PART 242—[REMOVED]

The Commission, under authority of sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of title 16 of the Code of Federal Regulations by removing Part 242.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in 16 CFR Part 14, Matter No. P954215; Repeal of Mail Order Insurance Guides, Matter No. P954903; Repeal of Guides Re: Debt Collection, Matter No. P954809; and Free Film Guide Review, Matter No. P959101

In a flurry of deregulation, the Commission today repeals or substantially revises several Commission guides and other interpretive rules.[1] The Commission does so without seeking public comment. I have long supported the general goal of repealing or revising unnecessary, outdated, or unduly burdensome legislative and interpretive rules, and I agree that the repeal or revision of these particular guides and interpretive rules appears reasonable. Nevertheless, I cannot agree with the Commission's decision not to seek public comment before making these changes.

Although it is not required to do so under the Administrative Procedure Act, 5 U.S.C. § 553(b)(A), the Commission traditionally has sought public comment before issuing, revising, or repealing its guides and other interpretive rules. More specifically, the Commission adopted a policy in 1992 of reviewing each of its guides at least once every ten years and issuing a request for public comment as part of this review. *See* FTC Operating Manual ch. 8.3.8. The Commission decided to seek public comment on issues such as:

(1) The economic impact of and continuing need for the guide; (2) changes that should be made in the guide to minimize any adverse economic effect; (3) any possible conflict between the guide and any federal, state, or local laws; and (4) the effect on the guide of technological, economic, or other industry changes, if any, since the guide was promulgated.

Id. The Commission has sought public comment and has posed these questions concerning a number of guides since adopting its procedures for regulatory review in 1992.[2]

Notwithstanding its long-standing, general practice of seeking public comment and its specific policy of seeking public comment as part of its regulatory review process, the Commission has chosen not to seek public comment before repealing or revising these guides and interpretive rules. Why not? Has the Commission changed its view about the potential value of public comment? Perhaps the Commission knows all the answers, but then again, perhaps not. Although reasonable arguments can be made for repeal or revision of these guides and interpretive rules, public comment still might prove to be beneficial.

In addition, the relatively short period of time that would be required for public comment should not be problematic. The Commission has not addressed any of these guides or interpretive rules in the last ten years. Indeed, it has not addressed some of them for thirty years or more. For example, the Commission apparently has not addressed the interpretive rule concerning the use of the word ''tile'' in designation of non-ceramic products since it was issued in 1950.[3] The continued existence of these guides and interpretive rules during a brief public comment period surely would cause no harm because they are not binding and because, arguably, they are obsolete. I seriously question the need to act so precipitously as to preclude the opportunity for public comment.[4]

In 1992, the Commission announced a careful, measured approach for reviewing its guides and interpretive rules, and public comment has been an important part of that process. Incorporating public comment into the review is appropriate and sensible. Although I have voted in favor of repealing or revising these guides and interpretive rules, I strongly would have preferred that the Commission seek public comment before doing so.

[FR Doc. 95–19543 Filed 8–7–95; 8:45 am]

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[1] Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements, 16 C.F.R. Part 14; Guides for the Mail Order Insurance Industry, 16 C.F.R. Part 234; Guides Against Debt Collection Deception, 16 C.F.R. Part 237; and Guide Against Deceptive use of the Word ''Free'' In Connection With the Sale of Photographic Film and Film Processing Services, 16 C.F.R. Part 242.

[2] *See, e.g.*, Request for Comments Concerning Guides for the Hosiery Industry, 59 Fed. Reg. 18004 (Apr. 15, 1994); Request for Comment Concerning Guides for the Feather and Down Products Industry, 59 Fed. Reg. 18006 (Apr. 15, 1994).

[3] 16 C.F.R. 14.2.

[4] Unfortunately, seeking public comment would not permit the Commission to count the repeal and revision of these guides and interpretive rules in its tally of completed actions in the Regulatory Reinvention Initiative Report that will be sent to the President on August 1, 1995, but perhaps that harm could be mitigated by reporting to the President that the Commission is seeking public comment concerning repeal or revision.

16 CFR Part 248

Guides for the Beauty and Barber Equipment and Supplies Industry

AGENCY: Federal Trade Commission.

