

BOARD ORDER 028



Chemical Safety and Hazard Investigation Board

SUBJECT: BOARD MEMBER ROLES AND RESPONSIBILITIES

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1. **PURPOSE.** This Order addresses the roles and responsibilities of Members of the Chemical Safety and Hazard Investigation Board (CSB).
 2. **EFFECTIVE DATE.** This Order is effective upon passage by the Board.
 3. **SCOPE.** This Order applies to the Board collectively and Members individually.
 4. **REFERENCES.** This Order is based upon several sources, primarily the following: 42 U.S.C. § 7412(r)(6)(A)-(S); 5 U.S.C. §§ 3331-3333; 40 CFR Part 1601; 5 CFR Part 2635, *Standards of Ethical Conduct for Employees of the Executive Branch*; *Status of the Chemical Safety Board*, GAO Decision, B-274245 Jan 16, 1997; and Office of Legal Counsel Opinion, *Division of Powers and Responsibilities Between the Chairperson of the Chemical Safety and Hazard Investigation Board and the Board as a Whole* (June 26, 2000).
 5. **POLICY.** The Board Members shall exercise their roles and responsibilities in a collegial manner consistent with the principle of shared authority set out in the Board's enabling legislation. Each Member will foster a collegial, supportive, and respectful environment in which a diversity of thought and perspective is encouraged, and Members have the ability to express and explore differing viewpoints. Every Member has basic responsibilities as set forth in the CSB's enabling legislation, rules, and Orders. The Board votes to establish Board policy in the form of rules and Orders. The Chairperson exercises the executive and administrative functions of the Board either directly or through delegations of authority to employees. Each Member must execute his duties in a manner consistent with the policies and Orders of the full Board.
 6. **TERM AND ACCEPTANCE OF APPOINTMENT.** A Board Member's term of office is fixed at five years and commences upon the President's signing of the appointee's commission. An appointee must accept the appointment, however, prior to exercising his or her authority as a Member. *See Status of the Chemical Safety Board, GAO Decision, B-274245, Jan 16, 1997* ("unless the Members of the Board take the requisite oath, they have not 'accepted' their offices").
 7. **ORIENTATION AND EDUCATION.** Within 30 days of appointment, each Member shall take training required by the Ethics in Government Act. Within 60 days, each Member shall receive training on the Sunshine Act, Hatch Act, federal records law, and information security responsibilities.
 8. **CHAIRPERSON.** The Chairperson exercises the executive and administrative functions of the Board by utilizing the authorities as described below and other analogous actions which may arise in the course and scope of their duty as Chief Executive Officer:
 - a. **Personnel Administration**
 - 1) Authority over all personnel matters and personnel actions, including, but not limited to, the appointment and supervision of staff employed by the CSB.
 - 2) Authority over the distribution of business among the personnel employed by the CSB and among the administrative units of the CSB.
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b. Use and Expenditure of Funds

- 1) Authority to control the use and expenditure of funds, including the power to authorize and execute contracts and interagency transfers;
- 2) Authority to control the preparation of the CSB budget; and
- 3) The authority to approve Member and employee travel.

c. Settlement Authority

After prior consultation with the Board Members, Office of General Counsel, and Director of Financial Operations, authority to take all appropriate action, including but not limited to the execution of agreements and the expenditure of funds in an amount necessary, to settle and resolve pending or potential claims against the CSB. Such matters include disputes of any kind within the authority of the CSB to settle or resolve by written agreement, including but not limited to those which may be filed or have been filed with administrative agencies that process or adjudicate federal employment disputes. Administrative claims under the Federal Tort Claims Act are processed in accordance with 40 C.F.R. § 1620.

d. Disclosure of CSB Records and Assertion of Legal Privileges

The Chairperson may, under appropriate circumstances, authorize the release of CSB records in accordance with law. The Chairperson may also assert or waive any legal privilege. The Chairperson may delegate any of these authorities to the Office of General Counsel or other appropriate CSB official.

e. Investigations

Authority to authorize the initiation of an accident investigation and the deployment of investigators, subject to a vote by the Board to recall the investigators and cancel the investigation.

f. Conduct of Board Meetings

Authority to preside at meetings where a quorum of Board Members is present, consistent with the Sunshine Act and the CSB regulations implementing the Act.

g. Official Communications

- 1) Authority to supervise and authorize, the response to all inquiries from Congress subject to the will of the full board as outlined in Section 10, the media, and the public concerning the Board and/or the CSB, except as specifically excluded by this Order.
- 2) Authority to supervise the preparation of all official statements and other communications concerning, or on behalf of, the Board and/or the CSB, except as specifically excluded by this Order.
- 3) Authority to make and/or authorize all statements, written communications, and pronouncements on behalf of the Board and/or the CSB, except as specifically excluded by this Order.

