

discovery of the nature and existence of the offense, and reduces the offense levels for evasion of import duties of less than \$1,000 where such evasion is unsophisticated.

(U). Proposed Amendment to §2X1.1 (Attempt, Solicitation, or Conspiracy): Section 2X1.1, and accompanying Commentary, are amended by deleting "object" wherever it appears and inserting in lieu thereof in each instance "substantive".

Section 2X1.1(b)(1) is amended by inserting "substantive" immediately before "offense".

Section 2X1.1(b)(2) is amended by inserting "substantive" immediately before "offense".

Section 2X1.1(b)(3) is amended by deleting "the offense" wherever it appears and inserting in lieu thereof in each instance "the substantive offense".

The Commentary to §2X1.1 captioned "Application Notes" is amended in Note 2 by deleting the first sentence and inserting in lieu thereof: "Substantive Offense," as used in this guideline, means the offense that the defendant was convicted of soliciting, attempting, or conspiring to commit. Under §2X1.1(a), the base offense level will be the same as that for the substantive offense."

Reason for Amendment: This is a technical amendment to enhance clarity by replacing the term "object offense" with the more commonly used term "substantive offense" and conforming the language used in various subsections of this guideline. Greater clarity in the guideline language should reduce the likelihood of litigation over the meaning of this language. See e.g., *United States v. Rothman*, No. 89-3896, 1990 U.S. App. LEXIS 17381 (5th Cir. 1990).

(V). Proposed Amendment to §2X5.1 (Other Offenses): Section 2X5.1 is amended by inserting immediately before the period at the end of the second sentence:

", except that any guidelines and policy statements that can be applied meaningfully in the absence of a Chapter Two offense guideline shall remain applicable".

The Commentary to §2X5.1 is amended by inserting immediately after "Commentary" the following:

"Application Note:

1. Guidelines and policy statements that can be applied meaningfully in the absence of a Chapter Two offense guideline include: §5B1.3 (Conditions of Probation); §5B1.4 (Recommended Conditions of Probation and Supervised Release); §5D1.1 (Imposition of a Term of Supervised Release); §5D1.2 (Term of Supervised Release); §5D1.3 (Conditions of Supervised Release); §5E1.1 (Restitution); subsection (c)(1)(B) of §5E1.2 (Fines for Individual Defendants) as a lower limit; §5E1.3 (Special Assessments); §5E1.4 (Forfeiture); Chapter Five, Part F (Sentencing Options); §5G1.3

(Imposition of a Sentence on a Defendant Serving an Unexpired Term of Imprisonment); Chapter Five, Part H (Specific Offender Characteristics); Chapter Five, Part J (Relief from Disability); Chapter Five, Part K (Departures); Chapter Six, Part A (Sentencing Procedures); Chapter Six, Part B (Plea Agreements)."

Reason for Amendment: This amendment inserts an application note to clarify that, in the case of an offense for which there is no sufficiently analogous offense guideline, any guidelines and policy statements that can be meaningfully applied in the absence of a Chapter Two offense guideline remain applicable.

(W). Proposed Amendment to §3A1.3 (Unlawful Restraint): The Commentary to §3A1.3 captioned "Application Notes" is amended by deleting Note 2 and inserting in lieu thereof:

"2. Do not apply this adjustment where the offense guideline specifically incorporates this factor, or where the unlawful restraint of a victim is an element of the offense itself (e.g., this adjustment does not apply to offenses covered by §2A4.1 (Kidnapping, Abduction, Unlawful Restraint))."

Reason for Amendment: This amendment clarifies the application of this guideline.

(X). Proposed Amendment to Chapter Five, Part K, Subpart 2 (Other Grounds for Departure): Chapter Five, Part K, Subpart 2 is amended by inserting the following additional sections:

"§5K2.16. Restitution Prior to Discovery of the Offense (Policy Statement)

If the defendant made full restitution for the offense prior to its discovery, a departure below the applicable guideline range may be warranted, particularly where the offense was an unplanned, isolated incident.