ACTION: Elimination of guides.

SUMMARY: The Guides for the Beauty and Barber Equipment and Supplies Industry (the ''Beauty/Barber Guides'' or the ''Guides'') designate as unacceptable certain advertising and trade practices relating to the sale of products used by, and/or marketed through, ''industry members'' (as defined in Section 248.0 of the Guides) such as barber shops, barber schools, beauty parlors, beauty salons, beauty clinics, and organizations or corporations engaging in the manufacture or distribution of industry products. Such products embrace a wide range of beauty and barber preparations, as well as articles or items of equipment, furnishings, and supplies for such establishments.

The Commission believes that the Beauty/Barber Guides do not provide guidance substantially specific to the beauty and barber equipment and supply industry. In addition, the Commission believes that, in some instances, the Guides no longer accurately represent current Commission policy, and would require extensive revision to be made up-to date. Although such a revision and reissuance might be warranted if there were evidence of widespread marketing abuses of the type addressed by the Guides, the Commission has no such evidence. In addition, the Commission believes that likely abuses, if any, are adequately addressed under applicable antitrust, consumer protection, and commercial tort laws, which are matters of public record. Consequently, the Commission believes that there is no continuing need for the Guides, and that they should be repealed in their entirety.

Although the Commission is eliminating the Guides, proceedings still may be brought against businesses under Section 5(a)(1) of the Federal Trade Commission Act (the ''FTC Act''), 15 U.S.C. 45(a)(1), for engaging in unfair or deceptive acts or practices in or affecting commerce in the advertising and sale of beauty and barber equipment and supplies. Proceedings also may be brought under Section 5(a)(1) of the FTC Act against businesses engaging in unfair methods of competition.

EFFECTIVE DATE: August 8, 1995.

ADDRESSES: Requests for copies of this document should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Douglas J. Goglia, Attorney, Federal Trade Commission, New York Regional Office, 150 William Street, 13th Floor, New York, NY 10038, (212) 264–1229.

SUPPLEMENTARY INFORMATION:

I. Introduction

As a part of its ongoing project to review all rules and guides, the Commission invited comment on its Guides for the Beauty and Barber Equipment and Supplies Industry, 16

CFR Part 248, on April 4, 1995.[1] The notice contained, with minor modification, the standard regulatory review questions relating to the economic impact and continuing relevance of the Guides; burdens or costs related to adherence to the Guides; benefits conferred on industry members by the Guides; changes needed to minimize the economic impact of the Guides; their relation to other federal, state, or local laws or regulations; changes in relevant technology or economic conditions since the Guides were issued; and the effects of those changes on the Guides. The comment period ended on June 4, 1995, and only one comment was received before that date.[2] One additional comment was received on June 16, 1995, after the comment period expired.[3]

II. Background

The Beauty/Barber Guides were first published on August 23, 1968 under the authority of Sections 5(a)(1) and 6(g) of the FTC Act, 5 U.S.C. 45(a)(1) and 46(g). They were intended by the Commission to supersede trade practice rules for the Beauty and Barber Equipment and Supplies Industry, which had been promulgated on August 9, 1941. They designate as unacceptable certain advertising and trade practices relating to the sale of products used by, and/or marketed through, ''industry members'' (as defined in Section 248.0 of the Guides) such as barber shops, barber schools, beauty parlors, beauty salons, and beauty clinics. Such products embrace a wide range of beauty and barber preparations, as well as articles or items of equipment, furnishings, and supplies for such establishments.

Like other Commission guides, the Beauty/Barber Guides were ''intended to encourage voluntary compliance with the law by those whose practices are subject to the jurisdiction of the Commission, and were published in the belief that a businessman who is fully informed of the legal pitfalls he may encounter can conduct his affairs so as to avoid such difficulties.'' [4] The Guides provide instruction regarding the use of trade names, symbols, and depictions; the defamation of competitors or the false disparagement of their products; false invoicing; push money; discriminatory advertising or promotional allowances, or services or facilities; commercial bribery; enticing away employees of competitors as a means of restraining competition; inducing breach of contract; exclusive dealing arrangements; and price discrimination.

