

Route 350 to the intersection with Ohio State Route 73; then north and west on Route 73 to the intersection with U.S. Route 22; then west along Route 22 to U.S. Highway 68; then north and west on U.S. 68 to the intersection with U.S. Highway 35; then west and north on U.S. 35 to Interstate Highway 675; then north and east on I-675 to the intersection with Federal Interstate Highway 70; then west on I-70 to the intersection with the Montgomery County line; and then north and west along the Montgomery County line to the point of beginning.

**V. Authority**

This change is made under the authority of 5 U.S.C. 301; 19 U.S.C. 2, 66, and 1624; and 6 U.S.C. 203.

**VI. Statutory and Regulatory Reviews**

*A. Executive Order 12866: Regulatory Planning and Review*

This rule is not considered to be an economically significant regulatory action under Executive Order 12866 because it will not result in the expenditure of over \$100 million in any one year. The change is intended to expand the geographical boundaries of the Port of Dayton, Ohio, and make it more easily identifiable to the public and to terminate the user fee airport status of Airborne Airpark in Wilmington, Ohio. There are no new costs to the public associated with this rule. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires federal agencies to examine the impact a rule would have on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This rule does not directly regulate small entities. The change is part of CBP's continuing program to more efficiently utilize its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public. To the extent that all entities are able to more efficiently or conveniently access the facilities and resources within the expanded geographical area of the new port limits, this rule should confer benefits to CBP,

carriers, importers, and the general public.

Because this rule does not directly regulate small entities, CBP certifies that this rule does not have a significant economic impact on a substantial number of small entities.

**VII. Signing Authority**

The signing authority for this document falls under 19 CFR 0.2(a) because the port extension is not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, this final rule may be signed by the Secretary of Homeland Security (or his or her delegate).

**List of Subjects**

*19 CFR Part 101*

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government agencies).

*19 CFR Part 122*

Customs duties and inspection, Airports, Imports, Organization and functions (Government agencies).

**Amendments to CBP Regulations**

■ For the reasons set forth above, part 101, CBP Regulations (19 CFR part 101) and part 122, CBP Regulations (19 CFR part 122), are amended as set forth below.

**PART 101—GENERAL PROVISIONS**

■ 1. The general authority citation for part 101 and the specific authority citation for section 101.3 continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

\* \* \* \* \*

**§ 101.3 [Amended]**

■ 2. The list of ports in § 101.3(b)(1) is amended by removing from the "Limits of Port" column for Dayton, Ohio, the present limits description "Including territory described in T.D. 76-77" and adding "CBP Dec. 09-19" in its place.

**PART 122—AIR COMMERCE REGULATIONS**

■ 3. The general authority for part 122 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

\* \* \* \* \*

**§ 122.15 [Amended]**

■ 4. The list of user fee airports at 19 CFR 122.15(b) is amended by removing "Wilmington, Ohio" from the "Location" column and, on the same line, "Wilmington Airport" from the "Name" column.

Dated: June 10, 2009.

**Janet Napolitano,**  
*Secretary.*

[FR Doc. E9-14229 Filed 6-16-09; 8:45 am]

**BILLING CODE 9111-14-P**

**DEPARTMENT OF JUSTICE**

**Parole Commission**

**28 CFR Part 2**

**Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes**

**AGENCY:** United States Parole Commission, Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The U.S. Parole Commission is promulgating interim rules to implement the District of Columbia Equitable Street Time Credit Amendment Act of 2008. This Act modifies parole laws for District of Columbia offenders by allowing the Parole Commission to terminate the supervision and legal custody of a parolee before the expiration of the parolee's sentence. The Act also modifies the requirement that the parolee lose credit for all time spent on parole when the Commission revokes a parolee's release for violating parole conditions. With these modifications, parole laws for DC offenders are more consistent with similar parole laws governing U.S. Code parole eligible offenders. The Commission is also making a number of conforming amendments to regulations that refer to the functions that are the subject of the new DC law, and editing regulations on the same subjects for U.S. Code parolees to make the regulations simpler and more understandable.

**DATES:** Comments must be received by August 31, 2009.

**ADDRESSES:** Submit your comments, identified by docket identification number USPC-2009-01 by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

2. *Mail:* Office of the General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

3. *Fax:* 301-492-5563.

