A–H1. No. Under section 6320(b)(2), a taxpayer is entitled to only one CDP hearing under section 6320 with respect to the tax and tax period or periods specified in the CDP Notice. Any subsequent consideration by Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q–H2. Is a decision of Appeals resulting from a retained jurisdiction hearing appealable to the Tax Court or a district court?

A–H2. No. As discussed in A–H1, a taxpayer is entitled to only one CDP hearing under section 6320 with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court or a district court.

(i) *Equivalent hearing*—(1) *In general.* A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an ''equivalent hearing.'' The equivalent hearing will be held by Appeals and generally will follow Appeals' procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (i) as follows:

Q–I1. What issues will Appeals consider at an equivalent hearing?

A–I1. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q–I2. Are the periods of limitation under sections 6502, 6531, and 6532 suspended if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A–I2. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day period that commences on the day after the end of the five business day period following the filing of the NFTL, that is, CDP hearings.

Q–I3. Will collection action, including the filing of additional NFTLs, be suspended if a taxpayer requests and receives an equivalent hearing?

A–I3. Collection action is not required to be suspended. Accordingly, the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q–I4. What will the Decision Letter state?

A–I4. The Decision Letter will generally contain the same information as a Notice of Determination.

Q–I5. Will a taxpayer be able to obtain court review of a decision made by Appeals with respect to an equivalent hearing?

A–I5. Section 6320 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals' denial of relief under section 6015. Such review must be sought within 90 days of the issuance of Appeals' determination on those issues, as provided by section 6015(e).

(j) *Effective date.* This section is applicable with respect to any filing of a NFTL on or after January 19, 1999.

§ 301.6320–1T [Removed]

Par. 3. Section 301.6320–1T is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Mark A. Weinberger,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 02–1306 Filed 1–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Parole Commission is amending its rules of procedure that govern the revocation process for District of Columbia parolees who are arrested and held in the District of Columbia on warrants charging them with violations of parole. The amended rules implement a decision of the U.S. District Court for the District of Columbia, in *Long* v. *Gaines*, Civ. Action No. 01–0010 (EGS), dated November 21, 2001, which obliges the Commission to promulgate amendments to its regulations so as to conform them to the requirements of constitutional due process as interpreted by the Court. The amended rules impose new deadlines for making determinations of probable cause (five days from arrest), for holding the final revocation hearing (sixty-five days from arrest), and for issuing final decisions as to revocation (eighty-six days after arrest). The amended rules also include other procedures designed to comply with the court's order.

DATES: This interim rule will take effect on February 19, 2002. Comments must be received by March 19, 2002.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

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

SUPPLEMENTARY INFORMATION: In *Long* v. *Gaines*, 167 F. Supp. 2d 75 (D.D.C. 2001), the U.S. District Court for the District of Columbia held that the Parole Commission's rules governing the revocation process for District of Columbia parolees are unconstitutional with respect to the applicable time deadlines for making determinations of probable cause and completing the revocation process. Under the Commission's current rules, a parolee who is arrested on a warrant charging a violation of parole is entitled to a prompt preliminary interview, normally conducted by a parole officer other than the officer who supervised the parolee. The Commission must make a determination of probable cause ''as expeditiously as possible'' if the interviewing officer recommends a finding of ''no probable cause,'' and within 21 days of the interview if the interviewing officer recommends that probable cause be found. A local revocation hearing must be held within 60 days of the probable cause determination if the parolee denies violating parole and has not been convicted of a new crime. Thereafter, the Commission must issue a final decision within 21 days of the revocation hearing, excluding weekends and holidays. See 28 CFR 2.101 through 2.105 (2001). Because the Commission customarily holds preliminary interviews within three to five days of arrest, these rules provide for an outside limit of 86 days from arrest for the

revocation hearing to be held, and 107 days from arrest for the final decision to be issued. (Parolees who are convicted of new crimes are only entitled to revocation hearings within 90 days of arrest; the rules governing such offenders are not changed by these amendments.)

However, in *Long* v. *Gaines* the court has held that the due process clause of the U.S. Constitution requires that the Commission make determinations of probable cause no later than five days from arrest, that revocation hearings be held not later than 65 days from arrest, and that final decisions be issued no later than 86 days from arrest. Except in the case of parolees convicted of new crimes, the Commission has now been enjoined to operate within these deadlines. The court also held that the Commission must ensure that: (1) The parolee is given notice of the time and purpose of the probable cause hearing and the charged violations; (2) prior to the revocation hearing, the parolee is provided with disclosure of the evidence to be relied upon by the Commission in determining whether parole was violated and, if so, whether to revoke parole; and (3) the ultimate decisionmaker is informed of all the parolee's arguments and evidence prior to rendering a final decision.