III. Discussion

The Commission has concluded that the Beauty/Barber Guides do not provide guidance substantially specific to the beauty and barber equipment and supply industry. In general, the Guides merely restate basic principles of consumer protection and commercial tort law. In addition, certain sections describe conduct that may be proscribed by Section 2 or 3 of the Clayton Act, as amended by the Robinson-Patman Act, and certain conduct that may, in limited circumstances, violate Section 5 of the FTC Act or Section 2 of the Sherman Act. However, in some instances, the Guides no longer accurately reflect Commission policy and enforcement standards. Consequently, the Commission believes that there is no continuing need for the Guides, and that they should be repealed.

Sections 248.1–248.4 and 248.6

Sections 248.1 of the Guides prohibits industry members from using, or causing or promoting the use of statements, representations, guarantees,[5] testimonials, or endorsements ''which ha[ve] a capacity and tendency or effect of misleading or deceiving purchasers. * * *'' Likewise, § 248.2 prohibits industry members from misrepresenting, directly or indirectly, the character of their businesses or the types of services they offer; § 248.3 prohibits the use of deceptive plaques and certificates in connection with the ''distribution, promotion or sale (including utilization in connection with services) of industry products''; § 248.4 proscribes deceptive pricing; an § 248.6 prohibits industry members from ''withhold[ing] from, or insert[ing] in, invoices or sales slips, any statements, or information by reason of which omission or insertion a false record is made * * * of the transactions represented on the face of such invoices or sales slips, with the capacity and tendency or effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public in any material respect.'' Each of these Guide sections addresses trade practices which are actionable under Section 5 of the FTC Act pursuant to the Commission's general Policy Statement on Deception (''Deception Statement''), set forth in the appendix to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984) (Letter from FTC Chairman James C. Miller III to the Honorable John D. Dingell (October 14, 1993)), or the Commission's Unfairness Statement set forth in the appendix to *International Harvester, Inc.*, 104 F.T.C. 949, 1061, 1073–74 (1984) (Letter from Commission Chairman Michael Pertschuk and Commissioners Paul Rand Dixon, David A. Clanton, Robert Pitofsky, and Patricia P. Bailey to the Honorable Wendell H. Ford and the Honorable John C. Danforth (December 17, 1980)). Moreover, the conduct proscribed by the aforementioned Guide sections may be actionable under Section 43(a) of the Lanham Act, [6] applicable state unfair competition statutes, and the commonlaw of commercial torts.[7]

In addition, Sections 248.1, 248.6, and other sections of the Guides specifically refer to the Commission's former ''capacity and tendency or effect of misleading or deceiving'' standard for deception, which was superseded by the Commission's Deception Statement. Accordingly, these sections fall to reflect the Commission's current policy regarding deception.

Section 248.5

Section 248.5 of the Guides prohibits industry members from using or imitating a competitor's trade or corporate name, trademarks, or other trade designations, where such use ''has the tendency or effect of misleading purchasers or prospective purchasers as

[1] Request for Comments Concerning Guides for the Beauty and Barber Equipment and Supplies Industry, 60 FR 17032, (April 4, 1995). The record in this proceeding has been designated P 958803 in the Commission's Public Reference Branch.

[2] The National Cosmetology Association (''NCA''), a national association of cosmetologists, barbers, estheticians, nail technicians, and owners of independent salons, stated that (1) the Guides have been effective in protecting industry members from problematic conduct, and (2) ''[m]ost industry members do not have resources available to hire attorneys to counsel them with respect to [trade regulation] laws. Thus the Guides are *the* principal means by which the industry is continuously reminded of how those laws apply to the industry.'' Comment of Messrs. William W. Scott, J. Keith Ausbrook and Brian R. Henry, Counsel for the National Cosmetology Association (June 2, 1995).

[3] The Beauty and Barber Supply Institute, Inc. (''BBSI'') stated that: '' we have no objection to the recommendation that Part 248—Guides For The Beauty And Barber Equipment And Supplies Industry, be deleted in its entirety from the Code of Federal Regulations.'' Letter from Douglas A. Kash, Esq. to Douglas Goglia, Esq., June 22, 1995 (regarding Amendments to the Code of Federal Regulations).

