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## Title 40 —Protection of Environment

### Chapter VI —Chemical Safety and Hazard Investigation Board

#### Part 1612 Production of Records in Legal Proceedings

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## PART 1612—PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS

**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 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 documents 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.