

§ 522.1451 [Amended]

2. Section 522.1451 *Moxidectin* is amended in paragraph (d)(2) by adding “and *Uncinaria stenocephala*” following “*caninum*”.

Dated: August 22, 2002.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02-23339 Filed 9-12-02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF JUSTICE**Parole Commission****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 procedures governing parole proceedings for District of Columbia offenders. The amendments provide for the application of the paroling policy guidelines at 28 CFR 2.80 to several groups of DC offenders previously excepted from such application: adult offenders who had hearings from August 5, 1998 to December 3, 2000 under the former version of the § 2.80 guidelines and who had positive or negative points assessed for post-imprisonment conduct; and youth offenders sentenced under the D.C. Youth Rehabilitation Act. The amendments for youth offenders also provide for rehearings on an annual schedule, and allow for an advancement of a presumptive release date for program achievement without any presumptive limitation on the amount of the advancement. Finally, the Commission is eliminating its requirement for an initial report following the release of a prisoner on supervision, and making a number of clarifications and corrections in the guidelines and other rules.

EFFECTIVE DATE: These rule amendments are effective October 15, 2002.

FOR FURTHER INFORMATION CONTACT: 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: On August 5, 1998, pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997 (Pub. L. 105-33), the U.S. Parole Commission assumed the function of making parole release decisions for District of Columbia imprisoned felons. (Two years later, under the same Act, the Commission took over the functions of imposing and modifying release conditions for D.C. offenders on parole or supervised release, and revoking parole or supervised release for violations of release conditions.) The Act required the Commission to exercise its authority under the laws and regulations of the District of Columbia, but gave the Commission the authority to amend and supplement any regulation interpreting or implementing parole laws. D.C. Code 24-1231(a)(1) and (c). Using this latter authority, the Commission supplemented the decision-making guidelines of the former District of Columbia Board of Parole with guidelines that retained the basic structure of the D.C. Board's guidelines (with a point assignment table comprised of a salient factor score and the scoring of pre- and post-incarceration factors, and the total point score indicating whether parole should be granted or denied). But the Commission refined the assessment of pre-incarceration factors regarding the probability that the prisoner would commit a violent offense if released, increased the reward for superior program achievement in prison programs, and specified rehearing ranges (as established by the assessment of points for pre-incarceration factors) for those prisoners denied parole. See 63 FR 39172 (July 21, 1998). These guidelines were promulgated at 28 CFR 2.80.

In November, 2000, the Commission amended the § 2.80 guidelines, retaining the point assignment table, but converting the rehearing ranges to “base guideline ranges” that indicated the total prison time to be served by the prisoner as a result of the assessment of pre-incarceration factors. See 65 FR 70663 (Nov. 27, 2000). Post-incarceration factors such as prison misconduct and superior program achievement were addressed under the revised guidelines by adding or subtracting ranges of months from the base guideline range, rather adding or subtracting points to determine a total point score. The conversion from rehearing to prison time ranges allowed the Commission to set presumptive release dates for DC prisoners up to 36 months from the date of the hearing.

The Commission prospectively applied the new guidelines to those adult offenders who were given initial hearings on or after December 4, 2000. 65 FR 70664. It also authorized retroactive application to those prisoners who had hearings under the original § 2.80 guidelines (redesignated to the appendix to § 2.80), as long as the prisoner had no points added for post-imprisonment misconduct or subtracted for superior program achievement under the original guidelines. *Id.* If the prisoner previously had any points added for prison misconduct or subtracted for superior program achievement, the original § 2.80 guidelines would continue to be applied. The Commission was not prepared at that time to devote scarce resources to the job of retroactive application of the new guidelines. Retroactive application in these cases would require the comparison of different rules for handling post-imprisonment conduct so as to ensure that the prisoner was not disadvantaged in the retroactive use of the new guidelines. The Commission has determined that there are sufficient resources to proceed with retroactive application of the § 2.80 guidelines without undue difficulty.

Up to this time D.C. youth offenders sentenced under the Youth Rehabilitation Act and eligible for parole have been considered for parole under the former § 2.80 guidelines,¹ regardless of when the Commission conducted the initial hearing. But the presumptive date system of the present § 2.80 guidelines clearly may be harmonized with the indeterminate nature of a YRA commitment, as demonstrated by the Commission's experience in making decisions for federal youth offenders sentenced under the former Federal Youth Corrections Act (18 U.S.C. 5005 *et seq.*). Consequently, the Commission is also extending the present § 2.80 guidelines to youth offenders sentenced under the YRA, with some modifications regarding the timing of rehearings and the use of program achievement in determining the prisoner's release date. The Commission is adopting a 12-month rehearing schedule for YRA offenders to be consistent with the parole practices for the federal youth offenders.² A rehearing will also be scheduled on the

¹ See D.C. Code 24-801 *et seq.* Like adult D.C. offenders, offenders sentenced under the YRA who committed their crimes after August 4, 2000 are not eligible for parole. D.C. Code 24-804(c).

