



U.S. Chemical Safety and Hazard Investigation Board

SUBJECT: SENIOR EXECUTIVE SERVICE PAY AND COMPENSATION

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1. **PURPOSE.** This order establishes the policy and process for setting and adjusting pay, granting bonuses and awards, and making other personnel decisions based on individual performance and mission contributions for Senior Executive Service (SES) employees of the U.S. 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 all CSB Senior Executive employees regardless of their appointment type (career, non-career, limited-term, or limited-emergency) or position type occupied (general or career reserved).
4. **REFERENCES.** This order implements relevant portions of Title 5 of the United States Code (USC) and Title 5 of the Code of Federal Regulations (CFR):
 - a. 5 U.S.C. § 31 – Authority for Employment; 5 C.F.R. § 317 – Employment in the Senior Executive Service;
 - b. 5 U.S.C. § 43 – Performance Appraisal; 5 C.F.R. § 430, Subpart C – Managing Senior Executive Performance; 5 C.F.R. § 430, Subpart D – Performance Appraisal Certification for Pay Purposes;
 - c. 5 U.S.C. § 45 – Incentive Awards;
 - d. 5 U.S.C. § 53 – Pay Rates and Systems; 5 C.F.R. § 534, Subpart D – Pay and Performance Awards Under the Senior Executive Service;
 - e. 5 C.F.R. § 530, Subpart B – Aggregate Limitation on Pay
5. **POLICY.** It is the policy of the CSB to encourage senior executives to achieve superior performance in their jobs and to actively seek ways to improve CSB operations. This policy establishes procedures regarding SES pay setting and adjustments, bonuses, and awards.
6. **DEFINITIONS.**
 - a. **Aggregate Pay.** The total compensation that a senior executive may earn in any one calendar year. For agencies with SES performance management certification, the aggregate pay limit is equal to that of the Vice President of the United States. For agencies without certification, the aggregate pay limit is Executive Schedule Level I (5 U.S.C. § 5312).
 - b. **Annual Summary Rating.** The final overall rating level that the CSB Chairperson, or his/her designee, assigns at the end of the appraisal period after considering the recommendation of the SES Performance Review Board (PRB). This is the official rating of record and serves as the basis for making personnel and pay decisions.

- c. **Appointing Authority (Authorized Agency Official).** The agency head, or designee, who is responsible for making decisions on final ratings, retention, reassignments, and removals for senior executives. The CSB Chairperson serves as the appointing authority.
- d. **Appraisal Period.** The established period of time for which a senior executive's performance will be appraised and rated. The annual appraisal period begins on October 1 and ends on September 30 each year. The minimum appraisal period is 90 calendar days.
- e. **Award (Bonus).** The performance or incentive award paid to a career senior executive in a lump sum cash payment, with no increase in base pay. An award recognizes and rewards performance excellence during the performance appraisal cycle or for a special act or incentive.
- f. **Basic Pay.** The continuing annual salary set and paid to a SES member. The rate of basic pay is the pay fixed by law or administrative action for the Senior Executive, within the established SES.
- g. **Executive Resources Board (ERB).** A panel comprised of career and non-career senior executives who review and provide recommendations to the Chairperson or designee on SES policies and programs. Pertinent to this policy are pay, compensation, and performance management.
- h. **Performance-Based Pay Adjustment.** A salary increase or decrease resulting from a senior executive's annual summary rating approved by the appointing authority. Pay may be adjusted once in any 12-month period.
- i. **Performance Appraisal.** The review and evaluation of a SES employee's performance against established performance elements and standards, aligned with agency goals and objectives.
- j. **Performance Review Board (PRB).** A panel of career and non-career senior executives appointed by the Chairperson responsible for the oversight of the performance management and compensation processes for senior executives.
- k. **Senior Executive (SES).** A member of the Senior Executive Service.
- l. **Twelve (12) Month Period.** Fifty-two (52) week period from the last pay adjustment that is known as the *12-month rule*.

7. **RESPONSIBILITIES.**

- a. **Board** approves budget line item amount for bonuses or awards paid to senior executives.

