guidelines and it is clear to consumers where the areas are located.

ATF is approving this area as being viticulturally distinct from surrounding areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only be substantiated by consumer acceptance of California Shenandoah Valley wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Exective Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Drafting Information

The principal author of this document is James A. Hunt, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance: Accordingly, under the authority contained in Section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.37 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.37 California Shenandoah Valley.

Par. 2. Subpart C is amended by adding § 9.37 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.37 California Shenandoah Valley.

(a) *Name.* The name of the viticultural area described in this section is "Shenandoah Valley" qualified by the word "California" in direct conjunction with the name "Shenandoah Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the California Shenandoah Valley viticultural area are two 1962 U.S.G.S. maps. The maps are titled: "Fiddletown Quadrangle California" 7.5 minute series and "Amador City Quadrangle California-Amador Co." 7.5 minute series.

(c) *Boundaries.* The Shenandoah Valley viticultural area is located in portions of Amador and El Dorado Counties of California. The boundaries are as follows:

The line starts at the point where the Consumnes River meets Big Indian Creek. The line then proceeds south, following Big Indian Creek, until Big Indian Creek meets the boundary between Sections 1 and 2 of Township 7 North Range 10 East. The line then follows this boundary south until it meets the Oleta (Fiddletown) Road. The line then follows the Oleta Road east until it meets the boundary between Sections 6 and 5 of Township 7 North Range 11 East. The line follows that boundary north into Township 8 North Range 11 East, and continues north on the boundary between Sections 31 and 32 until this boundary meets Big Indian Creek. The line then follows Big Indian Creek in a northeasterly direction until Big Indian Creek meets the boundary between Sections 28 and 27 of Township 8 North Range 11 East. The line then follows this boundary north until it reaches the southeast corner of Section 21 of Township 8 North Range 11 East. The line then proceeds east, then north, then west along the boundary of the western half of Section 22 of Township 8 North Range 11 East to the intersection of Sections 16, 15, 21, and 22. The line then proceeds north along the boundary between Sections 16 and 15 of Township 8 North Range 11 East and continues north along the boundary of Sections 9 and 10 of Township 8 North Range 11 East to the intersection of Sections 9, 10, 3 and 4 of Township 8 North Range 11 East. The line then proceeds West along the boundary of Sections 9 and 4. The line then continues west along the boundary of Sections 5 and 8 of Township 8 North Range 11 East to the Consumnes River. The line then proceeds west along the Consumnes River to the point of beginning.

Signed: December 3, 1982.

Stephen E. Higgins,

Acting Director.

Approved: December 17, 1982.

David Q. Bates,

Deputy Assistant Secretary (Operations).

[FR Doc. 82-35069 Filed 12-23-82; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 9

[T.D. ATF—120; Ref: Notice No. 419]

Shenandoah Valley Viticultural Area in Virginia and West Virginia

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Virginia and West Virginia to be known as "Shenandoah Valley." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes establishment of the Shenandoah Valley in Virginia and West Virginia as a viticultural area and its subsequent use as an appellation of origin on wine labels and in time advertisements will help consumers better identify the wines they may purchase.

EFFECTIVE DATE: January 27, 1983.

FOR FURTHER INFORMATION CONTACT: James A. Hunt, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2), outlines the procedure for proposing an American

viticultural area. Any interested person may petition ATF to establish a grape growing region as a viticultural area.

AFT received a petition from Amador County Wine Grape Growers Association in September 1980 proposing a viticultural area in California to be known as "Shenandoah Valley." A notice of proposed rulemaking was published in the **Federal Register** and public hearings were held in California and Virgina. The major issue in most of the 300 written comments and in the testimony of over 80 persons at the public hearings was the use of the name "Shenandoah Valley" as as viticultural area. About half of the commenters stated that the Shenandoah Valley name is historically and geographically best known for a valley in Virginia and West Virginia. They claimed that the use of Shenandoah Valley on California wine labels would be confusing for consumers and would allow the California wine industry use of a name which has significance for the Virginia wine industry. The other half of the commenters said that the Shenandoah Valley name in California has existed for over 100 years and the wine produced in this area is unique and well known. They stated that use of Shenandoah Valley on these labels would not confuse consumers because such wines are distinctly different from wine produced in the Shenandoah Valley of Virginia.

