

11504

RULES AND REGULATIONS

- (1) 8 3/10 pounds of sucrose; or
- (2) One gallon of concentrated fruit juice of not less than 70 Brix made from the same kind of fruit used in the manufacture of the concentrate; or
- (3) 2 1/2 ounces of any of the following:
 - (i) Malic acid;
 - (ii) Citric acid; or
 - (iii) Tartaric acid.

§ 18.128 Concentrate returned from a bonded wine cellar.

(a) *General.* The proprietor of a concentrate plant may accept the return of concentrate shipped by him to a bonded wine cellar. In such case, the proprietor of the concentrate plant shall:

(1) Give written consent to the proprietor of the bonded wine cellar for such return; and

(2) File, with the regional director, a consent of surety extending the terms of his bond, Form 1694, to cover the return of such concentrate to his plant. (He may, if he so desires, file one consent of surety on his bond to extend the terms thereof to cover all such concentrate which may be so returned to him.) If the regional director approves the application of the proprietor of the bonded wine cellar to return the concentrate, he will send a copy of his approval to the proprietor of the concentrate plant.

(b) *Receipt of returned concentrate.* When the returned concentrate is received, the proprietor shall note on both copies of the covering Form 3874 any loss in transit or other discrepancy, sign the form, retain one copy, and forward one copy to his regional director before the close of the next business day. The quantity of concentrate received shall be recorded in the proprietor's daily records and shall be reported on an unused line on his monthly report, Form 1695.

Subpart I—Records and Reports

§ 18.141 Records and reports.

Each proprietor shall keep records and render reports as required by this part. Such records and copies of applications, notices and reports, shall be maintained on or convenient to the concentrate plant available for inspection by ATF officers during business hours. Such records and copies of applications, notices and reports shall be preserved for a period of not less than two years from the date thereof or the date of the last entry required to be made thereon, whichever is the later: *Provided*, That the regional director may require such records to be kept for an additional period of not exceeding two years in any case where he deems such retention necessary or advisable.

§ 18.142 Photographic copies of records.

Persons who desire to record, copy, or reproduce records required to be preserved under § 18.141 by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original of such records, shall

make application to the regional director, in triplicate, to do so, describing:

- (a) The records to be reproduced.
- (b) The reproduction process to be employed.
- (c) The manner in which the reproductions are to be preserved.
- (d) The provisions to be made for examining, viewing, and using such reproductions.

The regional director shall not approve any application unless (1) the Director has approved that type of record for reproduction and the reproduction process to be employed, and (2) the manner of preservation of the reproductions and the provisions for examining, viewing, and using such reproductions are, in the regional director's opinion, satisfactory. Whenever records are reproduced under this section, the reproduced records shall be preserved in conveniently accessible files, and provisions shall be made for examining, viewing, and using the reproduced record the same as if it were the original record, and it shall be treated and considered for all purposes as though it were the original record; all provisions of law and regulations applicable to the original record shall be applicable to the reproduced record. As used in this section "original record" shall mean the record required by this part to be maintained or preserved, even though it may be an executed duplicate or other copy of the document.

§ 18.143 Daily records.

The proprietor shall maintain daily records which show the date of the transaction and which accurately and clearly reflect, by kind and by quantity, the following:

- (a) Processing material used.
- (b) Processing material removed.
- (c) Concentrates produced and the alcohol content thereof.
- (d) Concentrate used (by kind) in the manufacture of products at the concentrate plant premises.
- (e) Concentrate transferred (by kind) and the percent alcohol by volume thereof.
- (f) The name and address of each person to whom such concentrates are shipped and, in the case of concentrates shipped to, or returned by, a bonded wine cellar (1) the registry number of the bonded wine cellar, (2) the variety of grape, the kind and variety of berry, or the kind of fruit (if other than grape or berry), from which the concentrate was produced, (3) the percent of alcohol by volume of the concentrate, and (4) the fold of the concentrate.

(g) Substances received for use in rendering concentrates unfit for use as a beverage.

(h) Substances used in rendering concentrates unfit for use as a beverage or otherwise disposed of.

(72 Stat. 1392; 26 U.S.C. 5511)

§ 18.144 Monthly report.

A monthly report, on Form 1695, of concentrate plant operations shall be

prepared in duplicate by each proprietor. Where the proprietor has given notice of suspension of operations in accordance with the provisions of § 18.79, a report on Form 1695 need not be prepared or submitted for any month in which there were no operations. The original of each monthly report shall be forwarded to the regional director not later than the fifteenth day of the month succeeding that for which rendered.