**FOR FURTHER INFORMATION CONTACT:**

Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492-5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

**SUPPLEMENTARY INFORMATION:** Under the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105-33, the U.S. Parole Commission assumed parole release and revocation authority over District of Columbia felony offenders, exercising such authority pursuant to the parole laws and regulations of the District of Columbia. DC Code 24-131(c). The Attorney General of the United States must concur in any changes made by the Council of the District of Columbia in these laws and regulations. *Id.* The Commission has exclusive authority to amend or supplement any regulation that interprets or implements DC parole laws. DC Code 24-131(a)(1).

In December 2008 the DC Council passed the Equitable Street Time Credit Amendment Act of 2008 (hereinafter "the Act"). Former Attorney General Mukasey concurred in the legislation, and the Mayor of the District of Columbia signed the legislation in January 2009. After a period of congressional review, the Act became effective on May 20, 2009 as DC Law 17-389. The Act makes two significant changes in parole laws for DC offenders. First, Section 3(a) of the Act amends DC Code 24-404 to provide that the Commission may terminate a DC parolee from supervision, and legal custody of the parolee, before the expiration date of the sentence. Under present law, the Commission may only transfer a DC parolee to inactive supervision before the sentence expires. This first change gives the Commission the same authority, and same responsibilities, it presently carries out for Federal parolees under its jurisdiction (see 18 U.S.C. 4211). The Commission is required to conduct an early termination record review for the DC parolee after the parolee serves two years of continuous supervision. If the parolee is not discharged from supervision and the sentence after five years of supervision, the Commission must conduct a five-year termination hearing using the same decision-making standard it uses for Federal parolees, *i.e.*, whether there is a reasonable

probability that the parolee will violate any criminal law if he were discharged from the sentence.

The interim rule is almost identical to the current rule governing early termination decisions for Federal parolees. No substantive change is intended for the procedures for Federal parolees. The Commission is adopting the early termination guidelines it now uses for Federal parolees in carrying out its new duties for DC parolees. In doing so, the Commission is eliminating the use of a violence assessment under the guidelines at 28 CFR § 2.80 as a decision-making criterion. This assessment is presently used in the guidelines for transferring a DC parolee from active to inactive supervision. The elimination of the violence assessment is not intended to signal any devaluation of the risk of possible violence as a factor in the Commission's decision. Instead, the risk of future violence will be addressed as a case-specific factor that may warrant a departure from the advisory guidelines. The Commission is also amending the rules at 28 CFR 2.43 (for Federal parolees) and 2.208 (for DC supervised releasees) to conform with this interim rule and the clearer language and simpler format of the new rule.

The legislation applies to all DC parolees now under active or inactive supervision, and any DC prisoner who will be released to parole (including mandatory release) supervision. For those offenders released before the effective date of the Act, the Commission must apply the procedures of the new law within one year of the effective date.

The second significant amendment of DC parole law is found in Section 3(b) of the Act. Under the current version of DC Code 24-406, if parole is revoked, the parole violator must forfeit all time spent on parole, regardless of the nature of the violation. Section 3(b) of the Act amends 24-406 to limit the forfeiture of parole time to those revoked parolees who have incurred a new conviction for an offense punishable by imprisonment, or who have intentionally refused or failed to respond to a request or order of the Commission. The legislation provides for mandatory forfeiture of the parole period if the parolee is convicted of a crime punishable by a prison term of more than one year. If the new conviction carries a possible jail term of one year or less, the Commission has discretion to allow sentence credit if the Commission decides that forfeiture is not necessary to protect the public welfare. This change in forfeiture law brings DC parole laws more in line with

the forfeiture provisions for Federal parolees found at 18 U.S.C. 4210(b) and (c), which require parole time forfeiture for a revoked parolee who is convicted of a crime punishable by imprisonment, and permit forfeiture of a period while the parolee absconded from supervision or willfully disobeyed a Commission direction. For now, the Commission has decided not to promulgate guidelines regarding the exercise of discretionary judgment in granting parole time credit to persons convicted of misdemeanor crimes. As its experience develops, the Commission may decide that guidelines are desirable in making this decision. The amendment to the parole time credit laws does not apply to parole periods that have already been revoked and forfeited before the effective date of the Act.