"§5K2.17. Voluntary Disclosure of Offense (Policy Statement)

If the defendant voluntarily disclosed the existence of, and his responsibility for, the offense to authorities prior to the discovery of such offense, and if such offense was unlikely to have been discovered otherwise, a departure below the applicable guideline range may be warranted. For example, a downward departure under this section might be considered where a defendant, motivated by remorse, discloses an offense that otherwise would have remained undiscovered. This provision would not apply where the motivating factor is the defendant's knowledge that discovery of the offense is likely or imminent."

Reason for Amendment: This amendment sets forth two additional policy statements relevant to possible departures. Both policy statements address a defendant's action prior to the discovery of the offense.

Federal Register

Thursday
January 17, 1991

Part III

Department of Justice

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Literacy Program (GED Standard)

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Literacy Program (GED Standard)

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to amend its rule on Adult Basic Education by renaming it the Literacy Program and by raising the current 8.0 academic grade level literacy standard to a General Educational Development (GED) or high school diploma level. This amendment is being proposed in recognition of the higher standards of literacy required in the workplace.

DATES: Comments due by February 19, 1991.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 741, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on the Adult Basic Education (ABE) program. A final rule on this subject was published in the *Federal Register* August 3, 1989 (54 FR 32026 et seq.) On June 13, 1990 (55 FR 24064), a notice was published in the *Federal Register* announcing a pilot program in selected Bureau institutions to assess the merits of raising the literacy standard from an 8.0 academic grade level to a GED or high school diploma level. That assessment has been completed, and the Bureau in this document is proposing to adopt the GED or high school diploma level as the literacy standard for almost all sentenced inmates.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street, NW., HOLC Room 741, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. All

comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 544

Prisoners.

Dated: January 11, 1991.

Wade B. Houk,

Acting Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), it is proposed to amend part 544 in subchapter C of 28 CFR, chapter V as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

1. The authority citation for 28 CFR 544 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987); 5006-5024 (Repealed October 12, 1984 as to conduct occurring after that date); 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. Subpart H of part 544, consisting of §§ 544.70 through 544.76, is revised to read as follows:

Subpart H—Literacy Program

Sec.

544.70 Purpose and scope.

544.71 Applicability: Who must attend the literacy program.

544.72 Applicability: Who may be promoted.

544.73 Procedures.

544.74 Federal Prison Industries (UNICOR) and Inmate Performance Pay (IPP) assignments.

544.75 Incentives.

544.76 Disciplinary action.

Subpart H—Literacy Program

§ 544.70 Purpose and scope.

An inmate confined in a federal institution who does not have a verified General Educational Development (GED) or high school diploma is required to attend an adult literacy program for a minimum of 120 calendar days or until a GED is achieved, whichever occurs first. The Warden shall establish incentives to encourage an inmate to complete the literacy program.

§ 544.71 Applicability: Who must attend the literacy program.

(a) All inmates in federal institutions must attend the literacy program except:

(1) Pretrial inmates;

(2) Inmates committed for purpose of study and observation under the provisions of 18 U.S.C. 4205(c) or,

effective November 1, 1987, 18 U.S.C. 3552(b);

(3) Sentenced aliens with a deportation detainer;

(4) Other inmates who, for good cause, the Warden may excuse from attending the literacy program.

(b) Staff shall document in the inmate's education file and central file the specific reasons for not requiring the inmate to participate in the literacy program.

§ 544.72 Applicability: Who may be promoted.

(a) An inmate must show prior attainment of a GED or high school diploma in order to be promoted above grade 4 UNICOR and Inmate Performance Pay (IPP) assignments except:

(1) An inmate already in a UNICOR or IPP position above pay grade 4 at the time of implementation of this rule January 17, 1991, who does not have a GED or a high school diploma but was previously approved for promotion above grade 4.

(2) Other inmates who, for good cause, the Warden may determine are exempt from completing the academic requirements for promotion above grade 4. An inmate who is exempted from attending the literacy program under § 544.71(a) ordinarily may not be promoted above the fourth grade of compensation unless he or she meets the GED requirement.

(b) Staff shall document in the inmate's education file and central file the specific reasons for allowing pay promotion exemptions.

§ 544.73 Procedures.

(a) The Warden at each federal institution shall ensure that an inmate who does not have a verified GED or high school diploma is enrolled in the literacy program.

