



U.S. Chemical Safety and Hazard Investigation Board

SUBJECT: BOARD QUORUM AND VOTING

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1. **PURPOSE.** This Order provides procedures for preparing, considering, and adopting documents by the Chemical Safety and Hazard Investigation Board (“CSB” or “Board”) through the notation process. This Order also describes internal procedures for handling the administrative matters necessary to plan for and hold public meetings of the Board.
2. **EFFECTIVE DATE.** This Order is effective upon passage by the Board.
3. **SCOPE.** This Order applies to the Board and all Board staff.
4. **REFERENCES.** 42 U.S.C. § 7412(r)(6). 5 U.S.C. § 552b. 40 C.F.R. Parts 1600 and 1603.
5. **POLICY.** It is the policy of the Board to conduct its voting and meeting activities in an efficient and orderly manner, in compliance with applicable statutes and regulations.
6. **QUORUM AND VOTING REQUIREMENTS.** The quorum and voting rules of the Board are set forth at 40 C.F.R. § 1600.5.
7. **NOTATION VOTING.** Examples of items that may be adopted through the notation process include, but are not limited to the following:
 - Order.
 - Investigation Report.
 - Safety Study Plan.
 - Safety Study.
 - Decision regarding whether to convene a Public Hearing.
 - Regulation, rule, or procedure of the Board.
 - Annual Operating Budget.
 - Contract.
 - Annual Performance Plan.
 - Annual Performance and Accountability Report.
 - Any other items that require action by vote of the full Board.
- a. **Document Origin.** A document that the Members will vote on under the notation process may be submitted for consideration by any Member or may originate from one of the offices of the CSB. A "notation item" consists of a covering notation

memorandum, the draft document proposed for adoption, and pertinent attachments necessary for a full understanding of the document.

b. Office Responsibilities.

- 1) Notation memorandum. A draft document submitted for notation for the first time is submitted to the Members accompanied by a notation memorandum signed by the director of the originating office (or a designee) and routed through the General Counsel. The notation memorandum is a transmittal memorandum that briefly introduces the Members to the document(s) they are to consider. The format includes headings that focus attention on the purpose of the document. The memo may direct the Members' attention to pertinent attachments provided for additional background information. For major investigation reports and safety studies that will be discussed at a Board meeting, the originating office must attach to the notation memorandum an agenda for the report discussion.

If the Members consider a document through the notation process, and it is disapproved and returned to the staff for revisions, the revised document must be reissued to the Members with a memorandum signed by the head of the originating office and routed through the General Counsel. The memorandum states: (a) the notation number of the original document; (b) that the Members directed the document to be revised; (c) that the revised document is attached; (d) an explanation of the revisions incorporated in the revised document, and (e) where appropriate, the reason(s) the staff did not make certain suggested revisions.

The originating office is responsible for obtaining any necessary concurrence from other offices both in the case of a document submitted for notation for the first time or in the case of a document being returned to the Board after Member-requested revisions. A notation item that the Members consider and then return to the staff for revisions does not require the concurrence of other offices before recirculation to the Members unless the revisions are substantial and/or pertain to safety recommendations.

- 2) Draft documents. The originating offices are responsible for preparing notation documents according to standards to be established by the Board Members. All documents must be edited and proofread by the originating office before submission to the Office of General Counsel and distribution to the Members as a notation item. The Board Members will disapprove and return documents that do not meet its standards.
- 3) Pertinent attachments. The originating office is responsible for providing all attachments to the notation memo.
- 4) Delivery to Office of General Counsel. After all concurrences except the General Counsel's are obtained, the originating office delivers the original and a

minimum of six copies of the documents to be considered by the Board, to the Office of General Counsel.

- 5) Deadlines. If the Members must approve the draft document by a certain date to meet an external deadline, the originating office is responsible for ensuring that the Members have sufficient time to consider the notation item before the deadline.

c. Office of General Counsel Responsibilities.

