

## Chem. Safety and Hazard Invest. Board

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AUTHORITY: 5 U.S.C. 552b; 42 U.S.C. 7412(r)(6)(N).

SOURCE: 67 FR 35445, May 20, 2002, unless otherwise noted.

### § 1603.1 Applicability.

(a) This part implements the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b. These procedures apply to meetings, as defined herein, of the Members of the Chemical Safety and Hazard Investigation Board ("CSB" or "Board").

(b) This part does not affect the procedures by which CSB records are made available to the public, which continue to be governed by part 1601 of this chapter pursuant to the Freedom of Information Act, 5 U.S.C. 552, except that the exemptions set forth in §1603.7 shall govern in the case of any requests made for the transcripts, recordings, and minutes described in § 1603.11.

### § 1603.2 Policy.

It is the policy of the CSB to provide the public with the fullest practicable information regarding the decision-making processes of the Board, while protecting the rights of individuals and the ability of the Board to discharge its statutory functions and responsibilities. The public is invited to attend but not to participate in open meetings. For any open meeting, the Board, by majority vote, may decide to allow for a public comment period immediately following the close of that meeting.

### § 1603.3 Definitions.

As used in this part:

(a) *Days* means calendar days, except where noted otherwise.

(b) *General Counsel* means the Board's principal legal officer, or a CSB attorney serving as Acting General Counsel.

(c) *Meeting* means the deliberations of at least a quorum of Members where such deliberations determine or result in the joint conduct or disposition of official CSB business, and includes conference telephone calls or other ex-

changes otherwise coming within the definition. A meeting does not include:

(1) Notation voting or similar consideration of business, whether by circulation of material to the Members individually in writing or by a polling of the Members individually by telephone.

(2) Action by at least a quorum of Members to:

(i) Open or to close a meeting or to release or to withhold information pursuant to §1603.7;

(ii) Set an agenda for a proposed meeting(s);

(iii) Call a meeting on less than seven days' notice as permitted by §1603.9(b); or

(iv) Change the subject matter or the determination to open or to close a publicly announced meeting under §1603.10(b).

(3) A session attended by at least a quorum of Members for the purpose of having the Board's staff or expert consultants to the Board brief or otherwise provide information to the Board concerning any matters within the purview of the Board under its authorizing statute, provided that the Board does not engage in deliberations that determine or result in the joint conduct or disposition of official CSB business on such matters.

(4) A session attended by at least a quorum of Members for the purpose of having the Environmental Protection Agency or Occupational Safety and Health Administration (including contractors of those agencies) or other persons or organizations brief or otherwise provide information to the Board concerning any matters within the purview of the Board under its authorizing statute, provided that the Board does not engage in deliberations that determine or result in the joint conduct or disposition of official CSB business on such matters.

(5) A gathering of Members for the purpose of holding informal preliminary discussions or exchange of views which do not effectively predetermine official action.

(d) *Member* means an individual duly appointed and confirmed to the collegial body known as the Board.

(e) *Reporter* means a CSB employee designated by the General Counsel,

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under § 1603.5(c), to attend and prepare a written summary of all briefings described in paragraphs (c)(3) and (c)(4) of this section and all informal preliminary discussions described in paragraph (c)(5) of this section.

(f) *Sunshine Act* means the Government in the Sunshine Act, 5 U.S.C. 552b.

#### § 1603.4 Open meetings requirement.

Any meetings of the Board, as defined in § 1603.3, shall be conducted in accordance with this part. Except as provided in § 1603.7, the Board's meetings, or portions thereof, shall be open to public observation.

#### § 1603.5 Assurance of compliance.

(a) The General Counsel or another attorney designated by the General Counsel will attend and monitor all briefings described in § 1603.3(c)(3) and (c)(4) and all informal preliminary discussions described in § 1603.3(c)(5), to assure that those gatherings do not proceed to the point of becoming deliberations and meetings for Sunshine Act purposes.

(b) The General Counsel or the designated attorney will inform the Board Members if developing discussions at a briefing or gathering should be deferred until a notice of an open or closed meeting can be published in the FEDERAL REGISTER, and a meeting conducted pursuant to the Sunshine Act and this part.

(c) For each briefing described in § 1603.3(c)(3) or (c)(4) and each informal preliminary discussion described in § 1603.3(c)(5), the General Counsel is hereby authorized to designate a CSB employee, other than the attorney referred to in paragraph (a) of this section, to serve as a reporter. An employee may be designated as reporter for a single briefing or informal discussion or for a series of briefings or discussions. The reporter shall attend and prepare a written summary of each briefing(s) or informal discussion(s) for which he/she has been designated. The reporter must prepare the summary of a particular briefing or informal discussion within five business days after the date of that briefing or discussion. The reporter must then submit the summary to the General Counsel or the

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designated attorney who attended the briefing or informal discussion that is the subject of the summary for review and approval as a fair and accurate summary of that briefing or discussion. The written summaries of briefings and informal discussions shall be maintained in the Office of General Counsel.

#### § 1603.6 Business requiring a meeting.

The Board may, by majority vote of its Members, determine that particular items or classes of Board business cannot be accomplished by notation voting, but must instead be decided by a recorded vote at a meeting, as defined in § 1603.3(c).

