

or for foreign firms doing business in the United States.

Issued at Washington, DC, on July 10, 1986.  
Norman H. Plummer,  
Director of Environment and Energy.  
[FR Doc. 86-16520 Filed 8-15-86; 8:45 am]  
BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Part 9

[Notice No. 601]

#### San Lucas Viticultural Area

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms proposes to establish in Monterey County, California, an American viticultural area to be known by the appellation "San Lucas." This proposal is based on a petition filed by Almaden Vineyards of San Jose, California. Almaden Vineyards is one of several growers having extensive vineyard operations in the vicinity of the Town of San Lucas in southern Monterey County, California.

The use of the name of an approved viticultural area as an appellation of origin in the labeling and advertising of wine allows the proprietor of a winery to designate the area as a locale in which grapes used in the production of a wine are grown and enables the consumer to identify and to differentiate between that wine and other wines offered at retail.

**DATE:** Written comments must be received by October 17, 1986.

**ADDRESSES:** Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, RE: Notice No., P.O. Box 385, Washington, DC 20044-0385.

Copies of this proposal, the petition, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Ariel Rios Federal Building, Room 4406, 1200 Pennsylvania Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Michael J. Breen, Coordinator, FAA, Wine and Beer Branch, Room 6237, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: (202) 566-7626.

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in Title 27, Code of Federal Regulations, Part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added to Title 27 a new Part 9 providing for the listing of approved American viticultural areas.

Section 4.25a(e)(1) 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 viticultural area. The petition shall 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 features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundary of the proposed 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 boundary prominently marked.

##### Petition

Almaden Vineyards of San Jose, California, filed a petition for the establishment of a viticultural area to be known as "San Lucas" in southern Monterey County, California, in the vicinity of the Town of San Lucas.

The petitioned area consists primarily of bottomland and alluvial fans and terraces in the floodplain of the Salinas River as well as the slopes of rolling hills to the east and west of this 10-mile-long section of the Salinas Valley in Monterey County.

The principal stream that drains the valley is the Salinas River, the largest submerged or "upside-down" river in

North America. The bottomlands drained by this river share similar geological history, topographical features, and soils.

The boundary of the proposed viticultural area encompasses approximately 53 square miles or 33,920 acres. The area is approximately 10 miles in length by 5 miles in width and is bisected by State Highway 101 and the Salinas River which flows northwest 155 miles from its source in San Luis Obispo County through Monterey County into Monterey Bay. At the northern end of the proposed viticultural area, the elevation of the Salinas River is approximately 340 feet above sea level; at the southern end, the elevation of the Salinas River is approximately 435 feet above sea level.

The "San Lucas" viticultural area as proposed includes the entire San Lucas Land Grant as well as the southern fourth of the San Benito Land Grant and the northern half of the San Bernardo Land Grant.

Within the area there are approximately 5,000 acres devoted to the cultivation of wine grapes. Areas presently planted in wine grapes range from alluvial fans and terraces over 350 feet above sea level to low-lying hills having maximal elevations of 800 feet above sea level. The proposed area is entirely within the established Monterey Viticultural Area.

##### History

A Spanish navigator landed at Monterey in 1602. Subsequent overland expeditions from Mexico City to Alta California included padres who established 21 missions along the Camino Real in California. In the portion of California which later became Monterey County, missions were established at Carmel, Soledad and San Antonio.

The Spanish imposed rigidly prescribed rules under which land was parceled into pueblos, presidios, missions and ranchos. From 1774 to 1824, Spanish governors in Monterey awarded 34 relatively small parcels of land as ranchos in present-day Monterey County.

With Mexico's independence from Spanish rule in 1824, a succession of Mexican governors ruled California. These governors secularized the extensive landholdings of the missions by bestowing an additional 32 land grants, eight of which were in excess of 10,000 acres. From 1836 to 1842, 28 land grants totaling over a quarter of a million acres were awarded. The Rancho San Benito (6,671 acres) and the Rancho San Bernardo (13,346 acres) land grants

were awarded in 1841 and the Rancho San Lucas land grant (8,875 acres) was awarded in 1842.

