

## APPENDIX 4

### REQUEST FOR BOARD ACTION BY A BOARD MEMBER

Requester: Daniel J. Santos June 19, 2017

#### **Brief description of Requested Action:**

Direct the Office of the General Manager to publish a revision to the DNFSB Board Procedures within 10 business days of approval of this action to revise section 3.3.A and 3.3.B of the Board Procedures, as follows:

3.3 Requests for Board Action by a Board Member

A. **Each member of the Board, including the Chairman and Vice Chairman, may seek staff support or action of the Board by submitting written proposals for consideration by the full Board using the procedure below.** ~~Individual Board Members may seek nominal staff support by making a request directly to the applicable Office Director. Nominal requests are those that do not require significant staff resources (e.g., a request to be briefed on work the staff has already performed, or a request to have a simple inquiry made to DOE or NNSA) or those where the anticipated staff resources align with the previously approved annual work plan. Nominal requests can be verbal; no specific form or format is required. When the request is more than nominal, as concluded by any Board Member or the applicable Office Director, the procedure below shall be utilized.~~

B. ~~Individual Board Members may submit written proposals for consideration by the full Board.~~ These **proposals** may involve policy matters before the Board or proposed staff tasking ~~that could impact the Board's approved annual work plan.~~ Some matters, such as the preparation of a proposed recommendation, may involve both Board policy and staff tasking. In those cases, the procedure below for staff tasking shall be used since the staff tasking will necessarily precede any Board vote on the policy matter. A Request for Board Action by a Board Member form (Appendix 4) will be utilized to document and preserve these exchanges and decision making. The requesting Board Member will complete the Request for Board Action by a Board Member form, sign the request, and submit it to the Board's Executive Secretary.

#### **Justification:**

The existing Board procedure sections 3.3.A and 3.3.B should be revised to ensure implementation is done in accordance with the Board's enabling statute. Specifically, 42 U.S.C. § 2286 (c) (5) states:

"(5) Each member of the Board, including the Chairman and Vice Chairman, shall—

(A) have equal responsibility and authority in establishing decisions and determining actions of the Board;

(B) have full access to all information relating to the performance of the Board's functions, powers, and mission; and

(C) have one vote."

Individual Board Members have different judgements on what constitutes "nominal" staff support. This is understandable and expected. However, this creates situations where a single Board Member can make decisions and determine actions of the Board by directly tasking staff or where a single Board Member can negate other Board Members equal responsibility and authority by simply objecting to the "nominal" request. To remediate both scenarios and improve internal transparency, the Board Procedures already provide a mechanism to allow Board Members to formally solicit action of the Board (via the Board notational voting process) that may include tasking of the staff. My proposal simplifies our current Board Procedures and brings the procedures closer to alignment with Board's enabling statute.

Also, a revision is made to section 3.3.B to ensure all proposed staff tasking follow the same process irrespective of whether or not they could impact the Board's approved annual work plan or even when there is no approved work plan, as is currently the case with the Office of the Technical Director and the Office of the General Counsel.

**APPENDIX 4**

Summarize any time sensitive considerations:

Requestor signature signature on file June 19, 2017

Assistant Executive secretary signature on file June 19, 2017

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	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIPATING	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.](#)

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**AFFIRMATION OF BOARD VOTING RECORD**

**SUBJECT: RFBA by Board Member Santos to Revise Section 3.3.A and 3.3.B of the Board Procedures**

**Doc Control#2017-300-090**

The Board, with Board Member(s) Jessie H. Roberson, Daniel J. Santos, Joyce L. Connery *approving*, Board Member(s) Sean Sullivan, Bruce Hamilton *disapproving*, Board Member(s) none *abstaining*, and Board Member(s) none *not participating*, have voted to approve the above document on June 22, 2017.