#### § 1603.7 Grounds on which meetings may be closed or information may be withheld.

Except in a case where the Board finds that the public interest requires otherwise, a meeting may be closed and information pertinent to such meeting otherwise required by §§ 1603.8, 1603.9, and 1603.10 to be disclosed to the public may be withheld if the Board properly determines that such meeting or portion thereof or the disclosure of such information is likely to:

(a) Disclose matters that are:

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy; and

(2) In fact, properly classified pursuant to such Executive Order. In making the determination that this exemption applies, the Board shall rely upon the classification assigned to a document by the Environmental Protection Agency, Occupational Safety and Health Administration, or other originating agency;

(b) Relate solely to the internal personnel rules and practices of the CSB;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

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(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the CSB, except that this paragraph shall not apply in any instance where the Board has already disclosed to the public the content or nature of its proposed action or is required by law to make such disclosure on its own initiative prior to taking final action on such proposal;

(i) Specifically concern the Board's issuance of a subpoena, or the CSB's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the CSB of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination

on the record after opportunity for a hearing; or

(j) Disclose other information for which the Government in the Sunshine Act provides an exemption to the open meeting requirements of that Act.

### **§ 1603.8 Procedures for closing meetings, or withholding information, and requests by affected persons to close a meeting.**

(a) A meeting shall not be closed, or information pertaining thereto withheld, unless a majority of all Members votes to take such action. A majority of the Board may act by taking a single vote with respect to any action under § 1603.7. A single vote is permitted with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular subject matters and is scheduled to be held no more than thirty days after the initial meeting in such series. Each Member's vote under this paragraph shall be recorded and proxies are not permitted.

(b) Any person whose interest may be directly affected if a portion of a meeting is open may request the Board to close that portion on any of the grounds referred to in § 1603.7(e) through (g). Requests, with reasons in support thereof, should be submitted in writing, no later than two days before the meeting in question, to the General Counsel, Chemical Safety and Hazard Investigation Board, 2175 K Street, NW., Suite 400, Washington, DC 20037. In motion of any Member, the Board shall determine by recorded vote whether to grant the request.

(c) Within one working day of any vote taken pursuant to this section, the CSB shall make available a written copy of such vote reflecting the vote of each Member on the question and, if a portion of a meeting is to be closed to the public, a full written explanation of its action closing the meeting and a list of all persons expected to attend and their affiliation.

(d) Before every closed meeting, the General Counsel of the CSB shall publicly certify that, in his/her opinion,

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the meeting may be closed to the public and shall state each relevant exemption provision. If the General Counsel invokes the exemption for classified or sensitive unclassified information under §1603.7(a), he/she shall rely upon the classification or designation assigned to the document containing such information by the Environmental Protection Agency, Occupational Safety and Health Administration, or other originating agency. A copy of such certification, together with a statement setting forth the time and place of the meeting and the persons present, shall be retained by the Board as part of the transcript, recording, or minutes required by §1603.11.

### **§1603.9 Procedures for public announcement of meetings.**

(a) For each meeting, the CSB shall make public announcement, at least one week before the meeting, of:

- (1) The time of the meeting;
- (2) The place of the meeting;
- (3) The subject matter of the meeting;
- (4) Whether the meeting is to be open or closed; and
- (5) The name and business telephone number of the official designated by the CSB to respond to requests for information about the meeting.

(b) The one week advance notice required by paragraph (a) of this section may be reduced only if:

- (1) A majority of all Members determines by recorded vote that CSB business requires that such meeting be scheduled in less than seven days; and
- (2) The public announcement required by paragraph (a) of this section is made at the earliest practicable time.

(c) Immediately following each public announcement required by this section, or by §1603.10, the CSB shall submit a notice of public announcement for publication in the FEDERAL REGISTER.

### **§1603.10 Changes following public announcement.**

(a) The time or place of a meeting may be changed following the public announcement only if the CSB publicly announces such change at the earliest

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practicable time. Members need not approve such change.

(b) A meeting may be cancelled, or the subject matter of a meeting or the determination of the Board to open or to close a meeting, or a portion thereof, to the public may be changed following public announcement only if:

(1) A majority of all Members determines by recorded vote that CSB business so requires and that no earlier announcement of the cancellation or change was possible; and

(2) The CSB publicly announces such cancellation or change and the vote of each Member thereon at the earliest practicable time.

(c) The deletion of any subject matter announced for a meeting is not a change requiring the approval of the Board under paragraph (b) of this section.

### **§1603.11 Transcripts, recordings, or minutes of closed meetings.**

(a) Along with the General Counsel's certification referred to in §1603.8(d), the CSB shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or a portion thereof, closed to the public. The CSB may maintain a set of minutes in lieu of such transcript or recording for meetings closed pursuant to §1603.7(i). Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote. All documents considered in connection with any actions shall be identified in such minutes.

(b) The CSB shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or a portion thereof, closed to the public for at least two years after such meeting, or until one year after the conclusion of any CSB proceeding with respect to which the meeting, or a portion thereof, was held, whichever occurs later.

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### § 1603.12 Availability of transcripts, recordings, and minutes, and applicable fees.

The CSB shall make promptly available to the public the transcript, electronic recording, or minutes of the discussion of any item on the agenda or of any testimony received at a meeting, except for such item, or items, of discussion or testimony as determined by the CSB to contain matters which may be withheld under the exemptive provisions of §1603.7. Copies of the non-exempt portions of the transcript or minutes, or transcription of such recordings disclosing the identity of each speaker, shall be furnished to any person at the actual cost of transcription or duplication. Requests for transcripts, recordings, or minutes shall be made in writing to the General Counsel of the CSB, 2175 K Street, NW., Suite 400, Washington, DC 20037.

