



Public Employees for Environmental Responsibility

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Via U.S. Mail, Fax and E-mail

Dear Ms. Wenzel:

Public Employees for Environmental Responsibility (PEER) submits these comments in response to the proposed rule from the Chemical Safety and Hazard Investigation Board (CSB) entitled “Organization and Functions of the Chemical Safety and Hazard Investigation Board” appearing at 80 FR 27276 (May 13, 2015).

The ostensible purpose of the proposed rule is to promote openness and transparency in the work of the CSB. However, the circumstances surrounding its promulgation lead PEER to conclude that its real purpose is precisely the opposite. The timing of the proposed rule and the absence of a Presidentially-appointed Chairperson for the CSB (although one has been nominated and has had a Senate hearing), as well as the imminent expiration of the term of one of the CSB members, all strongly suggest that this proposed rule is a last-minute ploy to further weaken, hinder or restrict the already very limited authorities of the CSB chair.

Moreover, the mere fact that there is no chairperson at the Board during the rulemaking process further suggests that this rule is not promulgated in good faith, as obviously there can be no consultation with the chair over a rule putatively affecting his or her authorities during a vacancy in that position.

Tellingly, the thirty-day comment period provided for by the rule not so coincidentally dovetails with the expiration of one board member’s term whose vote would like be necessary to

promulgate a final rule (based on the 2–1 public vote on the issuance of the proposed rule). This is in contrast to the normal sixty-day public comment period provided for most proposed rules.

It is beyond ironic that in proposing an alleged transparency rule, the CSB has halved the typical public comment period. Even more significantly, it has deliberately obfuscated its public notice (under the general and uninformative term of “governance issues”) so as to not effectively communicate in its the announcement the content of the proposed rule to affected parties, particularly community groups, which will be most adversely affected by the required Washington, DC, venue for quarterly (or more frequent) business meetings.

PEER notes that one CSB board member’s term expires only twelve days after the closing date for receipt of public comments. Obviously, action to issue a final rule within a twelve day period following receipt of public comments virtually ensures that no serious opportunity for public comment is actually being solicited. The lack of good faith based on the timing issues alone surrounding the proposed rule means that the new CSB chair will unlikely be bound to it.

Substantively, the rule forces the chair to potentially schedule unlimited numbers of meetings within ninety days after the “calendar” of a notation item vote. There could be no limit to the number of meetings a chair could be “forced” to call. Arguably, the CSB might have to hold a public meeting every single workday to accommodate this requirement. Needless to say, the purpose of the rule is clear: To impair the CSB chair’s ability to lead the agency and to permit individual Board members to intrude upon the exercise of routine administrative authority.

Effectively, the two CSB members who supported this proposed rule (out of what is supposed to be a five-member board) wish to negate the remaining authorities of a Presidentially-appointed chair, or allow themselves to effectively chair the agency without receiving a Presidential appointment to do so.

The proposed rule also ignores small business interests and concerns, as well as the role of affected citizens. The requirement to have quarterly CSB meetings convened in Washington, DC is designed to appease the “K Street” lobbyists and organized constituency groups that are allied with the members’ interests, rather than to communicate more effectively with local communities where lives are actually affected by chemical disasters. Neither small businesses nor citizens and community groups will be nearly as well equipped to deal with CSB recommendations and proposals coming from within the “bubble” of Washington. One of the CSB’s traditional strengths has been its connection to local communities where chemical incidents actually occur. PEER believes that the proposed rule will weaken this linkage.

In addition, PEER notes the following serious deficiency in the rulemaking process. The CSB has provided no website availability to allow public review of comments received prior to a June 18, 2015, public meeting, at which the Board proposes to consider adoption of the rule. See 80 FR 32339 (June 8, 2015). Surely, this six-day period between the closing date for receipt of public comments and possible Board action must rank as one of the fastest in federal agency history – especially for a non-emergency rule.

Particularly since it is likely to adversely affect the CSB's already slim resources, PEER also requests that the CSB undertake a cost-benefit analysis of the proposed rule. Such an analysis should also consider the impact of the proposed rule in curtailing valuable public meetings that are held in communities actually affected by chemical disasters. The CSB appears to lack the personnel and resources to hold both Washington, DC and community-based meetings effectively. At its June 10, 2015, stakeholder meeting (ironically also held in DC), most participants clearly stated that the community function was by far the more important one.

For all the aforementioned reasons, PEER strongly opposes the proposed rule and urges that the Board delay any further consideration of these issues until a Senate-confirmed, Presidentially-appointed chair is in place. The fact that CSB board members are apparently unable to work together collegially in pursuit of the agency's statutory mission is a poor underlying reason for adopting this rule.