² All remaining FYCA prisoners are serving terms of seven years or more and thus all interim hearings are held on a 12-month schedule for these prisoners.

next available docket after the Commission is informed by institutional staff that the YRA offender has completed his prison program plan. This also comports with the Commission's present practice for federal youth offenders and YRA prisoners. With regard to the weighing of program accomplishments in the release decision for DC youth offenders, the Commission will refrain from using the rules at § 2.80(k)–(m) on awarding superior program achievement and subtracting the award in determining the total guideline range. The Commission will use the same policy that it adopted for federal youth offenders at § 2.64(e), weighing program achievement and response to treatment with other factors to make the parole release decision, without setting a limit on the reduction of the presumptive parole date for these reasons.

Through these amendments, the Commission will extend the benefit of the presumptive date system (*i.e.*, increased certainty regarding the expected release date) to virtually all DC offenders, reduce the variety of guidelines and parole procedures used for DC offenders, and simplify training for agency personnel.

The Commission is also clarifying or correcting guideline instructions and other procedural rules. An amendment at § 2.75 expressly allows the Commission to remand a case for a rehearing before a decision granting or denying parole is made, in order to obtain further information. An amendment to the instructions for scoring Category III of the guidelines Point Assignment Table clarifies that the death of the victim must occur in any type of violent offense for the three points to be added under that guideline. Editorial changes at §§ 2.82, 2.86, and 2.219 are made to bring the language of the respective rule in line with other provisions, or to correct minor errors.

There is an error in the base guideline range table of § 2.80(h) that must be corrected. The ranges in the table were developed by determining, under the appendix to § 2.80 guidelines, the number of rehearings it would take for the prisoner to reach a total point score that indicated parole should be granted, and multiplying this number by the rehearing range. For a prisoner who had a base point score of 10 at his initial hearing and then had one point deducted at the initial hearing and each subsequent rehearing for ordinary program achievement, the Commission would normally conduct six rehearings before the prisoner would obtain a total point score of three under the former § 2.80 guidelines, the score which

indicates parole should be granted at a rehearing. The rehearing range for a prisoner with a base point score of 10 is 26–32 months. Multiplying six by this rehearing range results in a base guideline range of 156–192 months, not the range of 136–172 presently listed in the base guideline range table, and a correction of this range in the table is necessary.

Other changes include amendments to the regulations governing actions for YRA offenders to clarify that only YRA offenders who committed their crimes before August 5, 2000 are eligible for parole and unconditional discharge from supervision. Parole was prospectively abolished for all D.C. Code offenders, including offenders sentenced under the YRA, by the Sentencing Reform Emergency Amendment Act of 2000, D.C. Act 13–410 (Aug. 11, 2000).

Finally, the Commission is eliminating the requirement in its rules that, within 90 days of a prisoner's release to supervision, the Court Services and Offender Supervision Agency (CSOSA) supervision officer must file an initial supervision report. This rule was promulgated during the transitional period when the supervision of parolees was being transferred from the jurisdiction of the DC Board of Parole to CSOSA. Now that the Commission and CSOSA have established a successful working relationship, this reporting requirement is no longer necessary and poses an undue burden to CSOSA staff.

Implementation

The Commission will begin retroactively applying the § 2.80 guidelines to adult and youth offenders previously heard under the appendix to § 2.80 guidelines, and to all youth offenders who have yet to have an initial hearing, at any hearing held on or after October 15, 2002. All other rule amendments described in this publication will also be implemented effective October 15, 2002. The correction to the base guideline range table at § 2.80(h) will only be prospectively applied to prisoners who are given an initial hearing or a revocation hearing (for a YRA parole violator) on or after October 15, 2002, and will not be retroactively applied to prisoners who had hearings prior to that date.

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 amendments 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).

Subpart C—District of Columbia Code Prisoners and Parolees

2. Section 2.75 is amended by revising paragraphs (a)(1) and (2) to read as follows:

§ 2.75 Reconsideration proceedings.