### § 1603.13 Report to Congress.

The CSB General Counsel shall annually report to the Congress regarding the Board's compliance with the Government in the Sunshine Act, including a tabulation of the total number of open meetings, the total number of closed meetings, the reasons for closing such meetings and a description of any litigation brought against the Board pursuant to the Government in the Sunshine Act, including any cost assessed against the Board in such litigation (whether or not paid by the Board).

### § 1603.14 Severability.

If any provision of this part or the application of such provision to any person or circumstances, is held invalid, the remainder of this part or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

## PART 1604—REPORTING OF ACCIDENTAL RELEASES

- Sec.  
1604.1 Purpose.  
1604.2 Definitions.  
1604.3 Reporting an accidental release.  
1604.4 Information required in an accidental release report.

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1604.6 Public availability of accidental release records.

AUTHORITY: 42 U.S.C. 7412(r)(6)(C)(iii); 42 U.S.C. 7412(r)(6)(N).

SOURCE: 85 FR 10094, Feb. 21, 2020, unless otherwise noted.

### § 1604.1 Purpose.

The enabling legislation of the Chemical Safety and Hazard Investigation Board (CSB) provides that the CSB shall establish by regulation requirements binding on persons for reporting accidental releases into the ambient air subject to the Board's investigative jurisdiction. 42 U.S.C. 7412(r)(6)(C)(iii). This part establishes the rule required by the enabling legislation. The purpose of this part is to require prompt notification of any accidental release within the CSB's investigatory jurisdiction.

### § 1604.2 Definitions.

As used in this part, the following definitions apply:

*Accidental release* means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

*Ambient air* means any portion of the atmosphere inside or outside a stationary source.

*Extremely hazardous substance* means any substance which may cause death, serious injury, or substantial property damage, including but not limited to, any "regulated substance" at or below any threshold quantity set by the Environmental Protection Agency (EPA) Administrator under 42 U.S.C. 7412(r)(5).

*General public* means any person except for:

(1) Workers, employees, or contractors working for (or on behalf of) the owner or operator of a stationary source from which an accidental release has occurred; and

(2) Any person acting in the capacity of an emergency responder to an accidental release from a stationary source.

*Inpatient hospitalization* means a formal admission to the inpatient service of a hospital or clinic for care.

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*Owner or operator* means any person or entity who owns, leases, operates, controls, or supervises a stationary source.

*Property damage* means damage to or the destruction of tangible public or private property, including loss of use of that property.

*Regulated substance* means any substance listed pursuant to the authority of 42 U.S.C. 7412(r)(3).

*Serious injury* means any injury or illness that results in death or inpatient hospitalization.

*Stationary source* means any buildings, structures, equipment, installations, or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

*Substantial property damage* means estimated property damage at or outside the stationary source equal to or greater than \$1,000,000.

#### § 1604.3 Reporting an accidental release.

(a) The owner or operator of a stationary source must report in accordance with paragraph (b) or (c) of this section, any accidental release resulting in a fatality, serious injury, or substantial property damage.

(b) If the owner or operator has submitted a report to the National Response Center (NRC) pursuant to 40 CFR 302.6, the CSB reporting requirement may be satisfied by submitting the NRC identification number to the CSB within 30 minutes of submitting a report to the NRC.

(c) If the owner or operator has not submitted a report to the NRC and notified the CSB under paragraph (b) of this section, the owner/operator must submit a report directly to the CSB within eight hours of the accidental release and must include the required information listed in §1604.4. A report may be made by email to: *report@csb.gov*, or by telephone at 202-261-7600.

(d) For the purpose of efficiency, multiple owner/operators may agree in advance or at the time of release to a

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single, consolidated report on behalf of one or more parties who are responsible for reporting an accidental release from a stationary source. However, any consolidated report must include all pertinent information required under §1604.4.

(e) Notwithstanding paragraphs (a) through (d) of this section, an owner or operator of a stationary source, without penalty, may revise and/or update information reported to the NRC or CSB by sending a notification with revisions by email to: *report@csb.gov*, or by correspondence to: Chemical Safety Board (CSB) 1750 Pennsylvania Ave. NW, Suite 910, Washington, DC 20006, within 30 days following the submission of a report to the NRC or CSB. If applicable, the notification must reference the original NRC identification number. No update or revisions should be sent to the NRC. In addition to the opportunity to revise and/or update information within 30 days, an owner or operator may also submit a revised report to the Board within 60 additional days if the submitter explains why the revised report could not have been submitted within the first 30 days.

#### § 1604.4 Information required in an accidental release report.

The report required under §1604.3(c) must include the following information regarding an accidental release as applicable:

(a) The name of, and contact information for, the owner/operator;

(b) The name of, and contact information for, the person making the report;

(c) The location information and facility identifier;

(d) The approximate time of the accidental release;

(e) A brief description of the accidental release;

(f) An indication whether one or more of the following has occurred:

(1) Fire;

(2) Explosion;

(3) Death;

(4) Serious injury; or

(5) Property damage;

(g) The name of the material(s) involved in the accidental release, the Chemical Abstract Service (CAS) number(s), or other appropriate identifiers;

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(h) If known, the amount of the release;

(i) If known, the number of fatalities;

(j) If known, the number of serious injuries;

(k) Estimated property damage at or outside the stationary source; and

(l) Whether the accidental release has resulted in an evacuation order impacting members of the general public and others, and, if known:

(1) The number of persons evacuated;

(2) Approximate radius of the evacuation zone; and

(3) The type of person subject to the evacuation order (*i.e.*, employees, members of the general public, or both).