The amended rules implement these requirements. Although not all of the court's requirements necessitate departures from the Commission's current practice, the amended rules significantly differ from the Commission's current practice by adopting the court's new deadlines, and by requiring that Commission hearing examiners conduct probable cause hearings in the District of Columbia within five days of the parolee's arrest. The Commission has delegated to these examiners the authority to make a probable cause decision at the conclusion of each hearing. The examiner will also have the authority to order the release of the parolee if no probable cause is found, and to set a date for the revocation hearing if probable cause is found.

Implementation

The Commission's regulations at 28 CFR 2.98 through 2.105, as amended by this publication, will be followed by the Commission in the case of all District of Columbia Code parolees who are arrested and held in the District of Columbia on warrants charging a violation or violations of parole, until the taking effect of final rules promulgated by the Commission. However, these interim amendments will also retain the status of proposed rules for the purposes of the public comment requirement of 5 U.S.C. 553 (b). The Commission will withhold promulgation of final rules until completion of the comment and objection process accorded to the plaintiffs in *Long* v. *Gaines*. These regulations do not supersede or replace any representation made by the defendants in the Compliance Plan approved by the district court on November 21, 2001.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that these interim regulations do not constitute a significant rule within the meaning of Executive Order 12866. The amended 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), and are deemed by the Commission to be rules of agency practice that do not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(C) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Amended Rules

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 2.98 is amended as follows:

a. Amend paragraph (a)(1) by removing ''preliminary interview'' and adding in its place ''probable cause hearing''.

b. Revise paragraph (f) to read as follows:

§ 2.98 Summons to appear or warrant for retaking of parolee.

* * * * *

(f) A summons or warrant issued pursuant to this section shall be accompanied by a warrant application (or other notice) stating:

(1) The charges against the parolee;

(2) The specific reports and other documents upon which the Commission intends to rely in determining whether a violation occurred and whether to revoke parole;

(3) Notice of the Commission's intent, if the parolee is arrested within the District of Columbia, to hold a probable cause hearing within five days of the parolee's arrest;

(4) A statement of the purpose of the probable cause hearing;

(5) The days of the week on which the Commission regularly holds its dockets of probable cause hearings at the Central Detention Facility;

(6) The parolee's procedural rights in the revocation process; and

(7) The possible actions that the Commission may take.

* * * * *

3. Section 2.99 is amended as follows:

a. Revise paragraph (b) to read as set forth below.

b. Amend paragraph (e) by removing ''preliminary interview'' and adding in its place ''probable cause hearing''.

§ 2.99 Execution of warrant and service of summons.

* * * * *

(b) Upon the arrest of the parolee, the officer executing the warrant shall deliver to the parolee a copy of the warrant application (or other notice provided by the Commission) containing the information described in § 2.98 (f).

* * * * *

4. Section 2.101 is revised to read as follows:

§ 2.101 Probable cause hearing and determination.

(a) Hearing. A parolee who is retaken and held in custody in the District of Columbia on a warrant issued by the Commission (or by the Board of Parole of the District of Columbia), and who has not been convicted of a new crime, shall, no later than five days from the date of such retaking, be given a probable cause hearing by an examiner of the Commission. The purpose of the probable cause hearing is to determine whether there is probable cause to believe that the parolee has violated parole as charged, and if so, whether a local or institutional revocation hearing should be conducted.

(b) Notice and opportunity to postpone hearing. Prior to the commencement of each docket of probable cause hearings, a list of the parolees who are scheduled for probable cause hearings, together with a copy of the warrant application for each parolee, shall be sent to the DC Public Defender Service. At or before the probable cause hearing, the parolee (or the parolee's attorney) may submit a written request that the hearing be postponed for any period up to thirty days, and the Commission shall ordinarily grant such requests. Prior to the commencement of

the probable cause hearing, the examiner shall advise the parolee that the parolee may accept representation by the attorney from the DC Public Defender Service who is assigned to that docket, waive the assistance of an attorney at the probable cause hearing, or have the probable cause hearing postponed in order to obtain another attorney and/or witnesses on his behalf. In addition, the parolee may request the Commission to require the attendance of adverse witnesses (i.e., witnesses who have given information upon which revocation may be based) at a postponed probable cause hearing. Such adverse witnesses may be required to attend either a postponed probable cause hearing, or a combined postponed probable cause and local revocation hearing, provided the parolee meets the requirements of § 2.102(a) for a local revocation hearing. The parolee shall also be given notice of the time and place of any postponed probable cause hearing.