From 1862 to 1890, Alberto Trescony amassed extensive holdings of rangeland consisting of Rancho San Benito and Rancho San Lucas as well as the portion of Rancho San Bernardo north of present-day San Ardo. Trescony grazed large herds of sheep and cattle on the land and rented tracts of land to tenant farmers who raised feed grains, primarily wheat and barley. As the area prospered, a large grain elevator was erected on a site which later became the Town of San Lucas. With the extension of railroad service south to San Lucas in the 1880's, the town continued to thrive and for a while its size eclipsed that of King City, its immediate neighbor to the north. The "San Lucas District," comprised of the Town of San Lucas, the San Lucas and San Benito land grants, and the northern half of the San Bernardo land grant, gained a reputation for raising grain, cattle and horses.

The petition includes documentation of the planting of wine grapes in 1970. Today, the area has approximately 5,000 acres devoted to wine grape cultivation. A drive south along State Highway 101 from King City past San Lucas to San Ardo reveals mile after mile of vineyards planted on land extending to the bases of the hills along both sides of the roadway.

#### Name

"San Lucas" is the name used locally to designate the agricultural district in southern Monterey County in which is located the Town of San Lucas. Because of the history of ownership by Alberto Trescony as well as references to the "San Lucas" agricultural district, ATF believes that the name "San Lucas" applies to the area within the land grant bearing that name as well as to the southern portion of the San Benito Land Grant and to the portion of the San Bernardo land grant lying northwest of San Ardo.

#### Geography

The proposed San Lucas viticultural area consists of bottomland and alluvial fans and terraces in the floodplain of the Salinas River as well as the slopes of rolling foothills which form the east and west portions of the proposed boundary. Straight lines drawn between the promontories of foothills ranging in elevation from 499 feet to 1,230 feet above sea level form the boundary of the area. The proposed viticultural area is approximately 10 miles in length from north to south and over 5 miles in width from west to east. The area is part of the

elongated 84-mile-long Salinas Valley which ranges in width from 10 to 12 miles near the Town of Salinas at its northern end near the Monterey Bay to less than one mile at Bradley at the southern end near the Monterey-San Luis Obispo county line.

#### Distinguishing Characteristics

The petitioner states that in addition to history and name the proposed viticultural area is distinguished from adjoining bottomlands to the northwest and southeast by temperature and by climate and is distinguished from highland areas to the east and west by differences in topography, elevation, geology, and soils.

Data from the soil survey of Monterey County support restricting the "San Lucas" appellation to the area as petitioned.

#### Topography and Elevation

The major physiographic units in Monterey County are the valley lands of the Salinas Valley, the Gabilan and Diablo Ranges to the east of the valley, and the Santa Lucia Range to the west of the valley.

The topography of the proposed viticultural area ranges from bottomland and alluvial fans and terraces in the flood plain of the Salinas River to the gently rolling Cholame Hills in the Diablo Range east of the proposed area and the somewhat steeper slopes along canyons in the foothills of the Santa Lucia Range west of the proposed area.

Elevations of existing grape plantings range from bottomlands at 350 feet to hills at 800 feet above sea level. Lying entirely within the approved Monterey viticultural area, the boundary of the proposed San Lucas viticultural area defines a region well suited for viticulture. The topography of the area ensures adequate ventilation for viticulture.

#### Geology

The geology of the proposed area varies little from adjoining basin lands to the northwest but does differ significantly from that of the hills and mountains to the east and west. The basin of the Salinas Valley consists of sand and gravel alluvia. The central part of the Santa Lucia Range directly west of the proposed area is composed of diatomaceous shale and massive sandstone. The Cholame Hills in the Diablo Range to the east consist chiefly of calcareous shale. The San Ardo area southeast of the proposed area yields gas and oil.

#### Soil

The basin of the Salinas River contains a mix of alluvial sand, silt and clay carried downstream over time by tributaries from the mountains and hills surrounding the Salinas Valley. The soil in the vicinity of the Town of San Lucas is mostly Lockwood shaly loam, otherwise known as "Chalk Rock."

Other soil series common to the proposed area are Oceano (loamy sand), Metz complex (loam and sand), Garey (sandy loam), Greenfield (fine sandy loam), and the Snelling-Greenfield complex (loam). All are rapidly draining to well drained, coarse to medium textured soils that formed in alluvium. Slopes are 0 to 30 percent. The natural vegetation consists of annual grasses and forbs. Roots penetrate to a depth of more than 60 inches. Soils of these series are used mostly for dryland grain and range. With the use of irrigation, these soils can be planted to row crops such as grapes.