(b) The Warden or designee shall assign to an education staff member the responsibility to coordinate the institution's literacy program. The literacy coordinator or designated education staff shall meet initially with the inmate for the purpose of enrolling the inmate in the literacy program. Subsequently, the literacy coordinator or designated education staff shall formally interview each inmate involved in the literacy program at least once every 30 days during the mandatory 120 day period, to review and record the inmate's progress in this program. The literacy coordinator shall place documentation of these interviews in the Literacy Program Record in the inmate's education file.

(c) At the end of 120 calendar days, excluding sick time, furloughs, or other absences from scheduled classes, the unit team shall meet with the inmate to encourage continued participation in the literacy program until the inmate attains a GED or high school diploma. At this time, the inmate may elect not to continue in the literacy program, and no disciplinary action will be taken. The inmate may not discontinue this program where participation is mandated by statute.

§ 544.74 Federal Prison Industries (UNICOR) and Inmate Performance Pay (IPP) assignments.

(a) Inmates who wish to secure a UNICOR or IPP work assignment above grade 4 of compensation or who wish to work in non-graded incentive pay (piece-rate) positions must be able to demonstrate the prior attainment of a

GED or high school diploma. However, if labor force needs require, inmates who do not meet the literacy requirements may be employed in UNICOR incentive pay positions if they are simultaneously enrolled in a literacy or related program, and provided they are found to be progressing at an acceptable level as defined by the supervisor of education. Failure to maintain satisfactory progress shall result in termination of UNICOR incentive pay employment. Local UNICOR management may elect to place the terminated piece-rate employee in an hourly rated 4th grade position. The Warden may, for good cause, exempt inmates from this requirement.

(b) An inmate may be assigned to the fourth grade of compensation in a UNICOR or IPP work assignment contingent on the inmate's enrollment,

and satisfactory participation, in the literacy program. Failure of an inmate to make adequate progress in the literacy program may be used as the basis to remove the inmate from the UNICOR or IPP work assignment.

§ 544.75 Incentives.

The Warden shall establish a system of incentives to encourage an inmate to obtain a GED.

§ 544.76 Disciplinary action.

As with other mandatory programs, such as work assignments, staff may take disciplinary action against an inmate whose academic level is below GED or high school level when that inmate refuses to enroll in, or to complete, the mandatory 120 calendar days literacy program.

[FR Doc. 91-1172 Filed 1-16-91; 8:45 am]

BILLING CODE 4410-05-M

Federal Register

Thursday
January 17, 1991

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and
Deferrals; Notice

**OFFICE OF MANAGEMENT AND
BUDGET****Cumulative Report on Rescissions and
Deferrals**

January 1, 1991.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special

message has been transmitted to Congress.

This report gives the status, as of January 1, 1991, of 7 deferrals contained in the first special message for FY 1991. This message was transmitted to Congress on October 4, 1990.

Rescissions

As of the date of this report, no rescission proposals are pending before the Congress.

Deferrals (Table A and Attachment A)

As of January 1, 1991, \$1,120.2 million in budget authority was being deferred

from obligation. Attachment A shows the history and status of each deferral reported during FY 1991.

Information From Special Messages

The special message containing information on deferrals covered by this cumulative report is printed in the **Federal Register** cited below:

55 FR 41436, Thursday, October 11, 1990.

Richard G. Darman,
Director.

BILLING CODE 3110-01-M

TABLE A
STATUS OF FY 1991 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	1,120.2
Routine Executive releases through January 1, 1991.	0
Overtaken by the Congress.....	0
Currently before the Congress.....	1,120.2

Attachments

ATTACHMENT A

Status of FY 1991 Deferrals - As of January 1, 1991
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted		Date of Message	Releases(-)		Amount Deferred as of 01-1-91
		Original Request	Subsequent Change (+)		Cumulative OMB/Agency	Congress- sional Required Action	
FUNDS APPROPRIATED TO THE PRESIDENT							
International Security Assistance Economic support fund.....	D91-1	149,319		10-04-90			149,319
DEPARTMENT OF AGRICULTURE							
Forest Service							
Expenses, brush disposal.....	D91-2	135,955		10-04-90			135,955
Cooperative work.....	D91-3	273,468		10-04-90			273,468
DEPARTMENT OF DEFENSE - CIVIL							
Wildlife Conservation, Military Reservations							
Wildlife conservation, Defense.....	D91-4	1,186		10-04-90			1,186
DEPARTMENT OF HEALTH AND HUMAN SERVICES							
Social Security Administration Limitation on administrative expenses (construction).....	D91-5	7,127		10-04-90			7,127

