

REQUEST FOR BOARD ACTION

Title of Action Document: Direct final rule; confirmation of effective date

Complete Review By:

Brief Description of Purpose: Pursuant to clauses 1.4(B)(5) and (28) of the Board Procedures, this Request for Board Action seeks Board approval of publication of the attached Federal Register notice confirming the effective date of the direct final rule amending the Board's Sunshine Act regulation.

Justification: Following publication of the direct final rule on August 30, 2021, the Board received one comment. The Office of the General Counsel analyzed the comment and determined that it was outside the scope of the rulemaking, and thus the rule should become final as scheduled on November 29, 2021.

Relevant Background Information Attached (initial): None

Summarize any staff difference of opinion regarding the proposed action: None

Summarize any time sensitive considerations: We should publish this notice by October 30, 2021 (30 days before the effective date).

Requester Signature:

Responsible Office Director Signature:

Executive Secretary Signature:

Final Disposition of Proposed Action:

Executive Secretary Signature:

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1704

[Docket No. DNFSB-2021-0001]

Government in the Sunshine Act

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Defense Nuclear Facilities Safety Board (DNFSB or Board) is confirming the effective date of November 29, 2021, for the direct final rule that was published in the Federal Register on August 30, 2021. The direct final rule amended the DNFSB's regulation implementing the Government in the Sunshine Act to include changes included in the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (NDAA).

DATES: The effective date of November 29, 2021, for the direct final rule published August 30, 2021 (86 FR 48295), is confirmed.

ADDRESSES: *DNFSB's General Counsel Webpage:* Go to <https://www.dnfsb.gov/office-general-counsel> and click "Rulemaking-DNFSB-2021-0001" to access publicly available information related to this rulemaking.

FOR FURTHER INFORMATION CONTACT: Eric Fox, Associate General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004-2901, (202) 694-7000.

SUPPLEMENTARY INFORMATION:

On August 30, 2021 (86 FR 48295), the DNFSB published a direct final rule amending its regulations in part 1704 of title 10 of the Code of Federal Regulations implementing the Government in the Sunshine Act. The Sunshine Act generally requires Board meetings to be open to public observation unless certain exemptions apply. The NDAA added a provision to the Atomic Energy Act of 1954 (AEA) that permits the Board to hold nonpublic collaborative discussions without following the requirements of the Sunshine Act, so long as certain requirements are met. The Board published this direct final rule to revise the Board's Sunshine Act regulations consistent with the new AEA provisions for nonpublic collaborative discussions.

In the direct final rule, the DNFSB stated that if no significant adverse comments were received, the direct final rule would become effective on November 29, 2021. The DNFSB received one comment. The DNFSB evaluated the comment against the criteria described in the direct final rule and determined that the comment was not significant and adverse. Specifically, the commentator opposed the legal authority granted in the NDAA, not the implementation of said authority in the DNFSB's regulations. The comment was therefore out of scope, and the direct final rule will become effective as scheduled. The comment is publicly available as part of the rulemaking docket at <https://www.dnfsb.gov/office-general-counsel>.

Dated: October 11, 2021.

Joyce Connery,
Chair.

AFFIRMATION OF BOARD VOTING RECORD

SUBJECT: RFBA by General Counsel Kevin Lyskowski to Approve Publishing FR Notice of Direct Final Rule Effective Date

Doc Control#: 2022-300-0001

The Board acted on the above document on 10/12/2021. The document was Approved.

The votes were recorded as:

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIPATING	COMMENT	DATE
Joyce L. Connery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10/08/2021
Thomas Summers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10/08/2021
Jessie H. Roberson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10/12/2021

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Board Members.

Shelby Qualls

Executive Secretary to the Board

Attachments:

1. Voting Summary
2. Board Member Vote Sheets

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

NOTATIONAL VOTE RESPONSE SHEET

FROM: Joyce L. Connery

SUBJECT: RFBA by General Counsel Kevin Lyskowski to Approve Publishing FR Notice of Direct Final Rule Effective Date

Doc Control#: 2022-300-0001

DATE: 10/08/2021

VOTE: Approved

COMMENTS:

None

Joyce L. Connery

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

NOTATIONAL VOTE RESPONSE SHEET

FROM: Thomas Summers

SUBJECT: RFBA by General Counsel Kevin Lyskowski to Approve Publishing FR Notice of Direct Final Rule Effective Date

Doc Control#: 2022-300-0001

DATE: 10/08/2021

VOTE: Approved

COMMENTS:

None

Thomas Summers

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

NOTATIONAL VOTE RESPONSE SHEET

FROM: Jessie H. Roberson

SUBJECT: RFBA by General Counsel Kevin Lyskowski to Approve Publishing FR Notice of Direct Final Rule Effective Date

Doc Control#: 2022-300-0001

DATE: 10/12/2021

VOTE: Approved

Member voted by email.

COMMENTS:

None

Jessie H. Roberson