

BOARD ORDER 028



Chemical Safety and Hazard Investigation Board

SUBJECT: EXECUTIVE AND ADMINISTRATIVE FUNCTIONS OF THE BOARD AND BOARD MEMBER ROLES AND RESPONSIBILITIES

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PURPOSE. This Order establishes the manner in which the Chemical Safety and Hazard Investigation Board (CSB) shall exercise its executive and administrative functions through the position of the Chairperson and addresses the roles and responsibilities of Board Members. In the event of ambiguity or disagreement, questions regarding the implementation and interpretation of this Order and the procedures set forth herein are decided by the Board by a majority vote.

1. **EFFECTIVE DATE.** This Order is effective upon passage by the Board.
2. **SCOPE.** This Order applies to the Board collectively and Members individually.
3. **REFERENCES.** This Order is based upon several sources, including primarily the following: 42 U.S.C. § 7412(r)(6)(A)-(S); 5 U.S.C. §§ 3331-3333; 40 C.F.R. Parts 1600 and 1601; *Status of the Chemical Safety Board*, GAO Decision, B-274245 (Jan. 16, 1997); CSB Office of General Counsel Memorandum, *Board Governance Issues* (Aug. 30, 1999); 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).
4. **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. 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 Board exercises its executive and administrative functions through the Chairperson, subject to oversight by the Board. Each Member must execute his duties in a manner consistent with the policies and Orders of the full Board. Although the term of an appointee to the Board commences upon the President's signing of the appointee's commission, the appointee must take the requisite oath of office prior to exercising his or her authority as a Member. Per this Order, there are only certain actions that the Chairperson may take without express approval by the Board. Further, in the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may not take any action that requires approval by the Board, except as stated in this Order.
5. **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.
6. **CHAIRPERSON.** Subject to oversight by the Board, the Chairperson exercises the executive and administrative functions of the Board by utilizing the authorities as described below:
 - a. **Personnel Administration**
 - 1) Authority over personnel matters and personnel actions, including, but not limited to, the appointment and supervision of staff employed by the CSB, except that the appointment or removal of the head of any major administrative unit of the CSB, the Managing Director (or Chief Operating

Officer or any person in a comparable position, regardless of title) of the CSB, or a Senior Advisor to the Chairperson (or any person in a comparable role, regardless of title, including non-career, limited term, and limited emergency Senior Executive Service appointments, as well as any assistant to a Senior Advisor or other comparable person) at the CSB requires a majority vote of the Board.

In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member (i) may not appoint or approve the appointment of the head of any major administrative unit of the CSB, or the Managing Director (or Chief Operating Officer or any person in a comparable position, regardless of title); and (ii) may not remove, or approve the removal of, any person from any of these positions whose appointment to the position had been approved by the Board when the Board consisted of more than one Member.

Each office set forth in 40 C.F.R. Part 1600 shall constitute a major administrative unit of the CSB, as shall any other office within the CSB with comparable duties or responsibilities, regardless of its title or designation, including, but not limited to, the following: Office of Administration; Office of Congressional, Public, and Board Affairs; Office of Communications; Office of Human Resources; Office of the Chief Information Officer (Information Technology); Office of Records Management; Office of Contracting; Office of Investigations and Recommendations; Office of Investigations; and Office of Recommendations. Any change to the organizational structure of the CSB, including the creation, elimination or renaming of any major administrative unit of the CSB, requires a majority vote of the Board.

- 2) Authority over the distribution of business among the personnel employed by the CSB and among the administrative units of the CSB.

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, in an amount not to exceed \$50,000. The use of and expenditure of funds, including contracts and interagency transfers, exceeding \$50,000 require approval by a majority vote of the Board. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may not authorize or approve the use of and expenditure of funds, including contracts and interagency transfers, exceeding \$50,000, except on a case-by-case basis as necessary for the continued operations of the CSB;
- 2) Authority to supervise the preparation of the CSB budget, except that Board Members shall have the authority to review and comment on the budget and that final approval of the budget and submission or transmission of the budget as described in 42 U.S.C. § 7412(r)(6)(R) requires a majority vote of the Board. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may give final approval to and submit or transmit the CSB budget; and

- 3) The authority to approve Member and employee travel. Approval for Board Members' travel shall not be unreasonably withheld.