§ 18.145 Final report.

When a change in the proprietorship of the concentrate plant occurs, the outgoing proprietor shall enter on his final report, Form 1695, an account of all concentrates transferred to his successor, who shall in turn enter such items on his report, Form 1695, as received from his predecessor. The outgoing proprietor shall make appropriate notation on all forms and records required to be kept by him, showing the change in proprietorship and the date thereof.

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Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Standard for Exposure to Asbestos

Pursuant to sections 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599; 29 U.S.C. 655, 657), Secretary of Labor's Order No. 12-71 (36 FR 8754), and 29 CFR Part 1911, § 1910.1001(i)(1) of Part 1910 of Title 29, Code of Federal Regulations, is hereby amended in the manner set forth below, in order to extend the retention period for asbestos exposure monitoring records from three years to twenty years.

On December 7, 1971 (36 FR 23207), OSHA issued an emergency temporary standard on asbestos in response to a petition by the Industrial Union Department of the AFL-CIO, pursuant to section 6(c) of the Act (84 Stat. 1596, 29 U.S.C. 655). This emergency temporary standard was designed primarily to immediately reduce and control occupational exposure to asbestos dust concentrations, and did not contain recordkeeping procedures. However, on January 12, 1972 (37 FR 466), OSHA published a proposed comprehensive standard for asbestos exposure which did include recordkeeping provisions. Paragraph (h)(1) of the proposal (37 FR 466) provided that exposure monitoring records, and records of medical examinations, be maintained for a period of twenty years. After public hearings the Secretary promulgated a new, permanent OSHA standard for asbestos on June 7, 1972 (37 FR 11318), in accordance with section 6(b) of the Act (84 Stat. 1593, 29 U.S.C. 655). This new regulation, which appeared as 29 CFR 1910.93a prior to recodification, contained a three-year requirement for retaining exposure monitoring records, 29

CFR 1910.93a(1)(1) (now 29 CFR 1910.1001(1)(1)).

On July 27, 1972, pursuant to section 6(f) of the Act, (84 Stat. 1597, 29 U.S.C. 655), a petition for judicial review of the asbestos standard was filed with the United States Court of Appeals for the District of Columbia. The principal petitioners, the Industrial Union Department, AFL-CIO, objected to several substantive portions of the standard, including those dealing with recordkeeping. The Court affirmed the Secretary's judgments and the standard's validity except for two provisions, one of which was the retention period for exposure monitoring records. "Industrial Union Department, AFL-CIO v. Hodgson," 499 F. 2d 467 (C.A.D.C. 1974). The Court directed the Secretary to re-examine the standard with respect to the three-year recordkeeping provision and to reconsider whether such time period adequately assured employee protection from asbestos-related diseases.

In discussing this issue, the Court noted that many of the problems facing the Secretary in developing an asbestos standard were directly attributable to the lack of information concerning asbestos-related diseases, and particularly to the lack of reliable data on past exposure levels. Noting the close functional relationship between medical records and exposure records, and the fact that the standard required that medical records be maintained for at least 20 years, the Court expressed surprise at the short three-year retention period for monitoring records. After reviewing the Secretary's obligation under the Act to require retention of records necessary for the development of information concerning the causes of disease and the importance of exposure data in establishing this causal relationship, the Court remanded the recordkeeping requirements to the Secretary "for such modification or clarification as may be necessary to ensure that the statutory objectives will be fulfilled" 499 F. 2d at 488.

Pursuant to the Court's direction, OSHA has completed its review, and has concluded that the opinion expressed by the Court is an accurate reflection of the record, and that the agency's initial judgment warrants correction.

OSHA believes that extension of the recordkeeping requirement for exposure monitoring from three years to twenty years as originally proposed would be in harmony with the twenty-year retention period now required for employee medical records, 29 CFR 1910.1001(j)(6)(1). As the court noted (499 F. 2d at 488), the two sets of records when read together would provide a more complete record of an employee's history of exposure, a factor vitally important with respect to asbestos-related diseases. The extended period for retention, with resultant data accumulation, will be critical to medical and scientific investigations studying such questions as dose-response relationships in diseases caused by occupational exposure to asbestos. This decision would also be responsive to

the agency's declared concern that the past inadequacy of health and monitoring records have hindered research into the consequences of asbestos exposure at the workplace. 37 FR 11318, June 7, 1972.