- b. **Chairperson** is responsible for the following:
- (1) Serving as the appointing authority for all SES positions at the CSB and setting the initial pay for individual senior executives.
 - (2) Developing, establishing, reviewing, and evaluating performance plans for all senior executives.
 - (3) Conducting a progress review at least once during the appraisal period for each SES employee.
 - (4) Appointing another Board Member to review a senior executive's appraisal and initial rating, if requested;
 - (5) Reviewing pay recommendations presented by the ERB, performance-based pay adjustments recommended by the PRB, and determining pay for all SES positions of the CSB; and
 - (6) Approving and documenting exceptions for executive pay setting upon initial appointment based upon compelling needs, which include the ability to recruit and retain a high-caliber, diverse executive leadership team.
- c. **The Office of Human Resources** is responsible for the following:
- (1) Setting policy and providing overall technical guidance and direction for this policy;
 - (2) Ensuring compliance with provisions of this policy so that processes associated with managing the policy are fair, equitable, credible, and transparent;
 - (3) Serving as the Executive Secretary and providing support and assistance to the ERB and PRB as needed;
 - (4) Submitting annual and ad hoc reports and information to the Office of Personnel Management (OPM) regarding the agency's SES Performance Management System;
 - (5) Coordinating with OPM, requests for performance management system certification or recertification; and
 - (6) Evaluating the effectiveness of the SES Performance Management System every two (2) years and updating this policy as needed.
- d. **Executive Review Board (ERB)** is responsible for assuring consistency and objectivity in the process of setting and adjusting pay for senior executives.

- e. **Performance Review Board (PRB)** is responsible for the following:
 - (1) Reviewing, evaluating and validating initial summary ratings and making recommendations to the Chairperson on all SES annual performance-based bonus and pay adjustments;
 - (2) Ensuring that all ratings are appropriately documented and well supported;
 - (3) Considering the agency's annual assessment of organizational performance and any other instructions and guidance related to the end-of-year appraisal process.
 - (4) Ensuring that individual SES members do not take part in deliberations involving their own appraisals, bonuses or awards, pay adjustments, and recommendations associated with them, except to clarify issues or provide information requested; and
- f. **Senior Executives** are responsible for maintaining high-levels of performance and significantly contributing to the mission, vision, and strategic goals in relation to CSB operations.

8. **SETTING PAY FOR SENIOR EXECUTIVES.**

- a. **Initial Appointment to the SES.** For pay-setting purposes, initial SES appointment includes first SES appointment from outside the Federal Government and conversions from GS or other non-SES pay systems from inside the Federal Government. Initial pay for new appointments to the SES must reflect the nature and quality of the individual's experience, qualifications, and accomplishments as they relate to the requirements of the vacant SES position. The Chairperson may offer a salary up to 8 percent (8%) above the appointee's existing salary or to the bottom of the salary range for the SES position, whichever is greater. In no case, can the pay exceed the top of the salary range or exceed EX-III. Pay above EX-III or equal to the rate for EX-II are reserved for those newly appointed senior executives who possess superior leadership or other competencies, as determined by the Chairperson. Proposed salaries exceeding this level must be justified in writing and based on appropriate factors, such as the scope and impact of the position, or the special or unique qualifications of the selectee. A recruitment incentive may also be offered in addition to setting the appointee's initial pay.
- b. **Reappointments and Reinstatements.** The Chairperson has the authority to set the basic pay of a former SES member upon reappointment to the SES at any rate within the SES range if there has been a break in SES service of more than 30 days or reinstatement from a Presidential appointment (*12-month rule* applies). If there has been a break in SES service of 30 days or less, the senior executive's rate of basic pay may not be set higher than the senior executive's former SES rate of basic pay. The Chairperson may approve a higher rate than the former or existing rate of basic pay for these executives, if necessary. If a higher rate is warranted, pay may be set up to 8 percent (8%) above the executive's previous salary. In no case can the rate of basic pay exceed the top of the salary range designated for the SES

position.

- c. **Transfers.** Career SES appointees may be transferred from one Agency to another upon approval of the gaining agency. Pay for these SES members typically remains unchanged however, the senior executive is not entitled to retain his or her rate of pay upon transfer. If the senior executive's pay is set at the same SES rate the executive received in his or her former agency, the action is not considered a pay adjustment and does not begin a new 12-month period. The Chairperson may approve a higher rate than the former or existing rate of basic pay for these executives, if necessary. If a higher rate is warranted, pay may be set up to 8 percent (8%) above the executive's previous salary. In no case, can the rate of basic pay exceed the top of the salary range designated for the SES position. However, if pay is set at a rate higher than that received in the executive's former agency, the action restarts the clock under the *12-month rule*. In addition, a senior executive whose rate of basic pay is higher than the rate for EX-III may not suffer a reduction in pay when the maximum rate of basic pay for the applicable SES rate range is equal to the rate for EX-III. If the agency's performance appraisal system has not been certified or has been suspended, the employee would not be eligible for a pay adjustment until the performance appraisal system is certified.