- 4) The Board Members shall be kept reasonably apprised of actions taken by the Chairperson or the staff on their behalf. Equally, Board Members shall apprise the Chairperson and other Board Members of information pertinent to the conduct and performance of the Agency.

The Chairperson shall be governed in the exercise of the above authorities by Federal law and by the regulations, rules and orders of the Board. All Board business which does not fall within the executive and administrative functions of the Chairperson as described above shall be decided by vote of the Board, in accordance with the relevant provisions of 40 CFR Part 1600 and Board Order 1.

9. **DELEGATION.** The Chairperson may delegate any of his or her executive and administrative functions (except presiding at Board meetings) to one or more CSB employees, consistent with all applicable Federal statutes and regulations, and the regulations, orders, and rules of the Board. Specific requirements for such delegations are as follows:
 - a. The Chairperson must complete the Chairperson's Delegation of Authority form documenting the specific authorities delegated, and the person or persons receiving the delegated authority. The Chairperson must sign and date the Chairperson's Delegation of Authority form.
 - b. The Chairperson shall distribute copies of the completed Chairperson's Delegation of Authority form to the recipient of the delegation, to the Office of General Counsel, to all Board Members, and to other members of senior leadership as appropriate.
 - c. The Chairperson shall review the master file semiannually and make changes to delegations as appropriate.
10. **THE BOARD AS A WHOLE.** The Board, acting by and through a quorum, shall take action as prescribed by statute or as necessary to carry out the duties and responsibilities of the Board, including but not limited to:
 - a. Approving investigation reports, safety studies, special investigations and other Board products related to chemical accidents and hazards and advocating, as appropriate, for safety and change as prescribed through Board products, recommendations, outreach and education;
 - b. Making and advocating for implementation of safety recommendations to Federal, State and local agencies, private organizations and members of the public pertaining to reducing recurrences of chemical incidents;
 - c. Determining cause or probable cause/s of chemical accidents/incidents, reporting all necessary information, and making and advocating for public safety recommendations.

11. MEMBER DUTIES. Functions are prescribed by statute or are necessary to carry out the duties and responsibilities as individual board members, and include but are not limited to:

- a. Voting on investigation reports, safety studies, special investigations and other Board products related to chemical accidents and hazards and advocating, as appropriate, for safety and change as prescribed through Board products, recommendations, outreach and education;
- b. Voting on and advocating for resolution of safety recommendations to Federal, State and local agencies, private organizations and members of the public pertaining to reducing recurrences of chemical incidents;
- c. Voting on reports of cause or probable cause/s of chemical accidents/incidents, reporting all necessary information, and making and advocating for public safety recommendations.
- d. Propose amendments in accordance with the product review process, to the extent possible and as desired, to any agenda item at least two days prior to any public meeting scheduled to consider that item;
- e. Review and comment on the Strategic Plan, Annual Action Plan, Critical Drivers List, or Annual Performance Objectives prior to the final vote, as desired;
- f. Review and comment as desired on the annual budget prior to submission;
- g. Select one or more specific Critical Driver List items each year and take active steps to achieve a positive outcome as described in Board Order 46, *Advocacy Program/Drivers of Critical Chemicals Safety Change*.
- h. Participate in scheduled gatherings with the CSB technical, business, and legal employees;
- i. Attend scheduled public meetings as possible;
- j. Circulate with all other Board Members for review and comment any external formal communication, such as a speech or presentation, discussing Board matters;
- k. Prepare for, and participate in site visits as necessary or appropriate;
- l. Prepare for, and participate in public hearings and various other safety inquiries;
- m. Comply with the requirements of all CSB Board Orders and rules;
- n. Complete all training on schedule;
- o. Safeguard all documents and confidential materials in accordance with law and agency policy.

12. PUBLIC COMMUNICATION

a. Protection of Nonpublic Information.

The Office of Government Ethics has defined “nonpublic information” as:

[I]nformation that the employee gains by reason of Federal employment and that he knows or reasonably should know has not been made available to the general public. It includes information that he knows or reasonably should know:

- 1) Is routinely exempt from disclosure under 5 U.S.C. 552 or otherwise protected from disclosure by statute, Executive order or regulation;
- 2) Is designated as confidential by an agency; or
- 3) Has not actually been disseminated to the general public and is not authorized to be made available to the public on request.

5 CFR Part 2635.793(b).

Board Members routinely participate in public meetings under the Sunshine Act, conferences, and discussion forums. Members may also on occasion publish papers or give interviews to trade publications and other media sources. In such communications, Board Members shall ensure that they do not disclose any non-public CSB information. 5 CFR Part 2635.793(a).

b. Required Disclaimer.

A Member must make clear that the views on a subject are identified as their own unless the information presented clearly reflects an official position of the Board, as determined by a prior Board vote. As such, the following advisory should be included in oral or written communications of individual Board Members unless prior concurrence has been obtained from all Board Members: “The views expressed herein are solely those of the author (speaker), and reflect no official support or endorsement by the Chemical Safety and Hazard Investigation Board.”