The long latency periods associated with asbestos-related diseases, and the consequent need for a standard to take such latency periods into account, were recognized by both the OSHA Advisory Committee on Asbestos Dust (proceedings at pp. 103-105, February 17, 1972) and the NIOSH Criteria Document for a Recommended Standard on Asbestos (generally chapters I and II). In addition, testimony by two witnesses at the OSHA hearings also supported longer retention periods for exposure monitoring records (Tr. at 527, 538, March 17, 1972). A consensus of the evidence in the record indicates that exposure monitoring records should be held for at least 20 years in order to make such a requirement meaningful in view of what is generally recognized as the minimum latency period for many asbestos-related diseases. OSHA is of the view that the interests of worker health would be best served by requiring the retention of exposure monitoring records for a period which reflects an appreciation of this recognized latency factor.

Accordingly, pursuant to the Court's remand for further consideration of the retention period for monitoring records, we have concluded, based on the existing record and for the reasons stated above, that a 20-year retention period is supported by the evidence and necessary for the protection of employees. It is noted that in a new proposal on exposure to asbestos (40 FR 47652, October 9, 1975), which reflects the most recent scientific and medical developments in the field, a 40-year retention period (or the duration of employment plus twenty years) for both exposure measurement and medical records has been proposed.

For the reasons stated above, the exposure records provision of the asbestos standard will be corrected to require retention of exposure monitoring records for at least 20 years, effective March 19, 1976. OSHA believes that a delay in the effective date of this requirement is not warranted since this rule only requires that affected employers retain records which they have already compiled and therefore does not impose a new burden of action, and since the initial three-year retention period for such records has now lapsed and these records might be destroyed. Loss of such records would be irreparable. Continued access to such records by all concerned is essential in the public interest, and is an appropriate means of effectuating the goals of improved worker safety and health under the Act. Good cause is found, therefore, pursuant to section 4(d)(3) of the Administrative Procedure Act (5 U.S.C. 553 (d)(3)), for making this rule effective.

Accordingly, pursuant to the direction of the United States Court of Appeals ("Industrial Union Department, AFL-CIO v. Hodgson, supra"), and the above referenced authority, paragraph

(1)(1) of 29 CFR 1910.1001 is hereby amended to read as follows:

§ 1910.1001 Asbestos.

(1) *Recordkeeping*—(1) *Exposure records*. Every employer shall maintain records of any personal or environmental monitoring required by this section. Records shall be maintained for a period of at least 20 years and shall be made available upon request to the Assistant Secretary of Labor for Occupational Safety and Health, the Director of the National Institute for Occupational Safety and Health, and to authorized representatives of either.

(Secs. 6, 8, Pub. L. 91-596, 84 Stat. 1593, 1598 (29 U.S.C. 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754); 29 CFR Part 1911).

Signed at Washington, D.C. this 12th day of March 1976.

MORTON CORN,
Assistant Secretary of Labor.

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Title 36—Parks, Forests, and Public Property

CHAPTER I—NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

Lake Mead National Recreation Area, Arizona—Nevada Closure of Designated Airstrip

Notice is hereby given that pursuant to the authority contained in section 3 of the Act of August 25, 1916, (39 Stat. 535, as amended; 16 USC 3), Section 6 of the Act of October 8, 1964, (78 Stat. 1040; 16 USC 460n-5), and 245 DM-1 (34 FR 13879) as amended, § 7.48(a) (3) of Title 36 of the Code of Federal Regulations is revoked as set forth below.

The purpose of this revocation is to permanently close the Pierce Ferry (also known as Pearce Ferry) landing strip located at approximate latitude 36°05' N., approximate longitude 114°03' W. Pursuant to the Superintendent's authority under 36 CFR § 2.6, this landing strip has been temporarily closed due to its inadequate length and other safety factors. Standard markers have been used to indicate to pilots that the strip is closed. Revocation of this subparagraph will remove this landing strip from the list of those within Lake Mead National Recreation Area at which aircraft operation and use are permitted.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. In this instance, however, safety considerations which necessitated closure of this airstrip make it impractical to withhold implementation of this revocation during a period of public comment. Persons who wish to submit written comments, suggestions, or objections regarding this action may provide these comments to