

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL TRADE COMMISSION

### 16 CFR Part 13

[Docket D-8908]

#### Prohibited Trade Practices; Encyclopaedia Britannica, Inc., et al.

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of period for public comment on petition to reopen the proceeding and modify the order.

**SUMMARY:** Encyclopaedia Britannica, a corporate respondent in the order in Docket No. D-8908, is prohibited from making misrepresentations while recruiting sales representatives, promoting merchandise or services, or attempting to collect debts, and filed a petition on April 2, 1987 requesting that the Commission reopen the proceeding and either set aside the order, now or at a fixed future date, or modify the order. A supplemental request to reopen the proceeding was filed on September 22, 1987. A second supplemental request to reopen the proceeding has been filed on January 22, 1988. This document announces the public comment period on the supplemental petition.

**DATE:** The deadline for filing comments on this matter is February 28, 1988.

**ADDRESS:** Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

Requests for copies of the petition should be sent to Public Reference Branch, Room 130.

**FOR FURTHER INFORMATION CONTACT:** Jock K. Chung, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-2984.

**SUPPLEMENTARY INFORMATION:** The order in Docket No. D-8908 was published at 41 FR 17884 on April 29, 1976. A correction to the order was published at 41 FR 19301 on May 12, 1976. The original request to reopen the proceeding was published at 52 FR

12430 on April 16, 1987. The petitioner, Encyclopaedia Britannica, sells encyclopedias and related products and services direct to the consumer by means of in-home, over-the-counter, direct mail and telephone sales solicitation. The order modification request is based on claimed changes of fact and law. A supplemental petition was placed on the public record on September 22, 1987. A second supplemental petition was placed on the public record on January 22, 1988.

#### List of Subjects in 16 CFR Part 13

Encyclopedia sales, Trade practices.

Benjamin I. Berman,

*Acting Secretary.*

[FR Doc. 88-2276 Filed 2-3-88; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Part 9

[Notice No. 653]

#### Santa Clara Valley Viticultural Area; CA

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF), is considering the establishment of a viticultural area located in West Central California, immediately south of San Francisco Bay. The petition was submitted by two winery owners located within the boundary of the proposed viticultural area. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they may purchase. The establishment of viticultural areas also allows wineries to further specify the origin of wines they offer for sale to the public.

**DATE:** Written comments must be received by March 7, 1988.

**ADDRESS:** Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC, 20044-0385 (Notice No. 653). Copies of the petition,

the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Edward A. Reisman, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226, (202) 566-7627.

#### SUPPLEMENTARY INFORMATION:

##### Background:

On August 23, 1978, AFT published Treasury Decision AFT-53 (43 FR 37672, 54624) revising regulations in 27 CFR, Part 4. These regulations allow the establishment of definite viticultural areas.

On October 2, 1979, AFT published Treasury Decision AFT-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region which has been delineated in Subpart C of Part 9.

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. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy or copies of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.  
Petition

ATF has received a petition proposing a viticultural area in Santa Clara, San Benito, San Mateo and Alameda Counties that extends from lower San Francisco Bay from the cities of San Jose, Santa Clara, Menlo Park, Mountain View and Fremont on the north to Gilroy and Morgan Hill on the southern end. Most of the proposed area is in Santa Clara County. The area is approximately 550 square miles or 352,000 acres.

There are 40 bonded wineries in the proposed viticultural area with approximately 1,500 acres of grapes. The proposed viticultural area is to be known as Santa Clara Valley. The petition was submitted by Mr. Eugene Guglielmo of Guglielmo Winery and Mr. Ernest Fortino of Fortino Winery. The Santa Clara Valley is in effect a southern extension of the depression partly filled by San Francisco Bay. It is protected from the Pacific Ocean by the Santa Cruz Mountains and separated from the San Joaquin Valley by the Diablo Range on the east.