Petition

ATF received a petition in August 1981 from Shenandoah Vineyards in Edinburg, Virginia, proposing an area in the countries of Frederick, Clarke, Warren, Shenandoah, Page, Rockingham, Augusta, Rockbridge, Botetourt, and Amherst in Virginia, and the counties of Berkeley and Jefferson in West Virginia, as a viticultural area to be known as "Shenandoah Valley."

The petitioner submitted evidence stating the name is locally and nationally known and the area has geographical characteristics which distinguish the viticultural features from those found in surrounding areas. This evidence was presented in a notice of proposed rulemaking published in the **Federal Register** on August 20, 1982 (47 FR 36445), with a 45 day comment period.

Comments

During the commend period, 80 comments with 132 signatures were received. In addition, Congressman J. Kenneth Robinson, 7th District of Virginia, requested that all hearing testimony at Harrisonburg, Virginia, on January 12 and 13, 1982, pursuant to Notices 371 and 391 (notice of proposed rulemaking for the Shenandoah Valley in California), be considered as part of the comment letter. There were no requests for a public hearing during the comment period.

Most of the comments were in support of the Shenandoah Valley viticultural area in Virginia-West Virginia stating that the name Shenandoah Valley clearly is known as being the Virginia-West Virginia Valley. Comments in favor were also received from Federal, State and local government officials.

Five commenters were in opposition because they considered the proposed viticultural area too large when compared to the acres of vineyards.

A few commenters recommended both Virginia and California be allowed use of the name Shenandoah Valley with some way of identifying their respective locations on a label.

Except for the comments opposed to the proposal based on the size of the area, comments on the boundaries favored those stated by the petitioner and contained in the notice.

Name Issue

The major issue for the propose viticultural area in Virginia-West Virginia is use of the name "Shenandoah Valley." Two geographical areas share the same name, one in Virginia and West Virginia and one in California, and both grow grapes used in wine production. The petitions, written comments and testimony at the hearing clearly established that the Shenandoah Valley in Virginia-West Virginia in nationally well known. While not nearly as well known nationally , the Shenandoah Valley located in California is known as a specific area in California and the area is nationally known, especially to wine consumers, as a specific grape growing area.

Because the Virginia-West Virginia Shenandoah Valley is clearly well known, ATF believes the consumer would consider wine labeled with a Shenandoah Valley viticultural area as originating from grapes grown in this area. Therefore, this final rule allows use of the name "Shenandoah Valley" as a viticultural area in Virginia-West Virginia without the need for the qualifying name of a State.

Approval of Shenandoah Valley for Virginia-West Virginia as a viticultural area does not preclude establishment of a California Shenandoah Valley. Regulations do not preclude the use of the same name for two areas if both areas meet the established guidelines and it is clear to consumers where the areas are located. ATF believes that the use of the name "Shenandoah Valley" in direct conjunction with he name of the State of California would eliminate the potential for consumer confusion and would allow consumers to readily identify wher the wine comes from. Therefore, the Treasury decision approving the use of the name Shenandoah Valley in California, will require the name California to appear in direct conjunction with the name Shenandoah Valley.

Viticultural Area Size Issue

The viticultural area requested for Shenandoah Valley is approximately 2.4 million acres. The total commerical wine grape acreage is less than 300 acres. The possibility of reducing the size of the 2.4 million acre viticultural area was strongly opposed by several commenters, including the petitioner and Federal, State, and local officials. These commenters stated that a change in the boundary would also change the nationally recognized Shenandoah Valley boundary. They stated that evidence indicates the soil and climate are generally similar for the whole area. The commenters opposing the large area Shenandoah Valley suggested that several viticultural areas are found in the proposed area but no specific recommendations were made on proposing new boundaries.

On the surface it looks as though the entire area does not merit being included as an approved viticultural area. However, because vineyards have been planted or are planned in locations throughout the petitioned for viticultural area and the evidence shows the geographical influences are generally similar, ATF is approving the Shenandoah Valley boundaries as stated in the petition and the notices. In addition, approval of this large area does not preclude establishing smaller viticultural areas within the Shenandoah Valley in the future.

