



4410-31

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC-2019-01]

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 United States Parole Commission is amending its regulations and eliminating the term “Executive Hearing Officer” in order to allow for more clarity.

DATES: The regulation is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Helen Krapels, General Counsel, U.S.

Parole Commission, 90 K Street, N.E., Third Floor, Washington, D.C. 20530, telephone (202) 346-7030. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: The United States Parole Commission is adopting final rules to amend its rules describing the delegation to hearing examiners in §2.23 and also the hearing procedures for prisoners transferred pursuant to treaty in §2.68. The amendments are part of our ongoing effort to make our rules easier to understand for those persons affected by the rules and other interested persons and organizations.

More specifically, both of these rule amendments involve the term “Executive Hearing Examiner.” This term is not defined in the regulations and is not clearly translatable to the agency. The agency has interpreted the term to refer to the role of the person who is reviewing the case as the second hearing examiner, and not the actual title of a person’s position. Therefore, whomever is reviewing the case as a second hearing examiner, is considered the Executive Hearing Examiner. An amendment of the regulations that removes the reference to the Executive Hearing Examiner will help clarify that any of the agency’s hearing examiners can be the second vote on the hearing examiner panel, and there is no requirement for someone with the title of Executive Hearing Examiner or a senior hearing examiner to review the case before it is submitted to the Commission.

Public Comment

In the notice of proposed rulemaking, we encourage the public to comment on our proposed changes. However, regarding these final rule amendments, only the terminology is changed and the term “Executive Hearing Examiner” is removed for clarity. The way that the actual hearings are conducted, and by whom, is not affected by these rule amendments. Thus, public comment is not required in this matter and the amended rules will take effect upon publication in the Federal Register.

Executive Orders 12866 and 13563

These regulations have been drafted and reviewed in accordance with Executive Order 12866, “Regulation Planning and Review,” section 1(b), Principles of Regulation, and in accordance with Executive Order 13565, “Improving Regulation and Regulatory Review,” section 1(b), General Principles of Regulation. The Commission has determined that these rules are not a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly these rules have not been reviewed by the Office of Management and Budget.

Executive Order 13132

These rules 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

These 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

These 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)

None of these rules are 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). These 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 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 adopts the following revisions to 28 CFR part 2 as 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 §2.23 to read as follows:

§2.23 Delegation to hearing examiners.

(a) There is hereby delegated to hearing examiners the authority necessary to conduct hearings and make recommendations relative to the grant or denial of parole or reparole, revocation or reinstatement of parole or mandatory release, and conditions of parole. Any hearing may be conducted by a single examiner or by a panel of examiners. Notwithstanding the provisions of §§2.48 through 2.51, §§2.101 through 2.104 and §§2.214 through 2.217, there is also delegated to hearing examiners the authority necessary to make a probable cause finding, to determine the location of a revocation hearing, and to determine the witnesses who will attend the hearing, including the authority to issue subpoenas for witnesses and evidence.

(b) The concurrence of two examiners shall be required to obtain a panel recommendation to the Regional Commissioner. A panel recommendation is required in each case decided by a Regional Commissioner after the holding of a hearing.

(c) An examiner panel recommendation exists of two concurring examiner votes. In the event of divergent votes, the case shall be referred to another hearing examiner for another vote. If concurring votes do not result from such a referral, the case shall be referred to any available hearing examiner until a panel recommendation is obtained.

3. Revise §2.68(h)(6) to read as follows:

§2.68 Prisoners transferred pursuant to treaty.

* * * * *

(h) * * *

(6) The transferee shall be notified of the examiner's recommended findings of fact, and the examiner's recommended determination and reasons therefore, at the conclusion of the hearing. The case shall thereafter be reviewed by a second hearing examiner, and the Commission shall make its determination upon a panel recommendation.

Patricia K. Cushwa,

Chairman (Acting), U.S. Parole Commission.

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