ATTACHMENT A
Status of FY 1991 Deferrals - As of January 1, 1991
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted		Date of Message	Releases(-)			Amount Deferred as of 01-1-91
		Original Request	Subsequent Change (+)		Cumulative OMB/ Agency	Congress- sionally Required	Congres- sional Action	
DEPARTMENT OF STATE								
Bureau for Refugee Programs								
United States emergency refugee and migration assistance fund, executive....	D91-6	14,529		10-04-90				14,529
DEPARTMENT OF TRANSPORTATION								
Federal Aviation Administration								
Facilities and equipment (Airport and airway trust fund).....	D91-7	538,659		10-04-90				538,659
TOTAL, DEFERRALS.....		1,120,244	0		0	0	0	1,120,244

[FR Doc. 91-1222 Filed 1-16-91; 8:45 am]
BILLING CODE 3110-01-C

Department

Thursday
January 17, 1991

Part V

Department of Energy

Office of Fossil Energy

10 CFR Part 1048

Trespassing on the Strategic Petroleum Reserve; Interim Final Rulemaking

DEPARTMENT OF ENERGY

Office of Fossil Energy

10 CFR Part 1048

Trespassing on the Strategic Petroleum Reserve

AGENCY: Strategic Petroleum Reserve, Department of Energy.

ACTION: Interim final rulemaking.

SUMMARY: The Department of Energy (DOE) is issuing an interim final rule to implement section 662 of the Department of Energy Organization Act, *as amended* (42 U.S.C. 7270b) ("the DOE Organization Act"). Section 662 made it a crime to violate regulations issued by the Secretary relating to unauthorized: (1) Entry into or upon Strategic Petroleum Reserve facilities or other real property subject to the jurisdiction or administration, or in the custody of the Department of Energy under part B of title I of the Energy Policy and Conservation Act; or (2) carrying, transporting, or otherwise introducing or causing to be introduced into or upon such property a dangerous weapon, explosive, or other dangerous material likely to produce substantial injury or damage or persons or property. These interim regulations: (1) Prohibit unauthorized entry and unauthorized introduction of dangerous materials; and (2) as required by the DOE Organization Act, provide for the posting of notices on property subject to these provisions, stating the prohibitions contained in these interim regulations and the penalties for violations of these interim regulations.

EFFECTIVE DATE: January 17, 1991.

OTHER DATES: Written comments must be received on or before March 15, 1991. Interested persons may request a public hearing by February 15, 1991. If any requests for a public hearing are received by that date, the Department will conduct a public hearing at the Department of Energy, Project Management Information Center, Strategic Petroleum Reserve, 900 Commerce Road East, New Orleans, Louisiana 70123 at 9:30 a.m. on March 15, 1991. If no requests for a hearing are received, the hearing will be cancelled. The Department will attempt to give adequate advance public notice of any cancellation.

ADDRESSES: Send comments and requests to speak to: Durinda Robinson, Office of the Chief Counsel, Department of Energy, Project Management Office, Strategic Petroleum Reserve, 900 Commerce Road East, New Orleans, Louisiana 70123.

FOR FURTHER INFORMATION CONTACT:

Ralph LaMonda, Office of the Strategic Petroleum Reserve, Department of Energy, Mail Stop FE-421, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 (Telephone Number).

Durinda Robinson, Office of Chief Counsel, Department of Energy, Strategic Petroleum Reserve, 900 Commerce Road East, New Orleans, Louisiana 70123, (504) 734-4311.

I. Background

Due to the necessity of assuring adequate security of the Strategic Petroleum Reserve and other associated real property under DOE jurisdiction, and persons in or upon such property, section 1(a) of Public Law No. 100-531, October 25, 1988, 102 Stat. 2652 (42 U.S.C. 7270b), added a new section 662 to the DOE Organization Act. Section 662(a) authorizes the Secretary to issue regulations concerning unauthorized: (1) Entry into or upon the Strategic Petroleum Reserve, its storage or related facilities, or real property subject to the jurisdiction, administration, or in the custody of the Secretary of Energy under part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231-6247); and (2) carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or upon such property.