Geographical Characteristics

The Shenandoah Valley is geologically well defined by the Blue Ridge Mountains on the east and by the Allegheny Mountains on the west. On the north it is drained by the Potomac River, into which the Shenandoah River drains. To the south, the Shenandoah Valley is generally known to extend somewhat beyond the headwaters of the Shenandoah River because of the similar topographic features, the same soils, and similar climatic conditions.

The record shows that the Shenandoah Valley is an example of a mountain landscape that has been formed by erosion during a long interval

of geologic time and that has reached a condition of dynamic equilibrium in which the adjustment between the landforms and the rocks beneath is nearly complete. It is an elongate area lying between the Blue Ridge Mountains on the Southeast and the North and Shenandoah Mountains (the beginning of the Allegheny complex) on the northwest.

On the east side of the Valley, the Blue Ridge Mountains are underlain by igneous rocks, the most resistant of which are metabasalts of the Catoctin Formation of Precambrian age. Highlands on the west side of the Valley are underlain by sandstones and quartzites of Silurian to Mississippian age. The main lowland areas of the Shenandoah Valley are underlain by a thick sequence of limestones, dolomites and shales of early Cambrian to late Ordovician age.

The southern boundary is not quite as completely and sharply defined. The evidence indicates that conditions relevant to a viticultural area, such as soil and terrain, as well as the geographical features associated with the closing of the mountains and the cutting by the James River extends the southern boundary to the James River.

The record shows that the Shenandoah Valley viticultural area is distinguished from the surrounding areas geographically as follows:

(a) The surficial deposits consist of residual deposits, colluvium, and alluvium. The residual deposits and colluvium are closely related in origin to the rocks on which they rest. The alluvial deposits are distributed close to or downstream from the rocks that are their source. It is not unusual for residuum to occur in thicknesses of as much as 100 feet and more on carbonate rocks.

In the mountain areas, covers of thicker residuum are found only on the granitic rocks of the Blue Ridge when protected from erosion by a thin mantle of fresh core stones. On the other side of the Shenandoah Valley, shales interbedded with thin sandstones have a cover of residuum protected by a blanket of sandstone flags. Other areas are characterized by many cliffy slopes and thin rocky soils.

The record shows that the surficial deposits in the valley are, therefore, consistent and have a marked delineation from surrounding areas.

(b) Exclusive of alluvial areas, comprising only about 15 percent of the whole valley, which are relatively flat, the land slopes toward a stream, either steeply or gently. The overall shape or form of the landscape is determined by the network of stream channels, each channel being concave to the sky. The local relief is determined by ridges which rise to a more or less even height about the streams.

(c) The General Soil Map of Virginia prepared by the Soil Conservation Service of the U.S. Department of Agriculture shows that the soils suitable for agriculture in the valley can, in fact, be used to delineate the valley lowlands. Except for the Massanutten Mountain uplift, essentially all of the area is overlain by Frederick-Lodi-Rock outcrop. The record shows that this soil does not occur anywhere else in the State.

(d) The climate features, including average temperature and precipitation, are relatively consistent throughout the valley. Data was cited from four weather stations of the U.S. Department of Commerce Weather Bureau, specifically the stations of Lexington and Staunton, Virginia, in the southern end and Winchester and Woodstock, Virginia, in the northern end of the valley. These stations show average temperatures ranging from 53.9°F to 55.7°F, precipitation from 33.8" to 37.7", heating degree days from 4344 to 4866 and cooling degree days from 851 to 1046. That data from the four stations to the east of the valley show average temperatures ranging from 47.8°F to 57°F, precipitation from 38.6" to 48.6", heating degree days from 4026 to 6463 and cooling degree days from 0 to 1263. Further, the record shows that to the west similar variations occur.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Miscellaneous

ATF is approving this area as being viticulturally distinct from surrounding areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only be substantiated by consumer acceptance of Shenandoah Valley wines.

Drafting Information

The principal author of this document is James A. Hunt, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority: Accordingly, under the authority in 27 U.S.C. 205 (49 Stat. 981, as amended), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.60 to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.60 Shenandoah Valley.

Par. 2. Subpart C is amended by adding § 9.60 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.60 Shenandoah Valley.