Finally, the Commission is amending a number of other rules to conform with the amendments required by the new law.

### Implementation

The regulations set forth below will be made effective as of the date of publication, and will apply to all persons who are serving sentences imposed for felony crimes under the District of Columbia Code. The Commission has already begun implementing the street time forfeiture provisions of the Act for revocation decisions issued on or after May 20, 2009, the Act's effective date. As noted above, the Act does not disturb the street time forfeiture decisions for DC offenders issued by the Commission before May 20, 2009, and it allows the Commission a period of one year to implement the provisions on early termination of supervision for those DC parolees who were released before the Act's effective date.

### Good Cause Finding

The Commission is making these interim rules effective less than 30 days from the date of this publication for good cause pursuant to 5 U.S.C. 553(d)(3). The effective date of the new Act has already passed and the Commission must immediately implement the new Act to ensure that determinations as to street time credit for revoked parolees are made in accordance with the Act, and that these parolees do not improperly forfeit sentence credit. Delaying the effective date of the rules would not serve the public interest regarding the fair administration of criminal laws, and is not necessary to prepare either the general public or other components of the DC criminal justice system for the implementation of the new Act. Almost

all of the changes required by the Act will be matters for the internal administration of the Commission's functions.

**Executive Order 12866**

The U. S. Parole Commission has determined that these interim rules do not constitute significant rules within the meaning of Executive Order 12866.

**Executive Order 13132**

These regulations will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, these rules do not have sufficient federalism implications requiring a federalism Assessment.

**Regulatory Flexibility Act**

The interim rules will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

**Unfunded Mandates Reform Act of 1995**

The rules will not cause State, local, or tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

**Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act)**

These rules are not "major rules" as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E—Congressional Review Act), now codified at 5 U.S.C. 804(2). The rules will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign based companies. Moreover, these are rules of agency practice or procedure that do not substantially affect the rights or obligations of non-agency parties, and do not come within the meaning of the term "rule" as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

**List of Subjects in 28 CFR Part 2**

Administrative practice and procedure, Prisoners, Probation and Parole.

**The Interim Rule**

Accordingly, the U. S. Parole Commission is adopting the following amendment to 28 CFR part 2.

**PART 2—[AMENDED]**

■ 1. The authority citation for 28 CFR part 2 continues to read as follows:

**Authority:** 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. The table of contents for 28 CFR part 2 is amended by revising the headings for Sections 2.95 and 2.96 to read as follows:

**Part 2—PAROLE, RELEASE, SUPERVISION AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS**

\* \* \* \* \*

**Subpart C—District of Columbia Code: Prisoners and Parolees**

\* \* \* \* \*

**§ 2.95 Early termination from supervision.**

**§ 2.96 Order of early termination.**

\* \* \* \* \*

■ 3. Section 2.43 is revised to read as follows:

**§ 2.43 Early termination.**

(a)(1) Upon its own motion or upon request of a parolee, the Commission may terminate a parolee's supervision, and legal custody over the parolee, before the sentence expires.

(2) The Commission may terminate supervision of a committed youth offender after the offender serves one year on supervision. Upon terminating supervision before the sentence expires, the Commission shall set aside the committed youth offender's conviction and issue a certificate setting aside the conviction instead of a certificate of termination.

(b) Two years after releasing a prisoner on supervision, and at least annually thereafter, the Commission shall review the status of the parolee to determine the need for continued supervision. The Commission shall also conduct a status review whenever the supervision officer recommends early termination of the parolee's supervision.

(c) Five years after releasing a prisoner on supervision, the Commission shall terminate supervision over the parolee unless the Commission determines, after a hearing, that such

supervision should not be terminated because there is a likelihood that the parolee will engage in conduct violating any criminal law. If the Commission does not terminate supervision under this paragraph, the parolee may request a hearing annually thereafter, and the Commission shall conduct an early termination hearing at least every two years.

(d) In calculating the two-year and five-year periods provided in paragraphs (b) and (c) of this section, the Commission shall not include any period of parole before the most recent release, or any period served in confinement on any other sentence.