#### Climate

The climate of Monterey County ranges from cool and moist along the coast, where fog is common, to hot and dry in inland areas in the southern part of the county.

There are different climatic regions within the county. The transitions between regions are gradual. The regions are the coastal areas and valleys that open to the coast; interior valleys generally surrounded by foothills and mountains; the foothills; and the higher more rugged mountainous areas. There is a great difference between the maximum and minimum temperatures from one region to another.

Temperatures near the coast are uniform throughout the year. However, as distance from water increases, the ranges between seasonal highs and lows and between daytime highs and nighttime lows during the growing season widen.

The mean annual temperature for Monterey County ranges only from 55° to 59 °F. The mean maximum temperature averages about 100 °F near Jolon in the interior (15 miles to the southwest of the Town of San Lucas) but only about 79° on the Monterey Peninsula. The mean minimum temperature for Jolon is 30° and for the Peninsula, about 41°.

Along the coast, the average annual temperature is 57 °F, and freezing temperatures are rare. In the southern part of the county, however, greater extremes in temperature and higher average temperatures prevail. Annual precipitation ranges from about 105

inches along the crest of the Santa Lucia Range to 10 inches in southernmost Salinas Valley.

The climate of Monterey County is strongly affected by the proximity of the Pacific Ocean. Its moderating influence limits the range of daily highs and lows as well as the annual range of temperature, keeping summers cool and winters moderately warm close to water. Coastal areas are very cloudy in summer, especially during the evening, night and morning. Nighttime cloudiness is common throughout the Salinas Valley during much of the summer; however, as the distance from the ocean increases, the clouds are fewer, and they form later in the evening and clear earlier in the morning.

Inland, the pattern of climate becomes more complex as the maritime influence interacts with mountain barriers and inland heating. The coastal mountains in the central and southern parts of the county hold marine air away from the interior, but as the sun heats the middle and southern parts of the Salinas Valley and higher elevations near the adjacent mountains, rising warm air draws cooler marine air from Monterey Bay into the valley. As a result of this sequence of heating and cooling effects of wind and marine fog, daily and annual temperatures in the county's interior range widely.

Average annual temperatures of about 60 °F are characteristic of the Salinas Valley. Temperatures farther inland in the southern Salinas Valley, however, climb fairly high during the day before the sea breeze becomes effective. In summer, the average daily maximum temperature remains in the low 60s along the coast and ranges from the middle 80s to the middle 90s in the southern end of the Salinas Valley and the eastern mountain area. Readings of 115 °F have been made in the southeasternmost inland reaches of the Salinas Valley.

Precipitation, mostly rain, occurs chiefly in winter. As a result of the terrain and the maritime influence, the amount of precipitation varies considerably from point to point. In most areas of the coastal range, the annual amount averages more than 20 inches and is about 80 inches at higher elevations. Most of the Salinas Valley is in the rain shadow of the coastal range and, consequently, the annual total precipitation drops to as little as 10 inches in areas to the south of King City. East of the Salinas Valley, precipitation increases again on the western slopes of the Gabilan and Diablo Ranges with about 20 inches reported at the higher elevations.

Grape growing in the Salinas Valley requires irrigation from May to October. Almost all of the irrigation water is pumped via wells from the large aquifer of the submerged Salinas River. Water released during the summer from the reservoirs of the Nacimiento and San Antonio dams into the Salinas River maintains a steady flow and supply for sprinkler and drip irrigation.

The location of the proposed "San Lucas" viticultural area in the inland southern end of the Salinas Valley allows a distinction on climatological characteristics from the rest of the county in that the area experiences heat and less intrusion of the fog common to those portions of the Salinas Valley which are closer in proximity to the Monterey Bay.

The April through October growing season of the proposed viticultural area is distinctly warmer than that of the portion of the Salinas Valley to the northwest and cooler than that of the portion of the valley to the southeast. The climate of the area is characterized by cold summer night temperatures, dropping as much as 40 degrees below daytime highs.

The petitioner has supplied thermograph readings documenting a 30-degree range between high and low temperatures at Almaden's vineyard situated east of King City and a 40-degree range between high and low temperatures at Almaden's vineyard situated south of San Lucas.

