

staying in the Dry Creek Valley area. The proposed realignment would put the Gill Creek watershed into the Alexander Valley area, where it drains, and would keep the Dutcher Creek watershed within the Dry Creek Valley area.

The petitioner has provided a chart of growing degree days for five vineyards in the Dry Creek Valley and Alexander Valley areas. This chart indicates the Dry Creek Valley area is generally cooler than sites in the Alexander Valley area. The climate of the proposed realignment area more closely reflects the warmer Alexander Valley than the cooler Dry Creek Valley.

### Proposed Boundary Realignment

The Alexander Valley and Dry Creek Valley viticultural areas are located in northern Sonoma County, California. The proposed realignment involves changing 410 acres, of which 50 acres are planted with grapes, from the Dry Creek Valley to the Alexander Valley viticultural area designation. The USGS map used for the proposed boundary realignment of the Alexander Valley and Dry Creek Valley areas is the Geyserville Quadrangle, California—Sonoma Co., 7.5 Minute Series, edition of 1955.

### Public Participation—Written Comments

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927-8602, provided the comments: (1) Are legible; (2) are 8 1/2" x 11" in size, (3) contain a written signature, and (4) are three pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Any person who desires an opportunity to comment orally at a

public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

### Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

### Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

### Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

### Drafting Information

The principal author of this document is N. A. Sutton, Regulations Division (San Francisco), Bureau of Alcohol, Tobacco, and Firearms.

### List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine

### Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is proposed to be amended as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

**Paragraph 1.** The authority citation for Part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

**Par. 2.** Section 9.53 is amended by revising paragraph (c)(6), removing paragraph (c)(7), and redesignating paragraphs (c)(8) through (c)(44) as (c)(7) through (c)(43) to read as follows:

### § 9.53 Alexander Valley

\* \* \* \* \*

(a) *Boundaries.* \* \* \*

(6) Then southeasterly in a straight line approximately 11,000 feet (closely following the ridge line) to the northwest corner of Section 10, T. 10 N., R. 10 W. on the Geyserville Quadrangle map;

\* \* \* \* \*

**Par. 3.** Section 9.64 is amended by revising paragraphs (c) introductory text and (c)(1) to read as follows:

### § 9.64 Dry Creek Valley

\* \* \* \* \*

(c) *Boundaries.* The Dry Creek Valley viticultural area is located in north central Sonoma County, California. From the beginning point lying at the intersection of latitude line 38 degrees 45 minutes and the northwest corner of Section 5, T. 10 N., R. 10 W. on the "Geyserville Quadrangle" map, the boundary runs—

(1) Southeasterly in a straight line approximately 11,000 feet (closely following the ridge line) to the northeast corner of Section 9, T. 10 N., R. 10 W.;

\* \* \* \* \*

Signed: January 29, 2001.

**Bradley A. Buckles,**

*Director.*

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## CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

### 40 CFR Part 1610

### Attorney Misconduct, Sequestration of Witnesses, and Exclusion of Counsel

**AGENCY:** Chemical Safety and Hazard Investigation Board.

**ACTION:** Proposed rule.

**SUMMARY:** This document sets forth new proposed regulations of the Chemical Safety and Hazard Investigation Board ("CSB") concerning sanctions for repeated attorney misconduct, and the sequestration of witnesses and exclusion of counsel in depositions

conducted under subpoena in CSB investigations.

**DATES:** Submit comments on or before March 7, 2001.

**ADDRESSES:** Address all comments concerning this proposed rule to Raymond C. Porfiri, Chemical Safety and Hazard Investigation Board, 2175 K Street, NW., 4th Floor, Washington, DC 20037.

**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 concerning witness representation in CSB investigations at 40 CFR 1610.1 (66 FR 1050, Jan. 5, 2001).

These proposed rules amplify those rules. Because they provide for the possibility of suspension of attorneys from practice before the Board in certain circumstances, the Board has determined that the rules and the procedures therein should be published for comment as proposed rules.

New § 1610.2 provides for sanctions against attorneys who are involved in repeated acts of misconduct and for hearing procedures for issuing suspensions from practice before the Board.

New § 1610.3 provides for the sequestration of witnesses in investigative proceedings and for the exclusion of attorneys representing multiple witnesses in investigations from witness depositions where the person conducting the deposition, after consultation with the Office of General Counsel, determines that the CSB has concrete evidence that the presence of such attorney would obstruct or impede the investigation. This "concrete evidence" standard meets the test set forth by the court in *Professional Reactor Operator Society v. Nuclear Regulatory Commission*, 939 F.2d 1047 (D.C. Cir 1991). See also *SEC v. Csapo*, 533 F.2d 7 (D.C. Cir. 1976).