[4] Statement by the Commission, 33 FR 11987 (August 23, 1968).

[5] The Commission has adopted Guides for the Advertising of Warranties and Guarantees which provide detailed guidance with respect to guarantee and warranty representations. *See* 16 CFR Part 239. Accordingly, to the extent Section 248.1 of the Beauty/Barber Guides relates to Guaratees, it is no longer necessary.

[6] 15 U.S.C. 1125(a).

[7] *See generally*, Restatement (Third) of Unfair Competition, Chapter 2 (1995) (hereinafter ''*Restatement*'').

to the character, name, nature, or origin of any product of the industry or is false or misleading in any other material respect.'' The conduct proscribed by Section 248.5—''passing off''—has been held to violate Section 5 of the FTC Act,[8] and Commission policy regarding such conduct is a matter of public record. Accordingly, there is no need for Section 248.5, which merely restates that policy and does not provide instruction specifically relevant to the beauty and barber equipment and supply industry. Moreover, the conduct prohibited by Section 248.5 is addressed by Section 43(a) of the Lanham Act, applicable state unfair trade statutes, and common law theories of trademark infringement.[9]

Section 248.7

Section 248.7 of the Guides proscribes the defamation of competitors and the disparagement of their products. This section prohibits conduct which may be addressed under Section 43(a) of the Lanham Act and common law theories of commercial tort.[10] There is no need for this section of the Guides, because it does not supplement this general authority with instruction specifically relevant to the beauty and barber equipment and supply industry.

Section 248.8

Section 248.8 of the Beauty/Barber Guides proscribes the payment by industry members of so-called ''push money.'' This section prohibits industry members from providing anything of value to a salesperson employed by a customer of the industry member as inducement to obtain greater effort in promoting the resale of the industry member's products when: (i) the agreement or payment is made ''without the knowledge and consent of the salesperson's employer''; (ii) the benefit to the salesperson or customer is dependent on lottery; (iii) ''any provision of the agreement or understanding requires or contemplates practices or a course of conduct unduly and intentionally hampering the sales of products of competitors * * *''; (iv) ''the effect may be to substantially lessen competition or tend to create a monopoly''; or (v) ''similar payments are not accorded to salespersons of competing customers on proportionally equal terms in compliance with Sections 2 (d) and (e) of the Clayton Act.''

To the extent that Section 248.8 prohibits industry members from surreptitiously compensating employees of their customers in exchange for greater effort on the part of those employees, it addresses commercial bribery, which may be prohibited under Section 2(c) of the Clayton Act[11] and is proscribed by many state criminal statutes.[12] To the extent that § 248.8 prohibits bonus plans dependent on lottery, it addresses business conduct which may be proscribed by Section 5 of the FTC Act and by state statutes relating to lotteries and similar promotions.[13] To the extent that it requires payments to salespersons of competing customers to be on proportionally equal terms, it restates general principles of competition law which are set forth in Section 2 of the Clayton Act and the Fred Meyer Guides. *See* Guides for Advertising Allowances and Other Merchandising Payments and Services, 16 CFR Part 240.

Section 248.9

Section 248.9 of the Guides prohibits industry members from ''willfully'' enticing away the employees of competitors ''with the intent and effect of thereby hampering or injuring competitors in their business or destroying or substantially lessening competition.''[14] Such conduct may constitute a commercial tort.[15] The Guides do not add substantial industry-specific analysis to this general authority.

Section 248.10

Section 248.10 of the Guides prohibits industry members from ''knowingly inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers. * * *'' The conduct described in this section may be a commercial tort.[16] There is no need for this section of the Guides, because it does not supplement this general authority with instruction specifically relevant to the beauty and barber equipment and supply industry.

Section 248.11

Section 248.11 proscribes exclusive dealing arrangements where the effect on such arrangements ''may be substantially to lessen competition or tend to create a monopoly in any line of commerce.'' This section recapitulates language contained in Section 3 of the Clayton Act and sets out a general principle of Sherman Act Section 2 jurisprudence—namely, that exclusive dealing may constitute an antitrust violation where it constitutes an attempt to monopolize or results in an actual monopolization of a relevant market.