(e) A parolee may appeal an adverse decision under paragraph (b) of this section under § 2.26 or § 2.27 as applicable.

(f) If the case is designated for the original jurisdiction of the Commission, a decision to terminate supervision under paragraphs (a)(2) and (b) of this section, or a decision to terminate or continue supervision under paragraph (c) of this section shall be made under the provisions of § 2.17.

(g)(1) In determining whether to grant early termination from supervision, the Commission shall consider the guidelines of this paragraph. The guidelines are advisory and the Commission may disregard the outcome indicated by the guidelines based on case-specific factors. Termination of supervision is indicated if the parolee:

(A) Has a salient factor score in the very good risk category and has completed two continuous years of supervision free from an incident of new criminal behavior or serious parole violation; or

(B) Has a salient factor score in a risk category other than very good and has completed three continuous years of supervision free from an incident of new criminal behavior or serious parole violation.

(2) As used in this paragraph, the term "an incident of new criminal behavior or serious parole violation" includes a new arrest or report of a parole violation if supported by substantial evidence of guilt, even if no conviction or parole revocation results. The Commission shall not terminate supervision of a parolee until it determines the disposition of a pending criminal charge.

(h) Case-specific factors that may justify a departure either above or below the early termination guidelines may relate to the current behavior of the parolee, or to the parolee's background and criminal history.

■ 4. Section 2.65 is amended by revising paragraph (i) to read as follows:

**§ 2.65 Paroling policy for prisoners serving aggregate U.S. and DC Code sentences.**

\* \* \* \* \*

(i) Forfeiture of parole time. All time on parole shall be forfeited if required under § 2.52(c) and § 2.105(d) of these regulations. If not, the Commission shall divide the total time on parole according to the proportional relationship of the DC sentence to the U.S. sentence, and shall order the forfeiture of the portion corresponding to the DC sentence pursuant to § 2.105(d). For example, if the parolee is serving a two-year DC Code sentence and a three-year U.S. Code sentence, the DC sentence is two fifths, or 40 percent, of the aggregate sentence (five years). If the parolee was on parole 100 days and parole is revoked for a misdemeanor conviction, a period of 40 days is subject to possible forfeiture under § 2.105(d).

■ 5. Section 2.74 is amended by revising the third sentence of paragraph (c) to read as follows:

**§ 2.74 Decision of the Commission.**

\* \* \* \* \*

(c) \* \* \*  
A decision terminating a parolee early from supervision shall also be based on the concurrence of two Commissioners.

\* \* \* \* \*

■ 6. Section 2.92 is amended by revising paragraphs (a), (c), and (d) to read as follows:

**§ 2.92 Jurisdiction of the Commission.**

(a) The jurisdiction of the Commission over a parolee shall expire on the date of expiration of the maximum term or terms for which he was sentenced, or upon the early termination of supervision as provided in § 2.95, subject to the provisions of this subpart relating to warrant issuance, time in absconder status, and the forfeiture of time on parole in the case of revocation.

(b) \* \* \*

(c) When the parolee's sentence expires, the supervision officer shall issue a certificate of discharge to the parolee and to such other agencies as may be appropriate. If the Commission terminates the parolee's supervision early under § 2.95, the Commission shall issue a certificate of discharge for delivery to the parolee by the supervision officer.

(d) An order of revocation shall not affect the Commission's jurisdiction to grant and enforce any further periods of parole, up to the date of expiration of the offender's maximum term, or upon the early termination of supervision under § 2.95.

■ 7. Section 2.95 is revised to read as follows:

**§ 2.95 Early termination from supervision.**

(a) (1) Upon its own motion or upon request of a parolee, the Commission may terminate a parolee's supervision, and legal custody over the parolee, before the sentence expires. (2) The Commission may terminate supervision of a committed youth offender after the offender serves one year on supervision. Upon terminating supervision before the sentence expires, the Commission shall set aside the committed youth offender's conviction and issue a certificate setting aside the conviction instead of a certificate of termination.

(b) Two years after releasing a prisoner on supervision, and at least annually thereafter, the Commission shall review the status of the parolee to determine the need for continued supervision. The Commission shall also conduct a status review whenever the supervision officer recommends early termination of the parolee's supervision.