(c) Review of the charges. At the beginning of the probable cause hearing, the examiner shall ascertain that the notice required by § 2.99 (b) has been given to the parolee. The examiner shall then review the violation charges with the parolee and shall apprise the parolee of the evidence that has been submitted in support of the charges. The examiner shall ascertain whether the parolee admits or denies each charge listed on the warrant application (or other notice of charges), and shall offer the parolee an opportunity to rebut or explain the allegations contained in the evidence giving rise to each charge. The examiner shall also receive the statements of any witnesses and documentary evidence that may be presented by the parolee. At a postponed probable cause hearing, the examiner shall also permit the parolee to confront and cross-examine any adverse witnesses in attendance, unless good cause is found for not allowing confrontation. Whenever a probable cause hearing is postponed to secure the appearance of adverse witnesses, the Commission will ordinarily order a combined probable cause and local revocation hearing as provided in paragraph (i) of this section.

(d) Probable cause determination. At the conclusion of the probable cause hearing, the examiner shall determine whether probable cause exists to believe that the parolee has violated parole as charged, and shall so inform the parolee. The examiner shall then take either of the following actions:

(1) If the examiner determines that no probable cause exists for any violation charge, the examiner shall order that the parolee be released from the custody of the warrant and either reinstated to parole, or discharged from supervision if the parolee's sentence has expired.

(2) If the hearing examiner determines that probable cause exists on any violation charge, and the parolee has requested (and is eligible for) a local revocation hearing in the District of Columbia as provided by § 2.102 (a), the examiner shall schedule a local revocation hearing for a date that is within 65 days of the parolee's arrest. After the probable cause hearing, the parolee (or the parolee's attorney) may submit a written request for a postponement. Such postponements will normally be granted if the request is received no later than fifteen days before the date of the revocation hearing. A request for a postponement that is received by the Commission less than fifteen days before the scheduled date of the revocation hearing will be granted only for a compelling reason. The parolee (or the parolee's attorney) may also request, in writing, a hearing date that is earlier than the date scheduled by the examiner, and the Commission will accommodate such request if practicable.

(e) Institutional revocation hearing. If the parolee is not eligible for a local revocation hearing as provided by § 2.102 (a), or has requested to be transferred to an institution for his revocation hearing, the Commission will request the Bureau of Prisons to designate the parolee to an appropriate institution, and an institutional revocation hearing shall be scheduled for a date that is within ninety days of the parolee's retaking.

(f) Digest of the probable cause hearing. At the conclusion of the probable cause hearing, the examiner shall prepare a digest summarizing the evidence presented at the hearing, the responses of the parolee, and the examiner's findings as to probable cause.

(g) Release notwithstanding probable cause. Notwithstanding a finding of probable cause, the Commission may order the parolee's reinstatement to supervision or release pending further proceedings, if it determines that:

(1) Continuation of revocation proceedings is not warranted despite the finding of probable cause; or

(2) Incarceration pending further revocation proceedings is not warranted by the frequency or seriousness of the alleged violation(s), and the parolee is neither likely to fail to appear for further proceedings, nor is a danger to himself or others.

(h) Conviction as probable cause. Conviction of any crime committed subsequent to release by a parolee shall constitute probable cause for the purposes of this section, and no probable cause hearing shall be conducted unless a hearing is needed to consider additional violation charges that may be determinative of the Commission's decision whether to revoke parole.

(i) Combined probable cause and local revocation hearing. A postponed probable cause hearing may be conducted as a combined probable cause and local revocation hearing, provided such hearing is conducted within 65 days of the parolee's arrest and the parolee has been notified that the postponed probable cause hearing will constitute his final revocation hearing. The Commission's policy is to conduct a combined probable cause and local revocation hearing whenever adverse witnesses are required to appear and give testimony with respect to contested charges.

(j) Late received charges. If the Commission is notified of an additional charge after probable cause has been found to proceed with a revocation hearing, the Commission may:

(1) Remand the case for a supplemental probable cause hearing if the new charge may be contested by the parolee and possibly result in the appearance of witness(es) at the revocation hearing;

(2) Notify the parolee that the additional charge will be considered at the revocation hearing without conducting a supplemental probable cause hearing; or

(3) Determine that the new charge shall not be considered at the revocation hearing.

5. Section 2.102 (f) is revised to read as follows:

§ 2.102 Place of revocation hearing.

* * * * *

(f) A local revocation hearing shall be held not later than sixty-five days from the retaking of the parolee on the parole violation warrant. An institutional revocation hearing shall be held within ninety days of the retaking of the parolee on the parole violation warrant. If the parolee requests and receives any postponement, or consents to any postponement, or by his actions otherwise precludes the prompt completion of revocation proceedings in his case, the above-stated time limits shall be correspondingly extended.

