

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]

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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.

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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