



**DEFENSE NUCLEAR FACILITIES
SAFETY BOARD**

WASHINGTON, D.C. 20004-2901

OFFICE OF THE
INSPECTOR GENERAL

March 16, 2015

MEMORANDUM TO: Mark T. Welch
General Manager

FROM: Stephen D. Dingbaum */RA/*
Assistant Inspector General for Audits

SUBJECT: AUDIT OF THE DEFENSE NUCLEAR FACILITIES SAFETY
BOARD'S (BOARD) COMPLIANCE WITH THE SUNSHINE
ACT (DNFSB-15-A-04)

The Office of the Inspector General (OIG) conducted this audit to determine if the Board complies with the requirements of the Sunshine Act.

OIG found that the Board complies with the requirements of the Sunshine Act. In a recent report, the U.S. Government Accountability Office had findings and made recommendations intended to promote transparency and openness at the Board. The report identified, among other things, that the Board does not disclose the results of its notational voting to the public which is used by the Board in its conduct of agency business. Board staff recently created new guidance defining the requirements, responsibilities, and procedures for posting each notational vote to the Board's public Web site. Therefore, OIG makes no recommendations.

BACKGROUND

In 1976, Congress enacted the *Government in the Sunshine Act* (the Sunshine Act) to open the Government's deliberation processes to public scrutiny. The Sunshine Act applies to agencies headed by a collegial body composed of two or more individual members appointed by the President and confirmed by the Senate. The act stipulates that when Federal agency heads deliberate on behalf of their respective organizations, these meetings must be open to the public. However, the act provides exemptions allowing for certain meetings to be closed to the public.

Sunshine Act at the Board

*Rules Implementing the Government in the Sunshine Act*¹ convey the Board's Sunshine Act requirements. A meeting under the Board's Sunshine Act requirements is the deliberation of three or more Board members (a quorum) where deliberations determine or result in the joint conduct or disposition of official Board business. The Board also holds public hearings.² When a hearing has a quorum in attendance, the hearing is considered a combined meeting and hearing. Staff publicize hearings in the Federal Register as public meetings and hearings in case Board members choose to deliberate. These hearings/meetings are open to the public and the Board posts both transcripts and video recordings to the Board's public Web site. Although the videos are available for a short period of time, CDs of the hearings may always be requested.

OBJECTIVE

The audit objective was to determine if the Board complies with the requirements of the Sunshine Act.

¹ [10 CFR 1704](#)

² This term refers to a hearing accessible to individuals from the public, authorized under the Board's enabling statute, for the purpose of taking testimony and gathering information from the Department of Energy and contractor witnesses relevant to public and worker health and safety at Department of Energy defense nuclear facilities.

FINDING

The audit determined that the Board complies with the requirements of the Sunshine Act. In a recent report, the U.S. Government Accountability Office had findings and made recommendations intended to promote transparency and openness at the Board.³ Therefore, OIG makes no recommendations.

What Is Required

Sunshine Act Requirements

The public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. It is the purpose of the Sunshine Act to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities. The act mandates that all portions of every meeting in an agency covered by the Sunshine Act shall be open to public observation, except for those portions that fall under the 10 exemptions described in the act.⁴ The act does not require that agencies hold meetings; however, it does require that agencies follow a number of procedural requirements when deciding to meet for either an open or a closed session. Specifically, agencies must publicly announce

- Meetings at least 1 week prior to the date to be held.
- The time, place, and subject matter of the meeting.
- Whether the meeting is open or closed to the public.
- A name and phone number to request information about the meetings.

³ *Defense Nuclear Facilities Safety Board, Improvements Needed to Strengthen Internal Control and Promote Transparency*, [GAO-15-181](#) (Washington, D.C.: January 2015).

⁴ [5 USC § 552b\(c\)](#)

What We Found

The Board Complies With the Requirements of the Sunshine Act

The Board is in compliance with the requirements of the Sunshine Act. Board members frequently discuss agency activities. These exchanges take place in various forums, including morning gatherings, in-person site visits, and briefings with staff and stakeholders. Board members do not engage in deliberations at these briefings and discussions; therefore, these discussions are not subject to the Sunshine Act. Additionally, the General Counsel or designee is required to attend and monitor these briefings and discussions to assure they do not proceed to the point of becoming deliberations and “meetings” within the meaning of the act.

