

TOWN OF AVON, COLORADO
AVON SPECIAL REGULAR MEETING FOR FRIDAY, JUNE 29, 2012
MEETING BEGINS AT 8 AM
AVON TOWN HALL, ONE LAKE STREET



| | |
|----------------------|---|
| | PRESIDING OFFICIALS |
| MAYOR | RICH CARROLL |
| MAYOR PRO TEM | KRISTI FERRARO |
| COUNCILORS | DAVE DANTAS, CHRIS EVANS, TODD GOULDING |
| | AMY PHILLIPS, ALBERT "BUZ" REYNOLDS, JR. |

TOWN STAFF

TOWN ATTORNEY: ERIC HEIL

ACTING TOWN MANAGER: PATTY MCKENNY

DEPUTY TOWN CLERK: CATHERINE MYTHEN

ALL REGULAR MEETINGS ARE OPEN TO THE PUBLIC EXCEPT EXECUTIVE SESSIONS
COMMENTS FROM THE PUBLIC ARE WELCOME DURING CITIZEN AND COMMUNITY INPUT AND PUBLIC HEARINGS
PLEASE VIEW AVON'S WEBSITE, [HTTP://WWW.AVON.ORG](http://www.avon.org), FOR MEETING AGENDAS AND MEETING MATERIALS
AGENDAS ARE POSTED AT AVON TOWN HALL AND RECREATION CENTER, ALPINE BANK, AND AVON LIBRARY
THE AVON TOWN COUNCIL MEETS ON THE SECOND AND FOURTH TUESDAYS OF EVERY MONTH

1. CALL TO ORDER AND ROLL CALL

2. APPROVAL OF AGENDA

3. ORDINANCES

Public Hearing on Ordinance No. 12-08, Series of 2012, Emergency Ordinance Amending Chapter 8.16 of the Avon Municipal Code, Enacting Immediate Fire Ban in the Town of Avon and Imposing Penalties for Violation Thereof (*Eric Heil, Town Attorney*) Review emergency ordinance that enacts an immediate fire ban in the Town of Avon in light of many factors that have led to an extreme fire danger environment

4. EXECUTIVE SESSION (THIS SESSION IS NOT OPEN TO THE PUBLIC)

Meet with Town Attorney for the purpose of receiving legal advice to specific legal questions pursuant to Colorado Revised Statute §24-6-402(4)(b) related to the pending litigation with Traer Creek LLC and Traer Creek Metropolitan District

5. ADJOURNMENT

Memo

To: Honorable Mayor and Town Council
Legal Review: Eric Heil, Town Attorney
From: Patty McKenny, Interim Town Manager
Date: June 28, 2012
Re: Emergency Ordinance No. 12-08 Enacting Immediate Fire Ban

Summary:

The attached emergency ordinance was drafted as a result of Council direction at the June 26, 2012 regular council meeting. This action will enact an immediate fire ban for the Town of Avon.

Background:

Below is the section from the Avon Municipal Code on "Open Burning":

CHAPTER 8.16 Open Burning

8.16.010 Restrictions – exceptions.

No person shall burn, nor permit to be burned, any trash, paper, rubbish, wastepaper, wood, weeds, brush, plants or other flammable or combustible material, nor kindle or maintain any bonfire on any open premises owned or controlled by him or her, or in any public street, alley, park property or other land adjacent to such premises except under the following conditions:

- (1) The burning is for the noncommercial cooking of food for human beings or for recreational purposes;*
- (2) When the burning is a smokeless flare or a safety flare used to indicate some danger to the public. (Ord. 79-17 §H(5)(part))*

8.16.020 Burning permit.

Open burning within the Town shall be prohibited at all times, except by special permit, which may be granted by the Mayor or Town Manager, upon written application of any person, provided such burning may be done without hazard to the community. (Ord. 79-17 §H(5)(part))

Discussion:

The Town of Avon's Municipal Code's Open Burning Section is less restrictive than the recent Stage II Fire Restrictions enacted by the State of Colorado and Eagle County. Thus, the town has decided to consider and enact legislation that sets forth the town's ability to adopt such restrictions that are consistent with these jurisdictions. See below for Section 8.16.030 for language that sets forth how the town can respond better to severe wildfire condition fire restrictions:

"8.16.030 Severe Wildfire Conditions Fire Restrictions. *The Town Council and/or Town Manager may declare that severe wildfire conditions exist and may further declare that fire restrictions adopted by the Eagle River Fire Protection District and/or County of Eagle shall be applicable in the Town of Avon. Any fire restrictions adopted in accordance with this Section 8.16.030 shall become effective immediately and shall supersede any provision of the Avon Municipal Code which is inconsistent with such restriction. Notice of the adoption of such additional fire restrictions shall be posted immediately in accordance with the Town's general posting requirements adopted in accordance with 6.7 of the Avon Home Rule Charter. The Town of Avon shall be authorized to erect such signage and post such notices as deemed appropriate to notify the general public. The Town Council and/or Town Manager may rescind the additional fire restrictions adopted in accordance with this Section 8.16.030 when determined by Town that the conditions warranting such additional fire restriction no longer exist.*

The Town will engage in active communication about these fire restrictions for the Avon community through press releases, website notices, community postings and signage around town. Please note a public hearing is scheduled for this item.

Attachments:

- ✓ Town of Avon Emergency Ordinance No. 12-08
- ✓ Executive Order & Press Release from the Governor's Office
- ✓ Press Release from Eagle County about Stage II Fire Restrictions
- ✓ Order from USFS about Fire Restrictions

**TOWN OF AVON, COLORADO
ORDINANCE 12-08
SERIES OF 2012**

**AN EMERGENCY ORDINANCE AMENDING CHAPTER 8.16 OF THE AVON
MUNICIPAL CODE, ENACTING IMMEDIATE FIRE BAN IN THE TOWN OF
AVON AND IMPOSING PENALTIES FOR VIOLATION THEREOF**

WHEREAS, the Town of Avon (“Town”) is a home rule authority municipal corporation and body politic organized under the laws of the State of Colorado and possessing the maximum powers, authority and privileges to which it is entitled under Colorado law; and

WHEREAS, the Town Council finds and determines that the Town’s geographic location and unusual recent warm weather conditions, lack of precipitation, and heavy fuel loading create a threat of wildfire in and around the Town and furthermore the Town Council takes notice of the numerous wildfire occurrences throughout Colorado and other western states and takes notice of the Governor’s Executive Order D 2012-015 Ban on Open Burning in the State of Colorado issued on June 14, 2012; and

WHEREAS, the public awareness and compliance with fire bans is most efficiently promoted with consistent regulations across Eagle County and the Town of Avon jurisdictions and therefore the Town Council desires to adopt and apply the fire restrictions enacted by the County in coordination with the Eagle River Fire Protection District; and

WHEREAS, the Town Council recognizes that significant additional visitor traffic is expected during the fourth of July week and that adoption of this Ordinance through the first and second reading process will not result in the timely adoption and effectiveness of regulations which are necessary for the immediate preservation of the public health and safety; and

WHEREAS, the Town Council conducted a public hearing on Friday, June 28, 2012 at the Avon Town Hall, after posting notice of such public hearing at least 24 hours in advance in accordance with Section 6.6 of the Avon Home Rule Charter.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO, the following:

Section 1. **Recitals Incorporated.** The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

Section 2. **Amendments to Chapter 8.16.** Chapter 8.16 is amended to enact a new section 8.16.030 and 8.16.040 to read as follows:

“8.16.030 Severe Wildfire Conditions Fire Restrictions. The Town Council and/or Town Manager may declare that severe wildfire conditions exist and may further declare that fire restrictions adopted by the Eagle River Fire Protection District and/or County of Eagle shall be applicable in the Town of Avon. Any fire restrictions adopted in accordance with this Section 8.16.030 shall become effective immediately and shall supersede any provision of the Avon Municipal Code which is inconsistent with such restriction. Notice of the adoption of such additional fire restrictions shall be posted immediately in accordance with the Town’s general posting requirements adopted in accordance with 6.7 of the Avon Home Rule Charter. The Town of Avon shall be authorized to erect such signage and post such notices as deemed appropriate to notify the general public. The Town Council and/or Town Manager may rescind the additional fire restrictions adopted in accordance with this Section 8.16.030 when determined by Town that the conditions warranting such additional fire restriction no longer exist.