The votes were recorded as:

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIPATING*	COMMENT	DATE
Sean Sullivan	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	06/22/17
Bruce Hamilton	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	06/22/17
Jessie H. Roberson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	06/22/17
Daniel J. Santos	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	06/22/17
Joyce L. Connery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	06/22/17

\*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:** RFBA by Board Member Santos to Revise Section 3.3.A and 3.3.B of the  
Board Procedures

Doc Control#2017-300-090

Approved \_\_\_\_\_ Disapproved  X  Abstain \_\_\_\_\_

Recusal – Not Participating \_\_\_\_\_

**COMMENTS:** Below  X  Attached \_\_\_\_\_ None \_\_\_\_\_

The proposed revision would require the Board to vote on any and all tasking of staff. As such, it violates the Board's statute which provides, "the Chairman shall be the chief executive officer of the Board and, subject to such policies as the Board may establish, shall exercise the functions of the Board with respect to ... the appointment and supervision of employees of the Board."

Merriam-Webster defines 'supervision' as "the action, process, or occupation of supervising; *especially*: a critical watching and directing (as of activities or a course of action)." One cannot direct without tasking, hence the Chairman must be able to task the staff in order to do the job Congress created and to which the President designated.

Whilst the Chairman's exercise of authority is subject to policies of the Board, the Board cannot create a policy that effectively cancels an authority provided for in law. Thus, if this revision passes it cannot be enforced.

Finally, it appears time to remove from the Board Procedures the language that provides, "in creating these procedures the Board has sought and typically obtained unanimous agreement among the Members." This is the third occasion in the past eighteen months where a Member has called for a vote on a revision without even so much as the courtesy of seeking input from other Members.

//s/

Sean Sullivan

6/22/2017

Date

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

**FROM:** Bruce Hamilton

**SUBJECT:** RFBA by Board Member Santos to Revise Section 3.3.A and 3.3.B of the  
Board Procedures

**Doc Control#2017-300-090**

Approved \_\_\_\_\_ Disapproved  X  Abstain \_\_\_\_\_

Recusal – Not Participating \_\_\_\_\_

**COMMENTS:** Below  X  Attached \_\_\_\_\_ None \_\_\_\_\_

This proposed change to Board Procedures would remove the definition of “nominal” effort, creating an expectation that even the most trivial request for staff action would require the administrative burden of a formal Request for Board Action. This would result in unnecessarily high transactional costs for the agency. While there certainly can be disagreements between Board Members and Office Directors on what is or is not a nominal request, the current Board Procedures at least allow for the handling of nominal work in an efficient and flexible way. Where disagreements do exist between individuals, Board Members can still ask for the Board’s support through a vote to approve a task. Removal of the allowance for nominal effort, even though recognizing the definition is subjective, would place every task into the same category. The agency would be tied in bureaucratic knots over day-to-day minutiae for no good reason.

The proposal, as written, would also generate the bizarre possible interpretation that the Chairman could not direct the staff to do *anything* without specific Board approval. This is certainly not what was intended by Congress in the Board’s enabling legislation, 42 U.S.C. § 2286.(c)(2), which states, “... the Chairman shall be the chief executive officer of the Board ... subject to such policies as the Board may establish ....” Reasonably, Congress meant the Chairman should conform to the policy wishes of the Board in execution, but this change would perversely exploit and manipulate that simple text by insinuating to establish a policy that every action the Chairman takes must be approved by the Board. *Reductio ad absurdum*, this sounds preposterous, but there is no way of knowing whether that outcome was or was not the intent of this proposed revision because no attempt was made to socialize its language amongst all Board Members prior to calling for this vote.

While the socialization of every Request for Board Action is not expected or even desirable, the sensitivity to changing Board Procedures calls for it. It has been the tradition of the Board that the Board Procedures be amended in a collaborative way, with unanimity or near unanimity, such that the Procedures can be respected and embraced by all Members of the Board. Section

1.0A of the Board Procedures states, "Although not required, in creating these procedures the Board has sought and typically obtained unanimous agreement among the Members." In this case, the failure to socialize this proposed change has regrettably undermined that important collaborative tradition.

I therefore disapprove.

  
Bruce Hamilton

22 JUNE 2017  
Date

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

**FROM:** Jessie H. Roberson

**SUBJECT:** RFBA by Board Member Santos to Revise Section 3.3.A and 3.3.B of the  
Board Procedures

Doc Control#2017-300-090

Approved  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_  
Recusal - Not Participating \_\_\_\_\_

COMMENTS: Below  Attached \_\_\_\_\_ None \_\_\_\_\_

This RFBA actually places the burden on the Board to vote before engaging the Staff. It is more likely to reduce the workload on the Staff. Each Board Member does, indeed, have a right and responsibility to pursue acquisition of information they need in the execution of their duty.