9. **ADJUSTING INDIVIDUAL PAY RATES.** After the initial pay rate is established for the senior executive, all subsequent pay adjustments for SES members will be based on a performance appraisal consistent with Board Order 29, SES Performance Management System.

- a. **Performance-Based Pay Adjustments.** Adjustments in pay will be made based on demonstrated individual performance and contributions to organizational and mission success in accordance with CSB's SES Performance Management System. The annual summary rating of a senior executive is the basis for individual performance recognition, i.e., performance-based pay adjustment or performance award. A senior executive who receives an annual summary rating of *Outstanding* must be considered for an annual pay increase. Executives who receive an annual summary rating of *Fully Successful* or higher may receive a performance-based pay increase. Executives who receive a rating below *Fully Successful* may be considered for a pay decrease. Performance-based pay increases are effective the first pay period in January.

- b. **Restrictions on Reducing Pay.** Prior to reducing a career senior executive's rate of basic pay following an Unsuccessful performance appraisal, the Chairperson must provide the senior executive with the following:

- (1) Written notice of such reduction at least 15 days in advance of its effective date;
- (2) A reasonable period of time, but no less than 7 days, for the senior executive to respond to such notice orally and/or in writing and to furnish affidavits and other documentary evidence in support of that response;
- (3) An opportunity to be represented in the matter by an attorney or other

representative;

- (4) A written decision and specific reasons for the pay reduction at the earliest practicable date after the senior executive's response, if any; and
- (5) An opportunity to request, within 7 days after the date of the initial decision, reconsideration by another Board Member, designated by the Chairperson. The Board Member may not overturn the Chairperson's decision, but may recommend an alternative solution. After reconsideration, the Chairperson's determination will be final and not subject to further review.

- c. **12-Month Rule.** Pursuant to 5 C.F.R. § 534.404(c), a senior executive's rate of basic pay may not be adjusted more than once during a 12-month period. Setting an executive's rate of basic pay upon initial appointment, reappointment, or reinstatement is considered a pay adjustment for the purpose of applying the *12-month rule*. However, the Chairperson may approve an increase more than once during a 12-month period where he or she determines an additional increase is warranted. The executive's most recent performance rating, current position, and earlier pay adjustments will all be factored into the decision.

10. **AGGREGATE LIMITATION ON PAY.** In accordance with 5 C.F.R. § 530.201, the aggregate annual compensation of employees in the SES pay system must adhere to the following:

- a. A Senior executive's pay may not exceed the rate payable for EX-I or the Vice President's salary on the last day of that calendar year.
- b. The rate payable is based on the certification status of CSB's performance appraisal system. CSB's performance appraisal system must be certified for senior executives to receive the higher aggregate limitation on pay, up to the Vice President's salary.
- c. Aggregate compensation for SES employees includes basic pay and certain payments made under the authority of Title 5, United States Code, such as rank and performance awards, recruitment, relocation, and retention incentives, and other similar payments.
- d. If a performance award, rank award, or other additional payment, when added to basic pay, would cause an executive's aggregate compensation to exceed the applicable aggregate limitation by the end of the calendar year, the excess amount is withheld from the award or other additional payment subject to the aggregate pay limit, rather than from the individual's basic pay. Basic pay itself is not reduced or withheld. The excess amount shall be considered part of the executive's aggregate compensation for the new calendar year.
- e. If the executive transfers to another agency or leaves the Federal service, the agency responsible for making the payment is the agency that employed the executive when the excess amount was created.

