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SUPPLEMENTARY INFORMATION: In certain categories of cases, the U.S. Parole Commission has found that an appropriate sanction for parole failure can be determined through a review of the parolee's record and by reference to the applicable reparole guidelines. The majority of these cases involve administrative violations, drug use, and drug treatment program failure, as well as petty crimes. The sanction is revocation and a presumptive reparole date. In other cases, the violation of parole may be serious enough that the only appropriate sanction is revocation and denial of reparole. The Commission has found that many arrested parole violators in these categories are willing to waive their right to a hearing under 18 U.S.C. 4214 in order to be removed from a local jail and complete the prescribed period of imprisonment in an institution where programming and other amenities are available.

Accordingly, in 1996, the Commission approved a pilot project for an "expedited revocation procedure." After the preliminary interview has been conducted following the arrest of the accused parole violator, the Commission offers the parolee the opportunity to consent to revocation and a sanction of a definite number of months in prison. The procedure was initially limited to Category One violations on the guidelines at 28 CFR 2.20. Category Two violations and cases where the Commission proposed to deny reparole altogether ("continue to expiration") were eventually added. The procedure is also used in the case of parolees who will complete an adequate sanction by serving a new state or federal sentence, but for whom revocation of parole is necessary in order to guarantee an adequate period of parole supervision following release from imprisonment. This is accomplished by an order forfeiting the time spent on parole, which accompanies an order of revocation.

Over the course of the pilot project, 1223 cases were considered for the expedited revocation procedure, with an acceptance rate of 76.2%. The project has saved agency resources as well as critical jail space without diminishing in any respect the sanctions normally imposed by the Commission on these types of parole violators. It is to be emphasized that the "expedited revocation procedure" is in no sense a form of plea-bargaining; the Parole Commission offers the accused violator

the sanction that is considered appropriate by the Commission. If the parolee does not accept the proposed sanction, a revocation hearing is conducted. Following the hearing, any appropriate sanction may be imposed. Moreover, the parolee's acceptance of the Commission's offer does not create a "plea agreement" that can be subsequently enforced to avoid consequences required by regulation or law (e.g., a consecutive sentence that is not referenced in the Commission's offer).

It is also to be emphasized that the Parole Commission may, in its discretion, decide not to offer an expedited revocation if there is any aspect of the case that appears to warrant an in-person revocation hearing, and may rescind an offer at any time in order to schedule an in-person hearing.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this proposed rule is not a significant rule within the meaning of Executive Order 12866, and the proposed rule has, accordingly, not been reviewed by the Office of Management and Budget. The proposed rule, if adopted, 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).

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 makes the following changes 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. 28 CFR Part 2 is amended by adding § 2.67 to read as follows:

§ 2.67 Expedited Revocation Procedure.

(a) In addition to the actions available to the Commission under § 2.47(a) and (b), and under § 2.48, the Commission may offer an alleged parole violator an opportunity to accept responsibility for his violation behavior, to waive a revocation hearing, and to accept the sanction proposed by the Commission in the Notice of Eligibility for Expedited

Revocation Procedure that is sent to the alleged parole violator.

(b) The following cases may be considered under the expedited revocation procedure:

(1) Cases in which the alleged parole violator has been given a preliminary interview under § 2.48, and the alleged violation behavior would be graded Category One or Category Two;

(2) Cases in which the alleged violator has been given a preliminary interview under § 2.48 and the proposed decision is continue to expiration of sentence, regardless of offense category; and

(3) Cases in which an alleged violator has received a dispositional review under § 2.47, and the Commission determines that conditional withdrawal of the warrant would be appropriate, but forfeiture of street time is deemed necessary to provide an adequate period of supervision.

(c) The alleged violator's consent shall not be deemed to create an enforceable agreement with respect to any action the Commission is authorized to take by law or regulation, or to limit in any respect the normal statutory consequences of a revocation of parole or mandatory release.

