

States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective July 9, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: April 19, 2001.

**William J. Muszynski,**

*Acting Regional Administrator, Region 2.*  
[FR Doc. 01-11829 Filed 5-9-01; 8:45 am]

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## CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

### 40 CFR Part 1611

#### Testimony by Employees in Legal Proceedings

**AGENCY:** Chemical Safety and Hazard Investigation Board.

**ACTION:** Final rule.

**SUMMARY:** This rule amends 40 CFR part 1611 (Testimony by Employees in Legal Proceedings), published at 66 FR 17364 (March 30, 2001). Part 1611 provides the Chemical Safety and Hazard Investigation Board's (CSB) policy concerning testimony of CSB employees in legal proceedings. This rule amends § 1611.2 (Definitions) to add a definition of "employee" and amends § 1611.6 (Testimony of former CSB employees) to add a requirement that former employees notify the CSB General Counsel when they are served with a subpoena relating to work performed for the CSB.

**DATES:** This rule is effective May 10, 2001.

**FOR FURTHER INFORMATION CONTACT:** Raymond C. Porfiri, (202) 261-7600.

**SUPPLEMENTARY INFORMATION:** (1) Amendment to section 1611.2. The current CSB rule on testimony by employees in legal proceedings, 40 CFR part 1611, published at 66 FR 17364 (March 30, 2001) does not define "employee." The CSB has determined that for the purpose of part 1611 (as well as part 1612, "Production of Records in Legal Proceedings") "employee" should be defined to include all those who undertake work for the CSB and who may come into contact with protected information. Thus "employee" is defined to include: current or former CSB Board Members or employees, including student interns, and contractors, contract employees, or consultants (and their employees). But it is made clear that this definition does not include persons who are no longer employed by or under contract to the CSB, and who are retained or hired as expert witnesses or agree to testify about matters that do not involve their work for the CSB.

Other agencies have included a similarly broad definition of employee for this purpose. See, e.g., Federal Energy Regulatory Commission, 18 CFR 388.111; Department of State, 22 CFR 172.1; USAID, 22 CFR 206.1; Overseas Private Investment Corporation, 22 CFR 713.10; Department of the Navy, 32 CFR 725.4; and U.S. Postal Service, 39 CFR 265.13. Moreover, CSB contractors are already required to sign non-disclosure agreements, prohibiting them from disclosing in any forum (except to CSB employees) trade secret or confidential business information obtained in their work for the CSB.

The need for this broad definition of employee is even more necessary at the CSB because, pursuant to 42 U.S.C. 7412(r)(6)(G), no part of the conclusions, findings or recommendations of the CSB relating to an accidental release or the investigation thereof, may be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report.

(2) Amendment to section 1611.6. The current rule pertaining to former employees is clarified to include a requirement that any former employee who is served with a subpoena to appear and testify in connection with civil litigation that relates to his or her work with the CSB, shall immediately notify the CSB General Counsel and provide all information requested by the General Counsel. This clarification is necessary to give notice to former employees of their obligation in this regard, and to provide the agency with advance notice of a potential problem.

Public Comment Procedures: Because this rule amends an internal policy for

CSB employees, the Administrative Procedure Act does not require that it be published as a proposed regulation for notice and public comment. See 5 U.S.C. 553(a)(2). This rule provides immediate clarifying guidance pertaining to CSB employee testimony. As such, the CSB finds that good cause exists for making the regulation effective immediately upon publication. See 5 U.S.C. 553(b)(3)(B).

#### Compliance With Other Laws

*Regulatory Planning and Review (E.O. 12866)*

This regulation is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This regulation will not have an effect of \$100 million or more on the economy. This regulation regulates how and when CSB employee testimony may be provided in certain situations. As such, it will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

(2) This regulation will not create a serious inconsistency or interfere with an action taken or planned by another agency.

(3) This regulation does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This regulation is consistent with well-established constitutional and statutory principles and does not raise novel legal or policy issues.

#### *Regulatory Flexibility Act*

The CSB certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This regulation merely regulates how and when CSB employees may testify in certain situations.

#### *Small Business Regulatory Enforcement Fairness Act*

This regulation is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. Because this regulation only regulates how and when CSB employees may testify in certain situations, this regulation:

a. Does not have an annual effect on the economy of \$100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions.

c. Does not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act*

This regulation does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This regulation does not have a significant or unique effect on State, local or tribal governments or the private sector because this regulation only regulates how and when CSB employees may testify in certain situations. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

*Takings (E.O. 12630)*

In accordance with Executive Order 12630, this regulation does not have significant takings implications. A takings implication assessment is not required.

