

sections 338 and 1060 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain an error that may prove to be

misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8940), that were

the subject of FR Doc. 01-981 is corrected as follows:

1. On page 9929, in the table, the entry for § 1.197-2(k), *Example 23* is corrected to read as follows:

Section	Remove	Add
*	*	*
1.197-2(k), <i>Example 23</i> , paragraph (iv), first sentence	(as these terms are defined in § 1.338-1(c)(13)).	defined in (as these terms are defined in § 1.338-2(c)(17))
*	*	*

§ 1.338-3 [Corrected]

2. On page 9935, column 3, § 1.338-3, paragraph (b)(3)(iv), paragraph (ii) of *Example 1.*, line 9 from the bottom of the paragraph, the language “338(h)(3)(A)(iii). See § 1.338-2(b)(3)(ii)(C).” is corrected to read “338(h)(3)(A)(iii). See § 1.338-3(b)(3)(ii)(C).”.

§ 1.338-6 [Corrected]

3. On page 9944, column 3, § 1.338-6, paragraph (d), paragraph (ix) of *Example 1* line 1, the language “The liabilities of T as of the beginning” is corrected to read “The liabilities of T1 as of the beginning”.

Cynthia E. Grigsby,

Chief, Regulations Unit, Office of Special Counsel (Modernization and Strategic Planning).

[FR Doc. 01-7934 Filed 3-29-01; 8:45 am]

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CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1610

Attorney Misconduct, Sequestration of Witnesses, and Exclusion of Counsel

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Final rule.

SUMMARY: This document sets forth new regulations of the Chemical Safety and Hazard Investigation Board (“CSB”) concerning sanctions for repeated attorney misconduct, and the sequestration of witnesses and exclusion of counsel in depositions conducted under subpoena in CSB investigations.

DATES: This rule is effective March 30, 2001.

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

SUPPLEMENTARY INFORMATION: The Chemical Safety and Hazard Investigation Board (“CSB” or “Board”) is mandated by law to “Investigate (or cause to be investigated), determine and report to the public in writing the facts, conditions, and circumstances and the cause or probable cause of any accidental release [within its jurisdiction] resulting in a fatality, serious injury or substantial property damages.” 42 U.S.C. 7412(r)(6)(C)(i). The Board has developed practices and procedures concerning witness representation in CSB investigations at 40 CFR 1610.1 (66 FR 1050, Jan. 5, 2001).

These regulations amplifies those rules. Because these regulations provide for the possibility of suspension of attorneys from practice before the Board in certain circumstances, the Board determined that the rules and the procedures herein should be published for comment as a proposed rule. These regulations were published as a proposed rule in the **Federal Register** of February 5, 2001 (66 FR 8926). The proposed rule provided for a 30-day comment period. No comments were received in response to the proposed rule and invitation for comments. This final rule is unchanged from the proposed rule.

New section 1610.2 provides for sanctions against attorneys who are involved in repeated acts of misconduct and for hearing procedures for issuing suspensions from practice before the Board.

New section 1610.3 provides for the sequestration of witnesses in investigative proceedings and for the exclusion of attorneys representing multiple witnesses in investigations from witness depositions where the person conducting the deposition, after consultation with the Office of General Counsel, determines that the CSB has concrete evidence that the presence of such attorney would obstruct or impede the investigation. This “concrete

evidence” standard meets the test set forth by the court in *Professional Reactor Operator Society v. Nuclear Regulatory Commission*, 939 F.2d 1047 (D.C. Cir 1991). See also *SEC v. Csapo*, 533 F.2d 7 (D.C. Cir. 1976).

Regulatory Flexibility Act

The Board, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and certifies that it will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, 109 Stat. 48.

Dated: March 21, 2001.

Christopher W. Warner,
General Counsel.

List of Subjects in 40 CFR Part 1610

Administrative practice and procedure, Investigations.

For the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board amends 40 CFR part 1610 as follows:

PART 1610—ADMINISTRATIVE INVESTIGATIONS

1. The authority citation for part 1610 continues to read as follows:

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

2. Add § 1610.2 and § 1610.3 to read as follows:

§ 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 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.

§ 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.

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CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD**40 CFR Parts 1611 and 1612****Testimony of Employees and Production of Records in Legal Proceedings**

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Final rule.

SUMMARY: This regulation establishes internal policies and procedures governing when and to what extent employees of the Chemical Safety and Hazard Investigation Board ("CSB" or "Board") may appear as witnesses in third-party litigation or produce CSB records in third-party litigation. The intended effect of this regulation is to conserve the CSB's ability to conduct official business, preserve its employee resources, minimize involvement in matters unrelated to its mission and programs, preserve its impartiality, avoid spending public time and money for private purposes, and to help avoid needless litigation.

DATES: This rule is effective March 30, 2001.

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

SUPPLEMENTARY INFORMATION: Based on the experience of other Federal agencies, there is a strong potential that CSB employees will be requested or subpoenaed to provide testimony or produce records in litigation. CSB regulations have not heretofore clearly specified when its employees are required to respond to subpoenas or produce CSB records. This has resulted in the potential of an employee giving testimony or providing records, which diverts such employee from performing his/her duties, and might create the appearance that the CSB is taking sides in private litigation. This regulation is intended to address this situation by generally prohibiting both voluntary appearances and compliance with subpoenas unless authorized by the CSB.

The need for this regulation is even more acute 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. The legislative history of this provision explains why Congress included it:

The findings, conclusions and recommendations of the Board are not to be