

APPENDIX 4

REQUEST FOR BOARD ACTION BY A BOARD MEMBER

Requester: Sullivan June 12, 2017

Brief description of Requested Action: Direct staff to remove the requirement from the Board's Code of Federal Regulations that the General Counsel or his designee be present at all gatherings of a quorum of the Board and place a similar requirement in the Board procedures in accordance with steps 1 and 2 below. The requirement is a safeguard measure ensuring adherence to the Government in the Sunshine Act. Placing the safeguard in the Board procedures and removing it from the CFR maintains the benefits of the safeguard while providing for increased efficiency and flexibility in agency operations.

1. Revise the Board Procedures as shown on attachment 1.
2. Comply with the Administrative Procedures Act as needed to remove provisions from the Board's Code of Federal Regulations. The necessary Federal Register notice is attachment 2.

Attachments (init) 1. Board procedure change; 2. Federal Register notice of CFR change

Summarize any time sensitive considerations: none

Requestor signature  June 12, 2017

Executive secretary  June 12, 2017

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICPATING	COMMENT	DATE
Sean Sullivan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Bruce Hamilton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Jessie H. Roberson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Daniel J. Santos	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Joyce L. Connery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Final Disposition Summary						

Executive Secretary signature _____ Click here to enter a date.

AFFIRMATION OF BOARD VOTING RECORD

SUBJECT: RFBA by Chairman Sullivan to Remove Requirement for Counsel to be present at Board Quorums from CFR and Modify Board Procedures

Doc Control#2017-300-083

The Board, with Board Member(s) Sean Sullivan, Bruce Hamilton *approving*, Board Member(s) Jessie H. Roberson, Daniel J. Santos, Joyce L. Connery *disapproving*, Board Member(s) none *abstaining*, and Board Member(s) none *not participating*, have voted to disapprove the above document on June 13, 2017.

The votes were recorded as:

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIPATING*	COMMENT	DATE
Sean Sullivan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	06/13/17
Bruce Hamilton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	06/12/17
Jessie H. Roberson	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	06/13/17
Daniel J. Santos	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	06/13/17
Joyce L. Connery	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	06/12/17

*Reason for Not Participating:

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


Assistant Executive Secretary to the Board

Attachments:

1. Voting Summary
2. Board Member Vote Sheets

cc: Board Members
OGC
OGM Records Officer
OTD

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

NOTATIONAL VOTE RESPONSE SHEET

FROM: Sean Sullivan

SUBJECT: Remove Requirement for Counsel to be present at Board Quorums from CFR and Modify Board Procedures

Doc Control#2017-300-083

Approved X Disapproved _____ Abstain _____

Recusal – Not Participating _____

COMMENTS: Below X Attached _____ None _____


The request addresses a measure designed to verify the Board's compliance with the Government in the Sunshine Act. The request seeks to remove an existing measure from the Code of Federal Regulations and place a similar measure in the Board Procedures. Doing so will provide for economy and flexibility of Board's operations.

The Sunshine Act requires a meeting of the Board to be open to the public. A quorum of Board Members routinely gathers for staff briefings in a non-public setting, thereby promoting staff efficiency by having a single briefing instead of five. These gatherings or briefings are not 'meetings' subject to the Sunshine Act so long as the Board Members do not deliberate on agency matters. The Board has imposed a safeguard measure upon ourselves, mandating the General Counsel or his designee be present on any such occasion to ensure compliance.

The Sunshine Act does not require any safeguard measure at all, but most federal boards and commissions have instituted some way of demonstrating compliance. However, of the sixty or more boards and commissions subject to the Sunshine Act, only one other has chosen to put a safeguard measure in the Code of Federal Regulations. As a regulatory requirement, the Board's safeguard measure is inflexible and inefficient. For example, just last week the start of a staff briefing to the Board Members was delayed by several minutes because the General Counsel was momentarily unavailable. While it may not sound like much, a dozen federal employees delayed five minutes equates to a full man-hour of taxpayer funded time that is lost.

Moreover, the use of the General Counsel in this manner is inefficient. I have attended hundreds of such gatherings/briefings, and I can recall not a single instance where the intervention of the General Counsel was needed to prevent a violation of the Sunshine Act. The Board Members themselves understand the limitations imposed by the Sunshine Act and faithfully follow the law.

The regulatory requirement is burdensome and wasteful. A reasonable safeguard measure placed in the Board procedures will provide for efficiency and flexibility without sacrificing any effectiveness in compliance with the law. I therefore approve.