### § 1604.5 Failure to report an accidental release.

(a) It is unlawful for any person to fail to make reports required under this part, and suspected violations of this part will be forwarded to the Administrator of the EPA for appropriate enforcement action.

(b) Violation of this part is subject to enforcement pursuant to the authorities of 42 U.S.C. 7413 and 42 U.S.C. 7414, which may include—

(1) Administrative penalties;

(2) Civil action; or

(3) Criminal action.

### § 1604.6 Public availability of accidental release records.

Accidental release records collected by the CSB under this part may be obtained by making a request in accordance with 40 CFR part 1601, the CSB's procedures for the disclosure of records under the Freedom of Information Act. The CSB will process requests, and if appropriate, disclose such records, in accordance with 40 CFR part 1601 and relevant Federal information disclosure laws.

## PART 1610—ADMINISTRATIVE INVESTIGATIONS

Sec.

1610.1 Representation of witnesses in investigations.

1610.2 Repeated attorney misconduct, sanctions, hearings.

1610.3 Sequestration of witnesses and exclusion of Counsel.

1610.4 Deposition Transcripts.

AUTHORITY: 42 U.S.C. 7412(r)(6)(C)(i), 7412(r)(6)(L), 7412(r)(6)(N).

Section 1610.4 also issued under 5 U.S.C. 555.

SOURCE: 66 FR 1050, Jan. 5, 2001, unless otherwise noted.

### § 1610.1 Representation of witnesses in investigations.

(a) *Witnesses who are compelled to appear.* Witnesses who are compelled to appear for a deposition (*i.e.*, by subpoena) are entitled to be accompanied, represented, and advised by an attorney as follows:

(1) Counsel for a witness may advise the witness with respect to any question asked where it is claimed that the testimony or other evidence sought from a witness is outside the scope of the investigation, or that the witness is privileged to refuse to answer a question or to produce other evidence. For these allowable objections, the witness or counsel for the witness may object on the record to the question or requirement and may state briefly and precisely the ground therefor. If the witness refuses to answer a question, then counsel may briefly state on the record that counsel has advised the witness not to answer the question and the legal grounds for such refusal. The witness and his or her counsel shall not otherwise object to or refuse to answer any question, and they shall not otherwise interrupt the oral examination.

(2) Any objections made will be treated as continuing objections and preserved throughout the further course of the deposition without the necessity for repeating them as to any similar line of inquiry. Cumulative objections are unnecessary. Repetition of the grounds for any objection will not be allowed.

(3) Counsel for a witness may not, for any purpose or to any extent not allowed by paragraphs (a)(1) and (2) of this section, interrupt the examination of the witness by making any objections or statements on the record.

(4) Following completion of the examination of a witness, counsel for the witness may on the record request the person conducting the deposition to permit the witness to clarify any of his or her answers. The grant or denial of such request shall be within the sole

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discretion of the person conducting the deposition.

(5) The person conducting the deposition shall take all necessary action to regulate the course of the deposition, to avoid delay, and to prevent or restrain disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language. Such person shall, for reasons stated on the record, immediately report to the Board any instances where an attorney has allegedly refused to comply with his or her directions, or has allegedly engaged in disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language in the course of the deposition. The Board may thereupon take such further action, if any, as the circumstances warrant, including exclusion of that attorney from further participation in the particular investigation.

(b) *Voluntary interviews.* Witnesses appearing voluntarily do not have a right to have an attorney present during questioning. The Investigator-in-Charge (IIC), in consultation with the General Counsel, may permit a witness to be accompanied by an attorney or non-attorney representative. If so accompanied, the role of the attorney or non-attorney representative is limited to raising objections to questions that are outside the scope of the investigation and to advising the witness with respect to any legal privilege such as, for example, under the Fifth Amendment to the U. S. Constitution. Attorney and non-attorney representatives may not represent more than one witness in each investigation in this fashion, absent the consent of the IIC and the General Counsel.

### **§ 1610.2 Repeated attorney misconduct, sanctions, hearings.**

(a) If an attorney who has been sanctioned by the Board for disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language in the course of a deposition under § 1610.1(a)(5) is sanctioned again by the Board in a subsequent deposition or investigation, the Board, after offering the attorney an opportunity to be heard, may reprimand, censure the attorney, or suspend the attorney from further practice before the Board for

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such period of time as the Board deems advisable.

(b) A reprimand or a censure shall be ordered with grounds stated on the record of the proceeding. A suspension shall be in writing, shall state the grounds on which it is based, and shall advise the person suspended of the right to appeal.

(c) An attorney suspended pursuant to this section may within ten (10) days after issuance of the order file an appeal with the Board. The appeal shall be in writing and state concisely, with supporting argument, why the appellant believes the order was erroneous, either as a matter of fact or law. If necessary for a full and fair consideration of the facts, the Board as a whole may conduct further evidentiary hearings, or may refer the matter to another presiding officer for development of a record. Such presiding officer may be an attorney who is a Member of the Board or is employed in the Office of General Counsel, or an administrative law judge detailed from another agency pursuant to 5 U.S.C. 3344. If the Board refers the matter to a presiding officer, unless the Board provides specific directions to the presiding officer, that officer shall determine the procedure to be followed and who shall present evidence, subject to applicable provisions of law. Such hearing shall commence as soon as possible. If no appeal is taken of a suspension, or, if the suspension is upheld at the conclusion of the appeal, the presiding officer, or the Board, as appropriate, shall notify the state bar(s) to which the attorney is admitted. Such notification shall include copies of the order of suspension, and, if an appeal was taken, briefs of the parties, and the decision of the Board.