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 (or the Board by a majority vote) may, under appropriate circumstances, authorize the release of CSB records in accordance with law, including information received under 40 C.F.R. Part 1604. The Chairperson (or the Board by a majority vote) may also assert or waive any legal privilege. The Chairperson may delegate any of these authorities to the Office of General Counsel, a Board Member or other appropriate CSB official.

e. Enforcement Actions

In consultation with the Board, the Chairperson may authorize enforcement actions by the CSB and refer matters to the United States Environmental Protection Agency (US EPA) for enforcement under 42 U.S.C. §7412(r)(6)(O) and 40 C.F.R. Part 1604. By a majority vote, the Board also may authorize enforcement actions and refer matters to US EPA for enforcement, as well as recall a referral and cease an enforcement action. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may authorize enforcement actions and refer matters to US EPA for enforcement, as well as recall a referral and cease an enforcement action.

f. Investigations

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

g. 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.

h. Official Communications

- 1) Authority to supervise and authorize: (i) subject to approval by the Board,

the official response of the Board to inquiries from Congress, and (ii) subject to review and comment by the Board, other communications to Congress relating to the CSB's activities and operations, as well as the official response to inquiries directed to the Board as a whole from the media and the public concerning the Board and/or the CSB, except as specifically excluded by this Order. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may provide the official response of the Board to inquiries from Congress.

- 2) Authority to supervise the preparation of all official statements and other communications concerning, or on behalf of, the Board and/or the CSB, subject to review and comment by the Board, 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, subject to review and comment by the Board, except as specifically excluded by this Order.
- 4) Board Members shall be kept reasonably apprised of actions taken by the Chairperson or the staff on their behalf. Equally, Board Members shall reasonably 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 expressly within the executive and administrative functions of the Chairperson as specifically described above shall be decided by a vote of the Board, in accordance with the relevant provisions of 40 C.F.R. Part 1600 and Board Order 001.

7. **DELEGATION**. The Chairperson may delegate any of his or her executive and administrative functions to one or more Board Members or, except for 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.

8. **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. Reviewing and approving investigation reports (including determining the format and structure of the reports and the procedures for internal and external review of 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. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may not approve investigation reports, but may approve safety studies, special investigations and other Board products related to chemical accidents and hazards.
 - 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. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may not approve safety recommendations to Federal, State and local agencies, private organizations and members of the public pertaining to reducing recurrences of chemical incidents but may approve changes in the status of existing recommendations.
 - c. Determining cause or probable cause/s of chemical accidents/incidents, reporting all necessary information, and making and advocating for public safety recommendations.
 - d. Voting on the appointment or removal of the head of any major administrative unit of the CSB, the Managing Director (or Chief Operating Officer or any person in a comparable position, regardless of title) of the CSB, or a Senior Advisor to the Chairperson (or any person in a comparable role, regardless of title, including non-career, limited-term and limited emergency Senior Executive Service appointments, as well as any assistant to a Senior Advisor or other comparable person) at the CSB. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member (i) may not appoint or approve the appointment of the head of any major administrative unit of the CSB, or the Managing Director (or Chief Operating Officer or any person in a comparable position, regardless of title); and (ii) may not remove, or approve the removal of, any person from any of these positions whose appointment had been approved by the Board when the Board consisted of more than one Member.
 - e. Approving the use and expenditure of funds, including contracts and interagency transfers, exceeding \$50,000. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may not authorize or approve the use of and expenditure of funds, including contracts and interagency transfers, exceeding \$50,000, except on a case-by-case basis as necessary for the continued operations of the CSB.
 - f. Reviewing, commenting on, and voting on the CSB budget, as well as submission or transmission of the CSB budget as described in 42 U.S.C. § 7412(r)(6)(R). In the

