

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1600

Organization and Functions of the Chemical Safety and Hazard Investigation Board

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Final Rule.

SUMMARY: This rule amends 40 CFR Part 1600.5, which governs quorum and voting requirements of the Chemical Safety and Hazard Investigation Board (CSB). The amendments add a requirement for the Chairperson to place notation votes that have been calendared for consideration at a public discussion to the agenda of a public meeting within 90 days of the calendared notation vote. The rule also adds a requirement for the Chairperson to conduct a minimum of four public meetings per year in Washington, DC.

DATES: [INSERT FINAL DATE].

SUPPLEMENTARY INFORMATION: This final rule will promote increased transparency and accountability for Board activities. It aligns with the Open Government principles of transparency, participation, and collaboration, as outlined in the Memorandum on Transparency and Open Government (74 Fed. Reg. 4685, Jan. 26, 2009).

The Board conducts most votes through a process of notation voting. In notation voting, Board Members may vote to approve, disapprove, or calendar a notation item for discussion at a public meeting. In recent years, notation items have been calendared but then not placed on the agenda for discussion at a public meeting of the Board. The addition of language in subsection (b) will ensure that calendaring is used in the way it was intended. It will require the consideration of calendared notation votes at a public meeting within 90 days of the calendaring action. Prior to the adoption of this amendment to the rule, calendaring could amount to a veto by a single Member even when other Members wished to vote on the item. This added language will prevent that action and preserve only the original intent of calendaring. Subsection (b) of this rule was amended to state that a "notation vote to schedule a public meeting may not be calendared." This change is intended to require a straight vote when one or more members may be reluctant to schedule a public meeting. The result is intended to provide an opportunity for important substantive business of the Board to be discussed publicly.

New subsection (d) adds provisions to ensure that the Board meets at least quarterly to review important CSB mission work and reaffirms the authority of all Board Members to add items

for discussion to the agendas of such CSB public meetings. This provision reinforces the policy of the Board (in Board Order 1, Section 9.b.2) that permits members to request public meeting agenda additions or changes. The amended rule also requires that the Board's quarterly meetings consider, at a minimum, calendared notation votes, important mission-related activities, and quarterly agency action plan progress. This portion of the rule is also intended to increase the transparency of Board actions, to promote the Board's accountability to the public, and to ensure regular, relevant feedback is received from the public related to the agency's mission work.

Although not required for this action, the Board published the proposed amendments in the Federal Register and provided thirty days for public comment.

The CSB received two written comments during the written comment period and several oral public comments at a meeting on June 18, 2015. The written comments have been posted to the CSB web site at <http://www.csb.gov/about-the-csb/public-comments/>, and the oral comments concerning the rule are in the transcript of the discussion which took place on June 18, 2015.

One written comment and each of the oral comments were

favorable. The written comment from the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), supported the rule because it will increase the transparency of the Board's actions and facilitate stakeholder involvement and CSB accountability. The USW fully supports the decision to hold regular quarterly business meetings, but noted that a method for participation by phone for those not in the Washington area is important. The comment also supported the rule's new requirements that calendared notation items be discussed in public within 90 days and that all Board Members may add items to public meeting agendas.

The USW also noted that Board Members should not cancel any investigation without sufficient notification to stakeholders. Earlier this year, the CSB voted to terminate three investigations at a meeting on January 28, 2015, even though the Federal Register notice (80 Fed. Reg. 2392 (Jan. 16, 2015)) did not provide specific notice that the Board might take such an action. The Board received criticism for providing inadequate notice. New section (ii) of this rule provides in pertinent part that each quarterly meeting shall include as an agenda item a "review by the Board of the schedule for completion of all open investigations, studies, and other important work of the Board." If the Board were

considering the cancellation of a particular investigation, such a discussion should occur at a quarterly meeting under this general agenda item. Without specifically stating such a possibility, interested members of the public might not be aware that the Board could vote to cancel a specific investigation at a quarterly public meeting.

An oral public comment from the American Chemistry Council was supportive of the amended rule.

The CSB also received a negative comment from Public Employees for Environmental Responsibility (PEER). PEER commented that the thirty day comment period was insufficient. However, as noted above, this rule could have been published as a final rule without any public comment period, and the Board also scheduled a public meeting to discuss the proposed changes and to provide an additional opportunity for public input.

PEER also noted that the rule could force the Board to hold a public meeting every single workday to accommodate this requirement to consider calendared notation items within ninety days. The Board does not share this concern. Because the Board will hold quarterly and other public meetings, the Board would rarely need to convene a special meeting solely to consider a calendared notation item.

PEER expressed concern that the Washington, DC, location for

business meetings was not convenient to all stakeholders. With respect to this concern, the CSB has provided and plans to continue to provide an opportunity for teleconference or webcast participation in the four meetings in Washington, DC. The CSB will also continue to conduct public meetings, as appropriate, throughout the United States.