#### Evidence of Name

In the 1770's, Spanish adventurers and ranchers impressed by the richness of the soil and mild climate, explored and settled in the area. In 1777, Franciscan friars chose the valley as the site of Mission Santa Clara and Mission San Jose and soon after their founding, planted grapes. The Cities of Santa Clara and San Jose were named after those early missions. In 1850 Santa Clara County became one of the twenty-seven original California counties. The name Santa Clara Valley became popularized during the early 1850's. The term "Santa Clara Valley" has been used in local books written from 1871 to present. The petitioner claims that the area has a proud and noble history as a grape-growing area. As stated by Mr. Leon Adams in his book, *The Wines of America*, "Santa Clara is the oldest of the northern California wine districts." The tourist pamphlet *San Jose—Santa Clara County, California (with full information on the Santa Clara Valley)* published by the San Jose Chamber of Commerce (circa 1905) described the Santa Clara Valley. It said that it is approximately 50 miles long (north to south) and approximately 25 miles wide (at the north end).

According to the petitioner the best evidence of the area's identification as the Santa Clara Valley is indicated on the U.S.G.S. maps that depict and name

the entire valley area from a topographic viewpoint.

#### Historical or Current Evidence that the Boundaries of the Proposed Viticultural Area are Correct

The petitioner submitted 26 U.S.G.S. maps with the boundaries of the proposed viticultural area appropriately marked so that they include all vineyards and bonded wineries in the proposed area. A few small mountain vineyards exist north and west of San Jose, but the bulk of the valley's northernmost grape growing has faded under urban development and the adverse effects of smog.

Most of the remaining wineries (many operated by one or two persons) are found where the valley narrows south of San Jose in the Morgan Hill, Gilroy and Hecker Pass areas.

In 1982, the Santa Cruz Mountains viticultural area was approved by ATF (T.D. ATF-98, 46 FR 59240). This grape-growing area is located immediately to the west of the proposed Santa Clara Valley viticultural area. A portion of the western boundary of the proposed Santa Clara Valley viticultural area is shared with the eastern boundary of the Santa Cruz Mountains viticultural area.

Evidence Relating to the Geographic Features such as Climate, Soil, Elevation, Physical Features, etc. which set the proposed Santa Clara Valley Viticultural Area apart from the Surrounding Areas.

#### (a) Climate

All references to the Santa Clara Valley in early publications made mention of the rich fertile soil of the valley floor which was protected from the colder ocean conditions by the nearby Santa Cruz Mountains located to the west and from the much hotter interior temperatures of the San Joaquin Valley with the Diablo Range to the east.

According to the petitioner, the climate of the Santa Clara Valley is moderate, with warm, dry summers, mild wet winters, and prevailing northwest winds. Summer temperatures can rise above 100 degrees F. at times.

The annual average temperature is 58 to 60 degrees F. The growing season between killing frosts is fairly long, ranging from 250 to 300 days. The area falls into climate region II (cool) with a heat summation of 2,700 degree days. Heavy frosts do not occur in the proposed viticultural area, although temperatures often get below freezing in winter. Most of the days are sunny, although in summer a high fog often hangs over the valley in the morning hours.

The nearby Santa Cruz Mountains (to the west of the proposed viticultural area) fall into climate Region I (very cool), having 2,500 or fewer degree days. The Santa Cruz Mountains take in most of the western boundary of the proposed area.

The Santa Cruz Mountains are characterized by a climate which is greatly influenced in the western portion by the Pacific Ocean breezes and fog movements, and in the eastern portion by the moderating influences of the San Francisco Bay. The Santa Cruz Mountains are characterized by a growing season in excess of 300 days. This is apparently due to cool air coming down the mountains forcing warmer air upward, thereby lengthening the season in which the necessary conditions for grape-growing are present.

Temperatures in the slopes of the hillsides where most of the vineyards are located appear to vary from that at the lower elevations of the vineyards in the Santa Clara Valley. This is caused by the marine influence coming off the Pacific Ocean which cools the Santa Cruz Mountains at night, much more so than the more inland Santa Clara Valley floor.

The rich San Joaquin Valley located on the east side of the Diablo Range is in Region V (very warm climate). The Livermore Valley (an American viticultural area) located 15 miles northeast of the proposed area is mostly in Region III (moderately cool climate).

