

respect to periods of time when a Senior Judge is performing judicial duties with the Court and shall notify the Department of Defense Military Retirement Fund to make appropriate adjustments in the Senior Judge's retired pay or annuity. See Article 142(e)(2), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 942(e)(2).

The proposed change to Rule 3A(a) would read:

With the Senior Judge's consent, and at the request of the Chief Judge, a Senior Judge may perform judicial duties with the Court if an active Judge of the Court is disabled or has recused himself or if there is a vacancy in an active judgeship on the Court. For the periods of time when performing judicial duties with the Court, a Senior Judge shall receive the same pay, per diem, and travel allowances as an active Judge. The periods of performance of judicial duties shall be certified by the Chief Judge and reported to the Court Executive who shall take appropriate steps so that the Senior Judge is paid in accordance with Article 142(e)(2), UCMJ.

*Comment:* The Fiscal Year 2017 National Defense Authorization Act (NDAA) amended Article 142(e)(2), UCMJ, involving the pay of a senior judge who performs judicial duties with the Court. Before the amendment was passed, retired judges had their annuities suspended while performing judicial duties and were paid as active service judges. The NDAA's amendment provides that instead of stopping the senior judge's annuity, the senior judge would continue to receive the annuity in full and also receive additional pay equal to the difference between the daily equivalent of the annual rate of pay provided for a judge of the Court and the daily equivalent of the retired pay of the senior judge under Article 145, UCMJ. Accordingly, Rule 3A(a) needs to be amended to comply with current law.

#### Rule 21(a):

Rule 21(a)—Supplement to Petition for Grant of Review—currently reads:

Review on petition for grant of review requires a showing of good cause. Good cause must be shown by the appellant in the supplement to the petition, which shall state with particularity the error(s) claimed to be materially prejudicial to the substantial rights of the appellant. See Article 59(a), UCMJ, 10 U.S.C. § 859(a).

The proposed change to Rule 21(a) would read:

Review on petition for grant of review requires a showing of good cause. Good cause should be shown by the appellant

in the supplement to the petition, which shall state with particularity the error(s) claimed to be materially prejudicial to the substantial rights of the appellant. See Article 59(a), UCMJ, 10 U.S.C. § 859(a).

*Comment:* The language in the current rule that “good cause *must* be shown” by the appellant in the supplement has led to some litigation as to whether there is a jurisdictional requirement to raise issues, and that supplements that do not include any specific errors should be dismissed for want of jurisdiction. The Court has rejected this view when it has been raised.

Amending the rule to reflect that “good cause *should* be shown” is the proper way to read the rule in light of Rule 21(e) which provides that when no specific errors are included in the supplement to the petition, the Court will nevertheless review the petition. Reading Rule 21(a) as mandatory would be inconsistent with Rule 21(e) and render the latter provision meaningless. The amended rule is consistent with prevailing judicial decisions and removes any confusion as to how to reconcile the subsections (a) and (e).

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## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

### Sunshine Act Notice

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

**ACTION:** Notice of public business meeting.

**SUMMARY:** The Defense Nuclear Facilities Safety Board (Board) published a notice in the **Federal Register** of April 24, 2017 concerning a public business meeting on May 11, 2017, at the Board's headquarters located at 625 Indiana Avenue NW., Washington, DC 20004-2901. The Board supplements that notice by providing specific information for how the public may participate in the meeting.

**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:** In the **Federal Register** of April 24, 2017, in 82 FR 18902, the Board announced its intention to hold a public meeting at its headquarters on May 11, 2017. The Board has amended the public meeting agenda to provide a specific opportunity

for members of the public to comment on the agenda item. The Board will invite public comment during the public comment period of the agenda on the Defense Nuclear Facilities Safety Board staff's effort to develop a potential scorecard regarding safety oversight of Defense Nuclear Facilities. The amended agenda is available on the Board's public Web site at <https://www.dnfsb.gov/public-hearings-meetings/may-11-2017-public-business-meeting>.

Persons interested in speaking during the public comment period are encouraged to pre-register by submitting a request to the Board by telephone to the Office of the General Counsel at (202) 694-7062 prior to close of business on May 10, 2017. The Board requests that commenters limit the nature and scope of their oral comments to the subject of the agenda. Those who pre-register will be scheduled to speak first. Individual oral comments may be limited by the time available, depending on the number of persons who register. At the beginning of the meeting, the Board will post a list of speakers at the entrance to the meeting room. Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate.

Dated: May 1, 2017.

**Joseph Bruce Hamilton,**  
Vice Chairman.

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## DELAWARE RIVER BASIN COMMISSION

### Notice of Public Hearing and Business Meeting May 17 and June 14, 2017

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, May 17, 2017. A business meeting will be held the following month, on Wednesday, June 14, 2017. The hearing and business meeting are open to the public and will be held at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania.

*Public Hearing.* The public hearing on May 17, 2017 will begin at 1:30 p.m. Hearing items will include draft dockets for withdrawals, discharges, and other water-related projects subject to the Commission's review, and two FY-2018 budget resolutions: (1) A resolution to