"General Viticulture" by Winkler, Cook, Kiewer and Lider (1974) identifies, in part, winegrowing climatic regions and heat summations, i.e., degree-days above 50° F for the period April 1 through October 31, for the following locations in Monterey, San Joaquin and San Luis Obispo (SLO) counties:

| Station               | County           | Heat summation | Climatic region |
|-----------------------|------------------|----------------|-----------------|
| Gonzales.....         | Monterey .....   | 2350           | I               |
| Soledad .....         | Monterey .....   | 2880           | II              |
| San Luis Obispo ..... | SLO.....         | 2620           | II              |
| Atascadero.....       | SLO.....         | 2870           | II              |
| Paso Robles.....      | SLO.....         | 3100           | III             |
| San Miguel.....       | SLO.....         | 3890           | IV              |
| Stockton.....         | San Joaquin..... | 4160           | V               |

The heat summations for the five climatic regions are:

| Region   | Degree-days      |
|----------|------------------|
| I.....   | Less than 2,500. |
| II.....  | 2,501 to 3,000.  |
| III..... | 3,001 to 3,500.  |
| IV.....  | 3,501 to 4,000.  |
| V.....   | 4,001 or more.   |

Based on the averages of degree-day records maintained by the petitioner for the vineyards near King City and San Lucas for the 11-year period 1974 to 1984, ATF has calculated the following:

| Station        | County         | Heat summation | Climatic region |
|----------------|----------------|----------------|-----------------|
| King City..... | Monterey ..... | 3389           | III             |
| San Lucas..... | Monterey ..... | 3734           | IV              |

Comparing the published data for selected stations in the vicinity of San Lucas with the calculations for the petitioner's vineyards near King City and San Lucas, ATF concludes that there is a difference in climatic regions between San Lucas and King City which is north of San Lucas. King City experiences more of the marine influence due to its proximity to the Monterey Bay.

San Miguel is situated in San Luis Obispo County approximately 30 miles south of the Town of San Lucas. Both San Lucas and San Miguel are classed in Climatic Region IV and both experience long daily periods of high heat and sunlight due to their inland locations and distance from the coast and its marine influence.

Winds and fog generated by high and low pressures between the inland hills and the year-round temperature of 55 degrees Fahrenheit for the waters of the Monterey Bay are an additional cooling factor in summer. These cooling winds are distinguished from those of the San Joaquin Valley to the east. The San Joaquin Valley is classed in Climatic Region V.

**Proposed Boundary**

The boundary of the proposed San Lucas viticultural area may be found on four United States Geological Survey maps of the 7.5 minute series, scale 1:24,000. The boundary is described in proposed § 9.56.

**Compliance with Executive Order 12291**

It has been determined that this proposed 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.

### 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 proposal because 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. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal 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 notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

### Public Participation

ATF requests comments from all interested parties. Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

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

Thermograph readings supplied by the petitioner support a "warm" Climatic Region III classification for the petitioner's vineyard east of King City and a "cool" Climatic Region IV classification for the petitioner's vineyard south of San Lucas. Based on this data, ATF has proposed a northern leg of the boundary for the area. Since the transition between the two climatic regions is gradual, however, ATF requests the submission of any additional thermograph readings taken from various points in the extensive vineyards which are situated immediately northwest of the boundary as proposed. Readings recorded over at least the past 10 years would be helpful in delineating the north leg of the boundary.

The Director 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 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 imposed.

### Drafting Information

The principal author of this document is Michael J. Breen, FAA, Wine and Beer Branch, 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 amended as follows:

### PART 9—AMERICAN VITICULTURAL AREAS

**Paragraph. 1.** The authority citation for 27 CFR Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

**Par. 2.** The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.56 to read as follows:

#### Subpart C—Approved American Viticultural Areas

Sec.  
9.56 San Lucas.

**Par. 3.** Subpart C is amended by adding § 9.56 to read as follows:

#### Subpart C—Approved American Viticultural Areas

##### § 9.56 San Lucas.

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

(b) *Approved maps.* The appropriate maps for determining the boundary of San Lucas viticultural area are the following four U.S.G.S. topographical maps of the 7.5 minute series: San Lucas, CA, 1949, photorevised 1979, Natrass Valley, CA, 1967, San Ardo, CA, 1967, and, Espinosa Canyon, CA, 1949, photorevised 1979.

