

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460



OFFICE OF
INSPECTOR GENERAL

December 28, 2021

MEMORANDUM

SUBJECT: Management Implication Report: Annual Performance Rating of Senior Executive Service Employees at U.S. Chemical Safety and Hazard Investigation Board

FROM: Paul H. Bergstrand, Acting Assistant Inspector General
Office of Special Review and Evaluation

A handwritten signature in black ink that reads "Paul H. Bergstrand". The signature is written in a cursive style.

TO: Dr. Katherine A. Lemos, Chairperson and Chief Executive Officer
U.S. Chemical Safety and Hazard Investigation Board

Purpose: The U.S. Environmental Protection Agency's Office of Inspector General, Administrative Investigations Directorate, has identified several concerns regarding the U.S. Chemical Safety and Hazard Investigation Board's compliance with U.S. Office of Personnel Management regulations and CSB board orders related to Senior Executive Service employee annual performance appraisals for appraisal years 2020 and 2021. This report outlines our investigative findings to enable the CSB to take appropriate corrective action.

Background: The CSB is required to assign an annual summary rating to each SES employee at the end of each appraisal period. See 5 C.F.R. §§ 430.305(a)(4) and 430.308(b); CSB Board Order 29 § 8(h)(1). Per CSB Board Order 29 § 8(h)(1), the appraisal period for SES employees at the CSB is July 1 through June 30.¹

The CSB's SES appraisal system involves several steps. At the beginning of each appraisal period, the SES employee's first-line supervisor must provide the employee with a performance plan. CSB Board Order 29 §§ 6(o), 7(a), and 8. For each appraisal period, the first-line supervisor must also provide an initial summary rating. CSB Board Order 29 § 6(m)-(n). The initial summary rating is then submitted to a Performance Review Board appointed by the CSB chairperson. CSB Board Order 29 §§ 6(m)-(n), 6(k), and 12; CSB Board Order 48 § 6(j). The PRB must review the initial summary rating and make a recommendation to the CSB chairperson regarding the SES employee's performance. See 5 C.F.R. § 430.309(e)(3); CSB Board Order 29 §§ 6(k) and 12. After taking into consideration the PRB's recommendation, the CSB chairperson determines the annual summary rating, which is the official rating of record. CSB Board Order 29 §§ 6(a), 6(m), and 10(e); see also 5 C.F.R. § 430.309(e)(4).

The annual summary rating must be communicated to the SES employee in writing, normally within three months of the end of the appraisal period. CSB Board Order 29 § 10(e); *OPM Senior Executive*

¹ The CSB board orders provide conflicting guidance regarding the SES appraisal period. Although CSB Board Order 29 states that the period runs from July 1 through June 30, CSB Board Order 48 lists the period as October 1 through September 30. CSB Board Order 48 § 6(d). For appraisal year 2020, the CSB used July 1 to June 30 as the appraisal period for SES employees, and we found no evidence that the CSB made a determination to change the SES appraisal period for 2021.

Service Desk Guide, pages 4-13 and 4-16. Because the CSB appraisal period ends June 30, the annual summary rating should be provided to each SES employee by September 30 of each year. Pay adjustments and performance awards for CSB SES employees are based on their annual summary ratings, and SES employees who receive an “outstanding” rating must be considered for an annual pay increase. CSB Board Order 48 § 9(a).

The CSB chairperson is responsible for implementing and administering the SES performance management system. CSB Board Order 29 § 7(a).

By statute and CSB board order, the CSB may not take any performance appraisal actions within 120 days after the beginning of a new presidential administration. See 5 U.S.C. § 4314(b)(1)(C); CSB Board Order 29 § 8(h)(4); *OPM Senior Executive Service Desk Guide*, page 4-10.

Problems Identified: For the appraisal period ending June 30, 2020, the CSB did not provide final annual performance ratings to either of the two SES employees it had at the time (referred to here as Employee A and Employee B).

