

APPENDIX 4

REQUEST FOR BOARD ACTION BY A BOARD MEMBER

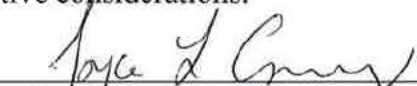
Requester: _____ JOYCE CONNERY _____ October 13, 2016

Brief description of Requested Action: Request staff (OGC/OGM) to post on the external DNFSB website the failed Board Vote package on the FY2017 OTD Work Plan (Doc#2016-300-027) and the relevant amendments (027A through 027G) that led to the final document. As per procedures, the Notational Vote Package is comprised of the following: the underlying staff document, and the relevant Forms.

Board Members should note that should this vote pass, the Board is explicitly waiving its deliberative process privilege for these vote packages.

Attachments (init) __ (included clean version of any proposed document or modified document)

Summarize any time sensitive considerations:

Requestor signature  October 13, 2016

Assistant Executive secretary  October 13, 2016

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICPATING	COMMENT	DATE
Joyce L. Connery	<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"/>	_____
Sean Sullivan	<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"/>	_____
Bruce Hamilton	<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: Request for Board Action by Chairman, Joyce L. Connery; Request OGC/OGM Staff to post on the external DNFSB website the failed Board Vote package on FY2017 OTD Work Plan (Doc#2016-300-027) and the relevant amendments (027A through 027G)

Doc Control#2017-300-005

The Board, with Board Member(s) Joyce L. Connery, Sean Sullivan, Daniel J. Santos, Bruce Hamilton *approving*, Board Member(s) Jessie H. Roberson *disapproving*, Board Member(s) none *abstaining*, and Board Member(s) none *recusing*, have voted to approve the above document on October 18, 2016.

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"/>	10/17/16
Jessie H. Roberson	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10/17/16
Sean Sullivan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	10/17/16
Daniel J. Santos	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10/18/16
Bruce Hamilton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	10/17/16

*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.



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: Joyce L. Connery

SUBJECT: Request for Board Action by Chairman, Joyce L. Connery; Request
OGC/OGM Staff to post on the external DNFSB website the failed Board
Vote package on FY2017 OTD Work Plan (Doc#2016-300-027) and the
relevant amendments (027A through 027G)

Doc Control#2017-300-005

Approved Disapproved Abstain

Recusal - Not Participating

COMMENTS: Below Attached None

Joyce L. Connery

Joyce L. Connery
10/17/16

Date

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Jessie H. Roberson

SUBJECT: Request for Board Action by Chairman, Joyce L. Connery; Request
OGC/OGM Staff to post on the external DNFSB website the failed Board
Vote package on FY2017 OTD Work Plan (Doc#2016-300-027) and the
relevant amendments (027A through 027G)

Doc Control#2017-300-005

Approved _____

Disapproved

Abstain _____

Recusal – Not Participating _____

COMMENTS:

Below _____

Attached _____

None



Jessie H. Roberson

10/17/2016

Date

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

NOTATIONAL VOTE RESPONSE SHEET

FROM: Sean Sullivan

SUBJECT: Request for Board Action by Chairman, Joyce L. Connery; Request OGC/OGM Staff to post on the external DNFSB website the failed Board Vote package on FY2017 OTD Work Plan (Doc#2016-300-027) and the relevant amendments (027A through 027G)

Doc Control#2017-300-005

Approved X Disapproved _____ Abstain _____

Recusal – Not Participating _____

COMMENTS: Below X Attached _____ None _____

Although I approve the request, I write to say that it should not be necessary. The staff already has direction to post the information covered by this request.

The staff has an operating procedure created in response to previous Board direction that provides:

REQUIREMENTS – All completed Forms found in the appendices to the Board Procedures related to a Notational Vote (i.e., Appendices 5 and 6, and, depending on the nature of the vote request, either Appendix 2, 3, or 4) and an electronic copy of the Board's Correspondence Log shall be posted to the Board's public website and intranet.

After two years of posting every such vote, a concern is now raised that votes disapproving documents and votes on amendments are perhaps deliberative and therefore protected by the deliberative process privilege. However, that privilege covers pre-decisional information reflecting the give-and-take of the consultative process. See *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 151 (D.C. Cir. 2006). The Board's organic statute, 42 U.S.C. § 2286, provides in paragraph (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 ... and (C) have one vote."

When Board Members vote, they act collectively as a Board to establish decisions and determine actions. Information documenting a vote cannot be pre-decisional.


Sean Sullivan

10/17/16
Date

ARCHIVE: Doc#2017-300-005 Request for Board Action by Chairman, Joyce L. Connery;
Request OGC/OGM Staff to post on the external DNFSB website the failed Board Vote package
on FY2017 OTD Work Plan (Doc#2016-300-027) and the relevant amendments (027A through 027G)

Shelby Qualls

From: Daniel J. Santos
Sent: Tuesday, October 18, 2016 9:20 AM
To: Lotus Smith; Shelby Qualls
Subject: RE: Notational Vote: Doc#2017-300-005 Request for Board Action by Chairman, Joyce L. Connery; Request OGC/OGM Staff to post on the external DNFSB website the failed Board Vote package on FY2017 OTD Work Plan

Approved.

From: Lotus Smith
Sent: Friday, October 14, 2016 4:08 PM
To: Bruce Hamilton <[redacted]>; Daniel J. Santos <[redacted]>; Jessie Roberson <[redacted]>; Joyce Connery <[redacted]>; Sean Sullivan <[redacted]>
Cc: ExSec <[redacted]>
Subject: Notational Vote: Doc#2017-300-005 Request for Board Action by Chairman, Joyce L. Connery; Request OGC/OGM Staff to post on the external DNFSB website the failed Board Vote package on FY2017 OTD Work Plan

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: Request for Board Action by Chairman, Joyce L. Connery; Request OGC/OGM Staff to post on the external DNFSB website the failed Board Vote package on FY2017 OTD Work Plan (Doc#2016-300-027) and the relevant amendments (027A through 027G)

DOC#2017-300-005

Office Directors have provided their input

Approved _____
Disapproved _____
Abstain _____
Recusal – Not Participating _____

COMMENTS:

Below _____
Attached _____
None _____

Lotus Smith
Executive Secretary
Office of the Chairman

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Bruce Hamilton

SUBJECT: Request for Board Action by Chairman, Joyce L. Connery; Request OGC/OGM Staff to post on the external DNFSB website the failed Board Vote package on FY2017 OTD Work Plan (Doc#2016-300-027) and the relevant amendments (027A through 027G)

Doc Control#2017-300-005

Approved X Disapproved _____ Abstain _____

Recusal – Not Participating _____

COMMENTS: Below X Attached _____ None _____

This RFBA is unnecessary. Sections 3.1 E. 1) f) and 3.1 E 2) d) of the Board Procedures already direct the posting of notational vote forms on the internet (although the language as it applies to vote forms for amendments could be made clearer), and Operating Procedure OP-11.1-2, "Posting of Notational Vote Forms on the Internet" provides the detailed process for doing so.

Voting, whether to amend a work product or to approve a final product, is not deliberation. To the extent that a contrary argument might be made, the Board has already waived any right to deliberative process privilege by its long-standing practice to post all notational vote forms, including those for amendments, on its public website.

That said, there is no reason not to direct the action stated, even though such action should take place without such direction.

I therefore approve.


Bruce Hamilton

17 OCT 2016
Date