(c) *Boundary.* The San Lucas viticultural area is located in Monterey County in the State of California. The boundary is as follows: Beginning on the "San Lucas Quadrangle" map at the northwest corner of section 5 in Township 21 South, Range 9 East, the

boundary proceeds northeasterly in a straight line approximately 0.35 mile to the 630-foot promontory in section 32, T. 20 S., R. 9 E.;

(1) Then east southeasterly in a straight line approximately 0.6 mile to the 499-foot promontory in the southwest corner of section 33, T. 20 S., R. 9 E.;

(2) Then east southeasterly in a straight line approximately 1.3 miles to the 847-foot promontory in section 3, T. 21 S., R. 9 E. on the "Natrass Valley quadrangle" map;

(3) Then south southeasterly in a straight line approximately 2.2 miles to the 828-foot promontory in section 14, T. 21 S., R. 9 E. on the "San Ardo Quadrangle" map;

(4) Then east southeasterly in a straight line approximately 1.3 miles to the 868-foot promontory in section 13, T. 21 S., R. 9 E.;

(5) Then southeasterly in a straight line approximately 0.94 mile to the 911-foot promontory in section 19, T. 21 S., R. 10 E.;

(6) Then easterly in a straight line approximately 1.28 miles to the 1,042-foot promontory in section 20, T. 21 S., R. 10 E.;

(7) Then east northeasterly in a straight line approximately 1.28 miles to the 998-foot promontory in southeast corner of section 16, T. 21 S., R. 10 E.;

(8) Then southerly in a straight line approximately 2.24 miles to the 1,219-foot promontory near the east boundary of section 28, T. 21 S., R. 10 E.;

(9) Then southwesterly in a straight line approximately 1.5 miles to the 937-foot promontory near the North boundary of section 32, T. 21 S., R. 10 E.;

(10) Then southwesterly in a straight line approximately 0.34 mile to the 833-foot promontory in section 32, T. 21 S., R. 10 E.;

(11) Then south southeasterly in a straight line approximately 0.5 mile to the 866-foot "Rosenberg" promontory in section 32, T. 21 S., R. 10 E.;

(12) Then south southeasterly approximately 1.1 mile to the 781-foot promontory in section 5, T. 22 S., R. 10 E.;

(13) Then southeasterly in a straight line approximately 0.7 mile to the 767-foot promontory in section 9, T. 22 S., R. 10 E.;

(14) Then southerly in a straight line approximately 0.5 mile to the 647-foot promontory along the south boundary of section 9, T. 22 S., R. 10 E.;

(15) Then southwesterly in a straight line approximately 2.67 miles to the 835-foot promontory in section 19, T. 22 S., R. 10 E.;

(16) Then west southwesterly in a straight line approximately 1.1 miles to the 1,230-foot promontory in section 24, T. 22 S., R. 9 E.;

(17) Then north northwesterly in a straight line approximately 1.4 miles to the 1,149-foot promontory in section 14, T. 22 S., R. 9 E.;

(18) Then northwesterly in a straight line approximately 0.57 mile to the 1,128-foot promontory in section 11, T. 22 S., R. 9 E.;

(19) Then west southwesterly in a straight line approximately 0.58 mile to the 1,220-foot promontory near the north boundary of section 15, T. 22 S., R. 9 E.;

(20) Then northwesterly in a straight line approximately 1.33 miles to the 1,071-foot promontory in the northwest corner of section 9, T. 22 S., R. 9 E.;

(21) Then northwesterly in a straight line approximately 2.82 miles to the 1,004-foot promontory in section 31, T. 21 S., R. 9 E.; on the "Espinosa Canyon Quadrangle" map;

(22) Then north northwesterly in a straight line approximately 1.32 miles to the 882-foot promontory in section 25, T. 21 S., R. 8 E.;

(23) Then northwesterly in a straight line approximately 1.05 miles to the 788-foot promontory in section 23, T. 21 S., R. 8 E.;

(24) Then northerly in a straight line approximately 1.54 miles to the 601-foot promontory in section 13, T. 21 S., R. 8 E.;

(25) Then northeasterly in a straight line approximately 3.2 miles to the point of beginning.