(a) *Name.* The name of the viticultural area described in this section is "Shenandoah Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Shenandoah Valley viticultural area are four U.S.G.S. Eastern United States 1:250,000 scale maps. The maps are

titled: Roanoke (1971), Charlottesville (1956, with a revision in 1965), Cumberland (1956, revised 1969) and Baltimore (1957, revised 1978).

(c) *Boundaries.* The Shenandoah Valley viticultural area is located in Frederick, Clarke, Warren, Shenandoah, Page, Rockingham, Augusta, Rockbridge, Botetourt, and Amherst Counties in Virginia, and Berkeley and Jefferson Counties in West Virginia. The boundaries are as follows:

The boundary line starts at the point of the intersection of the Potomac River and the Virginia-West Virginia State line approximately eight miles east of Charlestown, West Virginia. The line then proceeds southwesterly approximately 14.8 miles along the State line, which essentially follows the crest of the Blue Ridge Mountains, to its intersection with the westerly border line of Clarke County, Virginia. The line continues approximately 13.8 miles southwesterly along the county line and the crest of the Blue Ridge to its intersection with the westerly boundary line of Warren County, Virginia. The line continues approximately 15 miles along the Warren County line to its intersection with the Skyline Drive. The line continues approximately 71 miles in a southwesterly direction along the Skyline Drive and the Blue Ridge to its intersection with the Blue Ridge Parkway. The line continues approximately 53 miles in a southwesterly direction along the Blue Ridge Parkway to its intersection with the James River. The line then proceeds approximately 44 miles along the James River in a west-northwesterly direction to its intersection with the northwest boundary line of the Jefferson National Forest near Eagle Rock. The line then proceeds approximately 10.5 miles in a northeasterly direction along the Jefferson National Forest line and along the crest of North Mountain to its intersection with the westerly boundary line of Rockbridge County. The line continues approximately 23 miles along the county line in the same northeasterly direction to its intersection with the Chesapeake and Ohio Railroad. The line continues approximately 23 miles along the railroad between the Great North Mountain and the Little North Mountain to its intersection with the southeastern boundary line of the George Washington National Forest at Buffalo Gap. The line continues approximately 81 miles northeasterly along the George Washington National Forest line to the Vertical Control Station, (elevation 1883), on the crest of Little North Mountain approximately 3 miles west of Van Buren Furnace. The line continues approximately 53 miles northeasterly along the crest of Little North Mountain to its intersection with the Potomac River in Fort Frederick State Park. The line then proceeds approximately 47.4 miles southeasterly along the Potomac River to the beginning point at that river's intersection with the boundary line between West Virginia and Virginia.

Signed: December 3, 1982.

Stephen E. Higgins,

Acting Director.

David Q. Bates,

Deputy Assistant Secretary (Operations).

[FR Doc. 82-35088 Filed 12-23-82; 8:45 am]

BILLING CODE 4510-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

Exemption From Requirements for Recording Occupational Injuries and Illnesses; Final Rule and Amendment

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Final rule.

SUMMARY: With this notice, OSHA is amending Part 1904 to exempt certain employer establishments from requirements to: (1) Maintain, retain and provide access to the log and summary of occupational injuries and illnesses (1904.2, 1904.6, and 1904.7); (2) maintain, retain and make available for inspection the supplementary record of occupational injuries and illnesses (1904.4, and 1904.6); and (3) post the annual summary of occupational injuries and illnesses for each establishment (1904.5).

The Agency is exempting employer establishments in the following Standard Industrial Classifications (SIC's):

SIC's 52–59 (Retail Trades, except SIC's 52–54);

SIC's 60–67 (Finance, Insurance and Real Estate);

SIC's 70–89 (Services, except SIC's 70, 75, 76, 79, 80).

This action is part of OSHA's continuing effort to reduce the recordkeeping burden on employers.

The primary value to OSHA of these records has been to help OSHA safety and heath officers to assess workplace safety conditions as part of OSHA's General Schedule (i.e. agency-initiated) inspection of establishments. Since 1977, however, OSHA has not included in its general inspection program those employer establishments that would be exempt under this rule.

Further, because of low incidence rates at affected establishments, and limited OSHA resources, and because needed inspections are made in response to employee complaints about specific hazards, there is little likelihood that these establishments would be included in any future targeting scheme. For these establishments, the primary agency use of these records no longer exists, and OHSA, therefore, exempts these employers establishments from the requirements to keep these records. The exemption thus relieves a large number of employers of a paperwork burden that is unnecessary from the agency's point of view, without lessening on-the-job safety protection for workers.

