

2. Section 180.465 is revised to read as follows:

§ 180.465 4-(Dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane.

(a) *General.* Tolerances are established for the residues of 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane, (CAS No. 71526-07-3) when used as an inert ingredient (safener) in or on the following raw agricultural commodities:

| Commodity ¹ | Parts per million |
|------------------------|-------------------|
| Corn, field, forage | 0.005 |
| Corn, field, grain | 0.005 |
| Corn, field, stover | 0.005 |
| Corn, pop, grain | 0.005 |
| Corn, pop, stover | 0.005 |

¹There are no U.S. registered products containing 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane as of June 17, 2002.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 03-1768 Filed 1-28-03; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

Land Disposal Restrictions

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 266 to 299, revised as of July 1, 2002, § 268.44 is corrected in the table by adding footnote 8 to read as follows:

§ 268.44 Variance from a treatment standard.

Table—Wastes Excluded From the Treatment Standards Under § 268.40

* * * * *

⁸Dupont Environmental Treatment—Chambers Works must dispose of this waste in their on-site Subtitle C hazardous waste landfill.

[FR Doc. 03-55501 Filed 1-28-03; 8:45 am]

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CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1610

Transcripts of Witness Testimony in Investigations

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Final rule.

SUMMARY: The Chemical Safety and Hazard Investigation Board (“CSB” or “Board”) implements a new rule concerning transcripts of the testimony of witnesses appearing at Board depositions. The rule provides that witnesses have the right to petition to procure a copy of a transcript of their testimony, except that due to the nonpublic nature of Board depositions, witnesses (and their counsel) may for good cause be limited to inspection of the official transcript of their testimony.

DATES: Effective February 28, 2003.

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

SUPPLEMENTARY INFORMATION: The Chemical Safety and Hazard Investigation 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 for conducting investigations under this provision in 40 CFR 1610 and has spelled out the rights of witnesses to be represented in such proceedings (section 1610.1) and rules concerning attorney misconduct, (section 1610.2) and sequestration of witnesses and exclusion of counsel (section 1610.3). The Board has determined that it would be useful to add a provision concerning the taking, handling, and inspection of transcripts of Board depositions.

In the **Federal Register** of December 9, 2002 (67 FR 72890), the CSB published a proposed rule setting forth new practices and procedures for the taking, handling, and inspection of transcripts of Board depositions. 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.

In promulgating this regulation, the Board is following section 555(c) of the Administrative Procedure Act, which provides:

A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

On its face, section 555(c) recognizes that it is sometimes necessary to balance

a compelled witness’ right to have access to his or her testimony, and an agency’s need to limit the dissemination of sensitive matters revealed in such testimony.

Board depositions are nonpublic investigatory proceedings. Attendance at depositions is limited to the minimum number of necessary CSB staff, the witness, and one attorney representing the witness. Depositions are not open to multiple attorneys representing the witness, non-attorney representative of the witness, or representatives of other parties (40 CFR part 1610). The Board’s regulations on Freedom of Information Act requests (40 CFR part 1601) and on Production of Records in Legal Proceedings (40 CFR part 1612) further demonstrate that the Board recognizes that some of the information obtained in its investigation may not be appropriate for public dissemination.

Several considerations have led the Board to conclude that it is necessary to establish a mechanism to ensure appropriate control over the dissemination of deposition transcripts while also respecting witness’ rights under the Administrative Procedure Act. Because of the nature of Board investigations, deposition testimony may contain sensitive information. For example, testimony may reveal trade secrets and confidential business information, which are protected by the Trade Secrets Act, 18 U.S.C. 1905.

Protection of the integrity of Board investigations also necessitates control over the dissemination of deposition transcripts. First-hand witness accounts are an invaluable source of information about the events leading to, and causes of, chemical incidents. Witnesses can be reluctant to cooperate, though, out of fear of whistleblower retaliation. The CSB would likely have greater difficulty obtaining vital testimony if witnesses believed that their testimony could easily become known to their employers and to other witnesses. Reasonable limits, such as those included in this regulation, on the dissemination of transcripts also helps to prevent the coaching of future witnesses based on testimony already given. Such preparation is undesirable in health and safety investigations, where it is important to gather unvarnished facts and untainted recollections.

Ultimately, the Board’s duty is to obtain the facts about chemical incidents and to report objectively based on those facts. The Administrative Procedure Act provision limiting the release of transcripts in non-public proceedings is intended to facilitate missions such as the Board’s. It protects

against harms that would be caused by premature circulation of such transcripts, while protecting the witness' rights by allowing him or her to inspect the official transcript. This approach, embodied in this regulation, is also consistent with the principles of Attorney General Ashcroft's October 12, 2001, "Memorandum for Heads of All Federal Departments and Agencies," on the Freedom of Information Act, in which he said, "Any discretionary decision by your agency to disclose information protected under the FOIA should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information."

This proposal is modeled on the rules of the Securities and Exchange Commission (17 CFR 203.6) and those of other agencies which also follow the APA and permit the agency to limit witnesses to inspection of transcripts in non-public investigatory proceedings for good cause. The Board has followed the APA process by allowing witnesses, after their testimony, to ask the General Counsel for the opportunity to procure a copy of the transcript, provided, of course, that for good cause, the General Counsel may deny the petition and limit the witness (and his or her counsel) to an inspection of the witness' testimony. This regulation also makes it clear that this right to inspect the transcript is a right guaranteed by the APA and that witnesses who seek copies of the transcript are informed by the General Counsel of their right to inspect it.

As the court stated in *SEC v. Sprecher*, 594 F.2d 317, 319 (2nd Cir 1979), "[I]t is obviously impractical for the Commission to determine prior to the testimony of a witness whether there will be 'good cause' to withhold a copy of the testimony from that witness, and we do not read the APA as requiring such an advance determination."

Moreover, the courts have made it clear that the APA "does not require [the agency] to spell out the 'good cause' which was the basis for the refusal to sell copies of the transcript." *Commercial Capital Corp. v. SEC*, 360 F.2d 856, 858 (7th Cir. 1966).

In summary, this regulation largely tracks the language of the APA. The courts have recognized that such regulations are properly designed to "permit the [agency] to enjoy confidentiality, where it is necessary, in order effectively to complete its investigation." *Zients v. La Morte*, 319 F. Supp 956, 958 (S.D.N.Y 1970) (discussing purpose of the SEC regulation), accord *Lamorte v.*

Mansfield, 438 F.2d 448 (2d Cir 1971), (Friendly, J.) ("to the extent that a privilege exists, it is the agency's not the witness'").

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, Public Law 104-4, 109 Stat. 48.

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.

Paperwork Reduction Act

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

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 is revised to read as follows:

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.

2. Add § 1610.4 to read as follows:

§ 1610.4 Deposition Transcripts.

(a) Transcripts of depositions of witnesses compelled by subpoena to appear 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.

Dated: January 23, 2003.

Christopher W. Warner,
General Counsel.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03-159, MB Docket No. 02-91, RM-10411]

Digital Television Broadcast Service; Cheboygan, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WPBN/WTOM License Subsidiary, Inc., substitutes DTV channel 35 for DTV channel 14 at Cheboygan, Michigan. See 67 FR 31170, May 9, 2002. DTV channel 35 can be allotted to Cheboygan, Michigan, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 45-39-01 N. and 84-20-37 W. with a power of 80, HAAT of 168 meters and with a DTV service population of 68 thousand. Since the community of Cheboygan is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government has been obtained for this allotment. With this action, this proceeding is terminated.