A former Member should also include an appropriate disclaimer in publications if the publication involves commentary on a CSB recommendation or other official CSB statement.

c. Clearance Not Required

Speeches and formal writings need not be cleared where the material does not deviate from established Chemical Safety Board policy or does not involve controversial issues concerning the Chemical Safety Board. For example, writings or speeches reporting on safety issues as addressed in Board reports or studies, or describing the Board's organization, functions, activities, and programs need not be cleared. (Although informal addresses, appearances,

discussions, or lectures, unaccompanied by a prepared speech are not covered by this order, employees should understand that they should not depart from established agency policy unless prior review and approval from the Managing Director or Chairman has been received.)

d. **MISCONDUCT.**

Through its policies and ongoing training and education, the CSB seeks to prevent any type of misconduct by any Member. Despite such efforts, however, problems may arise. The responsibility to ensure that the Board is functioning properly and that individual Members are performing in accordance with statutory and other requirements lies with the Board itself. Accordingly, each Member has a duty to report potential misconduct to the Managing Director and the Chairman and to address misconduct by another Member by internal discussion and/or internal action. If the matter is still unresolved, the matter may be reported if necessary or prudent to the appropriate federal authority and to the Presidential Personnel Office for consideration of removal. Ultimately, in the most serious cases, the President may remove any Member of the Board for inefficiency, neglect of duty or malfeasance in office. 42 U.S.C. 7412(r)(6)(B) and (R).

1) **Types of Misconduct.**

Misconduct comes in many forms but may broadly be classified into two categories for purposes of this Order: 1) minor infractions; and 2) serious misconduct. Accordingly, any response may be tailored based on the severity of the misconduct.

2) **Minor Infractions**

On occasion, a Member may unintentionally violate an internal operating procedure or otherwise act in a manner inconsistent with the Board's rules or Orders. In other instances, a Member may consistently ignore basic procedures that nonetheless disrupt the board's operations.

Examples of such infractions include but are not limited to:

- Late submission of travel vouchers;
- Failure to follow CSB information security rules;
- Loss of government equipment costing more than \$100; and
- Failure to participate in a scheduled public meeting or miss the deadline for a board vote without adequate reason.

Potential Remedies

In such instances, the Chairperson, Managing Director, or Office of General Counsel may counsel the Member and may suggest or require, in appropriate cases, training or further education. If the infractions recur, the Chairperson may issue a private, written reprimand and remind the Member in writing to remedy the problem. If the alleged infractions involve the Chairperson, the next most senior Member is authorized by this section to take appropriate action in the

same manner as described above.

Serious Misconduct

Examples of serious misconduct include but are not limited to the following:

- *Repeated* failure to attend and participate in scheduled public meetings or voting matters without adequate reason;
- Unauthorized disclosure of nonpublic, privileged or confidential information;
- Failing to properly disclose and resolve conflicts of interest;
- Acting in a harassing or plainly improper manner with fellow Members or employees; or
- Taking any other actions contrary to applicable laws or the Standards of Ethical Conduct for Employees of the Executive Branch.

Reporting Serious Misconduct

In the event of serious misconduct, the fundamental duty of a Member is to report bona fide allegations. Depending on the circumstances, the appropriate authorities include:

- The EPA Inspector General, or other OIG as appropriate;
- The Presidential Personnel Office;
- A Congressional oversight committee;
- The Office of Special Counsel;
- The Department of Justice;
- The FBI; or
- Other appropriate law enforcement authority.

Threat to People or Property

In the event a Member acts or threatens to act in a manner that has or may cause physical harm to a person or the destruction of government property, the Chairperson shall take urgent action to address the situation pending a more complete investigation. Such actions include, but are not limited to barring the Member from the CSB premises and terminating the Member's access to CSB information systems. Any such action must be promptly reported in writing to other Members and the CSB senior staff. If the alleged misconduct involves the Chairperson, the next most senior Member or the CSB Managing Director is authorized by this section to take appropriate action. Nothing in this section

prohibits a Member from exercising his or her right to vote on any business coming before the Board.

13. INTERPRETATION. To the extent that any provision of this Order conflicts with federal law, federal law controls. To the extent that any provision of this order conflicts with prior guidance or board order, this Order controls. In the event of ambiguity, questions regarding the implementation and interpretation of these procedures are decided by the Board as a collegial body on a written, unanimous consensus basis or by vote if there is a lack of unanimity.

14. REVIEW AND UPDATE. The Chairperson shall initiate a review in consultation with the Members at least every two years to incorporate any organizational updates, consider changes for improving efficiency and effectiveness, and address conformance with any applicable legal requirements and Board policies.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

August 5, 2002; Amended, August 8, 2006; Amended, March 22, 2018, Amended April 1, 2021