EFFECTIVE DATE: This rule becomes effective January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Raymond E. Donnelly, Occupational Safety and Health Administration, Room N3622, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523–8076.

A. Background

1. *History of the Regulation.* The regulations concerning OSHA's occupational injury and illness recordkeeping system (29 CFR Part 1904) were adopted in 1971. Their purpose is to:

> Implement section 8(c) (1), (2), 8(g)(2) and 24 (a) and (e) of the Occupational Safety and Health Act of 1970. These sections provide for recordkeeping and reporting by employers covered by the Act as necessary or appropriate for enforcement of the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation and analysis of occupational safety and health statistics (29 CFR 1904.1).

On July 29, 1977, OSHA amended these regulations to exempt small employers with 10 or fewer employees from the recordkeeping requirements of Part 1904 (42 FR 38567). OSHA then stated that the amendment would continue the Congressional intent, expressed in previous appropriations acts (Pub. L. 93–517 and Pub. L. 94–206) generally to exempt employers with 10 or fewer employees from the recordkeeping requirements but not from the requirement in § 1904.8 to report accidents resulting in a fatality or multiple hospitalization nor from the requirement in § 1904.21 to participate in the Bureau of Labor Statistics' (BLS) annual statistical survey, if such an employer is selected to participate. OSHA also stated that the small employer exemption would carry out the mandate of section 8(d) of the Act which requires that information obtained under the Act be obtained with a minimum burden on employers (29 U.S.C. 657(d)).

On June 4, 1982, OSHA proposed a comparable exemption for establishments which are classified in

the Office of Management and Budget's Standard Industrial Classification (SIC) Manual as retail trade, finance, insurance, real estate and services—SIC's 52–89 (excluding 52–54, 70, 75, 76, 79 and 80) (47 FR 24346).

The scope of the proposed exemption was confined to establishments in the Major Industry Groups within SICs 52–89, which met two criteria. The first was that the establishments fall within SIC's not targeted for general schedule inspections. Since 1977 all establishments in SIC's 52–89 have not been targeted for such inspections. The second criterion was that the establishments fall within Major Industry Groups in SIC's whose average lost workday case injury rate (LWCIR), as published by the Bureau of Labor Statistics, for 1978–80 was at or below 75 percent of the private sector average. Major Industry Groups in SIC's 52–89 which had LWCIR averages above 75 percent of the private sector average and thus were not included in the proposed exemption are: building materials and garden supplies (SIC 52); general merchandise and food stores (SIC's 53, 54); hotels and other lodging places (SIC 70); repair (SIC's 75, 76); amusement and recreation services (SIC 79); and health services (SIC 80).

The purpose of the proposal was to further OSHA's continuing effort under section 8(d) of the Act to reduce the paperwork burden on employers without compromising worker safety and health. In the proposal OSHA identified the three main functions which making and keeping the OSHA prescribed records were intended to serve. OSHA also set forth why it believed that for the industry groups proposed for exemption, these requirements had outlived their usefulness. The following discussion reiterates these points.

The requirements to maintain, retain and provide access to the OSHA prescribed log, summary of occupational injuries and illnesses and supplemental record were intended to serve three main purposes.

First, these requirements were designed to aid OSHA's safety and health officers to identify hazardous operations when conducting general schedule inspections. Establishments in SIC's 52–89, however, have not been targeted for general schedule inspections since 1977 because these establishments fall within less-hazardous industrial divisions. For the same reason, coupled with limited OSHA resources, it is highly unlikely that such firms would be included in any future targeting plan. Thus, for the exempted establishments, OSHA concludes that the requirements have outlived their original purpose as a necessary component of general schedule inspection activity.

It should be emphasized that inspections in these establishments will continue to be made in response to employee complaints, and as part of OSHA's investigation of fatalities, multiple hospitalization incidents, and imminent danger situations. In these cases, however, the hazard information is usually provided by the complaint itself or through prompt investigation.