PEER recommended undertaking a cost benefit analysis of the rule before finalizing it due to a concern that the proposed rule could negatively impact public meetings held in communities in which an accident has occurred. PEER noted that the CSB appears to lack the personnel and resources to hold both Washington, DC and community-based meetings effectively. The Board shares this important concern. However, the Board has determined that this concern is a basis for caution, not a reason to delay adoption of the rule.

The Board contemplates that the cost of regular business meetings in Washington, DC, will be minimal as such meetings will be conducted at CSB headquarters, limited in scope, and should not involve excessive staff time to prepare and to conduct. The Board will evaluate per meeting costs over the next year to ensure that these costs are reasonable in relation to the anticipated benefits, and consider the need to seek additional resources to ensure that the new rule does not

negatively impact community based public meetings.

Having considered these comments, the Board has determined that the rule should be finalized without additional changes at this time. The Board plans to review the rule a year from its adoption to ensure the revisions have succeeded in accomplishing the primary objectives of improving transparency and accountability to stakeholders.

Statutory Authority 5 U.S.C. 301, 552(a)(1); 42 U.S.C.

§7412(r)(6)(N)

Regulatory Impact

Administrative Procedure Act: 5 U.S.C. 553(b)(3)(A), provides that when regulations involve matters of agency organization, procedure, or practice, the agency may publish regulations in final form without notice and comment. Because this rule is intended to promote public participation and transparency for Board activities, however, the Board provided thirty days for public comment and an opportunity for public comments on June 18, 2015, when Board Members met in Washington, DC (80 Fed. Reg. 32339 (June 8, 2015)).

Small Business Regulatory Enforcement Fairness Act: This regulation is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. Because

this regulation involves internal agency procedures and quarterly business meetings, this regulation: a. Does not have an annual effect on the economy of \$100 million or more. b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. c. Does not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Regulatory Flexibility Act: The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires that a rule that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on such small entities. This analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The CSB has considered the impact of this rule under the Regulatory Flexibility Act, and certifies that a final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act: The CSB reviewed this rule to

determine whether it involves issues that would subject it to the Paperwork Reduction Act (PRA). The CSB has determined that that the rule does not require a "collection of information" under the PRA.

Unfunded Mandates Reform Act of 1995: The rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a federal mandate that may result in the annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of more than the annual threshold established by the Act (\$128 million in 2006, adjusted annually for inflation).

List of Subjects in 40 CFR Part 1600

Administrative practice and procedure.

Dated: _____, 2015.

Rick Engler

Board Member.

Accordingly, for the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board proposes to amend 40 CFR part 1600 as follows:

PART 1600— ORGANIZATION AND FUNCTIONS OF THE CHEMICAL SAFETY
AND HAZARD INVESTIGATION BOARD

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 301, 552(a)(1); 42 U.S.C. 7412(r)(6)(N)

2. Amend §1600.5 by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§1600.5 Quorum and voting requirements.

(b) Voting. The Board votes on items of business in meetings conducted pursuant to the Government in the Sunshine Act. Alternatively, whenever a Member of the Board is of the opinion that joint deliberation among the members of the Board upon any matter at a meeting is unnecessary in light of the nature of the matter, impracticable, or would impede the orderly disposition of agency business, such matter may be disposed of by employing notation voting procedures. A written notation of the vote of each participating Board member shall be recorded by the General Counsel who shall retain it in the records of the Board. If a Board member votes to calendar a notation item, the Board must consider the calendared notation item at a public meeting of the Board within 90 days of the date on which the item is calendared. A notation vote to schedule a public meeting may not be calendared. The

Chairperson shall add any calendared notation item to the agenda for the next CSB public meeting if one is to occur within 90 days or to schedule a special meeting to consider any calendared notation item no later than 90 days from the calendar action.

(c) Public Meetings and Agendas. The Chairperson, or in the absence of a chairperson, a member designated by the Board, shall schedule a minimum of four public meetings per year in Washington, DC, to take place during the months of October, January, April, and July.

(1) Agenda. The Chairperson, or in the absence of a chairperson, a member designated by the Board, shall be responsible for preparation of a final meeting agenda. The final agenda may not differ in substance from the items published in the Sunshine Act notice for that meeting. Any member may submit agenda items related to CSB business for consideration at any public meeting, and the Chairperson shall include such items on the agenda. At a minimum, each quarterly meeting shall include the following agenda items:

(i) Consideration and vote on any notation items calendared since the date of the last public meeting;

(ii) A review by the Board of the schedule for completion of all open investigations, studies, and other important work of

the Board; and

(iii) A review and discussion by the Board of the progress in meeting the CSB's Annual Action Plan.

(2) Publication of agenda information. The Chairperson shall be responsible for posting information related to any agenda item that is appropriate for public release on the CSB website no less than two days prior to a public meeting.