

**DEPARTMENT OF JUSTICE****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 amending a rule that implements its authority under the District of Columbia Youth Rehabilitation Act to set aside a conviction for a youth offender. The rule acknowledges the Commission's authority to set aside a youth offender's misdemeanor conviction and describes the information the Commission examines in making such a determination. Also, the rule clarifies the Commission's policy for issuing a set-aside certificate for a youth offender who was formerly on supervised release and who was not reviewed for the set-aside certificate before the offender's sentence expired. The rule adopts the Commission's established criteria for conducting set-aside reviews when a youth offender's parole term ends before such a review has been held.

**DATES:** *Effective Date:* September 27, 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:** The District of Columbia Youth Rehabilitation Act authorizes the Parole Commission to set aside a conviction for a deserving youth offender who has been committed under that Act. DC Code 24-906. Normally, the Commission reviews a youth offender's case for issuance of a set-aside certificate after the offender has served a period of community supervision on parole or supervised release following discharge from the commitment portion of the sentence. DC Code 24-906(a), (c), and (d) require the issuance of a set-aside certificate if the Commission terminates parole supervision or supervised release before the expiration of the committed youth offender's sentence. Under Section 24-906(b), the Commission is also granted the authority to exercise discretion to set aside a committed youth offender's

conviction if the offender's sentence expires before the Commission can review the case for the unconditional discharge of the offender. This situation will normally arise when: (1) A youth offender's jail term for a misdemeanor conviction expires and the offender is discharged from the custody of the DC Department of Corrections without further supervision in the community; or (2) a youth offender is unconditionally discharged from parole supervision or supervised release and the Commission somehow did not review the case for early termination from supervision.

Until this rule change, the Commission's regulations did not address the agency's authority to grant a set-aside certificate for the misdemeanor youth offender, or the youth offender formerly on supervised release whose case somehow escaped Commission review before the expiration of the supervised release term. Nonetheless, the Commission has been carrying out its statutory authority to consider these offenders for set-aside certificates. To fill the gap in its rules, the Commission is amending 28 CFR 2.208(a) to provide a brief statement of the Commission's authority to issue a set-aside certificate after the youth offender's sentence expires, and the information the Commission would consider in granting or denying the set-aside certificate. For former supervised releasees, the amendment includes a cross-reference to § 2.106(f)(3), which describes the Commission's criteria for issuing a set-aside certificate *nunc pro tunc* for a youth offender who was on parole supervision and who was not reviewed for early termination from supervision (and the possible issuance of the set-aside certificate) before the expiration of the sentence.

**Executive Order 12866**

The U.S. Parole Commission has determined that this final rule does not constitute a significant rule within the meaning of Executive Order 12866.

**Executive Order 13132**

This regulation 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, this rule does not have sufficient federalism implications requiring a Federalism Assessment.

**Regulatory Flexibility Act**

The final 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).

**Unfunded Mandates Reform Act of 1995**

The rule 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)**

This rule is not a "major rule" 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 rule 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, this is a rule of agency practice or procedure that does not substantially affect the rights or obligations of non-agency parties, and does 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 making 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. Revise § 2.208(a)(2) to read as follows:

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

(a) \* \* \*

(2) Upon terminating supervision of a committed youth offender before the sentence expires, the Commission shall set aside the offender's conviction and issue a certificate setting aside the conviction instead of a certificate of discharge. The Commission may issue a

set-aside certificate *nunc pro tunc* for a youth offender previously under supervised release on the sentence and who was not considered for early termination from supervision, using the criteria stated at § 2.106(f)(3). If the youth offender was sentenced only to a term of incarceration without any supervision to follow release, the Commission may issue a set-aside certificate after the expiration of the sentence. In such cases, the Commission shall determine whether to grant the set-aside certificate after considering factors such as the offender's crime, criminal history, social and employment history, record of institutional conduct, efforts at rehabilitation, and any other relevant and available information.

\* \* \* \* \*

Dated: August 13, 2010.

**Isaac Fulwood,**

*Chairman, U.S. Parole Commission.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2010-0020]

RIN 1625-AA00

#### Safety Zone; AVI September Fireworks Display, Laughlin, Nevada, NV

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone, on the navigable waters of the lower Colorado River, Laughlin, NV, in support of a fireworks display near the AVI Resort and Casino. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

**DATES:** This rule is effective from 8 p.m. to 9:45 p.m. on September 5, 2010.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2010-0020 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0020 in the "Keyword" box, and

then clicking "Search." This material is also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Petty Officer Corey McDonald, Waterways Management, Coast Guard; telephone 619-278-7262, e-mail [Corey.R.McDonald@uscg.mil](mailto:Corey.R.McDonald@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On May 3, 2010 we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; AVI September Fireworks Display; Laughlin, Nevada, NV in the **Federal Register** (75 FR 23206). We received no comments on the proposed rule. No public meeting was requested, and none was held.

##### Basis and Purpose

The AVI Resort and Casino is sponsoring the AVI May fireworks display, which is to be held at the AVI Resort and Casino on the Lower Colorado River in Laughlin, Nevada. The Coast Guard is establishing a temporary safety zone on the navigable waters of the Lower Colorado River, Laughlin, NV in support of the AVI May fireworks display adjacent to the AVI Resort and Casino on the Lower Colorado River, Laughlin, NV. The safety zone is set as an 800 foot radius around the firing site in approximate position: 35°00'93" N, 114°38'28" W. This temporary safety zone is necessary to provide for the safety of the show's crew, spectators, participants of the event, participating vessels, and other vessels and users of the waterway.

##### Discussion of Comments and Changes

There were no comments submitted and no changes were made to the regulation.

##### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

##### Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of

Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Colorado River from 8 p.m. to 9:45 p.m. on September 5, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone will only be in effect for one hour and 45 minutes late in the evening when vessel traffic is low. Before the effective period, we will publish a Local Notice to Mariners (LNM).

##### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call