Sean Sullivan Date 6/13/17

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Bruce Hamilton


SUBJECT: Remove Requirement for Counsel to be present at Board Quorums from CFR and Modify Board Procedures

Doc Control#2017-300-083

Approved X Disapproved Abstain

Recusal – Not Participating

COMMENTS: Below Attached None X


Bruce Hamilton

12 JUN 2 2017
Date

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Jessie H. Roberson


SUBJECT: Remove Requirement for Counsel to be present at Board Quorums from CFR
and Modify Board Procedures
Doc Control# 2017-300-083

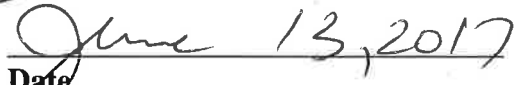
Approved_____ Disapproved X Abstain_____

Recusal – Not Participating_____

COMMENTS: Below X Attached_____ None_____

I am not supporting this change as not all Board Members feel compelled to operate in accordance with the Board's voluntary procedures and individual interpretations have produced polarizing interactions. I would not want to overlay Board compliance with the Sunshine Act to generally voluntary procedures.



Jessie H. Roberson


Date

Cameron Shelton

From: Daniel J. Santos
Sent: Tuesday, June 13, 2017 1:19 PM
To: Cameron Shelton; Shelby Qualls
Subject: RE: Notational Vote: Doc#2017-300-083, RFBA by Chairman Sullivan to Remove Requirement for Counsel to be present at Board Quorums from CFR and Modify Board Procedures - BLUE FOLDER

Disapproved with the following comment:

The proposal to remove the General Counsel or it's designee to be present at Board quorums is unnecessary, incomplete, creates legal risk for the agency, and is designed to avoid public transparency and accountability by foregoing public comment altogether from the formal Federal rulemaking process. Furthermore, I consider severely flawed the aspect of the proposal to have non-legal staff members be "trained" to provide legal advice to the Board without clear explanation of the legal, ethical, and human resource requirements implications and accountability of such actions.

From: Cameron Shelton
Sent: Monday, June 12, 2017 2:49 PM
To: Bruce Hamilton [REDACTED]; Daniel J. Santos [REDACTED]; Jessie Roberson [REDACTED]; Joyce Connery [REDACTED]; Sean Sullivan [REDACTED]
Cc: Glenn Sklar [REDACTED]; Katherine Herrera [REDACTED]; James Biggins [REDACTED]; Steven Stokes [REDACTED]; Richard Tontodonato [REDACTED]; Adam Poloski [REDACTED]; Chris Roscetti [REDACTED]; John Pasko [REDACTED]; Timothy Dwyer [REDACTED]; Matt Forsbacka [REDACTED]; Donita Vines [REDACTED]; ExSec [REDACTED]
Subject: Notational Vote: Doc#2017-300-083, RFBA by Chairman Sullivan to Remove Requirement for Counsel to be present at Board Quorums from CFR and Modify Board Procedures - BLUE FOLDER

This email is an electronic record of Notational Vote. Voting ballot will follow shortly. Also, accepting electronic votes.

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET**

FROM: Members of the Board
SUBJECT: RFBA by Chairman Sullivan to Remove Requirement for Counsel to be present at Board Quorums from CFR and Modify Board Procedures

DOC# 2017-300-083

Office Directors are copied and should provide input, if applicable.

Approved _____
Disapproved _____
Abstain _____
Recusal – Not Participating _____

COMMENTS:

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Joyce L. Connery

SUBJECT: Remove Requirement for Counsel to be present at Board Quorums from CFR and Modify Board Procedures

Doc Control #2017-300-083

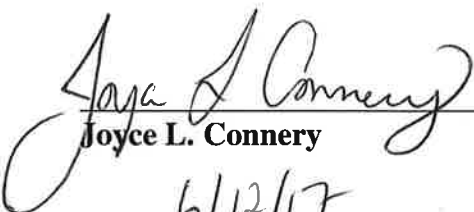
Approved _____ **Disapproved** X **Abstain** _____

Recusal – Not Participating _____

COMMENTS: **Below** X **Attached** _____ **None** _____

The Board has opined on this issue twice in the last year. Once in a vote on a work plan amendment Document #2016-300-033F and once the previous year in a similar vote on Document #2015-168B. In both of those cases the Board rejected this proposal. Additionally, other Board Members requested orally or in writing that drafting of the Federal Register Notice be considered through a Board Vote or at the very least, through an Orange Folder process. Those requests were not entertained and Board input was only sought after the work on this proposed rulemaking was completed.

This action, coupled with actions in the past several days designed to downgrade the Deputy role and eliminate a slot in the Office of General Counsel staff as well as to seek to put into place contracts for out-sourcing legal and related work seem to constitute an end-run around the Board's authorities with regards to staffing resources and planning and policy matters.



Joyce L. Connery
6/12/17

Date