8.16.040 Violation – Penalty. Any person violating any of the provisions of this Chapter shall be deemed to have committed a criminal infraction for each and every day or portion thereof during which any infraction is committed, continued or permitted and shall be subject to the General Penalty set forth in Chapter 1.08 of this Code.”

Section 3. Declaration. The Town Council hereby declares that the immediate adoption of regulations concerning severe wildfire conditions fire restriction is necessary to the immediate preservation of the public health and safety. The Town Council further declares that severe wildfire conditions exist and immediately adopt the fire restrictions adopted by the County of Eagle and Eagle River Fire Protection District.

Section 4. Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

Section 5. Effective Date. This Ordinance shall take effect immediately public notice following final passage in accordance with Section 6.6 of the Avon Home Rule Charter.

Section 6. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Avon, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and

welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 7. No Existing Violation Affected. Nothing in this Ordinance shall be construed to release, extinguish, alter, modify, or change in whole or in part any penalty, liability or right or affect any audit, suit, or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing which may have been incurred or obtained under any ordinance or provision hereby repealed or amended by this Ordinance. Any such ordinance or provision thereof so amended, repealed, or superseded by this Ordinance shall be treated and held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions, for the enforcement of such penalty, liability, or right, and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered, or made in such actions, suits or proceedings, or prosecutions imposing, inflicting, or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force for the purpose of sustaining any and all proceedings, actions, hearings, and appeals pending before any court or administrative tribunal.

Section 8. Publication by Posting. The Town Clerk is ordered to publish this Ordinance by posting notice of adoption of this Ordinance on first and final reading by title in at least three public places within the Town and posting at the office of the Town Clerk, which notice shall contain a statement that a copy of the Ordinance in full is available for public inspection in the office of the Town Clerk during normal business hours.

INTRODUCED, APPROVED, AND ADOPTED ON FIRST AND FINAL READING AND ORDERED PUBLISHED BY POSTING, after conducting a public hearing June 28, 2012 at the Council Chambers of the Avon Municipal Building, located at One Lake Street, Avon, Colorado.

Rich Carroll, Mayor

Published by posting in at least three public places in Town and posting at the office of the Town Clerk at least seven days prior to final action by the Town Council.

ATTEST:

APPROVED AS TO FORM:

Catherine Mythen, Deputy Town Clerk

Eric Heil, Town Attorney

STATE OF COLORADO

OFFICE OF THE GOVERNOR

136 State Capitol Building
Denver, Colorado 80203
Phone (303) 866 - 2471
Fax (303) 866 - 2003



John W. Hickenlooper
Governor

D 2012-015

EXECUTIVE ORDER

Ban on Open Burning in the State of Colorado

Pursuant to the authority vested in the Governor of the State of Colorado and, in particular, pursuant to Article IV, Section 2 of the Colorado Constitution and C.R.S. § 23-31-308, I, John W. Hickenlooper, Governor of the State of Colorado, hereby issue this Executive Order banning open burning in the State of Colorado.

I. Background and Need

High temperatures and dry conditions have resulted in high fire danger throughout much of Colorado. Already this year, 344 wildfires have been reported in the state. These wildfires have burned over 120,000 acres in areas across the state. These weather conditions and circumstances attest to the continuing threat to life, health and property posed by wildfires on Colorado's public and private lands. As of the date of this Executive Order, the High Park Fire in Larimer County is not contained and has burned over 49,000 acres and destroyed or damaged well over 120 structures. And various types of fire bans are currently in place in at least 57 of Colorado's 64 counties.

