

§ 1611.1

40 CFR Ch. VI (7-1-02 Edition)

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

§ 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