

jurisdiction voting requirements to provide that a decision is made on the basis of a majority vote of the Commissioners holding office at the time of the decision.

There are also several procedural rules governing hearing procedures for District of Columbia offenders that have been rendered obsolete by a change in circumstances unrelated to the structure of the Commission. When the Parole Commission took over the task of conducting parole hearings for DC offenders in 1998, as provided by the Revitalization Act, these offenders were incarcerated in correctional facilities of the DC Department of Corrections and the Federal Bureau of Prisons. Because of security and staffing concerns regarding the implementation of parole hearing procedures in DC facilities, the Commission's rules allowed the opportunity for the appearance of a representative and pre-hearing file disclosure for offenders in Bureau custody, but limited or denied these opportunities for offenders in DC custody. Section 11201 of the Revitalization Act required that all DC felony offenders had to be transferred to the custody of the Bureau of Prisons, and this transfer was accomplished by the end of 2001. This transfer has removed the need for different procedures for DC prisoners depending on the identity of the incarcerating authority. Therefore, the Commission is amending the rule at § 2.72 on hearing procedures for DC offenders to remove the difference in procedures regarding the opportunity for representation and pre-hearing file disclosure.

The Commission is amending the rule at 28 CFR 2.14 to provide that, for a prisoner who has had his initial hearing prior to the parole eligibility date and who must continue to serve the minimum term of his sentence before reaching parole eligibility, such a prisoner has the opportunity for an interim hearing nine months prior to the parole eligibility date. This amendment simplifies the Commission's present rule and ensures that such a prisoner is afforded the chance for an advancement of a presumptive release date to a parole effective date that coincides with the parole eligibility date, if the prisoner shows superior program achievement or other clearly exceptional circumstances that warrant a change in the previous decision.

The Commission is revising the rule at 28 CFR 2.49 to insert instructions on determining the type of revocation hearing that must be held when a Federal parolee has an unadjudicated violation charge that may be determinative of revocation and/or

reparole, and the parolee wants an adverse witness present at the hearing for confrontation and cross-examination on the contested charge. These instructions are presently found in the rules regarding revocation proceedings for DC parolees and supervised releasees, and the addition of the instructions in § 2.49 (with other editorial changes in § 2.49 and § 2.102) ensures that there is consistency in the application of agency policy on the place of a revocation hearing for all offenders under the Commission's jurisdiction.

The Commission is also making a number of corrections to the rules. In reviewing the rules on agency action following a hearing, the Commission discovered that a provision in § 2.13(c) on issuing the notice of the Commission's decision within 21 days of the hearing had been erroneously eliminated as a result of an amendment to § 2.13 promulgated in 1994. The Commission is correcting this error by restoring the notice provision, with an amendment conforming to the elimination of the requirement regarding notice of a referral to the National Commissioners. The Commission is also restoring part of an instruction regarding the scoring of Item A of the salient factor score, a component of the paroling policy guidelines (28 CFR 2.20). This part of the instruction on counting a prior instance of criminal conduct when the offender's case was diverted from a final criminal conviction was erroneously omitted when the Commission revised the salient factor scoring manual in November, 2002. Other obvious errors in the paroling policy guidelines that have been corrected are the omission of a reference to conduct causing "serious bodily injury" in the rating of property destruction offenses, the insertion of an instruction for rating a kidnapping offense in the instructions for rating an assault offense, and the repetition of an instruction in a general note on holding an offender accountable for the criminal acts of his co-conspirators.

Finally, the Commission is making editorial changes to a number of rules in order to use up-to-date terms (e.g., substituting "Executive Hearing Examiner" for "administrative hearing examiner" or "community corrections center" for "community treatment center"). As a result of a recodification of the District of Columbia Code, almost all the citations to the DC Code in the present rules are to statutes that have been renumbered. The new rules provide citations to the revised statutes. The Commission is also amending the rule for offenders sentenced under the

DC Youth Rehabilitation Act to clarify the group of youth offenders who are eligible for parole given the delayed enactment of the DC Sentencing Reform Emergency Amendment Act of 2000.

Implementation

These final rules will be applied to all cases as of the effective date of the rules.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that this final rule does not constitute a significant rule within the meaning of Executive Order 12866. 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), and is deemed by the Commission to be a rule of agency practice that does 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 Final Rule

■ Accordingly, the U.S. Parole Commission is adopting 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. Amend § 2.9 by removing "U.S. Federal Prison System" and adding "Bureau of Prisons".

■ 3. Amend § 2.13 by revising paragraph (c) to read as follows:

§ 2.13 Initial hearing; procedure.

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(c) At the conclusion of the hearing, the examiner shall discuss the decision to be recommended by the examiner and the reasons therefor, except in the extraordinary circumstance of a complex issue that requires further deliberation before a recommendation can be made. Written notice of the decision shall be mailed or transmitted to the prisoner within 21 days of the date of the hearing, except in emergencies. Whenever the Commission initially establishes a release date (or modifies the release date thereafter), the prisoner shall also receive in writing the reasons therefor.

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