The CSB chairperson, who served as Employee A’s first-line supervisor, did not provide Employee A with an initial or annual summary rating by September 30, 2020, or by the start of the new presidential administration on January 20, 2021. On February 3, 2021, the CSB chairperson issued a memorandum purporting to delegate to the CSB’s acting managing director the responsibility to serve as the “Reviewing Official for GS and SES employees” under CSB Board Order 10. However, CSB Board Order 10 governs performance appraisals only for General Schedule employees and provides limited authority for the chairperson to delegate his or her responsibilities.² Under CSB Board Order 29 and OPM regulations, the first-line supervisor is responsible for providing the initial summary ratings for SES employees, and the chairperson is responsible for the annual summary ratings. CSB Board Order 29 § 6(m)–(n); 5 C.F.R. § 430.309(e)(1). There is no authority under CSB Board Order 29 for the chairperson to delegate the responsibilities for SES employee ratings.

On March 31, 2021, the acting managing director met with Employee A to discuss Employee A’s “performance review” for the 2020 appraisal year and transmitted a summary of the meeting, including a suggested rating level, to the chairperson and the Human Resources Department. In doing so, the CSB contravened the 120-day moratorium period on any performance appraisal actions set forth in 5 U.S.C. § 4314(b)(1)(C). No initial summary rating was ever finalized, however. The CSB took no further action on a rating until September 10, 2021, when the acting managing director provided Employee A with an unsigned draft annual summary rating for 2020, despite the fact that no initial summary rating had been finalized and no PRB had been appointed. The CSB chairperson never provided Employee A with a signed annual summary rating for 2020. In addition, Employee A never received a signed performance plan, an initial summary rating, or an annual summary rating for the 2021 appraisal period.

Employee B received an initial summary rating from the outgoing interim executive and administrative authority in April 2020, but the CSB had no PRB in place at the end of the June 30, 2020, appraisal period to review the initial summary rating.³ Despite follow-up inquiries by Employee B, the CSB never

² According to CSB Board Order 10, the chairperson serves as the reviewing official for any General Schedule employee reporting directly to the chairperson; this responsibility may be delegated only to another board member. CSB Board Order 10 § 6(n).

³ The PRB lost its quorum with the retirement of one of its members on June 30, 2020. As of December 2021, the CSB has not had a PRB since June 2020.

established a PRB or submitted Employee B's initial summary rating to a PRB. In addition, when Employee B separated from the CSB, the CSB did not provide the annual summary rating as required for departing employees under CSB Board Order 29 § 10(b).

Because the CSB did not provide annual summary ratings for the 2020 or 2021 appraisal periods for Employee A, Employee A could not be considered for a pay increase or performance award. Employee B, who received an initial summary rating [REDACTED] for the 2020 appraisal period, could likewise not be considered for a performance-based pay increase or performance award. Employee B also reported that [REDACTED]

My office is notifying you of these problems so that the CSB can take appropriate steps to ensure compliance with the requirement to provide performance ratings to SES employees on an annual basis, including for appraisal years 2020 and 2021.⁴ Please inform my office of any corrective action taken by the CSB in relation to this matter.

Should you have any questions regarding this report, please do not hesitate to contact Kristin M. Kafka, Deputy Assistant Inspector General for Administrative Investigations, at (202) [REDACTED].

cc: Sean W. O'Donnell, Inspector General
Katherine Trimble, Assistant Inspector General for Audit
David LaCerte, Senior Advisor, Executive Counsel, and Acting Managing Director
Danielle R. Opalka, Acting Deputy Associate Director, Senior Executive Services and Performance Management, U.S. Office of Personnel Management

⁴ The OIG understands that, on or about September 24, 2021, after being notified of the OIG's investigation, the CSB engaged an outside human resources consultant to provide an assessment of the CSB's SES performance appraisal system. We also understand that the CSB hired a new Human Resources director in November 2021.