  
\_\_\_\_\_  
Jessie H. Roberson

  
\_\_\_\_\_  
Date

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

**NOTATIONAL VOTE RESPONSE SHEET**

**FROM: Daniel J. Santos**

**SUBJECT: RFBA by Board Member Santos to Revise Section 3.3.A and 3.3.B of the Board Procedures**

**Doc Control#2017-300-090**

Approved  X  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Recusal – Not Participating \_\_\_\_\_

COMMENTS: Below  X  Attached \_\_\_\_\_ None \_\_\_\_\_

The Board's enabling statute, 42 U.S.C. § 2286 (c) (5) states:

- "(5) Each member of the Board, including the Chairman and Vice Chairman, shall—*  
*(A) have equal responsibility and authority in establishing decisions and determining actions of the Board;*  
*(B) have full access to all information relating to the performance of the Board's functions, powers, and mission; and*  
*(C) have one vote."*

Implementation of current Board Procedures allow Board Members to seek "nominal" staff support by making a request directly to the applicable Office Director unless it is judged by any Board Member or the applicable Office Director that the request is more than nominal. Nominal requests are those that do not require significant staff resources (e.g., a request to be briefed on work the staff has already performed, or a request to have a simple inquiry made to DOE or NNSA) or those where the anticipated staff resources align with the previously approved annual work plan. Individual Board Members have different judgements on what constitutes "nominal" staff support. This is understandable and expected. While past differences have been resolved in a collegiate and collaborative manner, the Board procedures are voluntary and adherence to procedures has not been consistent. This creates situations where a single Board Member can make decisions and determine actions of the Board by directly tasking staff or where a single Board Member can negate other Board Members by simply objecting to the "nominal" request without having to provide a justification and without having to engage in further collaborative dialogue to avoid interference with the ability of any Board Member to perform their duties. To address both scenarios, improve internal transparency, and preserve individual Board Member ability to perform individual duties under the statute without obstruction, the Board Procedures already provide a mechanism to allow Board Members to formally solicit action of the Board (via the Board notational voting process) that may include tasking of the staff. This proposal simplifies current Board Procedures and brings the procedures closer to alignment with the Board's enabling statute.

Also, with this revision, all proposed staff tasking by an individual Board Member would now follow the same process irrespective of whether or not the tasking could impact the Board's approved annual work plan or even when there is no approved work plan, as is currently the case with the Office of the Technical Director and the Office of the General Counsel.

  
\_\_\_\_\_  
Daniel J. Santos

6/22/17  
\_\_\_\_\_  
Date



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

**FROM:** Joyce L. Connery

**SUBJECT:** RFBA by Board Member Santos to Revise Section 3.3.A and 3.3.B of the  
Board Procedures

Doc Control #2017-300-090

Approved   X                        Disapproved                             Abstain       

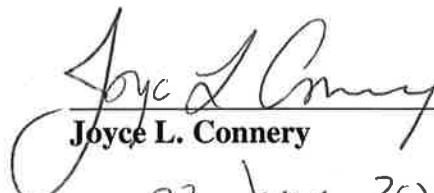
Recusal – Not Participating       

**COMMENTS:**      Below   X        Attached             None       

I am approving this action as a **TEMPORARY** measure to address an issue that has become problematic in the Request for Board Action Process (RFBA). Differences in opinion as to whether or not staff support on an RFBA have led to unnecessary consternation.

The transaction costs raised by OGM staff is a legitimate concern and I hope that Board Members will be mindful of this when using this provision. Additionally, Board Members with truly nominal requests can ask the Chairman to direct the staff to provide that information or service. Many times, when I served as Chair, I was asked by Board Members to direct staff to do nominal tasks.

Board procedures are due for their two year review and update and I believe we can seek a more permanent fix for this and other issues with Board Procedures through that process. **ALL** of our procedures need to be scrutinized.

  
\_\_\_\_\_  
Joyce L. Connery  
22 June 2017  
\_\_\_\_\_  
Date