Signed: August 8, 1986.

W.T. Drake,

Acting Director.

[FR Doc. 86-18580 Filed 8-15-86; 8:45 am]

BILLING CODE 4810-31-M

provide for more efficacious investigations, appeals and compliance with Commission decisions in Federal employment.

**DATE:** Written comments on the proposed regulations must be received on or before September 17, 1986. The Commission proposes to consider any comments received and thereafter adopt final regulations.

**ADDRESS:** Comments should be addressed to the Office of the Executive Secretariat, Room 5215, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, DC 20507. Copies of comments submitted by the public will be available for review at the Commission's Library, Room 298, 2401 E Street, NW., Washington, DC 20507, between the hours of 9:30 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Nicholas M. Inzeo, Assistant Legal Counsel, Legal Services, or James Lager, Staff Attorney, at 634-6690.

**SUPPLEMENTARY INFORMATION:** Pursuant to Reorganization Plan No. 1 of 1978, 43 FR 19807 (May 9, 1978) and Executive Order 12106, 44 FR 1053 (December 28, 1978), authority for the administration and enforcement of equal opportunity in federal employment, previously vested in the Civil Service Commission, was transferred to the Equal Employment Opportunity Commission. The Commission is specifically granted the authority to issue rules, regulations, orders and instructions pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-16(b); the Age Discrimination in Employment Act of 1967, 29 U.S.C. 633a(b); the Rehabilitation Act of 1973, 29 U.S.C. 794a(a)(1), and Executive Order 12067.

Pursuant to the foregoing authorities, the Commission is publishing proposed regulations to resolve certain problems in federal sector complaint processing procedures and appeals to the Commission from agency decisions on federal employment discrimination complaints.

#### **I. Proposed Amendments Affecting Investigation And Processing Of Employment Discrimination Complaints In The Federal Sector.**

The current regulation § 1613.212 has been misconstrued to suggest that a complainant cannot file a complaint against more than one agency. The proposed amendment removes the requirement that a complainant restrict the scope of the complaint to alleged discrimination by the employing agency. Section 1613.601 would be similarly revised.

The amendment to § 1613.213 addresses the problem of lengthy EEO counseling periods without the aggrieved being informed of the right to file a complaint. The regulation eliminates the 21 day notice and requires the EEO Counselor to issue the notice of final interview not later than the 30th day after the aggrieved person contacted the Counselor. In addition, the proposed regulation requires the EEO Counselor's report to be submitted after a complaint has been filed, rather than when a complaint has been accepted, so that the report may be used to make a decision on the complaint. The proposed § 1613.214 addresses a number of practical problems concerning representatives and employees working swing or night shifts. The proposed regulation explicitly indicates that an agency is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow a complainant and the representative to confer. The proposed regulation allows official time, however, for all employees otherwise in pay status, if their presence is required or authorized in the investigation, informal adjustment or hearing on a complaint.

Language has been added to proposed § 1613.214(b) to indicate that representatives can be disqualified for conflicts of interest. In addition, the title of this subsection has been changed to reflect more accurately its contents.

Section 1613.215 provides two additional grounds for rejecting or cancelling complaints of discrimination: (1) Where the complainant has filed a civil action in U.S. District Court, and (2) where the complainant fails to accept an agency's offer of full relief in settlement of the complaint. At present agencies are required to continue administrative processing of the complaint, notwithstanding the complainant's election to proceed in the judicial forum. Administrative processing currently is terminated only upon its completion or when the court has entered a final judgment on the complaint. The proposed regulation ends processing of the same complaint in two forums, saving time and resources.

The second new ground for cancellation of a complaint is where the agency has offered a complainant full relief to settle a complaint but the complainant rejects the offer and insists on continued administrative processing of the complaint. A complainant has the right to appeal the adequacy of an agency's offer of full relief to the Commission. In addition, the grounds for rejection or cancellation have been

## **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

### **29 CFR Part 1613**

#### **Equal employment Opportunity in the Federal Government: Complaints of Discrimination**

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Equal Employment Opportunity Commission is proposing to revise its regulations on equal employment opportunity in the federal government (29 CFR Part 1613). The regulations in Part 1613 cover the processing of complaints and appeals regarding employment discrimination in the Federal sector. These proposals