The second purpose of these regulations was to provide employers and employees with useful information about conditions at their workplaces. Eliminating the requirement to maintain the OSHA log and supplemental record for the establishments affected by this exemption would not result in the loss of useful information. Approximately 94 percent of all establishments in SIC's 52–89 (excluding 52–54, 70, 75, 76, 79 and 80) according to BLS data, are expected to have fewer than two injuries per establishment on an annual basis.

The third purpose of these regulations was to ensure the gathering of uniform, reliable safety and health statistics. OSHA did not propose to exempt affected employers from participating in the Bureau of Labor Statistics' annual survey of occupational injuries and illnesses. Currently, only a small percentage of these employers are asked to participate. In the future, these selected employers will be notified in advance by BLS of the requirement to participate in the survey and to maintain the OSHA log and make reports for the survey as requested by BLS.

Substantial public interest was generated by the proposal. Trade associations, unions, firms and individuals responded within the comment period which ended on July 6, 1982.

The Final Rule

OSHA is issuing the final rule as proposed. The Agency believes that substantial support for both the general concept of recordkeeping relief and the scope of this exemption was demonstrated by the response to the proposal.

Some commenters expressed objections to either the exclusion from or the inclusion of certain industries in the proposed exemption. OSHA has reviewed its proposed two-fold criteria for exemption and has concluded that these criteria are both rational and workable. In addition no alternative criteria which the Agency considers workable and appropriate were suggested. Additional discussion of these objections is found later in this document.

The Rulemaking

First, many of the comments received in response to the proposal generally supported the concept of an exemption from recordkeeping requirements for the industry groups included in the proposal. For example, the Shoe Corp. of America stated that the "requirement to maintain the OSHA 200 for each of the stores (in a 700 store chain) at the location is an exercise in costly paper work. The vast majority go out with all zeros typed in". (2–20; see also the comments of the Society of Independent Gasoline Marketers of America, 2–22; American Bankers Association, 2–23; American Retail Federation (ARF), 2–13A; First Bank Ceredo, 2–6; Arby's Inc. 2–8; RTM. 2–14). Several commenters from the "fast food" industry also wrote in support of their industry's inclusion in the exemption. Arby's stated that the "fast food environment is free from recognizable hazards, due to training and layout," and contended that there is no benefit from the paperwork burden associated with these forms (i.e., recording and posting of accident data). The company also noted it is using alternative recordkeeping systems to capture and store this same data.

The Society of Independent Gasoline Marketers of America (SIGMA) similarly stated that it "would relieve SIGMA members of an unnecessary paperwork burden and would not adversely affect workplace safety for this retail gasoline outlet employees (2–22). Also supporting the proposal was the American Bankers Association which characterized the proposed exemption as "justified and necessary" (2–23).

The ARF also supported the "concept embodied in the (proposed) rule as "consistent with both Section 8(d) of the Act which requires that information sought under the Act be obtained with a minimum burden on employers (29 U.S.C. 657 (d)) and this Administration's goal of reducing unnecessary paperwork burden on employers without lessening on-the-job safety protection for workers".

However, objections to the proposed exemptions were raised by several commenters. California's Department of Industrial Relations stated that OSHA has ignored uses of record keeping information in proposing this exemption. The Department argued that the log is a necessary component of any inspection, that the log contains information important to employees and that summary information is important to

gather for research purposes (2–21). OSHA believes these objections overstate the usefulness of the records involved in this exemption. OSHA inspectors depend on many sources of information. Certainly in the case of complaint inspections, complaining employees themselves are sources of available detailed health and safety information as are prompt investigations. Also most workplace injury and illness data are recorded in workers' compensation reports, which are typically more detailed than the OSHA log. Nor does the exemption ignore research needs. As stated above, this exemption does not affect the reporting requirements needed to complete the BLS Survey. In addition, no other research needs have been identified which would be affected by this exemption. OSHA does not believe that employees will be deprived of important information. Employees, either individually, or through safety and health committees have access to worker's compensation first reports of injury, and other records kept by employers in the form best designed for a particular firm's needs.

