Dated: December 20, 2000.

Amy Zimpfer,

Acting Regional Administrator, Region IX.

[FR Doc. 01–221 Filed 1–4–01; 8:45 am]

BILLING CODE 6560–50–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1610

Representation of Witnesses in Agency Investigations

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Final rule.

SUMMARY: This document sets forth the Chemical Safety and Hazard Investigation Board's regulations for the representation of witnesses in agency investigations. It covers representation by attorneys of witnesses in depositions or other situations where testimony is compelled and representation by attorneys or non-attorney representatives of witnesses who are appearing voluntarily for interviews.

DATES: Effective January 5, 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 for conducting investigations under this provision and has determined that its procedures and policies concerning witness representation should be published in the **Federal Register** and codified in the Code of Federal Regulations for wider public dissemination. These rules codify the law concerning witness representation as set forth in the Administrative Procedure Act, 5 U.S.C. 555(b). Because they concern a matter of agency organization, procedure, or practice, notice-and-comment procedures are not required and are not provided here. 5 U.S.C. 553(b)(B).

It should be noted that CSB administrative investigations are purely investigatory and that the CSB lacks the authority to determine anyone's civil or criminal liability, or make any other determination depriving a person of life, liberty or property. Its enabling statute prohibits any part of the ''conclusions, findings, or recommendations of the Board'' from being admitted as evidence or used in any other way in civil suits arising from incidents investigated by the CSB. 42 U.S.C. 7212(r)(6)(G). Witnesses in CSB proceedings are not targets of the investigation, do not have their legal rights at issue, and as such are not entitled to the sort of due process protections that attend agency adjudications. *See Hannah* v. *Larche,* 363 U.S. 420 (1960).

The Administrative Procedure Act does, however, provide that witnesses who are ''compelled to appear in person'' before the agency may be ''accompanied, represented, and advised by counsel, or if permitted by the agency by other qualified representative.'' 5 U.S.C. 555(b). The Board's rule codifies this provision and provides that witnesses compelled to appear (normally for a deposition) may be accompanied, represented, and advised by an attorney. The Board, in its discretion, has determined not to provide for non-attorney representation in such situations.

The CSB practice, which is being codified in this final rule, provides reasonable ''ground rules'' for attorney participation in witness depositions. It is modeled, in part, on the regulation of the Federal Trade Commission, 16 CFR 2.9(b).

The CSB also is providing guidance to witnesses who appear voluntarily for interviews. In such circumstances, the agency's Investigator-in-Charge, in consultation with the General Counsel, may permit the witness to be accompanied by an attorney or a non-attorney representative, but there is no right to such representation. The Administrative Procedure Act does not mandate a right to representation for non-compulsory appearances. 5 U.S.C. 555(b).

Regulatory Flexibility Act

The Board, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that this regulation 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.

Dated: December 22, 2000.

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 adds a new 40 CFR part 1610 as follows:

PART 1610—ADMINISTRATIVE INVESTIGATIONS

Sec.

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

§ 1610.1 Representation of witnesses in investigations.

(a) *Witnesses who are compelled to appear.* Witnesses who are compelled to appear for a deposition (i.e., by subpoena) are entitled to be accompanied, represented, and advised by an attorney as follows:

(1) Counsel for a witness may advise the witness with respect to any question asked where it is claimed that the testimony or other evidence sought from a witness is outside the scope of the investigation, or that the witness is privileged to refuse to answer a question or to produce other evidence. For these allowable objections, the witness or counsel for the witness may object on the record to the question or requirement and may state briefly and precisely the ground therefor. If the witness refuses to answer a question, then counsel may briefly state on the record that counsel has advised the witness not to answer the question and the legal grounds for such refusal. The witness and his or her counsel shall not otherwise object to or refuse to answer any question, and they shall not otherwise interrupt the oral examination.

(2) Any objections made will be treated as continuing objections and preserved throughout the further course of the deposition without the necessity for repeating them as to any similar line of inquiry. Cumulative objections are unnecessary. Repetition of the grounds for any objection will not be allowed.

(3) Counsel for a witness may not, for any purpose or to any extent not allowed by paragraphs (a)(1) and (2) of this section, interrupt the examination of the witness by making any objections or statements on the record.

(4) Following completion of the examination of a witness, counsel for the witness may on the record request the person conducting the deposition to permit the witness to clarify any of his or her answers. The grant or denial of such request shall be within the sole discretion of the person conducting the deposition.

(5) The person conducting the deposition shall take all necessary action to regulate the course of the deposition, to avoid delay, and to prevent or restrain disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language. Such person shall, for reasons stated on the record, immediately report to the Board any instances where an attorney has allegedly refused to comply with his or her directions, or has allegedly engaged in disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language in the course of the deposition. The Board may thereupon take such further action, if any, as the circumstances warrant, including exclusion of that attorney from further participation in the particular investigation.