- event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may give final approval to and submit or transmit the CSB budget.
- g. Reviewing, voting on and submitting or transmitting the official response of the Board to inquiries from Congress. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may provide the official response of the Board to inquiries from Congress.
 - h. Reviewing and commenting on all other communications to Congress relating to the CSB's activities and operations, as well as the official response to inquiries directed to the Board as a whole from the media and the public concerning the Board and/or the CSB.
 - i. Reviewing and commenting on official statements and other communications concerning, or on behalf of, the Board and/or the CSB.
 - j. Reviewing and commenting on statements, written communications, and pronouncements on behalf of the Board and/or the CSB.
 - k. Reviewing and commenting on, amending, and voting on the approval of the Strategic Plan, Annual Action Plan, Critical Drivers' List, and Annual Performance Objectives. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may amend or approve the Strategic Plan, Annual Action Plan and Annual Performance Objectives but not the Critical Drivers List.
 - l. Authorizing the release of CSB records under appropriate circumstances in accordance with law, including information received under 40 C.F.R. Part 1604, and asserting or waiving any legal privilege.
 - m. Voting on Board Orders and CSB rules and regulations and any amendments thereto or revocation thereof. An Order, rule or regulation may be approved, amended or revoked only by a majority vote of the Board. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may not approve, amend or revoke any Board Order or CSB rule or regulation.
 - n. Voting on and submitting comments to other agencies or authorities on rules or actions.
 - o. Authorizing enforcement actions by the CSB and referring matters to the United States Environmental Protection Agency for enforcement under 42 U.S.C. §7412(r)(6)(O) and 40 C.F.R. Part 1604, as well as recalling a referral and ceasing an enforcement action. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may authorize enforcement actions and refer matters to US EPA for enforcement, as well as recall a referral and cease an enforcement action.

9. **MEMBER ROLES AND RESPONSIBILITIES.** The roles and responsibilities of individual Board Members (including the Chairperson) include but are not limited to:

- a. Reviewing and voting on investigation reports (including determining the format and structure of the reports and the procedures for internal and external review of 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. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may not approve investigation reports but may approve safety studies, special investigations and other Board products related to chemical accidents and hazards.
- 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. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may not approve safety recommendations to Federal, State and local agencies, private organizations and members of the public pertaining to reducing recurrences of chemical incidents but may approve changes in the status of existing recommendations.
- 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, amend, and vote on the approval of the Strategic Plan, Annual Action Plan, Critical Drivers' List, and Annual Performance Objectives. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may amend or approve the Strategic Plan, Annual Action Plan and Annual Performance Objectives but not the Critical Drivers List.
- f. Review, comment on, and vote on the annual budget prior to submission. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may give final approval to and submit or transmit the CSB budget.
- g. Advocate for items on the Critical Drivers' List.
- h. Participate in scheduled gatherings with the CSB technical, business, and legal employees.
- i. Attend scheduled public meetings as possible.
- j. Circulate to all other Board Members for 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.
- p. Voting on the appointment or removal of the head of any major administrative unit of the CSB, the Managing Director (or Chief Operating Officer or any person in a comparable position, regardless of title) of the CSB, or a Senior Advisor to the Chairperson (or any person in a comparable role, regardless of title, including non-career, limited-term and limited emergency Senior Executive Service appointments, as well as any assistant to a Senior Advisor or other comparable person) at the CSB. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member (i) may not appoint or approve the appointment of the head of any major administrative unit of the CSB, or the Managing Director (or Chief Operating Officer or any person in a comparable position, regardless of title); and (ii) may not remove, or approve the removal of, any person from any of these positions whose appointment to the position had been approved by the Board when the Board consisted of more than one Member.
- q. Voting on the use and expenditure of funds, including contracts and interagency transfers, exceeding \$50,000. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may not authorize or approve the use of and expenditure of funds, including contracts and interagency transfers, exceeding \$50,000, except on a case-by-case basis as necessary for the continued operations of the CSB.
- r. Reviewing and voting on the official response of the Board to inquiries from Congress and the submission or transmission of the same. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may provide the official response of the Board to inquiries from Congress.
- s. Reviewing and commenting on all other communications to Congress relating to the CSB's activities and operations, as well as the official response to inquiries directed to the Board as a whole from the media and the public concerning the Board and/or the CSB.
- t. Reviewing and commenting on official statements and other communications concerning, or on behalf of, the Board and/or the CSB.
- u. Reviewing and commenting on statements, written communications, and pronouncements on behalf of the Board and/or the CSB.
- v. Voting to authorize the release of CSB records under appropriate circumstances in accordance with law, including information received under 40 C.F.R. Part 1604, and to assert or waive any legal privilege.
- w. Voting on Board Orders and CSB rules and regulations and any amendments thereto or revocation thereof. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may not approve, amend or revoke any Board Order or CSB rule or regulation.