Other objections where similar in nature. For example, OSHA agrees with the Michigan Department of Public Health, which stated that the recordkeeping requirements constitute a consistent, uniform way of recording injuries for individual establishments and industry wide (2–26). However, Michigan's claim that such records are the basis for joint labor-management efforts to improve safety and health is, in OSHA's opinion, a vast overstatement. Certainly for the exempted establishments, the minimal information recorded on and communicated by the required forms, could only be of peripheral value to such labor-management efforts. The uniformity of the forms, likewise, is irrelevant to joint labor-management efforts in any one firm, and of minimal significance to industry-wide efforts since the categories of recorded information are unambiguous. Michigan was also concerned that the adoption of this exemption could cause confusion in states operating their own health and safety plans pursuant to section 18 of the Act. However, any such confusion can be obviated by the states' adoption of similar exemptions. In sum, OSHA concludes that most general objections to the proposed exemption were based on theoretical uses for required records, which in fact, are either unproved or of minimal value.

Specific criticism of the proposal centered around OSHA's choice of industry groups for inclusion in the exemption, and/or the criteria themselves. Some commenters argued that additional industry groups or subgroups should be exempt because they meet OSHA's criteria in the proposal. For example OSHA was asked to broaden the exemption to include SIC 48, "Communications", because that industry's LWCIR has been below the criterion level of 75% of the private sector (AT&T) (2–15). OSHA limited its proposal to certain major groups within the broad industrial divisions of retail trade and services (SIC 52–89) because, by far, most of the hazardous major groups are contained in these divisions. OSHA realizes that other major groups also may have relatively low LWCIR's, or using other definitions, may be characterized as less hazardous.

Because statistics and concepts defining "hazardous" are changeable, OSHA is hesitant, however, to frame any exemption in the broadest way at this time. Therefore the Agency will continue to examine non-exempt industry groups for possible inclusion in future exemptions, based on the criteria applied here, or on equally rational criteria. It should also be noted that the record is not complete concerning whether other specified major groups, not included in the proposal, such as "Communications" (SIC 48) should also be exempt. For example, although industry comments supported extending the exemption to "Communications," no comments were received from affected unions, employees and other interested persons on the issue.

Various objections were made to OSHA's using 2-digit SIC codes to designate exempt industry groups. For instance, the AFL–CIO argued that two digit SIC codes are too broad to use for exemption purposes because they incorporate hazardous SIC's within them (2–10).

OSHA agrees with the AFL–CIO that using the 2-digit SIC code to designate less hazardous industries may "hide" less safe industries, firms, or in "safe" firms, unsafe operations. This flaw, however, is simply a consequence of the process of aggregation. OSHA does not agree with the AFL–CIO, however, that the 2-digit code is too "broad" for designating less hazardous industries. As stated above, little purpose would be served to continue to require 3 or 4 digit SIC codes groups or industries to keep records when OSHA is not using general schedule inspections in those industries. OSHA also believes that designating exempt categories down to the 3 or 4 digit level would be confusing to the public and administratively difficult for OSHA.

OSHA also agrees with commenters who stated that any definition which aggregates safety and health records of different firms and/or industries may "hide" high or low performers. In fact, even a firm-by-firm qualification test will aggregate operations with varying safety records with a given firm. Because of this fact, Inco Ltd. recommended that offices within larger establishments should be exempt, because offices are assumed to have very low workplace injury and illness rates. To the extent that office work results in very few recordable illnesses and injuries, the recording of such infrequent incidents would be a very slight additional burden for non-exempt establishments. Further, segregating data on an operation-by-operation basis may be beyond the normal operating procedures of many establishments and may thus create additional paperwork for such establishments. Even for those offices that may be considered separate establishments because the primary activity of their firms does not fall within the exempt SICs, OSHA does not believe that the continued making and keeping of the OSHA log and supplementary record will be unduly burdensome. Many of these offices are responsible for keeping OSHA-mandated records for other divisions of their firms. The additional making and keeping of these records for their own "office establishments" would appear to impose only a slight additional burden.

Other comments requested that OSHA revise its criteria for exemption to include certain SIC's. For instance, the ARF objected to the proposal's exclusion of SIC's 52,53 and 54 from the recordkeeping exemption, even though it acknowledged that these industries' LWCIR's were higher than 75% of the private sector average. The ARF characterized OSHA's criteria as "irrational and improper", in part because they allegedly implied a "casual relationship" between recordkeeping and the lost workday case rate. The ARF also accused OSHA of "punishing" SICs 52, 53 and 54, because they were not included in this exemption.