- 1) Docketing. After receiving an item for circulation to the Members, the General Counsel determines whether the item is within the scope of matters requiring a Board vote, and if so, docketing the item and distributes it as described below. If the General Counsel determines that the item is outside the scope of this Order, the item will be returned to the originating office or Member with a brief explanation. The General Counsel's negative determination may be appealed to the full Board for further disposition.
- 2) Notation number. The Office of General Counsel assigns a file (notation) number to the document, enters the notation number and other pertinent information into the Board's docket, and prepares the notation folder. The notation number is determined as follows:
 - (a) New item.
 - (1) A new notation item that is not closely related to a previous notation item is assigned a number from a single consecutive series; notation items are numbered in the order received.
 - (2) A new notation item that is closely related to a previous notation item is assigned the same number as the previous item with the addition of a letter suffix.
 - (b) Revised item. A revision of an earlier notation item, whether just one page or a substantially revised and complete copy, is assigned the same notation number as the original item, but with a new letter suffix.
- 3) Copy distribution. The Office of General Counsel distributes copies of notation items to the Members. A Member voting record is also included with each notation item. A notation item and its accompanying voting record will be deemed distributed when delivered to the mailbox of the Member at 2175 K Street, Washington, DC. A Member may also request a temporary address for delivery of such items when the Member is traveling or otherwise anticipates being out of the main office. In such cases, the date of distribution is the date the item and voting record is sent to the Member. Such items will be sent by an overnight courier service whenever feasible.

- 4) Notation files. The Office of General Counsel maintains the official, complete file on all notation items the Board has considered. The files contain a copy of the draft documents circulated to the Members, the Members' voting records, all notation-related memoranda, and final copies of the document as issued.

8. **CONSIDERATION OF NOTATION ITEM BY WRITTEN VOTE.**

a. **Scope.** All notation items submitted to the Members for a vote may be acted on in writing; there is no requirement that a notation item be discussed at a Board meeting. However, any Member may request that a notation item be placed on the agenda for discussion at a Board Meeting. Notation items that are to be discussed at a Board meeting should be circulated to the Members at least two weeks before the meeting. Members may act on a notation item in one of three fashions: by signature on a voting record, by voice vote at a Board meeting, or by a recorded vote at a Board Meeting.

b. **The Voting Record.**

- 1) Actions. When a notation item is circulated by the Office of General Counsel to the Members, each Member records his/her vote on a Member Voting Record supplied with the item. A Member chooses one of the following actions:

(a) APPROVE the subject notation item AS PRESENTED .

The Member should not add any additional suggested revisions or changes. If the Member would like to see any change, the Member should calendar the item or vote to disapprove the item.

(b) CALENDAR the notation item for discussion at a Board meeting. When a Member elects to calendar an item, the Member should specify on the voting record or by separate memorandum attached to the record the particular matter(s) the Member wants to discuss at a meeting. Once an item is calendared, the other Members' voting records for that item are suspended because the vote taken at the Board Meeting will prevail.

(c) DISAPPROVE the subject notation item without offering a revision, or disapprove and submit a written dissent and/or suggested substantive revisions.

If a Member wants to persuade other Members to his/her way of thinking, the Member should address a memorandum to other Members indicating disagreement with the document and the rationale for it, and the desired disposition of the document. The memorandum should be sent to the Office of General Counsel for distribution to the Members and appropriate Board staff.

- (d) NOT PARTICIPATING in the disposition of the document.
- 2) Due date. A Member's voting record is due five workdays from the date the notation item is distributed and must be returned by that date to the Office of the General Counsel. For example a voting record distributed on Monday, October 22, 2007, would be due on Monday, October 29, 2007. Legal Holidays would not be considered workdays for purposes of the calculation of the due date. The due date may be extended by the Chairperson at his discretion or based upon the request of a Member for up to an additional five workdays. In no event shall the due date for a vote on a specific item exceed 10 workdays from the date of distribution unless the Members vote to adopt a special deadline for that item. A Member that does not submit a vote by the due date will be listed as not participating in that vote. Any Member may request that the General Counsel designate an item as one requiring "Urgent Action." Votes on a document marked "Urgent Action" are requested "as soon as possible" but may be returned and counted up to five days from the date of distribution and still be included in the final vote tally. An urgent item is indicated as such on the voting record.
- 3) Adoption/disapproval date. The date of adoption or disapproval is determined by the following:
- (a) Routine item. A routine notation item is either adopted or disapproved when the Office of General Counsel has received all Member voting records for the item, and a majority of the participating Members have voted in favor of or against the item. The date of adoption or disapproval is the date that the last Member signed his/her voting record. In the event that a Member fails to submit a voting record for that item by the due date, the date of adoption or disapproval is the day after the due date for votes on that item.
- (b) Urgent item. An urgent notation item is either adopted or disapproved when the affirmative or negative votes of a majority of the participating Members are received by the Office of General Counsel.
- 4) Former Member participation. Occasionally, a Member will leave his/her term at the Board while a notation item is pending. If the Member has submitted his/her voting record to the Office of General Counsel, the vote will be considered in the final disposition of the notation item, even if the adoption/disapproval date falls after the Member has left the Board, except in the following two situations: (1) if the notation item has been calendared by another Member, the former Member's vote is voided because the vote taken at the Board meeting will prevail; (2) if another Member subsequently proposes substantive revisions to the notation item, the former Member's vote is voided when he/she is not available to participate in the consideration of the revisions.