(c) Five years after releasing a prisoner on supervision, the Commission shall terminate supervision over the parolee unless the Commission determines, after a hearing, that such supervision should not be terminated because there is a likelihood that the parolee will engage in conduct violating any criminal law. If the Commission does not terminate supervision under this paragraph, the parolee may request a hearing annually thereafter, and the Commission shall conduct an early termination hearing at least every two years.

(d) In calculating the two-year and five-year periods provided in paragraphs (b) and (c) of this section, the Commission shall not include any period of parole before the most recent release, or any period the parolee served in confinement on any other sentence.

(e)(1) In determining whether to grant early termination from supervision, the Commission shall consider the guidelines of this paragraph. The guidelines are advisory and the Commission may disregard the outcome indicated by the guidelines based on case-specific factors. Termination of supervision is indicated if the parolee:

(A) Has a salient factor score in the very good risk category and has completed two continuous years of supervision free from an incident of new criminal behavior or serious parole violation; or

(B) Has a salient factor score in a risk category other than very good and has completed three continuous years of supervision free from an incident of

new criminal behavior or serious parole violation.

(2) As used in this paragraph, the term "an incident of new criminal behavior or serious parole violation" includes a new arrest or report of a parole violation if supported by substantial evidence of guilt, even if no conviction or parole revocation results. The Commission shall not terminate supervision of a parolee until it determines the disposition of a pending criminal charge.

(3) Case-specific factors that may justify a departure either above or below the early termination guidelines may relate to the current behavior of the parolee, or to the parolee's background and criminal history.

■ 8. Section 2.96 is revised to read as follows:

**§ 2.96 Order of early termination.**

When the Commission orders early termination from supervision, the Commission shall issue a certificate to the parolee granting a full discharge from the sentence. The termination and discharge shall take effect only upon the actual delivery of the certificate of discharge to the parolee by the supervision officer, and may be rescinded for good cause at any time before such delivery.

■ 9. Section 2.97 is amended by revising the first clause of the first sentence to read as follows:

**§ 2.97 Withdrawal of order of release.**

If, after an order for release from active supervision under former § 2.95 has been issued by the Commission,

\* \* \* \* \*

■ 10. Section 2.98 is amended in paragraph (e) by removing "DC Code 24-406(a)" and adding in its place "DC Code 24-406(c)."

■ 11. Section 2.100 is amended in paragraph (d)(2) by removing "DC Code 24-406(a)" and adding in its place "DC Code 24-406(c)."

■ 12. Section § 2.105 is amended by revising paragraphs (b), (d), and (e) to read as follows: 2.105 Revocation decisions.

(a) \* \* \*

(b) If parole is revoked under this section, the Commission shall determine whether immediate reparole is warranted or whether the parolee should be returned to prison. If the parolee is returned to prison, the Commission shall also determine whether to set a presumptive release date pursuant to § 2.81.

(c) \* \* \*

(d)(1) Except as provided in paragraphs (d)(2) and (d)(3), the

Commission shall grant a revoked parolee credit toward completion of the sentence for all time served on parole.

(2)(A) The Commission shall forfeit credit for the period of parole if a parolee is convicted of a crime committed during a period of parole and that is punishable by a term of imprisonment of more than one year.

(B) If the crime is punishable by any other term of imprisonment, the Commission shall forfeit credit for the period of parole unless the Commission determines that such forfeiture is not necessary to protect the public welfare. In making this decision, the Commission shall consider the nature and circumstances of the violation behavior, the history and characteristics of the offender, including the offender's supervision history, and other available and relevant information.

(3) If, during the period of parole, a parolee intentionally refuses or fails to respond to any reasonable request, order, summons, or warrant of the Commission or any member or agent of the Commission, the Commission may order that the parolee not receive credit for the period of time that the Commission determines that the parolee failed or refused to respond to such a request, order, summons, or warrant.

(4) The provisions of this paragraph shall apply only to any period of parole that is being served on or after May 20, 2009, and shall not apply to any period of parole that was revoked before that date.