(b) *Voluntary interviews.* Witnesses appearing voluntarily do not have a right to have an attorney present during questioning. The Investigator-in-Charge (IIC), in consultation with the General Counsel, may permit a witness to be accompanied by an attorney or non-attorney representative. If so accompanied, the role of the attorney or non-attorney representative is limited to raising objections to questions that are outside the scope of the investigation and to advising the witness with respect to any legal privilege such as, for example, under the Fifth Amendment to the U. S. Constitution. Attorney and non-attorney representatives may not represent more than one witness in each investigation in this fashion, absent the consent of the IIC and the General Counsel.

[FR Doc. 01–288 Filed 1–4–01; 8:45 am]

BILLING CODE 6350–01–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1247

[STB Ex Parte No. 583]

Modification of the Class I Reporting Regulations

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: New regulations, requiring all Class I railroads to report the number of railroad cars loaded and terminated annually are adopted. The new reporting requirement will ensure the continued availability of important data—heretofore only voluntarily reported to, and supplied to the Surface Transportation Board (Board) by, the Association of American Railroads (AAR)—needed by the Board for application of the Uniform Railroad Costing System (URCS), its railroad cost accounting system.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Paul A. Aguiar, (202) 565–1527 or H. Jeff Warren, (202) 565–1533. [Assistance for the hearing impaired is available through the Federal Information Relay Service 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking (NPR) served July 18, 2000, comments were solicited on modifying Chapter X of the Code of Federal Regulations Title 49, Part 1247 to require Class I railroads to submit a new report—Annual Report of Cars Loaded and Cars Terminated (Form STB–54). This new report would require Class I railroads to report the number of cars loaded and terminated during each calendar year. Currently, the AAR collects such data quarterly and aggregates the information on a yearly basis in its annual reports (AAR Form CS–54–1) for each railroad.

Historically, we have relied on AAR Form CS–54–1 to obtain certain inputs for URCS. However, to ensure the continued availability of these data, we proposed that Class I railroads file an abbreviated version of AAR Form CS–54–1 with the Board. We proposed to require the reporting of only that data used as inputs for URCS—sections A and B of AAR Form CS–54–1.

Comments on the NPR were filed by the Western Coal Traffic League, United Transportation Union-Illinois Legislative Board (UTU–IL), and the U.S. Department of Agriculture. All three parties fully support the proposal. In addition, UTU–IL suggests that we: (1) Require the carriers to file quarterly, as well as annual, information; (2) make Form STB–54 data available for inspection in our public reference room rather than in the Office of Economics, Environmental Analysis, and Administration (OEEAA); and (3) adopt a definition of ''dependent short line'' railroads and require Class I railroads to list their dependent short lines.[1]

[1] Traffic loaded and terminated on dependent short line railroads is to be reported by Class I railroads as if it was loaded or terminated by the Class I carrier.

We will adopt the proposed reporting requirement supported by all commenters. We decline, however, to adopt UTU–IL's additional proposals. Regarding the suggestion to have railroads file quarterly data, it would be inappropriate to adopt the UTU–IL proposal without first affording railroads the opportunity to comment. More importantly, we see no reason to burden the railroads with filing quarterly data that we would not use. While UTU–IL contends that the filing of quarterly data will assure ''the integrity of the process,'' it has not explained why that is so, and we fail to see how filing such data would provide any benefit.

In addition, we see no need to maintain a second set of Form STB–54 data in our public reference room. UTU–IL has not shown that housing the data in OEEAA will place any unreasonable burden on the public or limit access to the information. Indeed, all other cost and traffic data reported by the railroads are available to the public only in OEEAA and we have received no reports of dissatisfaction with this arrangement. Because the data is used on a regular basis by OEEAA staff, it is administratively most practical to house the data where it is used and UTU–IL has provided no compelling reason to maintain a duplicate set of data in the public reference room.

Finally, under our proposal, we expect the railroads to apply the term ''dependent short line'' in the same manner as it has been applied in prior years to compile AAR Form CS–54–1. This will ensure comparability of data from year-to-year. We see no need, and UTU–IL has suggested none, to have railroads provide a list of their dependent short lines. Because it is our longstanding policy not to burden the industry by requiring the filing of unneeded information, we reject this proposal.

The regulations set forth below are adopted and will be codified at 49 CFR 1247. Copies of Form STB–54 and its instructions will be available on the Board's web site under forms (*http://www.stb.dot.gov/infoex1.htm#forms*). Alternatively, copies can be requested by writing or calling the contact persons listed above.

This action will not significantly affect either the quality of the human environment or energy conservation.

Because only large railroads will be affected by the new reporting requirement, we conclude that our action will not have a significant economic impact on a substantial number of small entities within the