A new Member who is appointed to the term of the former Member will not receive a voting record to participate in a pending notation item if the former

Member has voted. If the former Member's voting record is eventually voided because the notation item is calendared or substantive revisions have subsequently been proposed, the new Member will then be given a voting record for that notation item and may participate in the vote.

The General Counsel is responsible for resolving any disputes regarding the validity of a former Member's vote.

- c. **Concurring/Dissenting Statements.** When a notation item is adopted, either orally in a Board Meeting or by written record, a Member may file a statement that offers additional views concerning all or part of the item. The Member may file a concurring statement, a dissenting statement, or a concurring and dissenting statement. The original, signed statement is retained in the official notation file in the Office of General Counsel. At a Board Member's request, his or her dissenting statement to an Incident Investigation Report shall be published on the CSB's web site.
- 1) Written record. When notation items are approved in writing, the Member attaches the concurring and/or dissenting statement to his/her voting record and returns it to the Office of General Counsel, which circulates the statement to the other Members for them to note. The Office of General Counsel may also distribute information copies to appropriate staff. Another Member may join the Member's concurring and/or dissenting statement.
 - 2) At meeting. When notation items are adopted at a Board meeting, a Member states his/her intention to file a concurring and/or dissenting statement immediately following the vote. The statement should be sent to the Office of General Counsel within five workdays after the meeting. On receipt of the statement, the Office of General Counsel circulates the statement to the other Members for them to note. The Office of General Counsel may also distribute information copies to appropriate staff. Another Member may join the Member's statement.
- d. **Notification of Board Action.** Within three workdays of the disposition of a notation item, the Office of General Counsel provides the originating office with a Board Action Report. Information copies of the Board Action Report also are sent to the Members and appropriate offices. Members should verify their records regarding the item and notify the Office of General Counsel of any discrepancies. The Board Action Report indicates the action taken by the Board, the votes of the Members, and, if adopted, the action needed to put the item in final form. The originating office is responsible for ensuring that the proper action is taken on all adopted notation items. The Office of General Counsel also distributes a Board Action Report to notify Members and appropriate staff when a notation item is superseded by a later complete revision.

- e. **Withdrawal of Notation Item.** A Member, the General Counsel, or the director of the originating office may recommend withdrawal of any notation item from the Members' consideration. The request for withdrawal is made by memorandum addressed to the Board through the General Counsel. The memorandum is handled as a notation item and circulated to the Members with a voting record. A majority of the Members must concur in the withdrawal either by written voting record or, if calendared, by voice vote in a Board Meeting.

- f. **Publication of Board Approved Documents.**
 - 1) Report/Study. The originating office is responsible for the final preparation of approved investigation reports and safety studies. The originating office is also responsible for the technical and editorial accuracy of the final document. The author must review the final document for technical accuracy. The editor must proofread the final document for editorial accuracy. After technical review and proofreading, the originating office is responsible for publishing the document.

 - 2) Order. The General Counsel is responsible for the preparation of any Board Order. The General Counsel is also responsible for distributing copies of Board Orders to the Members and appropriate staff.

 - 3) Regulation. Following Board approval, the Office of General Counsel is responsible for the preparation of a proposed or final regulation for publication in the *Federal Register*.

9. **MEETING PROCEDURES.**

- a. **Scope.** Board meetings must be held in accordance with the Government in the Sunshine Act, 5 U.S.C. § 552b, and the CSB's Sunshine Act Regulation, 40 CFR part 1603.

- b. **Convening Meeting.**
 - 1) Scheduling. The Chairperson shall be responsible for scheduling meetings of the full Board. The Board will conduct meetings according to the proposed schedule unless the meeting date is changed or cancelled according to the procedures in this section. When a Member anticipates a conflict with a date on the list, the Member may request, informally or through a memo, that the Chairperson change the date. A date for a Board Meeting does not become certain until the General Counsel files a notice in the *Federal Register* to announce the date of the public meeting.

If circumstances warrant, a special meeting may be held, at the request of a Member, with adequate notice to all Members. A majority of Members must vote to hold a special meeting on less-than-normal notice (see 4 b. below).