Section 662(b) of the Act provides that any person who willfully violates these regulations is guilty of a misdemeanor, and shall be punished upon conviction by a fine of not more than \$5,000, imprisonment of not more than one year, or both. Under the Sentencing Reform Act of 1984, *as amended* (18 U.S.C. 3571), which contains alternative fines, a person found guilty of a misdemeanor under Federal law is subject to an increased fine of up to \$250,000.

II. Purpose

Section 662(a) of the Act permits the Secretary to issue these interim regulations. The purpose of these interim regulations is to provide for the security of persons and property in or upon the Strategic Petroleum Reserve or other real property subject to DOE jurisdiction by deterring unauthorized entry and unauthorized introduction of weapons or dangerous materials into or upon such property. Section 662(b) of the Act provides sanctions for violation of these interim regulations.

Section 662(a) of the Act also states that the Secretary shall post conspicuously, on the property subject

to the interim regulations, notification such property is subject to these regulations. Thus, these interim regulations provide for the posting of notices at the perimeters of Strategic Petroleum Reserve sites and other property under DOE jurisdiction to provide adequate notice to persons that such property is subject to these regulations.

III. Discussion

This section briefly describes the contents of each subpart of the interim rule and a discussion of the intended effect of each subpart of the interim rule.

Section 1048.1 Purpose

Prior to enactment of section 662, no Federal law of general applicability governed unauthorized entry or introduction of weapons or dangerous materials into Federal property. Other statutes applicable to other Federal facilities proved to be useful in maintaining security at those installations. Section 662 gives similar authority to DOE to provide for the security of persons and property in or upon the Strategic Petroleum Reserve, its sites, and associated real property subject to DOE jurisdiction.

Section 1048.1 states that purpose of these interim regulations is to provide for the protection and security of: (a) The Strategic Petroleum Reserve, its storage or related facilities, and other real property subject to the jurisdiction or administration, or in the custody of DOE under part B, title I of the Energy Policy and Conservation Act, *as amended* (42 U.S.C. 6231-6247) (EPCA); and (b) persons upon the SPR or other property subject to DOE jurisdiction under part B, title I of the EPCA.

Section 1048.2 Scope

Section 662(a) of the Act states that the Secretary shall post conspicuously, on the property subject to these interim regulations, notification that the property is subject to these interim regulations. Section 1048.2 states that these interim regulations apply to unauthorized entry or introduction of weapons or dangerous materials into or upon property which has been posted with notices of the prohibitions contained in these regulations and the penalties authorized by section 662(b) of the DOE Organization Act, *as amended* and the Sentencing Reform Act of 1984, *as amended*.

Currently, persons that enter the property subject to these regulations are subject to prosecution under State laws. Property under DOE jurisdiction under part I, title B of the EPCA (42 U.S.C.

6231-6247) is currently posted with notices to that effect. The boundaries of such property are clearly marked. These regulations are not intended to affect the existing boundaries or the location of notices currently posted on such property.

Section 1048.3 Unauthorized Entry

Under § 1048.3, entry upon Strategic Petroleum Reserve facilities without prior authorization is prohibited. Entry for any unauthorized purpose is an unauthorized entry.

Section 1048.4 Unauthorized Introduction of Weapons or Dangerous Materials

Under § 1048.4, the unauthorized introduction of weapons or dangerous materials as the unauthorized carrying, transporting or otherwise introducing or causing to be introduced into or upon the Strategic Petroleum Reserve of a dangerous weapon, explosive, or other dangerous material likely to produce substantial injury or damage to persons or property is prohibited. The introduction of weapons or dangerous materials for any unauthorized purpose is a violation of these interim regulations.

Section 1048.5 Violations and Penalties

Section 1048.5 states that willful unauthorized entry, or willful unauthorized introduction of weapons or dangerous materials into or upon real property subject to this part, constitutes a violation of these regulations. Section 662(b) of the DOE Organization Act provides that a violation of these interim regulations is a misdemeanor, and that the penalty for a person convicted of violating these interim regulations is subject to a fine of not more than \$5,000, imprisonment for not more than one year, or both.

