that they learn about the sites from the regular site reports provided by the DNFSB. (Please see the enclosed fact sheet, "Voices Across the Weapons Complex – A sampling of DNFSB work at sites of ANA members.")

This is not a time when concerns about dangers at nuclear weapons facilities are shrinking. Instead, there are concerns about aging facilities, about facilities operating where serious safety concerns have been raised, and some facilities where plans for increased production of nuclear weapons components could lead to novel dangers. For example, the President's Nuclear Posture Review calls for production of 80 plutonium pits per year by 2030 and plans are being laid for increased pit production at Los Alamos as well as new capabilities at Savannah River Site.

We are concerned that limitations imposed by Order 140.1 regarding DNFSB access to facilities, people and information will hinder the Safety Board's effectiveness to fully investigate and continue sound oversight. The Order is at odds with DNFSB enabling legislation, that sates, "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…"* (42 USC Sec. 2286c (a) *emphasis added*.)

We are particularly concerned about these constraints:

1)The exemption of Hazard Category 3 and facilities below this hazard level, and dismissal of worker health and safety

> Many of the risky facilities now under DNFSB's purview fall into Hazard Category 3, and these facilities can and do change in their hazard classification. To cite two examples, at Livermore its problem-plagued Tritium Facility is a Hazard Category 3, and at Los Alamos National Laboratory the Radiological Laboratory Utility Office Building (RLUOB) is slated to become a Hazard Category 3 facility.
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> DOE's publicly available PowerPoint presentation, "Roll-out Information and Training," for Order 140.1 states: *"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."*
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> At Livermore this seems a particularly flawed argument when the public is so closely located to many of the facilities. In fact, the public is closer than many of the "co-located workers" in other areas of the Livermore site. Even at other sites in the nuclear weapons complex where there is more physical separation, "significant localized risks" should be overseen by the DNFSB. We have seen negligence with dangerous materials

result in releases to the air and water. And, we have known radiation to be carried home by workers who live in our communities.

Moreover, it is disturbing to our organizations – and potentially catastrophic to the workers themselves – if DNFSB oversight of worker health and safety is curtailed. Worker safety is what assures public safety - they cannot be delinked. Indeed, the previous Order 140. 1-1A (superseded by the current order) specifically stated, "The Department and the Board share the common goal of ensuring adequate protection of public *and worker health and safety* and the environment at Departmental defense nuclear facilities." Order 140.1-1A, Overview Sec. 1(c), emphasis added.

2)Constrained access to contractors and site workers.

The new Order sets forth constraints such as formal Departmental Liaisons who are gate-keepers for DNFSB interactions with contractors and site workers. The new procedures seem cumbersome and counterproductive. Further this seems to run counter to enabling legislation that directs, "Each contractor operating a Department of Energy defense nuclear facility under a contract awarded by the Secretary shall, to the extent provided in such contract or otherwise with the contractor's consent, fully cooperate with the Board and provide the Board with ready access to such facilities, personnel, and information of the contractor *as the Board considers necessary to carry out its responsibilities* under this subchapter." 42 U.S.C. 2286c(a) *Emphasis added.*

3)Ability to deny access to predecisional documents.

This Order says that DOE may deny access to predecisional documents. What is deemed "predecisional" is unclear. One area of concern is access to early construction design. It is less helpful and more expensive for safety design flaws to be discovered at later stages. (The Uranium Processing Facility "design-fit" fiasco is one example of many.) In general, the DNFSB's expertise and safety perspective will be most helpful in developing orders, procedures, and requirements that help to address safety concerns at the earliest stage.

The constraints of this Order taken together limit the flow of access to information and have a chilling effect on the what information the DNFSB site representatives and inspectors seek as well as the information that workers and contractors at key sites are willing to provide. In addition, information flowing to the public and stakeholders at sites is curtailed. The goal of preventing safety incidents at the earliest stages is thwarted by what seem to be adversarial bureaucratic hurdles.

It is especially worrisome that there has been so little iterative and collaborative discussion in developing this Order with the Safety Board and stakeholders, workers and contractors on the sites, and apparently little discussion with Congress.

ANA has sent a letter calling upon the Department of Energy to rescind this Order 140.1, or at least, hold it in abeyance while DOE holds public hearings at each site subject to DNFSB oversight within 90 days. The purpose of the public hearings would be to explain to its workers and the public the clear meaning and import of DOE Order 140.1 (See enclosed August 27, 2018 letter to Secretary of Energy Perry.)

We also note that the Safety Board voted to hold hearings in addition to this one regarding Order 140.1. and hope these additional hearings could be held in locations outside of Washington, DC, and include stakeholders from key sites.

Tri-Valley CAREs and the Alliance for Nuclear Accountability call on the DNFSB to exercise the full extent of its authority in opposing the constraints limiting access to facilities, people, and information that are at the heart of this Order. Our members, including workers, and our communities depend every day on DNFSB diligence.