Given the high fire danger throughout the state, the Colorado State Forest Service, in consultation with federal land management agencies, has requested an immediate ban on open burning in Colorado. The Larimer County Commissioners have requested a fireworks ban in parts of Northern Colorado where extreme fire danger exists. In response to these and other requests for an effective, uniform response to the high fire danger across the state, this Executive Order bans open burning in the State of Colorado.

Our staff has been working with County Sheriffs, Colorado Counties, Inc., the Colorado Municipal League, and the Colorado State Fire Chiefs Association to ensure the appropriate application and the proper implementation of this Executive Order.

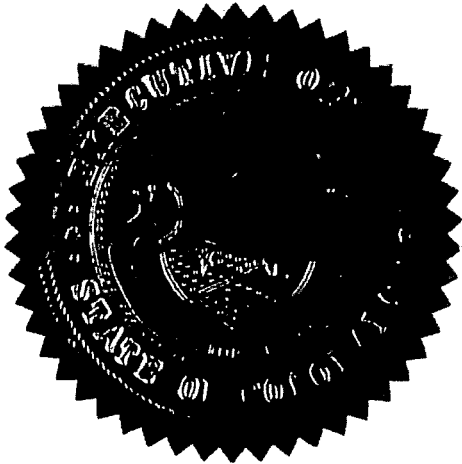
II. Directive

- A. Open burning is hereby prohibited in all counties in the State of Colorado.
- B. For purposes of this order, "open burning" means any outdoor fire, including but not limited to campfires, warming fires, charcoal grill fires, fused explosives, fireworks, and any other activity that poses a significant risk of starting a fire.
- C. For purposes of this order, "open burning" does not include fires in:
- i. liquid-fueled or gas-fueled stoves;
 - ii. fireplaces contained within buildings;
 - iii. charcoal grills at private residences;
 - iv. constructed, permanent fire pits or fire grates within developed camp and picnic grounds or recreation sites;
 - v. commercial, professional and municipal fireworks displays where specific written approval has been granted by the sheriff of the county in which the fireworks display is to occur; and
 - vi. connection with prescribed or controlled burns for agricultural or irrigation purposes along ditches located within and completely surrounded by irrigated farmlands where such burning is necessary for crop survival and specific written approval has been granted by the sheriff of the county in which the prescribed burn is to occur.
- D. Pursuant to C.R.S. § 23-31-306, this Executive Order shall be enforced by county sheriffs or by the administering agencies of the federal lands located within the state. This Executive Order is not intended to supersede more comprehensive or inclusive open burning restrictions that have been or may be established by Colorado counties, municipalities and/or other political subdivisions of the state. Where permitted by law, counties and other local governments may ban any or all of the open burning exemptions listed in section II.C. when local officials determine that a more restrictive ban is appropriate and warranted given fire danger conditions in their localities. An exemption to the opening burning restrictions set forth in this order may be granted only by county sheriffs or, within federal lands, by the administering federal agency, and only if the proposed burn is deemed by said sheriff or agency to be safe and subject to mitigation. Should a wildfire occur as the

result of the granting of an exemption to this order, the State of Colorado may, and likely would, deny access to state funds to pay for the costs of such a wildfire.

III. Duration

This Executive Order shall be effective at 2:00 PM on June 14, 2012, and shall remain in effect until amended or rescinded by Executive Order.



GIVEN under my hand and the
Executive Seal of the State of
Colorado this fourteenth day of
June, 2012.

A handwritten signature in black ink, reading "John W. Hickenlooper".

John W. Hickenlooper
Governor

Jaime Walker

From: CML Public Information Officers Listserv <PIOLIST@LIST.CML.ORG> on behalf of Lisa White <lwhite@CML.ORG>
Sent: Thursday, June 14, 2012 3:12 PM
To: PIOLIST@LIST.CML.ORG
Subject: [PIOLIST] Executive Order to ban fireworks
Attachments: 2012-06-14 fire ban order.pdf

Importance: High



FOR IMMEDIATE RELEASE

Office of Gov. John Hickenlooper

Eric Brown, 303-547-5308 c
eric.brown@state.co.us
Megan Castle, 303-513-2713 c
megan.castle@state.co.us

Press release on other side

Open burning, private use of fireworks banned in Colorado

DENVER — Thursday, June 14, 2012 — Gov. John Hickenlooper today signed an Executive Order that bans open burning and private use of fireworks throughout Colorado because of very dry conditions and high fire danger.