### Regulatory Flexibility Act

The Board, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this proposed regulation and certifies that it will not

have a significant economic impact on a substantial number of small entities.

### Unfunded Mandates Reform Act of 1995

This proposed 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, Pub. L. 104-4, 109 Stat. 48.

Dated: January 26, 2001.

**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 proposes to amend 40 CFR part 1610 as follows:

### PART 1610—ADMINISTRATIVE INVESTIGATIONS

1. The authority citation for part 1610 continues to read as follows:

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

2. Add §§ 1610.2 and 1610.3 to read as follows:

#### § 1610.2 Repeated attorney misconduct, sanctions, hearings.

(a) If an attorney who has been sanctioned by the Board for disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language in the course of a deposition under § 1610.1(a)(5) is sanctioned again by the Board in a subsequent deposition or investigation, the Board, after offering the attorney an opportunity to be heard, may reprimand, censure the attorney, or suspend the attorney from further practice before the Board for such period of time as the Board deems advisable.

(b) A reprimand or a censure shall be ordered with grounds stated on the record of the proceeding. A suspension shall be in writing, shall state the grounds on which it is based, and shall advise the person suspended of the right to appeal.

(c) An attorney suspended pursuant to this section may within ten (10) days after issuance of the order file an appeal with the Board. The appeal shall be in writing and state concisely, with supporting argument, why the appellant believes the order was erroneous, either

as a matter of fact or law. If necessary for a full and fair consideration of the facts, the Board as a whole may conduct further evidentiary hearings, or may refer the matter to another presiding officer for development of a record. Such presiding officer may be an attorney who is a Member of the Board or is employed in the Office of General Counsel, or an administrative law judge detailed from another agency pursuant to 5 U.S.C. 3344. If the Board refers the matter to a presiding officer, unless the Board provides specific directions to the presiding officer, that officer shall determine the procedure to be followed and who shall present evidence, subject to applicable provisions of law. Such hearing shall commence as soon as possible. If no appeal is taken of a suspension, or, if the suspension is upheld at the conclusion of the appeal, the presiding officer, or the Board, as appropriate, shall notify the state bar(s) to which the attorney is admitted. Such notification shall include copies of the order of suspension, and, if an appeal was taken, briefs of the parties, and the decision of the Board.

#### § 1610.3 Sequestration of witnesses and exclusion of counsel.

(a) All witnesses compelled by subpoena to submit to CSB depositions shall be sequestered unless the official conducting the depositions permits otherwise.

(b) Any witness compelled by subpoena to appear at a deposition during a CSB investigation may be accompanied, represented, and advised by an attorney in good standing of his or her choice, pursuant to § 1610.1. However, when the CSB official conducting the investigation determines, after consultation with the Office of General Counsel, that the CSB has concrete evidence that the presence of an attorney representing multiple interests would obstruct and impede the investigation or inspection, the CSB official may prohibit that counsel from being present during the deposition.

(c) The deposing official is to provide a witness whose counsel has been excluded under paragraph (b) of this section, and the witness' counsel, a written statement of the reasons supporting the decision to exclude. This statement, which must be provided no later than five working days after exclusion, must explain the basis for the counsel's exclusion. This statement must also advise the witness of the witness' right to appeal the exclusion decision and obtain an automatic stay of the effectiveness of the subpoena by filing a motion to quash the subpoena

with the Board within five days of receipt of this written statement.

(d) Within five days after receipt of the written notification required in paragraph (c) of this section, a witness whose counsel has been excluded may appeal the exclusion decision by filing a motion to quash the subpoena with the Board. The filing of the motion to quash will stay the effectiveness of the

subpoena pending the Board's decision on the motion.

(e) If a witness' counsel is excluded under paragraph (b) of this section, the deposition may, at the witness' request, either proceed without counsel or be delayed for a reasonable period of time to permit the retention of new counsel. The deposition may also be rescheduled to a subsequent date established by the

CSB, although the deposition shall not be rescheduled by the CSB to a date that precedes the expiration of the time provided in paragraph (d) of this section for appeal of the exclusion of counsel, unless the witness consents to an earlier date.

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