- 2) Agenda. Any Member may request that an item be placed on the agenda for discussion and if appropriate, a vote, at a Board Meeting. The General Counsel will determine whether the item requires a vote in the manner described in section 7.c.1. The General Counsel shall circulate to the Members a memorandum establishing a meeting date and agenda approximately two weeks before the meeting or with as much advance notice as possible for a special meeting. A Member may request, in a written memo to the other Members and the General Counsel, that the meeting not be held or that the agenda be changed. If a majority of Members agree to the request, the General Counsel issues a memo announcing the meeting "cancellation" or agenda change. If the meeting announcement notice has not been sent to the *Federal Register*, no further action is necessary. If the meeting announcement notice has been sent to the *Federal Register*, whether or not already published therein, a majority of the Board must formally vote to cancel the meeting or change the agenda. See 40 C.F.R. § 1603. This vote must be made public by publication of a subsequent notice in the *Federal Register*. The Office of General Counsel circulates a composite voting record to the Members for this action.

Unless an item requiring a vote is deleted from the agenda in the manner set forth herein, the Members should assume that a vote to approve, disapprove, or table the item, with or without revisions, will occur at the meeting.

- 3) Closed Meeting. Members must act affirmatively to close all or part of a meeting to the public and in accordance with the provisions of 40 CFR §§ 1603.7 and 1603.8.
- 4) Notice of Meeting.
- (a) Normal Notice. Public notice of a Board Meeting, whether open or closed, must be published in the *Federal Register* at least seven calendar days in advance of the meeting date. The notice includes the time, place, and agenda for the meeting; the status of the meeting (open, closed, or partially open); and the name and telephone number of the CSB official designated to respond to requests for information about the meeting. The Office of General Counsel responds to non-media requests for information regarding meetings. Information about the analysis, conclusions, and recommendations in an agenda item and copies of agenda items are not made available by staff to anyone other than Board employees at any time before the items are adopted, unless prior specific approval of the Members is obtained.
- (b) Less-than-normal Notice. If the approval to hold a Board Meeting comes too late for normal notice in the *Federal Register*, the Office of General Counsel circulates to the Members a composite voting record for approval to hold the meeting on less-than-normal notice. A majority of all the Members of the CSB must vote to approve holding a meeting with less than the

required public notice period. Notice of a meeting held on less-than-normal notice is published in the *Federal Register*.

- c. **Record of Meeting.** The official record of a Board meeting is maintained by the Office of General Counsel.
- 1) Open Meeting. The record of an open meeting consists of the following: (1) a copy of the agenda circulated to Members for approval; (2) a copy of the agenda as approved by the Members; (3) a copy of the notice of meeting as it appeared in the *Federal Register*; (4) a copy of any revised agenda, including a copy of the voting record amending the agenda; (5) a copy of any change notice published in the *Federal Register*; (6) a copy of the voting record to announce a meeting on less-than-normal notice; and (7) a videotape, transcript, or electronic recording of the meeting.
 - 2) Closed Meeting. The record of a closed meeting consists of the following: (1) a copy of the agenda circulated to Members for approval; (2) a copy of the agenda as approved by the Members; (3) a copy of the notice of meeting as it appeared in the *Federal Register*; (4) a copy of any revised agenda, including a copy of the voting record amending the agenda; (5) a copy of any change notice published in the *Federal Register*; (6) a copy of the voting record to announce a meeting on less-than-normal notice; (7) a voting record by which the Members approved closing the meeting and the General Counsel certified closing the meeting; and (8) a videotape, electronic recording, transcript, or detailed minutes of the meeting.

Regarding item 8 of the record, the General Counsel is responsible for recording a closed meeting on videotape, recording, transcript, or minutes, as appropriate. The Sunshine Act requires the agency to retain item 8 "for a period of at least 2 years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later." Except for Members and the General Counsel, access to item 8 of a closed meeting is granted to Board employees or other persons only with the permission of the General Counsel. As directed by the Members, access to item 8 of a closed meeting may be limited to Members only and kept in the custody of the Board Chairperson.

- d. **Member Comments on Agenda Items.** The originating office of a notation item is responsible for ensuring that all revisions made by the Members before, during, and after a Board meeting are incorporated into the final document before printing or release.
- 1) Pre-meeting comments/revisions. A Member may make pre-meeting comments on agenda items by memorandum. The Member distributes copies of the memorandum to other Members, the General Counsel, and the heads of appropriate offices at least seven days prior to the scheduled meeting. To

expedite discussion of a notation item at a Board Meeting, the office that originated the notation item should prepare a memorandum containing the staff response to a Member's pre-meeting comments, with revised pages if necessary, before the meeting. At least two days prior to the scheduled meeting, the originating office delivers the memorandum to the Members, Office of General Counsel, and appropriate staff.