The Sentencing Reform Act of 1984, as amended, (18 U.S.C. 3571), contains alternative fines. The Sentencing Reform Act authorizes a sentence of fine of not more than \$100,000 for an individual found guilty of a misdemeanor that does not result in death, and a fine of not more than \$250,000 for an individual found guilty of a misdemeanor that results in death. The Sentencing Reform Act does not increase the maximum term of imprisonment authorized by section 662(b) of the DOE Organization Act.

Section 1048.6 Posting

Section 1048.6 states that notices stating the pertinent prohibitions of §§ 1048.3 and 1048.4 and the penalties of § 1048.5 will be conspicuously posted at

all entrances of each facility or parcel of real property subject to the interim regulations in this part, and at such intervals along the perimeters thereof as will provide reasonable assurance of notice to persons about to enter. DOE considers posting such notices to be adequate notice to persons of the property subject to these interim regulations. The only intended effect of posting is to provide actual notice that unauthorized entry and introduction of weapons or dangerous materials is a violation of Federal law, and that violations of these interim regulations is subject to the maximum penalty permitted by Federal law. DOE will post such notices at locations currently posted in accordance with State laws.

IV. Environmental Review

The interim rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act.

V. Review Under Executive Order 12291

DOE has determined that the incremental effect of today's interim rule, if finalized, will not have the magnitude of effects on the economy to bring the interim rule within the definition of a "major rule" contained in Executive Order 12291. The interim rule imposes no regulatory burden on the economy, on individuals, or public or private organizations, or on state and local governments. The interim rule is not likely to result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, and local government agencies, or geographic regions; or (3) 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.

Pursuant to the Executive Order, the interim rule has been submitted to the Office of Management and Budget (OMB) for prepublication regulatory review.

VI. Review Under Executive Order 12612

Executive Order 12612 requires that rules be reviewed for Federalism effects on the institutional interest of states and local governments, and if the effects are sufficiently substantial, preparation of a Federalism assessment is required to assist senior policymakers. The rulemaking to implement section 662 of the DOE Organization Act will not have

any substantial direct effects on state and local governments within the meaning of the Executive Order. The interim rule will affect Federal agency property that is not subject to direct State regulation.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law No. 96-345 (5 U.S.C. 601-612), requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the interim rule is published. The requirement (which appears in section 603 of the Act) does not apply if the agency "certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." This interim rule will not have any economic impact.

VIII. Effective Date

The prohibitions contained in this interim rule are effective January 17, 1991.

IX. Procedural Requirements

A. Section 501 of the DOE Organization Act

Under section 501(e) of the DOE Organization Act, we may waive the prior notice and hearing requirements of subsections (b), (c) and (d) of section 501 upon our finding that strict compliance with these requirements is likely to cause serious harm or injury to the public health, safety, or welfare. For the following reasons, DOE believes that such a finding can and should be made in this instance. First, the imminent threat of hostilities in the Persian Gulf greatly increases the substantial threat of terrorist activities directed at Strategic Petroleum Reserve facilities. Second, DOE's ability to respond to the real and present threat of attack by terrorists is severely restricted because there is no Federal law of general applicability, other than section 662 of the DOE Organization Act, to provide for the security of persons and property in or upon the Strategic Petroleum Reserve or other real property subject to DOE jurisdiction by deterring unauthorized entry and unauthorized introduction of weapons or dangerous materials into or upon such property. Therefore, we have waived these requirements to the extent necessary to adopt this interim rule effective immediately.

B. Section 553 of the Administrative Procedure Act

Section 553(d) of the Administrative Procedure Act requires that a substantive rule not become effective

less than thirty days after its publication, unless the agency promulgating the rule finds good cause to waive this requirement and publishes this finding together with the rule. We have determined that good cause is found to waive the section 553(d) requirement for the reasons stated above in support of adopting the interim rule effective immediately.

C. Public Hearing

1. Procedures for Submitting Requests to Speak. The time and place of the public hearing are indicated at the beginning of this notice. DOE invites any person who has an interest in today's interim rule, or who is a representative of a group or class of persons that has an interest in the interim rule, to make a request for an opportunity to make an oral presentation. Such requests should be directed to the address indicated at the beginning of this notice. Requests may be hand delivered to such address. If no requests to speak are received by the date indicated at the beginning of this notice, the hearing will be cancelled.

