

**APPENDIX 2**

**REQUEST FOR BOARD ACTION**

Requester: \_\_\_\_\_ James P. Biggins \_\_\_\_\_ 06/5, 2017

**Title of Action Document:** Approve and publish July 18, 2017 Federal Register Notice

**Brief description of Requested Action:** I hereby request Board approval of the attached Federal Register notice pursuant to the Board procedures at 1.4(B)(28).

Attachments (1) \_\_ (included clean version of any proposed document or modified document)

Summarize any staff difference of opinion regarding the proposed action: N/A

Summarize any time sensitive considerations: The Government in the Sunshine Act requires at least a one week notice prior to a closed meeting.

Requestor signature \_\_\_\_\_ signature on file \_\_\_\_\_ June 5, 2017

Assistant Executive secretary \_\_\_\_\_ signature on file \_\_\_\_\_ June 5, 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 \_\_\_\_\_ Date \_\_\_\_\_

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3670-01

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

**Sunshine Act Notice**

**AGENCY: Defense Nuclear Facilities Safety Board.**

**ACTION: Notice of Closed Meeting.**

**SUMMARY:** Pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552b), and the Defense Nuclear Facilities Safety Board's (Board) regulations implementing the Government in the Sunshine Act, notice is hereby given of the Board's closed meeting described below.

**DATES:** 10:00 a.m. – 11:00 a.m., July 18, 2017.

**ADDRESS:** Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Glenn Sklar, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901, (800) 788-4016. This is a toll-free number.

**SUPPLEMENTARY INFORMATION:** The meeting will be closed to the public. No participation from the public will be considered during the meeting.

**Status**

Closed. During the closed meeting, the Board Members will discuss issues dealing with potential Recommendations to the Secretary of Energy. The Board is invoking the exemptions to close a meeting described in 5 U.S.C. 552b(c)(3) and (9)(B) and 10 C.F.R. 1704.4(c) and (h). The Board has determined that it is necessary to close the meeting

since conducting an open meeting is likely to disclose matters that are specifically exempted from disclosure by statute, and/or be likely to significantly frustrate implementation of a proposed agency action. In this case, the deliberations will pertain to potential Board Recommendations which, under 42 U.S.C. 2286d(b) and (h)(3), may not be made publicly available until after they have been received by the Secretary of Energy or the President, respectively.

**MATTERS TO BE CONSIDERED:** The meeting will proceed in accordance with the closed meeting agenda which is posted on the Board's public website at [www.dnfsb.gov](http://www.dnfsb.gov). Technical staff may present information to the Board. The Board Members are expected to conduct deliberations regarding potential Recommendations to the Secretary of Energy.

Date: June X, 2017

**Sean Sullivan,  
Chairman.**

**AFFIRMATION OF BOARD VOTING RECORD**

**SUBJECT: Approve and Publish July 18, 2017 Federal Register Notice**

**Doc Control#2017-300-080**

The Board, with Board Member(s) Sean Sullivan, Bruce Hamilton, Jessie H. Roberson, Daniel J. Santos, Joyce L. Connery *approving*, Board Member(s) none *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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	06/20/17
Bruce Hamilton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	06/19/17
Jessie H. Roberson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	06/20/17
Daniel J. Santos	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	06/22/17
Joyce L. Connery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	06/19/17

\*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:** Approve and Publish July 18, 2017 Federal Register Notice

Doc Control#2017-300-080

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

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

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

Sunshine Act exemption 9(B) is not appropriate. Controlling case law holds that the Board may not invoke this exemption. However, a majority of Members with full knowledge of the case law voted nevertheless to invoke exemption 9(B). The Federal Register Notice thus reflects the decisions made by the Board.

I also note that this meeting was originally scheduled for June 27, but a delay was necessary in order to accommodate this vote. Approval of Federal Register Notices for Board meetings should be a ministerial act. The Board's decision to require voting on such notices has injected needless delay in the consideration of important safety issues.

\_\_\_\_\_  
//s//  
**Sean Sullivan**

\_\_\_\_\_  
6/20/2017  
**Date**

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

**FROM:** Bruce Hamilton

**SUBJECT:** Approve and Publish July 18, 2017 Federal Register Notice

**Doc Control#2017-300-080**

Approved   X                        Disapproved                             Abstain       

Recusal – Not Participating       

**COMMENTS:**      Below   X        Attached                             None       

It is inappropriate to invoke Exemption (9)(B) of the Government in the Sunshine Act (5 U.S.C. § 552b(c)(9)(B)). This exemption is redundant to Exemption (3) prior to the Board's decision on a Recommendation, and it is not applicable once the Board has decided. Including it as an exemption might advance the erroneous interpretation that the information could be withheld from the public even after the Board had acted in order not to frustrate DOE's action, but the "proposed agency action" listed in (9)(B) is the Board's action, not DOE's response to it.

That said, a majority of the Board have taken the view that (9)(B) is appropriate, and this is not the place to revisit that controversy.

I therefore approve.

  
Bruce Hamilton

19 JUN 2017  
Date

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

**FROM:** Jessie H. Roberson

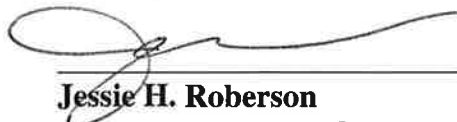

**SUBJECT:** Approve and Publish July 18, 2017 Federal Register Notice

**Doc Control#2017-300-080**

**Approved**  **Disapproved**  **Abstain**

**Recusal – Not Participating**

**COMMENTS:** **Below**  **Attached**  **None**

  
\_\_\_\_\_  
**Jessie H. Roberson**  
  
\_\_\_\_\_  
**Date**

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

**FROM:** Daniel J. Santos

**SUBJECT:** Approve and Publish July 18, 2017 Federal Register Notice

**Doc Control#2017-300-080**

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

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

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



Daniel J. Santos

6/22/17  
Date



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

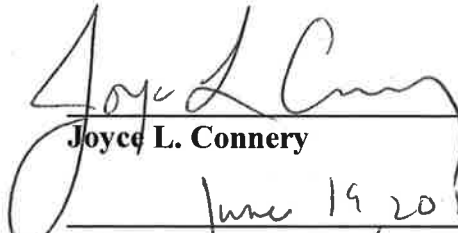
**FROM:** Joyce L. Connery

**SUBJECT:** Approve and Publish July 18, 2017 Federal Register Notice

**Doc Control #2017-300-080**

**Approved**  **Disapproved**  **Abstain**   
**Recusal – Not Participating**

**COMMENTS:** **Below**  **Attached**  **None**

  
\_\_\_\_\_  
**Joyce L. Connery**  
\_\_\_\_\_  
**Date** June 19, 2017