Section 248.12

Section 248.12 prohibits commercial bribery. This conduct may be prohibited by Section 2(c) of the Clayton Act, and by many state criminal statutes.[17] There is no need for this section of the Guides, because it does not supplement this general authority with instruction specifically relevant to the beauty and barber equipment and supply industry.

Section 248.13–248.15

Sections 248.13, 248.14 and 248.15 of the Beauty/Barber Guides respectively proscribe discriminatory pricing, the provision of discriminatory promotional allowances, and inducing price discrimination. Section 248.13 and 248.15 recite almost verbatim language contained in Sections 2 (a), (b) and (f) of the Clayton Act. Section 248.14 is duplicative of the Fred Meyer Guides, which interpret Sections 2 (d) and (e) of the Clayton Act and Section 5 of the Federal Trade Commission Act. *See* Guides for Advertising Allowances and Other Merchandising Payments and Services, 16 CFR part 240.

IV. Conclusion

The Commission thus believes that the Beauty/Barber Guides do not provide guidance substantially specific to the beauty and barber equipment and supply industry. The Guides merely restate principles of consumer protection and commercial tort law found in statutes, case law, and other

[8] *See, e.g., Waltham Watch Co.* v. *FTC,* 318 F.2d 28 (7th Cir.), *cert. denied,* 375 U.S. 944 (1963) (''passing off'' products as those of a competitor violates Section 5); *Parke, Austin & Lipscomb, Inc.* v. *FTC,* 142 F.2d 437 (2d Cir.), *cert. denied,* 323 U.S. 753 (1944) (false claims of association with a better known company violate Section 5); *J. Merrell Redding,* 14 F.T.C. 32 (1930) (simulation of a competitor's advertising violates Section 5); *Lighthouse Rug Co.* v. *FTC,* 35 F.2d 163 (7th Cir. 1929) (imitation of a competitor's corporate name and trademark violates Section 5).

[9] *See generally, Restatement, supra* note 7, Chapter 3.

[10] *See generally, Restatement, supra* note 7, § 2, Comment C. *See also,* J.D. Lee, Modern Tort Law, § 36.09 (4th ed. 1990) (hereinafter ''*Lee*'').

[11] 15 U.S.C. 13(c).

[12] *See e.g.,* Cal. Penal Code § 641.3 *et seq.* (Deering 1995); Ill. Rev. Stat., Ch. 38, para. 29A–1 (1995); N.Y. Penal Law § 180.00 (McKinney 1976).

[13] *See e.g.,* Tex. Penal Code § 32.42 (West 1995); Cal. Bus. & Prof. Code § 17539.1 (Deering 1995); Cal. Penal Code § 319 *et seq.* (Deering 1995).

[14] As a caveat, section 248.9 provides:

nothing in this section shall be construed as precluding such persons from seeking more favorable employment, or as precluding employers from hiring or offering employment to employees of a competitor in good faith and not for the purpose of inflicting competitive injury.

[15] *See generally, Lee, supra* note 10, Ch. 45; William L. Prosser, *Prosser on Torts* § 129 (4th ed. 1971) (hereinafter ''*Prosser*'').

[16] *Lee, supra* note 10, at 45; *Prosser, supra* note 15, at § 129.

[17] *See supra* note 12.

regulations. The Guides also describe certain conduct that may, in some instances, violate Sections 2 (a), (b), (c) and (d) of the Clayton Act. In addition, to the extent that certain conduct described by the Guides may substantially lessen competition in a properly defined antitrust market, it may violate Section 5 of the FTC Act. To the extent such conduct may tend to create a monopoly, it may also violate Section 2 of the Sherman Act. The conduct described by the Guides must be examined on a case-by-case basis to determine whether an applicable provision of law has been violated. Furthermore, in some instances, the Guides do not accurately represent current Commission policy and enforcement standards. Accordingly, the Commission has determined to repeal the Guides.

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Part 248

Advertising, Cosmetics, Trade practices.

