

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect 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.

*For the reasons discussed above, I certify this AD:*

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

**2010-05-09 Dowty Propellers:** Amendment 39-16219. Docket No. FAA-2008-0545; Directorate Identifier 2008-NE-16-AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective April 7, 2010.

#### Affected ADs

(b) None.  
(c) This AD applies to Dowty Propellers Models R354/4-123-F/13, R354/4-123-F/20, R375/4-123-F/21, R389/4-123-F/25, R389/4-123-F/26, and R390/4-123-F/27 propellers. These propellers are installed on, but not limited to, Saab AB, Saab Aerosystems SF340A and SAAB SF340B airplanes.

#### Reason

(d) European Aviation Safety Agency (EASA) AD No. 2008-0033, dated February 19, 2008, states:

A number of propeller blade outer sleeves have been found with cracks since 1996. Testing has shown that blade retention integrity is not affected by this cracking. However, this condition, if not detected and corrected, can lead to blade counterweight release, possibly resulting in damage to the aircraft and injury to occupants or persons on the ground.

This AD requires initial and repetitive visual inspections of propeller blade root outer sleeves for cracks, and removal before further flight of propeller blades with cracked blade root outer sleeves. We are issuing this AD to prevent blade counterweight release, which could result in injury or damage to the airplane.

#### Actions and Compliance

(e) Unless already done, do the following actions.

#### Propeller Blade Root Outer Sleeve Visual Inspections

(1) At the next 1,600 flight hours (FH) aircraft check after the effective date of this AD, or, after any blade accumulates 15,000 FH time-in-service, whichever occurs later, visually inspect all propeller blade root outer sleeves for cracks.

(2) Thereafter, at intervals not to exceed 1,600 FH, visually inspect all propeller blade root outer sleeves for cracks.

(3) Before further flight, remove any propeller blades found with cracked root outer sleeves during the visual inspections in paragraphs (e)(1) and (e)(2) of this AD.

#### FAA AD Differences

(f) None.

#### Alternative Methods of Compliance (AMOCs)

(g) The Manager, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

#### Related Information

(h) Refer to European Aviation Safety Agency AD 2008-0033, dated February 19, 2008, and Dowty Propellers Alert Service Bulletin No. SF340-61-A106, Revision 1, dated March 20, 2008, for related information.

(i) Contact Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail:* [terry.fahr@faa.gov](mailto:terry.fahr@faa.gov); telephone (781) 238-7155; fax (781) 238-7170, for more information about this AD.

#### Material Incorporated by Reference

(j) None.

Issued in Burlington, Massachusetts, on February 23, 2010.

**Francis A. Favara,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2010-4219 Filed 3-2-10; 8:45 am]

**BILLING CODE 4910-13-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:** Final rule.

**SUMMARY:** The U.S. Parole Commission is promulgating final 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 a parolee lose credit for all time spent

on parole when the Commission revokes the 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 for both DC and U.S. Code offenders.

**DATES:** *Effective date:* April 12, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Rockne Chickinell, 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:**

**Legislation and Interim Rules**

The Parole Commission described the provisions of the Equitable Street Time Credit Amendment Act of 2008, DC Law 17-389 (hereinafter "the Act") in its June 17, 2009 publication of interim rules implementing the Act. 74 FR 28602-06. When it became effective May 20, 2009, the Act made two significant changes in parole laws for DC offenders. First, Section 3(a) of the Act amended 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. Before this change, the Commission could only transfer a parolee to inactive supervision for good behavior on parole. Second, Section 3(b) of the Act amended DC Code 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 provided 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.

The Commission's interim rules for the procedures governing early termination from supervision for DC parolees are almost identical to the rules governing early termination decisions for federal parolees. The interim rules for street time forfeiture largely follow the statutory language. The final rules are virtually identical to the interim rules, with several changes resulting from the public comment submitted in response to the interim rules. These comments and the Commission's responses are summarized below. 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 the final rules on DC parolees.

**Public Comment on Interim Rules Regarding Early Termination From Supervision**

The Commission received public comment on the interim rules from the District of Columbia Public Defender Service ("PDS") and the Washington Lawyers' Committee for Civil Rights and Urban Affairs ("WLC"). First, PDS asked that the Commission amend 28 CFR § 2.95(c) to specify the procedures that apply to a five-year hearing on early termination from supervision. Unlike the federal statute for early termination hearings at 18 U.S.C. 4211(c), the new DC law does not specify these procedures. In conducting early termination hearings for DC offenders, the Commission has always intended to use the same procedures that apply to federal early termination hearings. The Commission is amending the interim rule at § 2.95(c) to add a cross-reference to 18 U.S.C. 4214(a)(2) (the statute describing procedures that apply to federal revocation and early termination hearings). The rule at § 2.43(c) for federal parolees is similarly amended.