#### (b) Rainfall and Winds

The average rainfall is between 16 to 20 inches in the Santa Clara Valley. The rainy season, when 80% of the rain falls, extends from November through March. Annual precipitation to the west averages over 28 inches annually at coastal Santa Cruz and over 56 inches annually at Ben Lomond in the elevated areas of the Santa Cruz Mountains. In the Diablo Range, to the east, precipitation is as much as 30 inches annually. Rainfall in the mountainous portions increases rapidly with elevation, although much less so in the Diablo Range than in the Santa Cruz Mountains. There is a greater amount of rainfall in the Santa Cruz Mountains because they are located close to the Pacific Ocean. Rainfall in the Livermore Valley (to the northeast) averages only 14 inches annually.

During the summer, the cool temperature and the prevailing, moderate to strong, west and northwest offshore winds move into the San Francisco Bay area at low elevations, thus, the effect of the marine air is felt in

the Santa Clara Valley mainly late in the afternoon and the evenings.

Precipitation distribution occurs during storms that bring in southwesterly winds. The winds come from that direction because of the close proximity to the Pacific Ocean and the Santa Cruz Mountains lie at right angles to the direction of the wind flow.

Surface winds enter the south part of the Santa Clara Valley via the Coyote Narrows and pass through Pajaro Gap. Prevailing wind direction is from the north over most of the south part of the valley, with winds blowing mostly from the south just below Gilroy, due to the Pajaro Gap. In the vicinity of Gilroy, however, winds are variable, because the currents from north and south meet there. Winter winds associated with the low pressure cyclonic storms which visit the region are more changeable in direction and velocity. Wind speeds are greatest during summer, when they average ten miles per hour.

#### (c) Soils

The soil associations present in the Santa Clara Valley are areas dominated by very deep, well drained poorly drained soils on alluvial plains, fans, stream benches and terraces. The soils in the Santa Cruz Mountains are Franciscan shale which is unique to this particular area south of San Francisco. The soil of the Santa Cruz Mountains is basically residual material from the decomposition of bedrock and the soil types in the area differ depending on the type of underlying bedrock. Generally, these residual soils tend to be thin and stony, and somewhat excessively drained. They are also characterized as impoverished, making it extremely difficult to grow grapes. This contrasts with the soil of the Santa Clara Valley, which is primarily alluvium and is more fertile. The soils of the Livermore Valley also differ from those of Santa Clara Valley because they are very gravelly as opposed to the rich Santa Clara Valley soils.

#### (d) Physiography and Geology

The Santa Clara Valley ranges in elevation from 100 to 800 feet above sea level as compared with the Santa Cruz Mountains and Diablo Range which surround the valley on the west and east side, respectively. The Santa Cruz Mountains elevation is approximately 1,000 feet above sea level to 3,500 feet above sea level. The Diablo Range elevation averages approximately 1,000 feet above sea level to 3,500 feet above sea level.

Just like the Santa Clara Valley, the Livermore Valley viticultural area is one of the coastal intermountain valleys that

surround the San Francisco Bay depression. The Livermore Valley has three main streams which are formed by the watershed runoff from three surrounding ridges.

Drainage in the Livermore Valley flows west to Alameda Creek which empties into San Francisco Bay.

The Santa Cruz Mountains are geologically different than the Santa Clara Valley because this mountain area is composed of formations of granite, marble, sandstone, lava, quartzite and schist.

The Santa Clara Valley floor consists chiefly of a number of confluent alluvial fans and flood plains formed by deposits from the numerous streams that enter the valley from both mountain systems. An imperceptible alluvial divide at Morgan Hill separates the drainage of the valley into a north-flowing system and a south-flowing system. The former drains into San Francisco Bay at the north end of Santa Clara County, and the latter leads to the Pajaro River south of Gilroy and eventually flows into Monterey Bay.

The oldest rocks found within eastern Santa Clara Valley are the Franciscan-Knoxville Group of Upper Jurassic age. These rocks form the largest single geologic unit in the area.

Along the margins of the Santa Clara Valley, Pliocene strata are exposed and the valley floor itself is composed of an accumulation of Quaternary clay, sand, and gravel. The structure of the area is complex. It is controlled by faulting. Faults are zones of weakness that are rapidly attacked by water and other agents of erosion. The famous San Andreas Fault, together with one of its prominent branches, the Sargent Fault, subparallels the western boundary of Santa Clara County and separates Miocene strata from Upper Jurassic rocks. San Francisco Bay and Santa Clara Valley outline a trough that is a downdropped fault block.

#### Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this notice of proposed rulemaking because the proposal, if promulgated as a final rule, is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens 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 the notice of proposed rulemaking, if promulgated as a 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 proposed rulemaking is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (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, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 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.

#### Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. The document proposes possible boundaries for the area named "Santa Clara Valley" viticultural area. However, comments concerning other possible boundaries or names for this proposed viticultural area will be given full consideration.

ATF is particularly interested in receiving comments on the northern boundary of the proposed viticultural area particularly in the Menlo Park/Redwood City/Woodside areas on the northwest and in the Fremont/Newark areas on the northeast. ATF would also like to receive comments on the southern boundary in the Hecker Pass/Pacheco Pass areas. 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, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which 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.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 30-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

#### Drafting Information

The principal author of this document is Edward A. Reisman, Wine and Beer 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 and Issuance

27 CFR Part 9, American Viticultural Areas, is amended as follows:

#### PART 9—[AMENDED]

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

Authority: 27 U.S.C. 205.

Paragraph 2. The table of contents in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.126 to read as follows:

#### Subpart C—Approved American Viticultural Areas

Sec.

\* \* \* \* \*  
9.126 Santa Clara Valley.

Paragraph 3. Subpart C is amended by adding § 9.126 to read as follows:

#### Subpart C—Approved American Viticultural Areas

##### § 9.126 Santa Clara Valley.

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

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the "Santa Clara Valley" viticultural area are 26 U.S.G.S. Quadrangle (7.5 Minute Series) maps. They are titled:

- (1) Calaveras Reservoir, Calif., 1961, (photorevised 1980);
- (2) Castle Rock Ridge, Calif., 1955 (photorevised 1968), photoinspected 1973;
- (3) Chittenden, Calif., 1955 (photorevised 1980);
- (4) Cupertino, Calif., 1961 (photorevised 1980);

- (5) Gilroy, Calif., 1955 (photorevised 1981);
- (6) Gilroy Hot Springs, Calif., 1955 (photorevised 1971), photoinspected 1973;
- (7) Lick Observatory, Calif., 1955 (photorevised 1968), photoinspected 1973;
- (8) Loma Prieta, Calif., 1955 (photorevised 1968);
- (9) Los Gatos, Calif., 1953 (photorevised 1980);
- (10) Milpitas, Calif., 1961 (photorevised 1980);
- (11) Mindego Hill, Calif., 1961 (photorevised 1980);
- (12) Morgan Hill, Calif., 1955 (photorevised 1980);
- (13) Mt. Madonna, Calif., 1955 (photorevised 1980);
- (14) Mt. Sizer, Calif., 1955 (photorevised 1971), photoinspected 1978;
- (15) Mountain View, Calif., 1961 (photorevised 1981);
- (16) Newark, Calif., 1959 (photorevised 1980);
- (17) Niles, Calif., 1961 (photorevised 1980);
- (18) Pacheco Peak, Calif., 1955 (photorevised 1971);
- (19) Palo Alto, Calif., 1961 (photorevised 1968 and 1973);
- (20) San Felipe, Calif., 1955 (photorevised 1971);
- (21) San Jose East, Calif., 1961 (photorevised 1980);
- (22) San Jose West, Calif., 1961 (photorevised 1980);
- (23) Santa Teresa Hills, Calif., 1953 (photorevised 1980);
- (24) Three Sisters, Calif., 1954 (photorevised 1971), photoinspected 1978;
- (25) Watsonville East, Calif., 1955 (photorevised 1980);
- (26) Woodside, Calif., 1961 (photorevised 1968 and 1973).

(c) The boundaries of the proposed Santa Clara Valley viticultural area are as follows:

- (1) The beginning point is at the junction of Elephant Head Creek and Pacheco Creek (approx. .75 mile southwest of the Pacheco Ranger Station) on the Pacheco Peak, Calif. U.S.G.S. map.
- (2) From the beginning point the boundary moves in a northerly direction up Elephant Head Creek approx. 1.2 miles until it intersects the 600 foot contour line;
- (3) Then it meanders in a northwesterly direction along the 600 foot contour line approx. .55 miles until it intersects Vargas Road in the northwest portion of Sec. 25, T4S/R1W on the Niles, Calif. U.S.G.S. map;
- (4) Then it travels in a northwesterly direction approx. .6 mile to the

intersection of Morrison Canyon Road in the eastern portion of Sec. 23, T4S/R1W;