The Board conducts agency business using a voting procedure known as notational voting. Notational voting is a process that entails the circulation of written materials for Board members to review, comment on, and vote on in writing. The Board uses notational voting to decide a range of topics.

OIG staff reviewed the Board's Web site and Federal Register notices for Sunshine Act meetings and public hearings conducted under Board's statutory authority from November 24, 2009, through October 7, 2014. A total of 13 open public hearings/meetings took place during this approximate 5-year period. No closed meetings took place during the timeframe reviewed.

Open Meetings

The Board complies with the requirements of the Sunshine Act for open meetings. Each of the 13 meetings identified complied with the Sunshine Act requirements, which require that certain meeting information (e.g., time, place, subject matter of the meeting) be made available to the public. The Board also publicly announced each meeting at least 1 week prior as required by the act.

Closed Meetings

The Board did not hold any closed meetings between November 24, 2009, and October 7, 2014. Board members stated that the Board conducts or disposes of agency business using notational voting. Therefore, OIG examined the Board's guidance to determine if requirements of the Sunshine Act for closed meetings have been

incorporated. Specifically, procedures for making decisions for conducting closed meetings, roles and duties of the Board's legal staff related to the Sunshine Act, required documentation, and procedures for public announcements were reviewed. Our examination concluded that the Board's guidance for closed meetings appears adequate to comply with the requirements of the Sunshine Act.

Recent Developments

The U.S. Government Accountability Office recently reported that opportunity exists to promote transparency and openness at the Board. The report identified, among other things, that the Board does not disclose the results of its notational voting to the public. The report recommended that the Board develop and implement a policy to publicly disclose the results of Board votes, including concurring or dissenting comments. Board staff recently created new guidance⁵ defining the requirements, responsibilities, and procedures for posting each notational vote to the Board's public Web site. Staff now post all notational votes on the Board's public Web site.

BOARD COMMENTS

A discussion draft of this report was provided to the Board. Board management provided supplemental information that has been incorporated into this report, as appropriate. As a result, Board management stated their general agreement with this report and opted not to provide formal comments for inclusion in this report.

SCOPE AND METHODOLOGY

The audit reviewed the Board's activities related to the Sunshine Act with special emphasis on compliance with its requirements. OIG conducted this performance audit from October 2014 through December 2014 at the Board's headquarters in Washington, D.C. Internal controls related to the audit objective were reviewed and analyzed.

⁵ *Operating Procedure for the Posting of Notational Vote Forms on the Internet*, DNFSB/OP-11.1-1 (Washington, D.C.: December 15, 2014).

Throughout the audit, auditors were aware of the possibility of fraud, waste, and abuse in the program.

To address the audit objective, OIG interviewed staff and Board members at Board headquarters. OIG reviewed previously issued Federal audit reports, including the U.S. Government Accountability Office's recent report, addressing issues related to compliance with the Sunshine Act. OIG also reviewed Federal and internal guidance. OIG auditors reviewed records of 13 open public hearings/meetings, including 17 transcripts, between November 24, 2009, and October 7, 2014 for compliance with Sunshine Act requirements. OIG also conducted a review and analysis of the Board's Sunshine Act training.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit was conducted by Beth Serepca, Team Leader; Robert Woodward, Audit Manager; Ziad Buhaissi, Senior Auditor; and Jenny Cheung, Auditor.

TO REPORT FRAUD, WASTE, OR ABUSE

Please Contact:

Email: [Online Form](#)

Telephone: 1-800-233-3497

TDD 1-800-270-2787

Address: U.S. Nuclear Regulatory Commission
Office of the Inspector General
Hotline Program
Mail Stop O5-E13
11555 Rockville Pike
Rockville, MD 20852

COMMENTS AND SUGGESTIONS

If you wish to provide comments on this report, please email OIG using this [link](#).

In addition, if you have suggestions for future OIG audits, please provide them using this [link](#).