(e) Notwithstanding paragraphs (a) through (d) of this section, prisoners committed under the Federal Youth Corrections Act shall not be subject to forfeiture of time on parole, but shall serve uninterrupted sentences from the date of conviction except as provided in § 2.10(b) and (c). DC Code 24–406(c) and paragraphs (a) through (d) of this section are fully applicable to prisoners serving sentences under the DC Youth Rehabilitation Act.

\* \* \* \* \*

■ 13. Section § 2.208 is revised to read as follows:

**§ 2.208 Termination of a term of supervised release.**

(a)(1) The Commission may terminate a term of supervised release and discharge the releasee from supervision after the expiration of one year of supervised release, if the Commission is satisfied that such action is warranted by the conduct of the releasee and the interest of justice.

(2) Upon terminating supervision of a committed youth offender before the sentence expires, the Commission shall set aside the committed youth offender's

conviction and issue a certificate setting aside the conviction instead of a certificate of discharge.

(b) Two years after a prisoner is released on supervision, and at least annually thereafter, the Commission shall review the status of the releasee to determine the need for continued supervision. The Commission shall also conduct a status review whenever the supervision officer recommends termination of the supervised release term. If the term of supervised release imposed by the court is two years or less, the Commission shall consider termination of supervision only if recommended by the releasee's supervision officer.

(c) In calculating the two-year period provided in paragraph (b) of this section, the Commission shall not include any period of release before the most recent release, or any period served in confinement on any other sentence.

(d) (1) In deciding whether to terminate supervised release, the Commission shall consider the guidelines of this paragraph. The guidelines are advisory and the Commission may disregard the outcome indicated by the guidelines based on case specific factors. Termination of supervision is indicated if the releasee:

(A) Has a salient factor score in the very good risk category and has completed two continuous years of supervision free from an incident of new criminal behavior or serious release violation; or

(B) Has a salient factor score in a risk category other than very good and has completed three continuous years of supervision free from an incident of new criminal behavior or serious release violation.

(2) As used in this paragraph, the term "an incident of new criminal behavior or serious release violation" includes a new arrest or report of a release violation if supported by substantial evidence of guilt, even if no conviction or release revocation results. The Commission shall not terminate supervision of a releasee until it determines the disposition of a pending criminal charge.

(3) Case-specific factors that may justify a departure either above or below the early termination guidelines may relate to the current behavior of the releasee, or to the releasee's background and criminal history.

Dated: June 8, 2009.

**Isaac Fulwood,**

*Chairman, U.S. Parole Commission.*

[FR Doc. E9–14157 Filed 6–16–09; 8:45 am]

**BILLING CODE 4410–31–M**

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Part 49**

**RIN 1219–AB66**

**Mine Rescue Teams**

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises MSHA's existing standards for mine rescue teams for underground coal mines. On February 10, 2009, the United States Court of Appeals for the District of Columbia Circuit (Court) held that MSHA's Mine Rescue Teams rule, issued on February 8, 2008, is inconsistent with Section 4 of the Mine Improvement and New Emergency Response (MINER) Act in three respects. This final rule revises those portions of the existing rule in accordance with the MINER Act, consistent with the Court's decision.

**DATES:** *Effective Date:* June 17, 2009.

*Compliance Dates:* Each underground coal mine operator affected by the changes in this final rule shall comply with the requirements of § 49.50(a), Table 49.50–A, by December 14, 2009, and the requirements of § 49.50(a), Table 49.50–B, by June 17, 2010.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at [silvey.patricia@dol.gov](mailto:silvey.patricia@dol.gov) (Internet e-mail), 202–693–9440 (voice), or 202–693–9441 (facsimile).

**SUPPLEMENTARY INFORMATION:**

**I. Final Rule**

The Administrative Procedure Act (APA) requires that rulemakings be published in the **Federal Register** and requires generally that agencies provide an opportunity for public comment. However, notice and an opportunity for public comment are not required when the agency "for good cause finds" that notice and comment "are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B).

The Court stated in its decision that the MINER Act does not allow MSHA to exercise any discretion with respect to the issues in the Court's order. As a result, MSHA finds that there is "good cause" under 5 U.S.C. 553(b)(B) of the APA to issue this final rule without prior public notice and comment. Further, in accordance with the Court's decision, MSHA has determined that there is "good cause" to except this action from the 30-day delayed effective