[66 FR 17363, Mar. 30, 2001]

### **§ 1610.3 Sequestration of witnesses and exclusion of Counsel.**

(a) All witnesses compelled by subpoena to submit to CSB depositions shall be sequestered unless the official conducting the depositions permits otherwise.

(b) Any witness compelled by subpoena to appear at a deposition during a CSB investigation may be accompanied, represented, and advised by an

attorney in good standing of his or her choice, pursuant to §1610.1. However, when the CSB official conducting the investigation determines, after consultation with the Office of General Counsel, that the CSB has concrete evidence that the presence of an attorney representing multiple interests would obstruct and impede the investigation or inspection, the CSB official may prohibit that counsel from being present during the deposition.

(c) The deposing official is to provide a witness whose counsel has been excluded under paragraph (b) of this section, and the witness' counsel, a written statement of the reasons supporting the decision to exclude. This statement, which must be provided no later than five working days after exclusion, must explain the basis for the counsel's exclusion. This statement must also advise the witness of the witness' right to appeal the exclusion decision and obtain an automatic stay of the effectiveness of the subpoena by filing a motion to quash the subpoena with the Board within five days of receipt of this written statement.

(d) Within five days after receipt of the written notification required in paragraph (c) of this section, a witness whose counsel has been excluded may appeal the exclusion decision by filing a motion to quash the subpoena with the Board. The filing of the motion to quash will stay the effectiveness of the subpoena pending the Board's decision on the motion.

(e) If a witness' counsel is excluded under paragraph (b) of this section, the deposition may, at the witness' request, either proceed without counsel or be delayed for a reasonable period of time to permit the retention of new counsel. The deposition may also be rescheduled to a subsequent date established by the CSB, although the deposition shall not be rescheduled by the CSB to a date that precedes the expiration of the time provided in paragraph (d) of this section for appeal of the exclusion of counsel, unless the witness consents to an earlier date.

[66 FR 17363, Mar. 30, 2001]

#### § 1610.4 Deposition Transcripts.

(a) Transcripts of depositions of witnesses compelled by subpoena to ap-

pear during a Board investigation, shall be recorded solely by an official reporter designated by the person conducting the deposition.

(b) Such a witness, after completing the compelled testimony, may file a petition with the Board's General Counsel to procure a copy of the official transcript of such testimony. The General Counsel shall rule on the petition, and may deny it for good cause. Whether or not such a petition is filed, the witness (and his or her attorney), upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony. If such a petition is denied by the General Counsel, he shall inform the petitioner of the right to inspect the transcript.

(c) Good cause for denying a witness' petition to procure a transcript of his or her testimony may include, but shall not be limited to, the protection of: trade secrets and confidential business information contained in the testimony, security-sensitive operational and vulnerability information, and the integrity of Board investigations.

[68 FR 4393, Jan. 29, 2003]

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

Sec.

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- 1611.8 Procedure in the event of a subpoena in civil litigation.
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- 1611.10 Obtaining CSB investigation reports and supporting information.

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

SOURCE: 66 FR 17366, Mar. 30, 2001, unless otherwise noted.

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### § 1611.1 General.

(a) This part prescribes policies and procedures regarding the testimony of employees of the Chemical Safety and Hazard Investigation Board (CSB) in suits or actions for damages and criminal proceedings arising out of chemical incidents when such testimony is in an official capacity and arises out of or is related to an incident investigation. The purpose of this part is to ensure that the time of CSB employees is used only for official purposes, to avoid embroiling the CSB in controversial issues that are not related to its duties, to avoid spending public funds for non-CSB purposes, to preserve the impartiality of the CSB, and to prohibit the discovery of opinion testimony.

(b) This part does not apply to:

(1) Congressional requests or subpoenas for testimony or records;

(2) Federal court civil proceedings in which the United States is a party;

(3) Federal administrative proceedings;

(4) Employees who voluntarily testify, while on their own time or in approved leave status, as private citizens as to facts or events that are not related to the official business of the CSB. The employee must state for the record that the testimony represents the employee's own views and is not necessarily the official position of the CSB.

(c) This part only provides guidance for the internal operations of the CSB, and neither creates nor is intended to create any enforceable right or benefit against the United States.

### § 1611.2 Definitions.

*CSB incident report* means the report containing the CSB's determinations, including the probable cause of an incident, issued either as a narrative report or in a computer format. 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.

*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.

[66 FR 17366, Mar. 30, 2001, as amended at 66 FR 23854, May 10, 2001]

### § 1611.3 Scope of permissible testimony.

(a) The statute creating the CSB, 42 U.S.C. 7412(r)(6)(G), precludes the use or admission into evidence of CSB investigative reports in any suit or action for damages arising from such incidents. This provision would be undermined if expert opinion testimony of CSB employees, which may be reflected in the views of the CSB expressed in its reports, were admitted in evidence or used in litigation arising out of an incident. The CSB relies heavily upon its investigators' opinions in its deliberations. Furthermore, the use of CSB employees as experts to give opinion testimony would impose a significant administrative burden on the CSB's investigative staff.

(b) For the reasons stated in paragraph (a) of this section and § 1611.1, CSB employees may only testify as to the factual information they obtained during the course of an investigation. However, they shall decline to testify regarding matters beyond the scope of their investigation, and they shall not give any expert or opinion testimony.