Dated: May 5, 1998.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

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DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Electronic Issuance of Paroling Violation Warrants

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending a regulation that requires parole violation warrants to be issued by U.S. Mail. In order to expedite the receipt of warrants by the U.S. Marshals Service, the regulation is being amended to permit warrants to be sent by electronic transmission. Although an alleged parole violator may be arrested by authorized officials who have been alerted to the issuance of a warrant but have not actually received the warrant, a procedure that will ensure the immediate receipt of warrants by arresting authorities will avoid confusion as to the Commission's instructions and the parolee's status.

EFFECTIVE DATE: June 10, 1998.

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

SUPPLEMENTARY INFORMATION: The Commission has determined that cases of confusion over whether a warrant should be executed or placed as a detainer (if the alleged parole violator is already in custody on another charge) can be readily avoided if the Commission adopts a procedure designed to expedite the receipt of warrants by the U.S. Marshals Service. Other possibilities for delay and confusion prior to the receipt of a signed warrant can also be avoided. The only legal obligation under which the Commission operates with respect to the issuance of valid warrants is that a warrant must be issued prior to the expiration of the parolee's sentence. Issuance and delivery of a warrant are separate events. 18 U.S.C. 4213(d) (1976).

The term "issue" means to send out officially. *Hervey v. Secretary of Health and Human Services*, 88 F.3d 1001, 1002 (Fed. Cir. 1996). The long-accepted definition of the term "issue" has never been specific as to means of issuance. Accordingly, the Parole Commission may, by regulation, define the issuance of a warrant as being the electronic transmission of the signed warrant to the arresting authorities. The date and time of "issuance" of a warrant will be the date and time it is transmitted electronically. The signed original, having been thus issued, will remain in the Commission's file.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866, and the rule has, accordingly, not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, U.S.C. 605(b).

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 makes the following changes 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. 28 CFR Part 2, § 2.44 (c) is revised to read as follows:

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

* * * * *

(c) A summons or warrant may be issued only within the prisoner's maximum term or terms except that in the case of a prisoner released as if on parole pursuant to 18 U.S.C. 4164, such summons or warrant may be issued only within the maximum term or terms, less one hundred eighty days. A summons or warrant shall be considered issued when signed and either—

(1) Placed in the mail or

(2) Sent by electronic transmission to the intended authorities.

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Dated: May 5, 1998.

Michael J. Gaines,
Chairman, U.S. Parole Commission.

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DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Release of Information to the Public

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Commission's regulation concerning the disclosure of information about offenders under its jurisdiction currently addresses only those situations where disclosure is necessary to give notice to potential victims of individuals on parole, or to assist law enforcement authorities. No provision is made for the general disclosure of information about prisoners and parolees when such information is considered to be "public sector" information that may be disclosed without the consent of the subject. At 28 CFR 540.65(b), the Bureau of Prisons defines the information that is considered "a matter of public record" for disclosure to representatives of the media. The Parole Commission is now amending its regulation to define the information that it gives to the media and to the public generally.

EFFECTIVE DATE: Effective June 10, 1998.

FOR FURTHER INFORMATION CONTACT:

Pamela A. Posch, Office of General Counsel, 5550 Friendship Blvd., Chevy Chase, Maryland 20815. Telephone: (301) 492-5959.

SUPPLEMENTARY INFORMATION: The information defined as "public sector" information is consistent with the information defined in § 540.65(b), and with the current practice of the U.S. Parole Commission. The same policy will be followed for both U.S. and D.C. Code offenders.

It should be noted that, although Commission decisions may be disclosed, this does not necessarily include the statement of reasons provided by the Commission in support of each decision. Pursuant to its routine use exemptions from the Privacy Act of 1974 (published at 53 FR 7813, March 10, 1988), public disclosure of the full Notice of Action issued by the Parole Commission is only available if the Commission has determined that disclosure is appropriate " * * * to further understanding of the criminal justice system by the public" and has transmitted the Notice of Action to the Office of Public Affairs of the Department of Justice.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866, and the rule has, accordingly, not been reviewed by the Office of Management and Budget. The rule 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).

List of Subjects in 28 CFR Part 2

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The Final Rule

Accordingly, the U.S. Parole Commission makes the following changes 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. 28 CFR Part 2, § 2.37 is amended by adding the following new paragraph (c):

§ 2.37 Disclosure of information concerning parolees; Statement of policy.

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