OSHA disagrees with this analysis. As stated above, the main reason for proposing these exemptions was OSHA's belief that in industries with above average safety and health experience little purpose is served by documenting low injury and illness rates on the forms and at the frequencies now required.

In addition, although this exemption is in keeping with OSHA's practice of

recognizing good performance by employers, OSHA does not expect that this exemption by itself, will provide sufficient incentive to change employer behavior to improve workplace health and safety. Neither does OSHA believe, as ARF suggested, that conforming to reporting requirements, by itself, improves workplace safety and health. Certainly, if data existed which supported such a causal relationship, OSHA would be amiss in issuing this exemption. It is because OSHA believes that the requirements affected by this exemption no longer serve their original purposes, that this exemption is being issued.

In conclusion, OSHA believes that its criteria for choosing industrial groups for exemption from certain recordkeeping requirements are both rational and fair. In addition, and just as importantly, OSHA believes that adopting this exemption will help employers, employees and the Agency to concentrate their respective resources on affirmative actions to improve workplace safety and health.

OSHA finds, in accordance with Executive Order 12291 (46 FR 13193), that this is not a "major rule" since its effect will not meet any of the definitional elements in § 1(b) of the Executive Order. As stated above, the effect of this rule will be to reduce many employers' paperwork burden, and accordingly results in lower costs to them. The Secretary also finds that no regulatory flexibility analysis is required under the Regulatory Flexibility Act (Pub. L. 96–354; 94 Stat. 1164) because this action will not have a significant economic impact on a substantial number of small entities, in that no increased reporting requirements are imposed and that competition within affected industries is not altered. A certification to this effect has been made by the Secretary to Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act

Information collection requirements contained in this regulation are in the process of being submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). Once the requirements have been assigned an OMB control number, the public will be notified to that effect.

Authority

This document was prepared under the direction and supervision of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health.

Accordingly, pursuant to Section 8(g) of the Occupational Safety and Health Act of 1970 (84 Stat. 29 U.S.C. 657(g), 1593, 1600), Section 4 of the Administrative Procedures Act (45 U.S.C. 553), and Secretary of Labor's Order 8–76, Part 1904 of Title 29 of the Code of Federal Regulations is hereby amended as set forth below.

List of Subjects in 29 CFR Part 1904.

Health records, Health statistics, Occupational safety and health.

Signed at Washington, D.C., this 20th day of December, 1982.

Thorne G. Auchter,

Assistant Secretary of Labor.

PART 1904—[Amended]

Part 1904 of Title 29, Code of Federal Regulations is amended as follows:

1. By adding a new paragraph (h) to § 1904.12, to read as follows:

§ 1904.12 Definitions.

* * * * *

(h) *Establishments Classified in Standard Industrial Classification Codes (SIC) 52–89.* (1) Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52–89.

(2) Retail trades are classified as SIC's 52–59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

(3) Finance, insurance and real estate are classified as SIC's 60–67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance, and real estate.

(4) Services are classified as SIC's 70–89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, education, social, and cultural; and membership organizations.

(5) The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of the normal basis for determining the primary activity.

2. By adding a new § 1904.16 to read as follows:

§ 1904.16 Establishments Classified in Standard Industrial Classification Codes (SIC) 52–89, (except 52–54, 70, 75, 76, 79 and 80).

An employer whose establishment is classified in SIC's 52–89, (excluding 52–54, 70, 75, 76, 79 and 80) need not comply, for such establishment, with any of the requirements of this part except the following:

(a) Obligation to report under § 1904.8 concerning fatalities or multiple hospitalization accidents; and (b) obligation to maintain a log of occupational injuries and illnesses under § 1904.21, upon being notified in writing by the Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2621

Limitation on Guaranteed Benefits; Correction

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; correction.

SUMMARY: On December 13, 1982, the Pension Benefit Guaranty Corporation published in the **Federal Register** at 47 FR 55672, FR Doc. 82–33789, an amendment to its Limitation on Guaranteed Benefits regulation. This document corrects the authority citation for 29 CFR Part 2621 and a typographical error in Appendix A to Part 2621.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel, Code 210, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, D.C. 20006, 202–254–4895. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 82–33789 appearing at page 55672 in the issue of December 13, 1982:

1. On page 55672 in column 3, in the "Authority", "4022(B)" is corrected to