(c) CSB employees may testify about the firsthand information they obtained during an investigation that is not reasonably available elsewhere, including their own factual observations. Consistent with the principles cited in § 1611.1 and this section, current CSB employees are not authorized to testify regarding other employee's observations or reports, or other types of CSB documents, including but not limited to safety recommendations, safety studies, safety proposals, safety accomplishments, reports labeled studies, and analysis reports, as they contain staff analysis and/or CSB conclusions.

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(d) Consistent with 42 U.S.C. 7412(r)(6)(G), a CSB employee may not use the CSB's investigation report for any purpose during his testimony.

(e) No employee may testify in any matter absent advance approval by the General Counsel as provided in this part.

### § 1611.4 Manner in which testimony is given in civil litigation.

(a) Testimony of CSB employees with unique, firsthand information may be made available for use in civil actions or civil suits for damages arising out of incidents through depositions or written interrogatories. CSB employees are not permitted to appear and testify in court in such actions.

(b) Normally, depositions will be taken and interrogatories answered at the CSB's headquarters in Washington, DC, and at a time arranged with the employee reasonably fixed to avoid substantial interference with the performance of his or her duties.

(c) CSB employees are authorized to testify only once in connection with any investigation they have made of an incident. Consequently, when more than one civil lawsuit arises as a result of an incident, it shall be the duty of counsel seeking the employee's deposition to ascertain the identity of all parties to the multiple lawsuits and their counsel, and to advise them of the fact that a deposition has been granted, so that all interested parties may be afforded the opportunity to participate therein.

(d) Upon completion of the deposition of a CSB employee, the original of the transcript will be provided to the deponent for signature and correction, which the CSB does not waive. A copy of the transcript of the testimony and any videotape shall be furnished, at the expense of the party requesting the deposition, to the CSB's General Counsel at Washington, DC headquarters for the CSB's files.

(e) If CSB employees are required to travel to testify, under the relevant substantive and procedural laws and regulations the party requesting the testimony must pay for the costs, including travel expenses. Costs must be paid by check or money order payable

to the Chemical Safety and Hazard Investigation Board.

### § 1611.5 Request for testimony in civil litigation.

(a) A written request for testimony by deposition or interrogatories of a CSB employee relating to an incident shall be addressed to the General Counsel, who may approve or deny the request consistent with this part. Such request shall set forth the title of the civil case, the court, the date and place of the incident, the reasons for desiring the testimony, and a showing that the information desired is not reasonably available from other sources.

(b) Where testimony is sought in connection with civil litigation, the General Counsel shall not approve it until the CSB's investigation report is issued.

(c) The General Counsel shall attach to the approval of any deposition such reasonable conditions as may be deemed appropriate in order that the testimony will be consistent with § 1611.1, will be limited to the matters delineated in § 1611.3, will not interfere with the performance of the duties of the employee as set forth in § 1611.4, and will otherwise conform to the policies of this part.

(d) A subpoena shall not be served upon a CSB employee in connection with the taking of a deposition in civil litigation.

### § 1611.6 Testimony of former CSB employees.

(a) It is not necessary to request CSB approval for testimony of a former CSB employee, nor is such testimony limited to depositions. However, the scope of permissible testimony continues to be constrained by all the limitations set forth in § 1611.3 and § 1611.4.

(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.

[66 FR 17366, Mar. 30, 2001, as amended at 66 FR 23854, May 10, 2001]

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### § 1611.7 Testimony by current CSB employees regarding prior activity.

Any testimony regarding any incident within the CSB's jurisdiction, or any expert testimony arising from employment prior to CSB service is prohibited absent approval by the General Counsel. Approval shall only be given if testimony will not violate §1611.1 and §1611.3, and is subject to whatever conditions the General Counsel finds necessary to promote the purposes of this part as set forth in §1611.1 and §1611.3.

### § 1611.8 Procedure in the event of a subpoena in civil litigation.

(a) If the CSB employee has received a subpoena to appear and testify in connection with civil litigation, a request for his deposition shall not be approved until the subpoena has been withdrawn.

(b) Upon receipt of a subpoena, the employee shall immediately notify the General Counsel and provide all information requested by the General Counsel.

(c) The General Counsel shall determine the course of action to be taken and will so advise the employee.

### § 1611.9 Testimony in Federal, State, or local criminal investigations and other proceedings.

(a) As with civil litigation, the CSB prefers that testimony be taken by deposition if court rules permit, and that testimony await the issuance of the investigation report. The CSB recognizes, however, that in the case of coroner's inquests and grand jury proceedings this may not be possible. The CSB encourages those seeking testimony of CSB employees to contact the General Counsel as soon as such testimony is being considered. Whenever the intent to seek such testimony is communicated to the employee, he shall immediately notify the General Counsel.

(b) In any case, CSB employees are prohibited from testifying in any civil, criminal, or other matter, either in person or by deposition or interrogatories, absent advance approval of the General Counsel.

(c) If permission to testify by deposition or in person is granted, testimony shall be limited as set forth in §1611.3.

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Only factual testimony is authorized; no expert or opinion testimony shall be given.

### § 1611.10 Obtaining CSB investigation reports and supporting information.

It is the responsibility of the individual requesting testimony to obtain desired documents. There are a number of ways to obtain CSB investigation reports, and accompanying investigation docket files. The rules at part 1612 of this chapter explain CSB procedures for production of records in legal proceedings, and the CSB's Freedom of Information Act rules at part 1601 of this chapter explain CSB procedures for producing documents more generally. See also the information available on the CSB web site, at [www.csb.gov](http://www.csb.gov). You may also call the CSB Office of General Counsel, at (202) 261-7600. Documents will not be supplied by witnesses at depositions, nor will copying services be provided by deponents.