11. PERFORMANCE AWARDS.

- a. A senior executive performance award is a cash award paid to a career appointee within the SES whose most recent performance summary rating of record was *Fully Successful* or higher. Former SES career appointees who elected to retain award eligibility under 5 C.F.R. Part 317, subpart H, reemployed annuitant with an SES career appointment, and an SES career appointee who is on detail are all eligible for performance awards. If the detail is to another agency, eligibility is in the individual's official employing agency, i.e., the agency from which detailed. If the appointee is on a reimbursable detail, the agency to which the appointee is detailed may reimburse the employing agency for some or all of any award, as agreed upon by the two agencies.
- b. Non-career appointees are not eligible for performance awards. However, such appointees may receive time-off or special act or service awards under the same provisions used in Board Order 13, GS Awards and Incentive Program. Special Act awards for SES employees may range from \$500 up to \$3,000.
- c. The Performance Review Board (PRB) established within the CSB, in accordance with 5 C.F.R. § 430.311, will recommend to the Chairperson SES career appointees to receive performance awards.
- d. The Chairperson will consider the recommendations of the PRB, but the Chairperson will make the final decisions as to who will receive an SES performance award and the amount of the award.
- e. The amount of a performance award paid to a career appointee may not be less than five percent (5%) or more than twenty percent (20%) of the appointee's SES rate of basic pay as of the end of the performance appraisal period.
- f. The total amount of all SES performance awards paid by the CSB during a fiscal year may not exceed the greater of:
 - (1) Ten percent (10%) of the aggregate rates of basic pay for all career SES appointees in the CSB as of the end of the fiscal year prior to the fiscal year in which the award payments are made; or
 - (2) Twenty percent (20%) of the average annual rates of basic pay for all career SES appointees in the CSB as of the end of the fiscal year prior to the fiscal year in which the award payments are made.
- g. Performance awards must be paid in a lump sum except in those instances when it is not possible to pay the full amount because of the applicable aggregate limitation on pay during a calendar year.
- h. Within 14 days after SES performance awards are approved, the CSB will submit to the Office of Personnel Management (OPM) a report of how performance awards were distributed, the total amount of awards given, and the aggregate SES payroll

or average SES rate of basic pay. If OPM determines that an agency's payments do not meet legal requirements, the agency must take any corrective action directed by OPM.

12. SENIOR EXECUTIVE SERVICE RANK AWARDS.

- a. Each year, the Chairperson shall recommend to OPM career appointees in the SES to be awarded the rank of Meritorious Executive or Distinguished Executive. This award recognizes exceptional performance over an extended period of time. These recommendations should be made in accordance with 5 U.S.C. § 4507. The recommended SES members must be favorably reviewed by OPM and approved by the President to receive a rank award, subject to the limitations in 5 U.S.C. § 4507.
- b. The rank of Meritorious Executive is awarded for *sustained accomplishment* and entitles the awardee to a lump-sum bonus equal to twenty percent (20%) of his/her basic pay. The rank of Distinguished Executive is awarded for *sustained extraordinary accomplishment* and entitles the awardee to a lump-sum bonus equal to thirty-five percent (35%) of his/her basic pay.
- c. Career appointees may receive both a rank award and a Senior Executive Service performance award in the same fiscal year.
- d. Career appointees awarded an executive rank may not receive the same rank again during the following four (4) fiscal years.

13. MISCELLANIOUS PAY PROVISIONS.

- a. **Premium Pay.** SES members are excluded from the premium pay provisions of 5 U.S.C. § 55, subchapter V (such as overtime pay, Sunday premium pay, holiday premium pay, night pay, standby duty pay, and hazardous duty pay). SES members are also excluded from earning compensatory time off in lieu of overtime pay under 5 U.S.C. § 5543 for the work performed as an SES member.
- b. **Retention of SES Pay Provisions.** Career SES members who, without a break in service, accept a Presidential appointment to an Executive Schedule position (or a position whose pay is set by reference to an Executive Schedule rate) may elect to retain SES benefits (e.g., pay, leave, performance awards and Presidential Rank Award eligibility).
- c. **Saved Pay.** Saved pay is used when a career senior executive is guaranteed placement in a position outside the SES if he/she is removed during his/her probationary period due to performance or as a result of a reduction in force, (See 5 U.S.C. § 3594). If the individual is placed in a General Schedule position, saved pay is subject to the limitation on SES position under 5 U.S.C. § 5382 of Executive Schedule Level II.
- d. **Retained Pay.** If an appointee is not eligible for saved pay under 5 U.S.C. § 3594 following separation from the SES and is placed in a General Schedule position, the

individual may still be eligible for pay retention under 5 C.F.R. § 536.104(b). An appointee is not eligible for pay retention if placement in the General Schedule is at the employee's request, i.e., an action initiated by an employee for his/her benefit, convenience, or personal advantage and that is not caused or influenced by a management action. An appointee is not eligible for retained pay if he/she declines a reasonable offer, as defined in 5 C.F.R. § 536.206.

14. **RECORDS**. The Office of Human Resources shall maintain all awards documents and report awards data to the Office of Personnel Management (OPM) as appropriate.

U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

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