Sincerely,

Jeff Ruch
Executive Director

Cc: Office of Information and Regulatory Affairs, OMB
Office of Advocacy, Small Business Administration

**Comments of the
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,
Allied Industrial and Service Workers International Union
on
Proposed Rule of the Chemical Safety and Hazard Investigation Board
40 CFR Part 1600 on Organization and Functions of the
Chemical Safety and Hazard
Investigation Board
Docket No. CSB-2015-0004-0001
June 12, 2015**

The United Steelworkers (USW) offer these comments and amendments to the proposed rulemaking supplementing 40 CFR Part 1600, which covers the actions of the U.S. Chemical Safety and Hazard Investigation Board (CSB). The 850,000 members of the USW include the majority of unionized workers in the chemical industry and hundreds of thousands of men and women whose workplaces use and store large quantities of industrial chemicals.

Many USW represented workplaces have been involved in CSB investigations. Since the Board's creation, USW has been strongly invested in the investigations and subsequent recommendations of the CSB. As a longtime stakeholder in the actions of the CSB, we appreciate this opportunity to comment on the proposed rulemaking.

The proposed rule amends the regulation which governs the daily operations of the board. We support the proposed rule because it will increase the transparency of the Board and facilitate stakeholder involvement and CSB accountability.

Public Meetings

The Board proposes to hold quarterly business meetings. During these meetings the agenda will contain specific items; a review of open investigations, vote on prior notation items, and a discussion of the CSB's annual Action Plan. Prior to the scheduled meetings, the appointed chairperson will post the related agenda information for public review.

Holding frequent public business meetings is a vital part of the CSB's business process. Developing a transparent structure, as mentioned in the proposal, will allow the viable input of stakeholders to be better utilized by CSB board members and staff. For example, the CSB will have a regular opportunity to receive input on its annual action plan to know if the stakeholders engaged with the board functions have key information pertaining to this plan to provide to the discussion.

The USW fully supports the decision to hold regular quarterly public meetings and to grant easily accessible meeting minutes. CSB meetings affect many industries and workers across the United States. We urge the Board to ensure that those who are not in Washington, D.C., are able to join the meetings by phone. A remote connection by phone will ensure that those workers, industry and other stakeholders who cannot travel to the meeting are not disadvantaged.

The members of the Board have a shared responsibility for fulfilling its mission, and each member of the Board must be afforded the opportunity to publicly discuss CSB-related business, as he or she deems appropriate. Therefore, USW also supports the proposal that any Board member may submit items related to CSB business for inclusion on the agenda of the public meeting, provided the items are submitted with sufficient advance time for public notice of the meeting and agenda as described in the proposed rule.

Notation Voting

To better align with the Memorandum on Transparency and Open Government (74 Fed. Reg. 4685, Jan 26, 2009), the proposal includes an amendment which increases the visibility of notation voting carried on by the board. As outlined in the proposal, the chairperson will be required to add notation votes that have been calendared for public discussion to the agenda of a public meeting within ninety (90) days of the calendared notation vote. This will allow the calendared items to be discussed at the public meetings within a reasonable time period.

The Memorandum on Transparency and Open Government (74 Fed. Reg. 4685, Jan 26, 2009) was released to set forth guidelines on transparency of government executive departments and agencies. The memorandum promotes these groups to conduct their business in a manner which is collaborative, transparent, and publically engaged.

The CSB's notation voting process should be used only to vote on noncontroversial issues. When a Board member chooses to calendar an item because it requires further discussion, it is crucial that the discussion occurs within a reasonable period of time. Recent history under the current rules allowed a calendared item to wait indefinitely to be put on the agenda at a public meeting.

The USW fully supports amending the 40 C.F.R. § 1600.5 as proposed. As described above, the Board must operate with transparency shared responsibility. A requirement that calendared items be discussed in public within 90 days will allow stakeholders to be more involved in the process and will strengthen CSB investigations and recommendations.

In addition to the stated proposal, the Board also amend the present regulation to incorporate motions about investigations under scrutiny. For full disclosure, no board members should have the importance to cancel an investigation without sufficiently notify all stakeholder member of the board.

We thank you again for the opportunity to comment. The USW fully supports this proposal and believe that implementation of the rule will better coordinate the mission of the CSB. Please feel free to contact us if you have questions about these comments.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Ashlee Fitch', with a stylized flourish at the end.

Ashlee Fitch
Health, Safety and Environment Department