The ban does not apply to campfires in constructed, permanent fire pits or fire grates within developed camp and picnic grounds or recreation sites; liquid-fueled or gas-fueled stoves; fireplaces contained within buildings; charcoal grills at private residences; or specific prescribed or controlled burns for agricultural or irrigation purposes.

Commercial, professional and municipal fireworks displays are allowed when written approval has been granted by the sheriff of the county in which the fireworks display is to occur.

“We can’t completely eliminate the threat of wildfire because there’s no way to control Mother Nature,” Hickenlooper said. “But we can take steps to reduce the risks of more wildfires starting. This ban is a necessary step to help protect people, property and the beautiful state we live in.”

Most Colorado counties have already adopted fire bans. At least 44 of the state’s 64 counties are now listed with “high,” “very high” or “extreme” wildfire danger. The wildfire danger and individual restrictions for every Colorado county can be found at www.colorado.gov.

The governor’s Executive Order is not intended to supersede more comprehensive or inclusive open burning restrictions that have been or may be established by Colorado counties, municipalities and/or other political subdivisions of the state. Where permitted by law, counties and other local governments may ban any or all of the open burning exemptions listed in the order when local officials determine that a more restrictive ban is appropriate and warranted given fire danger conditions in their localities.

The Executive Order will stay in effect until it is amended or rescinded. The full text of the order is attached to this press release.

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Contact Us

Sheriff's Office
0885 E Chambers Ave.
P.O. Box 359
Eagle, CO 81631

Phone: 970-328-8500
Fax: 970-328-1448
info@sheriff.eagle.co.us

Find us on

County implements Stage II Fire Restrictions

Contact: Jessie Mosher, Sheriff's Office Public Information Officer, 970-328-8500 or 970-328-1448

View the Governor's [Executive Order](#) banning open burning and private use of fireworks

With Colorado facing some of the most dangerous fire conditions on record, Eagle County in collaboration with local fire authorities, White River National Forest and the Bureau of Land Management has implemented Stage II Fire Restrictions. These restrictions will take effect on Friday, June 22 at 12:01 PM on private lands in unincorporated Eagle County and within the Town of Red Cliff.

Stage II fire restrictions prohibit:

- Building, maintaining, attending or using a fire or campfire, charcoal grill, any type of Tiki torch, wood burning stove, shepherders stove, or open fire of any type. These restrictions apply to developed camping and picnic grounds. Devices using pressurized liquid or gas are prohibited.
- Smoking, except within an enclosed vehicle, trailer, building or tent.
- Using an explosive requiring fuse or blasting caps, fireworks, rockets, exploding target, incendiary ammunition.
- Operating a chainsaw, cutoff saw, or any other mechanical equipment without an approved spark arrestor, without a chemical pressurized fire extinguisher of 8 oz. capability by weight, and without one "O" or larger round point shovel with an overall length of 48 inches readily available for use.
- Welding or operating an acetylene or other torch with open flame, except with a current letter of authorization. The welding area must be barren or cleared of all flammable materials within 10 feet sides of the equipment.
- Operating or using any internal combustion engine without a spark arresting device present and maintained in effective working order meeting either:
 - Department of Agriculture, Forest Service Standard 5100-1a; or
 - Society of Automotive Engineers (SAE) recommended practice J335(b) and J350

The following persons are exempt from this order:

- Persons with a permit or letter of authorization specifically authorizing the prohibited activity
- Any federal, state, or local officer or member of an organized rescue or firefighting force while performing an official duty.

A comprehensive listing of fire restrictions throughout the state and other fire related information is available at [www.eaglecounty.us](#)

found online at www.coemergency.com . Information on current wildfires in Colorado and around the country is available at www.inciweb.org.