## PART 1612—PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS

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

SOURCE: 66 FR 17366, Mar. 30, 2001, unless otherwise noted.

### § 1612.1 Purpose and scope.

(a) This part sets forth procedures to be followed when requesting material for use in legal proceedings (including administrative proceedings) in which the Chemical Safety and Hazard Investigation Board (CSB) is not a party, and procedures to be followed by the employee upon receipt of a subpoena, order, or other demand (collectively referred to here as a demand) for such material by a court or other competent authority or by a private litigant. *Material*, as used in this part, means any

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type of physical or documentary evidence, including but not limited to paper documents, electronic media, videotapes, audiotapes, etc.

(b) The purposes of this part are to:

(1) Conserve the time of employees for conducting official business;

(2) Minimize the possibility of involving the CSB in controversial issues not related to its mission;

(3) Maintain the impartiality of the CSB among private litigants;

(4) Avoid spending the time and money of the United States for private purposes; and

(5) To protect confidential, sensitive information, and the deliberative processes of the CSB.

### § 1612.2 Applicability.

This part applies to requests to produce material concerning information acquired in the course of performing official duties or because of the employee's official status. Specifically, this part applies to requests for: material contained in CSB files; and any information or material acquired by an employee of the CSB in the performance of official duties or as a result of the employee's status. Two sets of procedures are here established, dependent on the type of material sought. Rules governing requests for employee testimony, as opposed to material production, can be found at part 1611 of this chapter. Document production shall not accompany employee testimony, absent compliance with this part and General Counsel approval.

### § 1612.3 Published reports and material contained in the public incident investigation dockets.

(a) Demands for published investigation reports should be directed to the Office of Congressional and Public Affairs, U.S. Chemical Safety and Hazard Investigation Board, 2175 K Street, NW, Suite 400, Washington, DC 20037. Demands for material contained in the CSB's official public docket files of its incident investigations shall be submitted, in writing, to CSB Records Officer, U.S. Chemical Safety and Hazard Investigation Board, 2175 K Street, NW, Suite 400, Washington, DC 20037. For information regarding the types of docu-

ments routinely issued by the CSB, see part 1601 of this chapter.

(b) No subpoena shall be issued to obtain materials subject to this section, and any subpoena issued shall be required to be withdrawn prior to release of the requested information. Payment of reproduction fees may be required in advance.

### § 1612.4 Requests for authentication or certification of records.

The CSB may authenticate or certify records to facilitate their use as evidence. Requests for certified copies should be made to the General Counsel at least 30 days before the date they will be needed. The CSB may charge a certification fee of \$5.00 per document.

### § 1612.5 Other material.

(a) *Production prohibited unless approved.* Except in the case of the material referenced in §1612.3, no employee or former employee of the CSB shall, in response to a demand of a private litigant, court, or other authority, produce any material contained in the files of the CSB (whether or not agency records under 5 U.S.C. 552) or produce any material acquired as part of the performance of the person's official duties or because of the person's official status, without the prior written approval of the General Counsel.

(b) *Procedures to be followed for the production of material under this section.*

(1) All demands for material shall be submitted to the General Counsel at CSB headquarters, 2175 K Street, NW., Suite 400, Washington, DC 20037. If an employee receives a demand, he shall forward it immediately to the General Counsel.

(2) Each demand must contain an affidavit by the party seeking the material or his attorney setting forth the material sought and its relevance to the proceeding, and containing a certification, with support, that the information is not available from other sources, including CSB materials described in §1612.3 and part 1601 of this chapter.

(3) In the absence of General Counsel approval of a demand, the employee is not authorized to comply with the demand.

(4) The General Counsel shall advise the requester of approval or denial of the demand, and may attach whatever conditions to approval considered appropriate or necessary to promote the purposes of this part. The General Counsel may also permit exceptions to any requirement in this part when necessary to prevent a miscarriage of justice, or when the exception is in the best interests of the CSB and/or the United States.

### PARTS 1613-1619 [RESERVED]

## PART 1620—ADMINISTRATIVE CLAIMS ARISING UNDER THE FEDERAL TORT CLAIMS ACT

### Sec.

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AUTHORITY: 28 U.S.C. 2672; 42 U.S.C. 7412(r)(6)(N); 28 CFR 14.11.

SOURCE: 69 FR 55513, Sept. 15, 2004, unless otherwise noted.

### § 1620.1 Purpose and scope of regulations.

The regulations in this part apply only to administrative claims presented or filed with the Chemical Safety and Hazard Investigation Board (CSB), under the Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), 2401(b), 2671-2680, as amended, for money damages against the United States for damage to or loss of property, personal injury, death, or other damages caused by the negligent or wrongful act or omission of an officer or employee of CSB while acting within the scope of his or her office or employment, but only under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

### § 1620.2 Administrative claim; when presented.

(a) For purposes of the provisions of 28 U.S.C. 2401(b), 2672, and 2675, a claim is deemed to have been presented when the CSB receives from a claimant, and/or his or her authorized agent, attorney, or other legal representative, an executed Standard Form 95 (Claim for Damage, Injury or Death), or other written notification of an incident, accompanied by a claim for money damages stating a sum certain (a specific dollar amount) for specified damage to or loss of property, personal injury, death, or other compensable damages alleged to have occurred as a result of the incident. A claimant must present a claim within 2 years of the date of accrual of the claim. The date of accrual generally is determined to be the time of death, injury, or other alleged damages, or if the alleged damages are not immediately apparent, when the claimant discovered (or reasonably should have discovered) the alleged damages and its cause, though the actual date of accrual will always depend on the facts of each case. Claimants should be advised that mailing a claim by the 2-year time limit is not sufficient if the CSB does not receive the claim through the mail by that date. Additionally, claimants should be advised that a claim is not considered presented by the CSB until the CSB receives all information requested in this paragraph. Incomplete claims will be returned to the claimant.

