



U. S. Chemical Safety and Hazard Investigation Board

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Board Action Report

Notation No.: 104

Voting Period: Urgent Notation Item April 25, 2001 – May 2, 2001, but votes are requested as soon as possible

Subject: Amendment of CSB Rule on Testimony by Employees in Legal Proceedings

Whereas,

1. The CSB published in the Federal Register (66 FR 17364, March 30, 2001) (See Notation Item 102) final rules on testimony by CSB employees (40 CFR part 1611) and the production of CSB records in legal proceedings (40 CFR part 1612);
2. These rules were promulgated to avoid the deleterious effects of CSB involvement in third-party litigation, by strictly limiting the circumstances under which CSB employees may testify or produce records in civil litigation;
3. The effective implementation of these rules and fulfillment of their purpose requires the addition of a clear statement that the rules apply to all those who perform work for the CSB, including, among others, student interns, contractors, and contractor employees;
4. The effective implementation of these rules and fulfillment of their purpose also requires the addition of a provision ensuring that the CSB General Counsel is notified when former employees are subpoenaed to testify in connection with their work for the CSB; and
5. The attached draft final rule, to be published in the Federal Register upon Board approval, addresses the aforementioned issues by amending the rule on employee testimony to add a specific definition of the term "employee" for the purposes of both the employee testimony rule (40 CFR part 1611) and the record production rule (40 CFR part 1612), and to add a requirement that former employees notify the CSB General Counsel when they are subpoenaed in connection with their work for the CSB;

Therefore, pursuant to its authority under 42 U.S.C. § 7412(r)(6)(N), the Board hereby votes to adopt the attached draft final rule amending the CSB regulation on testimony of

CSB employees in legal proceedings, and to authorize its immediate publication in the Federal Register.

Approval Date: April 28, 2001

	<u>Approve</u>	<u>Disapprove</u>	<u>Not Participating</u>
Isadore Rosenthal	x		
Gerald Poje	x		
Andrea Taylor			x