The person making the request should give a telephone number where he or she may be contacted. Each person to be heard must submit six copies of his or her statement at the hearing registration desk. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made with the Project Management Office in advance of the hearing by so indicating in the letter requesting to make an oral presentation.

2. Conduct of Hearing. DOE reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. Each presentation shall be limited to 20 minutes. A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553. At the conclusion of all initial oral statements each person will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in order in which the official statements were made and will be subject to time limitations.

Any interested person who wished to ask a question at the hearing may submit the question, in writing, to the presiding officer to be asked of any

person making a statement at the hearing. The presiding officer will determine whether the question is relevant and whether time limitations permit it to be presented for an answer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the Project Management Office between the hours of 9:30 a.m. and 5:30 p.m. In addition, any person may purchase a copy of the hearing transcript from the court reporter.

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, as amended, Public Law No. 100-531.

List of Subjects in 10 CFR Part 1048

Security measures, Government contracts, Arrest authority, and Use of force.

In consideration of the foregoing, a new part is added to chapter X, title 10 of the *Code of Federal Regulations*, as set forth below:

Issued in Washington, DC, on January 16, 1991.

Robert H. Gentile,
Assistant Secretary for Fossil Energy.

Part 1048 is added to 10 CFR chapter X to read as follows:

PART 1048—TRESPASSING ON STRATEGIC PETROLEUM RESERVE FACILITIES AND OTHER PROPERTY

- | | |
|--------|--|
| Sec. | |
| 1048.1 | Purpose. |
| 1048.2 | Scope. |
| 1048.3 | Unauthorized entry. |
| 1048.4 | Unauthorized introduction of weapons or dangerous materials. |
| 1048.5 | Violations. |
| 1048.6 | Posting. |
| 1048.7 | Effective date. |
| 1048.8 | Applicability of other laws. |

Authority: Sec. 662, Pub. L. No. 100-531, 102 Stat. 2652 (42 U.S.C. 7270b); section 6, Pub. L. No. 100-185, 101 Stat. 1280 (18 U.S.C. 3571(b)(5)).

§ 1048.1 Purpose.

The regulations in this part are issued for the protection and security of: (a) The Strategic Petroleum Reserve (SPR), its storage or related facilities, and real property subject to the jurisdiction or administration, or in the custody of DOE under part B, title I of the Energy Policy and Conservation Act, as amended (42 U.S.C. 6231-6247) (EPCA); and (b) persons upon the SPR or other property subject to DOE jurisdiction under part B, title I of the EPCA.

§ 1048.2 Scope.

The regulations in this part apply to entry into or upon all SPR storage or related facilities, and real property subject to DOE jurisdiction or administration, or in its custody under part B, title I of the EPCA, which have been posted with a notice of the prohibitions and penalties contained in this part.

§ 1048.3 Unauthorized entry.

Unauthorized entry into or upon an SPR facility or real property subject to this part, without authorization, is prohibited.

§ 1048.4 Unauthorized introduction of weapons or dangerous materials.

Unauthorized carrying, transporting, introducing or causing to be introduced into or upon an SPR facility or real property subject to this part, of a dangerous weapon, explosive or other dangerous material likely to produce substantial injury or damage to persons or property, is prohibited.

§ 1048.5 Violations.

Willful unauthorized entry, or willful unauthorized introduction of weapons or dangerous materials into or upon real property subject to this part, constitutes a violation of these regulations. Violation of these regulations is a misdemeanor, and a person convicted of violating these regulations is subject to the maximum fine permitted by law, imprisonment for not more than one year, or both.

§ 1048.6 Posting.

Notices stating the pertinent prohibitions of §§ 1048.3 and 1048.4 and the penalties of § 1048.5 will be conspicuously posted at all entrances of each facility or parcel of real property subject to the regulations in this part, and at such intervals along the perimeters thereof as will provide reasonable assurance of notice to persons about to enter.

§ 1048.7 Effective date.

The prohibitions in §§ 1048.3 and 1048.4 take effect immediately.

§ 1048.8 Applicability of other laws.

Nothing in this part shall be construed to affect the applicability of the provisions of State law or of any other Federal law.

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