(5) Then it follows Morrison Canyon Road west approx. 1.5 miles to Mission Boulevard (Highway 238) at Sec. 22, T4S/R1W;

(6) Then it moves northwest on Mission Boulevard (Highway 238) approx. .6 mile to the intersection of Mowry Avenue just past the Sanatorium at Sec. 22, T4S/R1W;

(7) It then goes in a southwesterly direction on Mowry Avenue approx. 3.6 miles to the intersection of Nimitz Freeway (Highway 880) (depicted on the map as Route 17) at Sec. 5, T5S/R1W, on the Newark, Calif. U.S.G.S. map;

(8) It then moves along the Nimitz Freeway (Highway 880) in a southeasterly direction for approx. 9 miles to the intersection of Calaveras Boulevard (Highway 237) at Milpitas on the Milpitas, Calif. U.S.G.S. map;

(9) Then it follows Highway 237 in a westerly direction approx. 7.2 miles to the intersection of Bay Shore Freeway (Highway 101) at Moffett Field on the Mt. View, Calif. U.S.G.S. map;

(10) Then in a northwest direction follow Bay Shore Freeway (Highway 101) for approx. 12 miles to the intersection of Woodside Road (Highway 84) at Redwood City on the Palo Alto, Calif. U.S.G.S. map;

(11) Then it heads southwest on Woodside Road (Highway 84) approx. 5 miles to the intersection of Mountain Home Road at Woodside on the Woodside, Calif. U.S.G.S. map;

(12) It travels along Mountain Home Road in a southerly direction approx. 2.2 miles to where it intersects Portola Road on the Palo Alto, Calif. U.S.G.S. map approx. .1 mile northwest of Searsville Historical Marker;

(13) It then moves along Portola Road in a west to north direction approx. .6 mile until it intersects La Honda Road (Highway 84) on the Woodside, Calif. U.S.G.S. map;

(14) It then goes south on La Honda Road (Highway 84) approx. .5 mile until it meets the 600 foot elevation contour line;

(15) It moves along the 600 foot elevation contour line in a southeasterly direction approx. 14 miles to Regnart Road at Regnart Creek on the Cupertino, Calif. U.S.G.S. map;

(16) It goes northeast along Regnart Road, approx. .7 mile to the 400 foot elevation contour line (.3 mile southwest of Regnart School);

(17) It travels along the 400 foot elevation contour line southeast approx. 1.4 miles to the north section line of Section 36, T7S/R2W at Blue Hills, CA:

(18) The boundary goes east on the section line approx. .4 mile to Saratoga Sunnyvale Road (Highway 85);

(19) It travels south on Saratoga Sunnyvale Road (Highway 85) approx. 1 mile to the south section line of Section 36, T7/8S R2W;

(20) Then it goes west on the section line approx. .75 mile to the first intersection of the 600 foot elevation contour line;

(21) It follows the 600 foot elevation contour line southeast approx. .75 mile to Pierce Road south of Calabazas Creek;

(22) It then travels south on Pierce Road approx. .4 mile to the first intersection of the 800 foot elevation contour line;

(23) Then it runs southeast approx. 28 miles on the 800 foot elevation contour line to the east section line of Sec. 25, T10S/R2E/R3E approx. .5 mile north of Little Arthur Creek on the Mt. Madonna, Calif. U.S.G.S. map;

(24) Then it goes south on the section line approx. .5 mile to the 800 foot elevation contour line approx. .2 mile south of Little Arthur Creek;

(25) Then it goes southeast along the 800 foot elevation contour line approx. 2.7 miles to Hecker Pass Road (Highway 152) approx. 1.25 miles east of Hecker Pass on the Watsonville East, Calif. U.S.G.S. map;

(26) The boundary goes northeast on Hecker Pass Road (Highway 152) approx. .75 mile to the intersection of the 600 foot elevation contour line just west of Bodfish Creek;

(27) It travels southeast along the 600 foot elevation contour line approx. 7.3 miles to the first intersection of the western section line of Sec. 30, T11S/R3E/R4E on the Chittenden, Calif. U.S.G.S. map;