Second, PDS suggested that the Commission require notice to parolees and supervised releasees of early termination denials and reasons for the termination denials. Among other reasons, PDS contended that these requirements would safeguard the offender's liberty interest in early termination from supervision, and equip the offender with the tools needed to achieve early termination at the next review. Under its practice for federal parolees, the Commission sends a notice of the early termination decision when the Commission: (1) Grants early termination from supervision; (2) denies early termination at the five-year mark or thereafter; and (3) denies early termination in disagreement with the

supervision officer's recommendation in favor of early termination. Notice of the decision is not required by 18 U.S.C. 4211, or the Commission's rule at 28 CFR 2.43. The Commission disagrees with the contention that a parolee, whether serving a federal or DC Code sentence, has a liberty interest in early termination of parole that is protected by the Due Process Clause. (Under case precedent, a DC Code prisoner does not have a liberty interest in parole release.) Finally, in cases where the offender may benefit from some direction on improvement, it is likely that the offender is already on notice from the supervision officer of deficient behavior that requires correction.

Third, PDS recommended that the rules be modified to state that after five years on supervision, there is a presumption that the parolee must be terminated from supervision unless the Commission finds that the parolee is a risk to the public safety. The rules fully implement the directives of federal and DC statutes. The related request for a new rule requiring the parolee's termination from supervision if a hearing is not held within sixty days of the five-year mark is contrary to established case precedent from the federal circuits.

Finally, PDS recommended amending the early termination guidelines and expanding the examples of case-specific factors for departing from the guidelines. In particular, PDS objects to the use of the salient factor score in making early termination decisions. The Commission continues to explore the use of an alternative risk prediction device for reparole decisions for DC offenders. Until this investigation results in proposed rulemaking, the Commission will continue to use the early termination guidelines.

WLC asked the Commission for more formal procedures in conducting case reviews before the five-year point of the parolee's supervision term. WLC also recommended that the Commission enhance the statutory presumption for termination from supervision at the five-year mark by adopting a policy that a parolee must be released from further supervision at that point if he had not been convicted of a new crime or had his parole revoked. Finally, WLC echoed the comments of PDS on the Commission's use of the salient factor score.

WLC's recommendations concerning the case review process for early termination decisions are again founded upon the supposition that the parolee has a constitutionally-protected liberty interest in being discharged early from parole supervision. As noted earlier, a

parolee does not possess such a liberty interest. There does not appear to be a compelling need for the Commission to adopt more complex procedures or more restrictive evidentiary standards for early termination decisions. If the Commission chose to establish more complex procedures for this function, it would likely have to add more personnel to accommodate the increased workload.

In reviewing the interim rules, the Commission discovered a mistake in the rule governing appeals for early termination denials for federal parolees (28 CFR 2.43(e)). When the Commission promulgated the interim rule, it mistakenly referred to adverse decisions under paragraph (b) of revised § 2.43, rather than paragraph (c), as subject to appeal. Paragraph (b) covers adverse decisions before the parolee has served five years on supervision, while paragraph (c) covers adverse decisions at the five-year mark and thereafter. The statute establishing an administrative appeal remedy for federal parole-eligible offenders only specifies an administrative appeal for offenders who are denied early termination from supervision “under section 4211(c) [of Title 18, U.S.C.]” the provision for early termination of parole supervision after service of five years on parole. The Commission has never extended an administrative appeal for early termination denials to parolees before the five-year mark (see 28 CFR § 2.43(c)(3) (2008)), and did not intend to do so in its interim rule. The final rule corrects this mistake and provides that only federal parolees who have been denied early termination of parole after serving five years on supervision have the opportunity to appeal the denial to the Commission.

#### **Public Comment on Interim Rules Regarding Forfeiture of Time Spent on Parole**

Regarding the rules governing forfeiture of street time for parole violators, PDS suggested that the Commission amend 28 CFR 2.105(d) to provide that all street time can be forfeited only when the parolee has been convicted of: (1) A crime punishable by more than one year of imprisonment; or (2) a crime punishable by a maximum prison term of one year and the Commission finds the parolee is a risk to the public safety. PDS contended that this change would bring the rule in line with the new law at DC Code 24–406(c)(2). However, the Commission’s rule already directs that the Commission must forfeit street time for a parolee convicted of a crime punishable by more than one year in

prison. 28 CFR 2.105(d)(2)(A). Regarding a parolee convicted of a crime punishable by a lesser term of incarceration, the wording of § 2.105(d)(2)(B) is more consistent with the new law than the proposed wording sought by PDS. The statute directs the Commission to forfeit street time for a parolee convicted of a new offense punishable by “one year or less” of imprisonment. DC Code 24–406(c)(2)(B). Therefore, a parolee convicted of a crime punishable by a maximum jail term of less than one year (*e.g.*, 90 days or 6 months, common statutory penalties for misdemeanors) is subject to street time forfeiture under the statute. Finally, the new statute does not require that, before taking away a misdemeanor’s street time, the Commission must find that the street time forfeiture is necessary to protect the public safety. Instead, DC Code 24–406(c)(2)(B) directs the Commission to forfeit the street time for the misdemeanor “unless the Commission determines that such forfeiture of credit is not necessary to protect the public welfare.” Therefore, the misdemeanor avoids the street time forfeiture only if the Commission finds that forfeiture is *not* needed to protect the public. If the Commission refrains from making the finding, the statutory command controls and requires the forfeiture.