The staff response memorandum is addressed to the Board, copied to the General Counsel and other appropriate staff, and is signed by the head of the originating office. The notation number and the title of the notation item should be referenced in the subject line of the response memorandum and the name of the Member and date of the Member's memorandum should be cited in the first line of the staff response memorandum. If the response includes revisions to pages of the notation item, the revised pages are attached to the staff response memorandum.

- 2) Meeting comments/revisions. The writer of the notation item and appropriate staff are present at the meeting at which a notation item is discussed to answer Member questions. The Members may ask the staff to add or delete information in the document or to revise current text. The revisions to the text of an adopted document do not have to be subsequently circulated to the Members for approval unless a Member specifically requests this action.
- 3) Post-meeting comments/revisions. When a Member requests that revisions be circulated for review after the meeting or if the notation item was adopted pending revisions, the office originating the notation item prepares the necessary revisions and a memorandum by which the revisions are sent to the Members. The originating office delivers the memorandum to the Office of General Counsel, which processes the memorandum as a revised notation item in accordance with the procedures discussed in Section 7. The memorandum should be distributed to the Members within five workdays after the meeting.

e. Member Voting on Agenda Items.

- 1) Voice vote. An agenda item is adopted or disapproved by voice vote as determined by the Chairperson, unless (a) an absent Member has asked that the record be held open for his/her vote (See paragraph 2. below.) or (b) a Member present at the Meeting requests a recorded vote. In the case of a recorded vote, an item is approved if a simple majority of the Members vote in favor of the item. The General Counsel or his designee shall record the votes of each of the Members, and this information becomes part of the record of that meeting. A notation item is not considered to be adopted at a meeting if the record is being held open at the request of an absent Member. In the event of a procedural disagreement, guidance in *Roberts Rules of Order* is followed.

2) Absent Member. A Member who is absent from a Board Meeting is listed as not participating in the disposition of all agenda items unless the Member has asked to participate in one of two ways prior to the meeting:

(a) Open record. An absent Member may request that the Chairperson leave the record open for up to 10 workdays following the meeting for his/her later participation and vote. Within two workdays following the meeting, the Office of General Counsel will distribute a voting record for each agenda item to the absent Member. The voting records for those items will be deemed distributed when delivered to the office of the Member at 2175 K Street, Washington, DC. The voting records may be sent to a temporary address specified by the Member at the time the Member requests that the record be left open. In such cases, the date of distribution is the date the item and voting record is sent to the Member. Such items will be sent by an overnight courier service whenever feasible. To be included in the vote tally, the signed voting record must be returned to the Office of General Counsel before the record is closed for that meeting. The adoption date for the notation item is the date an absent Member submits his/her signed voting record or the day after the record closes for that meeting, whichever date comes first. A Member who fails to submit a vote before the record closes will be listed as not participating in that vote.

(b) Proxy. An absent Member may vote by proxy. The proxy must include the absent Member's voting intent with respect to the agenda item; a blank proxy may not be voted. A Member may designate any other Member as his/her proxy orally, by telephone, or in writing to that Member. Notice of the designation of a proxy is given immediately to the Chairperson, the other Members, and the General Counsel. The proxy holder determines whether any changes made at the meeting have so affected the agenda item that the proxy should not be voted. Otherwise, the proxy holder votes the proxy, subject to the direction received from the absent Member.

3) Restrictions of Proxy. A proxy vote may not be used to provide a quorum for a Board Meeting. A proxy may not be used as a vote in deciding to hold a meeting on less than the required public notice or to close a meeting.

4) Vote Change. Any Member may change his/her vote within 24 hours of a vote taken at a Board meeting. The Member should notify the Chairperson, the other Members, and the General Counsel by memorandum immediately upon reaching a decision to change a vote.

10. **CONSTRUCTION WITH BOARD RULES**. To the extent that the provisions of this Order conflict with the provisions of 40 C.F.R. § 1600 or 40 C.F.R. § 1603, the provisions of those rules shall govern.

11. **REVIEW AND UPDATE**. The General Counsel shall be responsible for reviewing and proposing revisions to this Order, if needed, at least once every three fiscal years, with the first such review due no later than September 30, 2010.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Adopted October 12, 1999; Amended, October 25, 2007; November 9, 2007; and November 13, 2009.