- x. Voting on and submitting comments to other agencies or authorities on rules or actions.
- y. Voting on the authorization of enforcement actions by the CSB and the referral of matters to the United States Environmental Protection Agency for enforcement under 42 U.S.C. §7412(r)(6)(O) and 40 C.F.R. Part 1604, as well as recalling a referral and ceasing an enforcement action. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may authorize enforcement actions and refer matters to US EPA for enforcement, as well as recall a referral and cease an enforcement action.

10. PUBLIC COMMUNICATION

a. Protection of Nonpublic Information.

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

[I] information 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 C.F.R. Part 2635.793(b).

Nothing in this or any other Board Order shall prohibit Board Members from participating in public meetings under the Sunshine Act, conferences, and discussion forums or from publishing papers or opinion pieces, issuing their own statements, giving interviews to the press, trade publications and other media sources, or communicating with Congress, other agencies or the public, and a Board Member shall not be required to obtain prior approval or otherwise obtain authorization from the Chairperson or other Board Members before doing so. In such communications, Board Members shall ensure that they do not disclose any non-public CSB information. 5 C.F.R. Part 2635.793(a).

b. Required Disclaimer.

A Member (including the Chairperson) 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

Except as specifically provided by this Order, speeches and writings by Board Members are not required to be reviewed or cleared.

11. MISCONDUCT. Through its policies and ongoing training and education, the CSB seeks to prevent any type of misconduct by any Member, including the Chairperson. Despite such efforts, however, problems may arise. The responsibility to ensure that the Board is functioning properly and that individual Members (including the Chairperson) 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 Chairperson (or the next most senior Board Member if the conduct of the Chairperson is at issue) and to address misconduct by another Member (including the Chairperson) 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, including the Presidential Personnel Office. 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).

Examples of the kind of misconduct that may warrant action include: (i) deliberate repeated failure to participate in scheduled public meetings of the Board or voting matters without adequate reason; (ii) intentional unauthorized disclosure of nonpublic, privileged or confidential information; or (iii) threatening, harassing, bullying, retaliating against or acting improperly toward a fellow Board Member or CSB employee. Any response should be tailored based on the nature and severity of the misconduct.

12. 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 another Board Order, this Order controls. In the event of ambiguity or disagreement, questions regarding the implementation and interpretation of this Order and the procedures set forth herein are decided by the Board by a majority vote.

13. REVIEW AND UPDATE. The Board shall initiate a review of this Order 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. This Order may be amended or revoked only by a majority vote of the Board. In the event that the Board consists of only a single Member (whether the Chairperson or another Member), this Order may not be amended or revoked by that single Member.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

August 5, 2002; Amended, August 8, 2006; Amended, March 22, 2018; Amended April 1, 2021; Amended May 17, 2022; Amended January 11, 2023.