6. Section 2.103 is amended by revising paragraph (d) and adding paragraphs (f) and (g) to read as follows:

§ 2.103 Revocation hearing procedure.

* * * * *

(d) All evidence upon which a finding of violation may be based shall be disclosed to the alleged violator before the revocation hearing. Such evidence shall include the Community Supervision Officer's letter summarizing the parolee's adjustment to parole and requesting the warrant, all other documents describing the charged violation or violations of parole, and any additional evidence upon which the Commission intends to rely in determining whether the charged violation or violations, if sustained, would warrant revocation of parole. If the parolee is represented by an attorney, the attorney shall be provided, prior to the revocation hearing, with a copy of the parolee's presentence investigation report, if such report is available to the Commission. If disclosure of any information would reveal the identity of a confidential informant or result in harm to any person, that information may be withheld from disclosure, in which case a summary of the withheld information shall be disclosed to the parolee prior to the revocation hearing.

* * * * *

(f) At a local revocation hearing, the Commission shall secure the presence of the parolee's Community Supervision Officer, or a substitute Community Supervision Officer, who shall bring the parolee's supervision file, if the parolee's Community Supervision Officer is not available. At the request of the hearing examiner, such officer shall provide testimony at the hearing concerning the parolee's adjustment to parole.

(g) After the revocation hearing, the hearing examiner shall prepare a summary of the hearing that includes a description of the evidence against the parolee and the evidence submitted by the parolee in defense or mitigation of the charges, a summary of the arguments against revocation presented by the parolee, and the examiner's recommended decision. The hearing examiner's summary, together with the parolee's file (including any documentary evidence and letters submitted on behalf of the parolee), shall be given to another examiner for review. When two hearing examiners concur in a recommended disposition, that recommendation, together with the parolee's file and the hearing examiner's summary of the hearing, shall be submitted to the Commission for decision.

* * * * *

7. Section 2.104 (a)(1) is amended by removing ''preliminary interview'' and adding in its place ''probable cause hearing''.

8. Section 2.105 (c) is revised to read as follows:

§ 2.105 Revocation decisions.

* * * * *

(c) Decisions under this section shall be made upon the concurrence of two Commissioner votes, except that a decision to override an examiner panel recommendation shall require the concurrence of three Commissioner votes. The final decision following a local revocation hearing shall be issued within 86 days of the retaking of the parolee on the parole violation warrant. The final decision following an institutional revocation hearing shall be issued within 21 days of the hearing, excluding weekends and holidays.

* * * * *

Dated: January 10, 2002.

Edward F. Reilly, Jr.,

Chairman, Parole Commission.

[FR Doc. 02–1308 Filed 1–17–01; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 160

[USCG–2001–10689]

RIN 2115–AG24

Temporary Requirements for Notification of Arrival in U.S. Ports

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments; correction.

SUMMARY: This document corrects the temporary final rule with request for comments published in the **Federal Register** on October 4, 2001. That rule temporarily changed notification requirements for vessels bound for or departing from U.S. ports. The rule temporarily lengthened the usual notification period from 24 to 96 hours prior to port entry, required submission of reports to a central national clearinghouse, suspended exemptions for vessels operating in compliance with the Automated Mutual Assistance Vessel Rescue System, for some vessels operating on the Great Lakes, and required submission of information about persons onboard these vessels.

DATES: The temporary final rule published in the **Federal Register** (66 FR 50565) was effective on October 4, 2001 to June 15, 2002. These corrections to that rule are effective on January 18, 2002.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call LTJG Marcus A. Lines, Coast Guard, at telephone 202–267–6854. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at telephone 202–366–5149.

SUPPLEMENTARY INFORMATION

Need for Correction

As published, the temporary final rule contains an error that inadvertently delays an existing effective date of a reporting requirement for certain vessels to include International Safety Management (ISM) Code (Chapter IX of SOLAS) Notice information in the notice of arrival report.

Correction

In the temporary final rule FR Doc. 01–24984, beginning on page 50565 in the issue of October 4, 2001, make the following corrections:

§ 160.T208 [Amended]

1. In § 160.T208 in paragraph (f)(2) on page 50573, in the first column, remove the date ''July 1, 2002,'' and add in its place the date ''January 1, 2002,''.

Dated: January 11, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02–1370 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles—Long Beach 01–011]

RIN 2115–AA97

Security Zones; Port of Los Angeles and Catalina Island

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a moving and fixed security zone 100 yards around all cruise ships that enter, are moored in, or depart from the Port of Los Angeles, and while anchored at Catalina Island. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Capitan of the Port Los Angeles—Long Beach, or his designated representative.