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)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 Joyce L. Connery October 13, 2016

Assistant Executive secretary October 13, 2016

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:

<table>
<thead>
<tr>
<th></th>
<th>APRVD</th>
<th>DISAPRVD</th>
<th>ABSTAIN</th>
<th>NOT PARTICIPATING*</th>
<th>COMMENT</th>
<th>DATE</th>
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</thead>
<tbody>
<tr>
<td>Joyce L. Connery</td>
<td>☒</td>
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<td>10/17/16</td>
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<tr>
<td>Jessie H. Roberson</td>
<td>☐</td>
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<td>☐</td>
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<td>10/17/16</td>
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<td>Sean Sullivan</td>
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<td>10/17/16</td>
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<td>Daniel J. Santos</td>
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<td>☐</td>
<td>10/18/16</td>
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<tr>
<td>Bruce Hamilton</td>
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<td>☐</td>
<td>☒</td>
<td>10/17/16</td>
</tr>
</tbody>
</table>

*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
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)

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

Date 10/17/16
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)

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 X  Abstain____
Recusal – Not Participating____

COMMENTS:  Below____  Attached____  None X

[Signature]
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

Date

10/17/16
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; Daniel J. Santos; Joyce Connery; Jessie Roberson; Sean Sullivan
Cc: ExSec
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
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)

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

Date
17 OCT 2016