(28) Then it follows south along the section line approx. 1.9 miles to the south township line at Sec. 31, T11S/T12S, R3E/R4E;

(29) It moves in an easterly direction along the township line approx. 12.4 miles to the intersection of T11S/T12S and R5E/R6E on the Three Sisters, Calif. U.S.G.S. map;

(30) Then it goes north along R5E/R6E range line approx. 5.3 miles to Pacheco Creek on the Pacheco Creek, Calif. U.S.G.S. map;

(31) Then it moves northeast along Pacheco Creek approx. .5 mile to Elephant Head Creek at the point of beginning.

Approved: January 27, 1988.

Stephen E. Higgins.

Director.

[FR Doc. 88-2287 Filed 2-3-88; 8:45 am]

BILLING CODE 4810-31-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Parts 169 and 171

[DoD Directive 4100.15]

#### Commercial Activities Program

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Supplemental notice of proposed rule.

**SUMMARY:** This rule proposes to reissue Part 169 to incorporate substantive changes required by Pub. L. 100-180, "National Defense Authorization Act for Fiscal Years 1988 and 1989" December 4, 1987, section 111 and Executive Order 12615, "Performance of Commercial Activities," November 19, 1987. This part proposes to prescribe DoD policy for establishment and operation of DoD commercial activities. It also withdraws proposed Part 171.

**DATE:** Comments must be received on or before March 4, 1988.

**ADDRESS:** Office of the Assistant Secretary of Defense (Production & Logistics), Installation Services Directorate, The Pentagon, Room 3E787, Washington, DC. 20301.

**FOR FURTHER INFORMATION CONTACT:** Mr. Doug Hansen, Telephone 202-325-0537.

**SUPPLEMENTARY INFORMATION:** Part 169 was published in the *Federal Register* on March 18, 1980 (45 FR 17138) and reissued on September 16, 1985 (50 FR 37527) prescribing the policy for the establishment of DoD commercial activities. Comments will be available for public inspection by request. Because of the short time requirements placed on DoD to publish this part, DoD does not plan to acknowledge or respond to individual comments. However, DoD will respond to the comments in the preamble of the final rule.

DoD has determined that the proposed rule (32 CFR Part 171) that was published in the *Federal Register* on December 3, 1986 (51 FR 43620) is withdrawn. Current Parts 169 and 169a remain in effect until revised.

#### List of Subjects in 32 CFR Part 169

Armed Forces, Government procurement.

It is proposed to revise Part 169 to read as follows:

## PART 169—COMMERCIAL ACTIVITIES PROGRAM

Sec

- 169.1 Reissuance and purposes.
- 169.2 Applicability and scope.
- 169.3 Definitions.
- 169.4 Policy.
- 169.5 Responsibilities.

Authority: 5 U.S.C. 301 and 552 and Pub. L. 93-400.

#### § 169.1 Reissuance and purpose.

This part:

- (a) Reissues 32 CFR Part 169.
- (b) Updates DoD policies and assigns responsibilities for commercial activities (CAs) as required by E.O. 12615 and OMB Circular A-76 (revised).

#### § 169.2 Applicability and scope.

This part:

- (a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) Encompasses DoD policy for CAs in the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) Is not mandatory for CAs staffed solely with civilian personnel paid by nonappropriated funds, such as military exchanges. However, its provisions are mandatory for CAs when they are staffed partially with civilian personnel paid by or reimbursed from appropriated funds, such as libraries, open messes, and other morale, welfare, and recreation (MWR) activities.

(d) Does not:

(1) Apply to governmental functions as defined in § 169.3

(2) Apply when contrary to law, executive orders, or any treaty or international agreement.

(3) Apply in times of a declared war or military mobilization.

(4) Provide authority to enter into contracts.

(5) Apply to the conduct of research and development, except for severable in-house CAs in support of research and development, such as those listed in enclosure 3 of DoD Instruction 4100.33.<sup>1</sup>

(6) Justify conversion to contract solely to avoid personnel ceilings or salary limitations.

(7) Authorize contracts that establish an employer-employee relationship between the Department of Defense and contractor employees as described in

<sup>1</sup> Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, ATTN: Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120.