The Eagle County Sheriff's Office is urging people living in and near fire-prone areas to be prepared for the worst by protecting their property through clearing brush and removing dead branches, along with many other steps that are outlined at www.firewise.org. In addition, residents should prepare emergency evacuation plans and make sure they have their most valuable and important possessions prepared for transport.

To receive real-time emergency text or email notifications, subscribe to EC Alert at www.ecalert.org.

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500 Broadway - P.O. Box 850 | Eagle, CO 81631 | 970-328-8600 | Email: info@eaglecounty.us

**ORDER
FIRE RESTRICTIONS
WHITE RIVER NATIONAL FOREST**

Pursuant to 16 U.S.C. § 551 and 36 C.F.R. § 261.50 (a) and (b), the following acts are prohibited on all National Forest System lands, roads and trails within the White River National Forest(s) located in Pitkin, Garfield, Rio Blanco, Summit, Eagle, Gunnison and Mesa Counties, State of Colorado This Order is necessary to protect public health and safety.

PROHIBITIONS:

1. Building, maintaining, attending or using a fire, campfire, coal, wood-burning stove or sheepherder's stove, any type of charcoal-fueled broiler or open fire of any type [36CFR 261.52(a). This includes all developed recreation sites, campgrounds and picnic areas.

EXCEPT: Petroleum-fueled stoves, lanterns or heating devices that meet the fire underwriter's specifications for safety.

2. Smoking, except within an enclosed building, or trailer. 36 CFR 261.52(c).
3. Welding, or operating an acetylene or other torch with open flame. 36 CFR 261.52(i).
4. Operating or using any internal combustion engine without a spark arresting device properly installed, maintained and in effective working order meeting either:
 1. Department of Agriculture, Forest Service Standard 5100-1a; or
 2. Appropriate Society of Automotive Engineers (SAE) recommended practice J335(b) and J350(a). 36 CFR 261.52(j).
5. Operating a chainsaw without an approved spark arrestor and without a chemical pressurized fire extinguisher of not less than 8 ounce capacity. Chainsaw operators are also required to have a "0" or larger round point shovel with an overall length of 36 inches and have at least five gallons of water. 36 CFR 261.52(h).
6. Violating Colorado State law C.R.S. §23-31-308, Executive Order D2012-015, concerning burning, fires, or which is for the purpose of preventing or restricting the spread of fires [36 CFR 261.52(k)].
7. Using an explosive (e.g. fireworks, blasting caps or any incendiary device which may result in the ignition of flammable material) [36 CFR 261.52(b)].

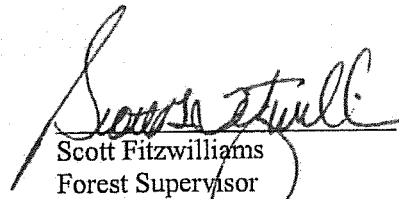
EXEMPTIONS:

Pursuant to 36 CFR 261.50 (e), the following persons are exempt from specified Prohibitions of this order:

1. Persons with a permit specifically authorizing the prohibited act or omission are exempt from Prohibitions #1, #3, #4, #5, #6, and #7 .
2. Any Federal, State or Local Officer or member of an organized firefighting force in the performance of an official duty are exempt from Prohibitions #1, #3, #4, #5, #6, and #7.
3. Resident owners and leasers of land within the restricted area exempt from No. 1, provided such fires are within a residence, lodge or hut equipped with a spark arrester on the chimney.

This order becomes effective at midnight, June 22, 2012 and will remain in force until rescinded or until December 31, 2012, whichever event occurs first.

Done at Glenwood Springs, Colorado, this 22nd day of June, 2012.


Scott Fitzwilliams
Forest Supervisor
White River National Forest

Violations of these regulations is punishable as a Class B misdemeanor, by a fine of not more than \$5000 for an individual or \$10,000 for an organization, or imprisonment for not more than six (6) months or both. Title 16 USC, Section 551, and 18 USC Sections 3559 and 3571.