PDS recommended that the Commission add other examples to the list of information the Commission considers in making a determination that street time forfeiture is not warranted for a parolee convicted of a new misdemeanor. Several examples proposed by PDS are incorporated in the final rule. The Commission decided to forego promulgating guidelines for evaluating whether street time forfeiture is not necessary to protect the public welfare, and instead continue to make these decisions on a case-by-case basis.

PDS also recommended that 28 CFR 2.105(d)(3) provide that “[t]he parolee shall receive credit for the remainder of the time on parole” if the Commission partially forfeits street time for the parolee who loses contact with the supervision officer or violates an order. This recommended amendment is unnecessary because § 2.105(d) begins with the instruction “[e]xcept as otherwise 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.” In addition, paragraph (d)(3) clearly states that the forfeiture allowed under that paragraph is “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.”

WLC feared that through the interim rules Commission sought to expand its authority to forfeit street time for a parolee who had committed only administrative violations. This fear is groundless. WLC suggested that the Commission specify those misdemeanor crimes that shall lead to street time forfeiture. This suggestion shares the same underlying flaw as found in the comments of PDS, *i.e.*, that the new law requires that the Commission must find that the parolee presents a danger to the public safety before it can forfeit street time for a new misdemeanor conviction.

WLC also recommended that the Commission provide notice to the parolee of those “reasonable requests or orders” that may result in street time forfeiture under § 2.105(d)(3) if the parolee refuses to obey the request or order. Neither due process nor the terms of the new law require the notice suggested by WLC. Given the variety of situations that could lead to a partial street time forfeiture under paragraph (d)(3), and the infrequency of street time forfeitures outside the absconder situation, the Commission sees no reason to undertake the difficult task of preparing a rule or other notice that seeks to give a parolee warning of requests or orders that may lead to the forfeiture of street time if the parolee disobeys the request or order.

#### **Implementation**

The regulations set forth below will be made effective on April 12, 2010. The Commission earlier implemented the Act’s provisions with the interim rules made effective June 17, 2009. The Act does not disturb the street time forfeiture decisions for DC offenders issued by the Commission before May 20, 2009 (the effective date of the Act), 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.

#### **Executive Order 12866**

The U.S. Parole Commission has determined that these final 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 final 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 Final Rule

■ Accordingly, the U. S. Parole Commission is adopting the following amendments 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. 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 conducted in accordance with the procedures prescribed in 18 U.S.C. 4214(a)(2), 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 (c) 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:

(i) 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

(ii) 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 (g), 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.

■ 3. 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 this part. 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).

■ 4. 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. \* \* \*

■ 5. 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.

\* \* \* \* \*

(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.

■ 6. 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 conducted in accordance with the procedures prescribed in 18 U.S.C. 4214(a)(2), 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 (e). 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:

(i) 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

(ii) 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 (e), 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.

■ 7. 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.

■ 8. Section 2.97 is amended by revising the introductory text 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, and prior to the expiration date of the sentence(s) being served, the parolee commits any new criminal offense or engages in any conduct that might bring discredit to the parole system, the Commission may, in its discretion, do any of the following:

\* \* \* \* \*

■ 9. 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)."

■ 10. 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)."

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

**§ 2.105 Revocation decisions.**

\* \* \* \* \*

(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.

\* \* \* \* \*

(d)(1) Except as provided in paragraphs (d)(2) and (d)(3) of this section, the Commission shall grant a revoked parolee credit toward completion of the sentence for all time served on parole.

(2)(i) 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.

(ii) 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, family support and stability, employment record, participation in applicable treatment programs, 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 (e) 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.

\* \* \* \* \*

■ 12. 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 (d). 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:

(i) 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

(ii) 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 (d), 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: February 24, 2010.

**Isaac Fulwood,**

*Chairman, U.S. Parole Commission.*

[FR Doc. 2010–4270 Filed 3–2–10; 8:45 am]

**BILLING CODE 4410–31–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

**[Docket No. USCG–2010–0083]**

**Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, VA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary deviation from regulations; request for comments.

**SUMMARY:** The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Berkley Bridge across the Eastern Branch of the Elizabeth River, mile 0.4, at Norfolk, Virginia. This deviation is necessary to test another change in the drawbridge

operation schedule based on comments received from the first test deviation published on October 9, 2009.

**DATES:** This deviation is effective from 9 a.m. on March 10, 2010 through 2:30 p.m. on September 3, 2010.

Comments and related material must be received by the Coast Guard on or before July 1, 2010.

**ADDRESSES:** You may submit comments identified by docket number USCG–2010–0083 using any one of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>.

• *Fax:* 202–493–2251.

• *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

• *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Terrance A. Knowles, Environmental Protection Specialist, Fifth Coast Guard District, telephone 757–398–6587, e-mail [Terrance.A.Knowles@uscg.mil](mailto:Terrance.A.Knowles@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

**Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0083), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>)