PART 248—[REMOVED]

The Commission, under authority of Sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of title 16 of the Code of Federal Regulations by removing Part 248.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–19544 Filed 8–7–95; 8:45 am]

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DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Fraud Offenses That Involve Multiple Millions of Dollars in Losses

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is establishing a dollar amount range of $1 million to $5 million for Category Six fraud offenses in the paroling policy guidelines at 28 CFR 2.20. Frauds that cause losses of over $5 million will be rated Category Seven. At the present time, the Category Six offense severity rating is assigned to all frauds exceeding $1 million. In some cases, decisions above the Category Six guidelines are found warranted because the dollar losses greatly exceed those associated with ordinary cases of theft/forgery/fraud that are rated Category Six. The conversion of the open-ended dollar criterion for Category Six offenses into a range of $1 million to $5 million will provide the Commission with an appropriate benchmark to determine when dollar amount losses are so excessive as to require the offender to serve more prison time than indicated by the guidelines. This will permit increased consistency in the Commission's decisionmaking.

EFFECTIVE DATE: October 2, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, 5550 Friendship Blvd., Chevy Chase, Maryland 20815. Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: Public comment was solicited by publication of a proposed rule at 60 FR 18379 (April 11, 1995). Some public comment argued that the guidelines of the U.S. Sentencing Commission are significantly less severe for theft, forgery, and fraud offenses committed on or after November 1, 1987. (The U.S. Parole Commission's jurisdiction is limited to offenders whose crimes were committed prior to November 1, 1987. See Section 235 of the Sentencing Reform Act of 1984, which appears as an Editorial Note to 18 U.S.C. 3551.) According to this comment, the revision of the guidelines is a step in the right direction, but has the effect of creating two classes of accountability from the same government, because significantly larger dollar amounts would be required for the sentencing guidelines to match those of the U.S. Parole Commission.

The Commission has compared the operation of its guidelines for theft, forgery, and fraud cases with those of the U.S. Sentencing Commission, as applied in actual practice. The conclusion is that the guideline ranges are, contrary to the public comment, roughly equivalent. This is because the parole guideline ranges are determined solely by reference to the dollar amount, whereas the sentencing guidelines begin with dollar amount but require upward adjustments for such typical aggravating factors (in large-scale white collar crimes) as ''organizer or leader'', multiple victims, multiple counts, and refusal to accept responsibility. Frauds that cause losses of $1 million or more usually involve some degree of organizational leadership, multiplicity of schemes and victims, efforts to deny responsibility, etc., sufficient to produce several upward adjustments. In this manner, the total offense level produces a guideline range, in most cases, equal to or greater than the parole guidelines. For example, a conviction-offense fraud of $750,000 with upward adjustments reflecting persistent fraudulent investment schemes by an unrepentant first offender can produce a sentencing guideline range of 46–57 months, which is greater than the corresponding parole guideline, even if the Parole Commission includes additional losses exceeding $1 million (40–52 months).

Accordingly, the Commission decided to adopt its original proposal to set a range of $1 million to $5 million for Category Six offenses, and to rate fraud offenses exceeding $5 million in Category Seven.

The Commission intends that the practical effect of this guideline revision will be to preclude decisions above the Category Six guidelines when the relevant dollar amount does not exceed $5 million, except when non-monetary factors in aggravation (*e.g.*, unusually vulnerable victims) warrant a decision above the guideline range in individual cases. The Category Seven rating will, for the most part, include cases in which above-guideline decisions would otherwise have been expected.

Finally, the Commission decided to adopt conforming amendments to the other offense examples listed in the guidelines that are rated by dollar amount (i.e., property destruction, counterfeit currency, antitrust offenses, insider trading, tax evasion, and currency offenses).

Implementation

The revised guidelines will be applied at any initial parole hearing or revocation hearing conducted on or after the effective date set forth above. The revised guideline will also be applied retroactively to prisoners who were given parole or reparole decisions prior to that effective date, at the next statutory interim hearing conducted pursuant to 28 CFR 2.14, provided that application of the revised guideline results in a decision more favorable to the prisoner. For example, at a statutory interim hearing, a prisoner who was continued above the Category Six guidelines for a $4 million fraud offense could argue for a release date within the Category Six guidelines if he can show that no other factor continues to justify a departure from the guideline range.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this proposed rule is not a significant regulatory action for the purposes of Executive Order 12866, and the proposed rule has, accordingly,