*Federalism (E.O. 13132)*

The CSB has determined this regulation conforms to the Federalism principals of Executive Order 13132. It also certifies that to the extent a regulatory preemption occurs, it is because the exercise of State and Tribal authority conflicts with the exercise of Federal authority under the U.S. Constitution's Supremacy Clause and Federal statute. This regulation is, however, restricted to the minimum level necessary to achieve the objectives of 5 U.S.C. 301 pursuant to which this regulation is promulgated.

*Civil Justice Reform (E.O. 12988)*

In accordance with Executive Order 12988, the CSB has determined that this regulation does not unduly burden the judicial system, and does meet the requirements of section 3(a) and 3(b)(2) of the Order.

*Paperwork Reduction Act*

This regulation contains no reporting or recordkeeping requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3510 *et seq.*

*National Environmental Policy Act (NEPA)*

This regulation does not constitute a major Federal action significantly affecting the quality of the human environment under NEPA, 42 U.S.C. 4321 *et seq.* A detailed statement under the NEPA is not required.

**List of Subjects**

Administrative practice and procedure, Freedom of information, Government employees, Investigations, Testimony of employees.

For the reasons stated in the preamble, the Chemical Safety and Hazard Investigation Board amends 40 CFR part 1611 as follows:

**PART 1611—TESTIMONY BY EMPLOYEES IN LEGAL PROCEEDINGS**

1. The authority citation for part 1611 continues to read as follows:

**Authority:** 5 U.S.C. 301, 42 U.S.C. 7412(r)(6)(G).

2. Amend § 1611.2 to add a new definition paragraph as follows:

**§ 1611.2 Definitions.**

\* \* \* \* \*

*Employee*, for the purpose of this part and part 1612 of this chapter, refers to current or former CSB Board Members or employees, including student interns, and contractors, contract employees, or consultants (and their employees). This definition does not include persons who are no longer employed by or under contract to the CSB, and who are retained or hired as expert witnesses or agree to testify about matters that do not involve their work for the CSB.

3. Amend § 1611.6 to redesignate the existing text as paragraph (a) and to add a new paragraph (b) as follows:

**§ 1611.6 Testimony of former CSB employees.**

(a) \* \* \*

(b) Any former employee who is served with a subpoena to appear and testify in connection with civil litigation that relates to his or her work with the CSB, shall immediately notify the CSB General Counsel and provide all information requested by the General Counsel.

Dated: May 1, 2001.

**Christopher W. Warner,**  
*General Counsel.*

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**45 CFR Part 270**

**RIN 0970-AC06**

**High Performance Bonus Awards Under the TANF Program**

**AGENCY:** Administration for Children and Families, HHS.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The final rule covering the Temporary Assistance for Needy Families (TANF) high performance bonuses to States in FY 2002 and beyond was published August 30, 2000 (65 FR 52814). This interim final regulation further implements the child care measure, one of the measures on which we will award bonuses to States in FY 2002 and FY 2003.

Specifically, we explain how we will compute scores and rank States on the affordability component using four income ranges and a comparison of the number of children eligible under the State's income limits compared to the federal eligibility limits. We also specify how we will compute scores and rank States for the child care quality component based on new reporting requirements for market rate surveys for child care.

**DATES:** Effective date: This interim final rule is effective on May 10, 2001, except for § 270.4(e)(2)(ii) which requires an information collection that is not yet approved by the Office of Management and Budget (OMB). We will publish a document in the **Federal Register** announcing the effective date of § 270.4(e)(2)(ii) when the additional data collection requirement is approved by OMB.

**Comment period:** You may submit comments through July 9, 2001. We will not consider comments received after this date.

**ADDRESSES:** You may mail comments to the Administration for Children and Families, Child Care Bureau, 330 C Street SW., Room 2046, Washington, DC 20447. Attention: Gail Collins.

Commenters may also provide comments on the ACF website. Electronic comments must include the full name, address and organizational affiliation (if any) of the commenter. This interim rule is accessible electronically via the Internet from the ACF Welfare Reform Home Page at <http://www.acf.dhhs.gov/news/welfare>.