(b) All claims filed under the FTCA as a result of the alleged negligence or wrongful act or omission of the CSB or its employees must be mailed or delivered to the Office of the General Counsel, 2175 K Street NW., Suite 650, Washington, DC 20037.

(c) The FTCA requires that a claim must be presented to the Federal agency whose activities gave rise to the claim. A claim that should have been presented to CSB, but was mistakenly addressed to or filed with another Federal agency, is presented to the CSB, as required by 28 U.S.C. 2401(b), as of the date the claim is received by the CSB. When a claim is mistakenly presented to the CSB, the CSB will transfer the claim to the appropriate Federal agency, if ascertainable, and advise the

claimant of the transfer, or return the claim to the claimant if the appropriate Federal agency cannot be determined.

(d) A claimant whose claim arises from an incident involving the CSB and one or more other Federal agencies will identify each agency to which the claim has been submitted at the time the claim is presented to the CSB. The CSB will contact all other affected Federal agencies in order to designate a single agency that will investigate and decide the merits of the claim. In the event a designation cannot be agreed upon by the affected agencies, the Department of Justice will be consulted and that agency will designate a specific agency to investigate and determine the merits of the claim. The designated agency will then notify the claimant that all future correspondence concerning the claim must be directed to the designated Federal agency. All involved Federal agencies may agree to conduct their own administrative reviews and to coordinate the results, or to have the investigation conducted solely by the designated Federal agency. However, in any event, the designated agency will be responsible for the final determination of the claim.

(e) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments must be in writing and signed by the claimant or his or her authorized agent, attorney, or other legal representative. Upon the timely filing of an amendment to a pending claim, the CSB will have an additional 6 months in which to investigate the claim and to make a final disposition of the claim as amended. A claimant's option under 28 U.S.C. 2675(a) will not accrue until 6 months after the filing of an amendment.

**§ 1620.3 Administrative claim; who may file.**

(a) A claim for damage to or loss of property may be presented by the owner of the property, or his or her authorized agent, attorney, or other legal representative.

(b) A claim for personal injury may be presented by the injured person, or his or her authorized agent, attorney or other legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate, or by any other person legally entitled to assert a claim under the applicable State law, provided that the basis for the representation is documented in writing.

(d) A claim for loss totally compensated by an insurer with the rights to subrogate may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights to subrogate may be presented by the insurer or the insured individually as their respective interests appear, or jointly. When an insurer presents a claim asserting the rights to subrogate the insurer must present appropriate evidence that it has the rights to subrogate.

(e) A claim presented by an agent or legal representative must be presented in the name of the claimant, be signed by the agent, attorney, or other legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his or her authority to present a claim on behalf of the claimant as agent, attorney, executor, administrator, parent, guardian, conservator, or other legal representative.

**§ 1620.4 Investigations.**

CSB may investigate, or may request any other Federal agency to investigate, a claim filed under this part.

**§ 1620.5 Administrative claim; evidence and information to be submitted.**

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his or her monthly or yearly salary or earnings (if any), and the duration of his or her last employment or occupation.

(3) Full names, addresses, birth date, kinship and marital status of the decedent's survivors, including identification of those survivors who were dependent on support provided by the decedent at the time of death.

(4) Degree of support afforded by the decedent to each survivor dependent on him or her for support at the time of death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering before death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injuries and death.

(8) True and correct copies of relevant medical treatment records, laboratory and other tests, including X-Rays, MRI, CT scans and other objective evidence of medical evaluation and diagnosis, treatment of injury/illness, and prognosis, if any had been made.

(9) Any other evidence or information that may have a bearing on either the responsibility of the United States for the death or the amount of damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by the attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. If damages for pain and suffering are claimed, a physician's detailed statement specifying the duration of pain and suffering, a listing of drugs administered for pain, and the claimant's general physical condition.

(2) True and correct copies of relevant medical treatment records, laboratory and other tests including X-Rays, MRI, CT scans and other objective evidence of medical evaluation and

diagnosis, treatment injury/illness and prognosis.

(3) The claimant may be required to submit to a physical or mental examination by a physician employed by CSB or another Federal agency. On written request, CSB will make available to the claimant a copy of the report of the examining physician employed by the United States, provided the claimant has furnished CSB with the information noted in paragraphs (b)(1) and (b)(2) of this section. In addition, the claimant must have made or agrees to make available to CSB all other physicians' reports previously or thereafter made of the physical or mental condition that is subject matter of his or her claim.

(4) Itemized bills for medical, dental, and hospital expenses incurred, and/or itemized receipts of payment for such expenses.

(5) If the prognosis reveals the necessity for future treatment, a statement of the expected treatment and the expected expense for such treatment.

(6) If a claim is made for loss of time from employment, a written statement from his or her employer showing actual time lost from employment, whether he or she is a full-time or part-time employee, and wages or salary actually lost.

(7) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(8) Any other evidence or information that may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for damage to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership of the property.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.