

publication, will be followed by the Commission in the case of all District of Columbia Code parolees and supervised releasees who are arrested and held in the Washington, DC metropolitan area on warrants charging a violation or violations of parole or supervised release. In the case of District of Columbia Code parolees and supervised releasees who are arrested and held outside the Washington, DC metropolitan area on warrants charging a violation or violations of parole or supervised release, the revocation rules applicable to U.S. Code parolees shall apply. Where preliminary interviews are required, the Commission will request the local U.S. Probation Office to conduct a preliminary interview as required by 28 CFR § 2.48 (a) within 3 to 5 days of the Commission being notified by the U.S. Marshals Service of the parolee's arrest, unless exceptional circumstances require additional time not to exceed 10 days.

#### Regulatory Assessment Requirements

The U.S. Parole Commission has determined that these final rule amendments 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.

#### Adoption of Amended Rules

Accordingly, the interim rule amendments to 28 CFR Part 2, Subchapter C, Sections 2.98 through 2.105, which were published at 67 FR 2569 on January 18, 2002, are adopted by the Commission as final rules with revisions to Section 2.101 as set forth below. In addition, the Commission adopts amendments to 28 CFR Part 2, Subchapter D, which are also set forth below.

#### 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 § 2.101 (a) and (b), 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, and who has not been convicted of a new crime, shall be given a probable cause hearing by an examiner of the Commission no later than five days from the date of such retaking. A parolee who is retaken and held in custody outside the District of Columbia, but within the Washington DC metropolitan area, and who has not been convicted of a new crime, shall be given a probable cause hearing by an examiner of the Commission within five days of the parolee's arrival at a facility where probable cause hearings are conducted. The purpose of a 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. If the examiner finds probable cause, the examiner shall schedule a final revocation hearing to be held within 65 days of such parolee's arrest.

(b) *Notice and opportunity to postpone hearing.* Prior to the commencement of each docket of probable cause hearings in the District of Columbia, 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 D.C. 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 D.C. 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.

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3. Section 2.211 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:

#### § 2.211 Summons to appear or warrant for retaking releasee.

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(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 releasee;

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

(3) Notice of the Commission's intent, if the releasee is arrested within the District of Columbia, to hold a probable cause hearing within five days of the releasee'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 releasee's procedural rights in the revocation process; and

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

4. Section 2.212 is amended to read 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".

#### § 2.212 Execution of warrant and service of summons.

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(b) Upon the arrest of the releasee, the officer executing the warrant shall deliver to the releasee a copy of the warrant application (or other notice provided by the Commission) containing the information described in § 2.211(f).

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5. Section 2.214 is revised to read as follows:

#### § 2.214 Probable cause hearing and determination.

(a) *Hearing.* A supervised releasee who is retaken and held in custody in the District of Columbia on a warrant