(a)(1) Following an initial or subsequent hearing, the Commission may—

(i) Set an effective date of parole within nine months of the date of the hearing;

(ii) Set a presumptive parole date at least ten months but not more than three years from the date of the hearing;

(iii) Continue the prisoner to the expiration of sentence if the prisoner's mandatory release date is within three years of the date of the hearing;

(iv) Schedule a reconsideration hearing at three years from the month of the hearing; or

(v) Remand the case for a rehearing on the next available docket (but no later than 180 days from the date of the hearing) for the consideration of additional information.

(2) Exceptions. (i) With respect to the rule on three-year reconsideration hearings. If the prisoner's current offense behavior resulted in the death of a victim and, at the time of the hearing, the prisoner must serve more than three years before reaching the minimum of the applicable guideline range, the Commission may schedule a reconsideration hearing at a date up to five years from the month of the last hearing, but not beyond the minimum of the applicable guideline range.

(ii) With respect to youth offenders. Regardless of whether a presumptive parole date has been set, a reconsideration hearing shall be conducted every twelve months for a youth offender, and on the next available docket after the Commission is informed that the prisoner has completed his program plan.

* * * * *

3. Section 2.80 is amended as follows:

a. Revise paragraph (a);

b. Revise paragraph (f), Point Assignment Table, Category III, A;

c. Amend paragraph (h) by deleting "136-172" in the table of base guideline ranges, and substitute "156-192";

d. Remove the Appendix to § 2.80 and add new paragraph (o).

The revised and added text reads as follows:

§ 2.80 Guidelines for D.C. Code offenders.

(a)(1) Applicability in general. Except as provided below, the guidelines in paragraphs (b)–(n) of this section apply at an initial hearing or rehearing conducted for any prisoner.

(2) Reparole decisions. Reparole decisions shall be made in accordance with § 2.81.

(3) Youth offenders. A prisoner sentenced under the Youth Rehabilitation Act shall be considered for parole under these guidelines pursuant to paragraph (a)(1) of this section, except that the prisoner shall be given rehearings in accordance with the schedule at § 2.75(a)(2)(ii) and the prisoner's program achievements shall be considered in the parole release decision in accordance with § 2.106. The guidelines at paragraphs (k)–(m) of this section for awarding superior program achievement and subtracting the award in determining the total guideline range shall not apply.

(4) Prisoners considered under the guidelines of the former District of Columbia Board of Parole. For a prisoner whose initial hearing was held before August 5, 1998, the Commission shall render its decision by reference to the guidelines of the former D.C. Board of Parole in effect on August 4, 1998. However, when a decision outside such guidelines has been made by the Board, or is ordered by the Commission, the Commission may determine the appropriateness and extent of the departure by comparison with the guidelines of § 2.80. The Commission may also correct any error in the calculation of the D.C. Board's guidelines.

(5) Prisoners given initial hearings under the guidelines in effect from August 5, 1998 through December 3,

2000 (the guidelines formerly found in 28 CFR 2.80, Appendix to § 2.80 (2000)). For a prisoner given an initial hearing under the § 2.80 guidelines in effect from August 5, 1998 through December 3, 2000, the guidelines in paragraphs (b)–(n) of this section shall be applied retroactively subject to the provisions of paragraph (o) of this section.

* * * * *

(f) Base point score. * * * Point Assignment Table

* * * * *

CATEGORY III: DEATH OF VICTIM OR HIGH LEVEL VIOLENCE

* * * * *

A. Current offense involved violence (high level violence or other violence) with death of victim resulting +3

* * * * *

(o) Conversion rules for retroactive application of the § 2.80 guidelines. When the guidelines of this section are retroactively applied, the following conversion rules shall be used.

(1) If the prisoner previously had any points added for negative institutional behavior under the guidelines formerly found in the Appendix to § 2.80 (2000) (*i.e.*, the guidelines in effect from August 5, 1998 through December 3, 2000), the total guideline range shall be increased by the lesser of:

(i) The guideline range from § 2.36 found to apply to the prior misconduct; or

(ii) The range of months obtained when the number of points previously added for negative institutional behavior is multiplied by the rehearing range applicable under the guidelines in the former Appendix to § 2.80 (*e.g.*, if two points previously were added for misconduct and the applicable rehearing range was 18–24 months, then 36–48 months (2 × 18–24) would be added).

(2) If negative institutional behavior previously was sanctioned by the application of a guideline range at § 2.36, the total guideline range shall be increased by that range for that behavior.

(3) If the prisoner previously had an extra point deducted for superior program achievement (as opposed to ordinary program achievement) under the guidelines in the former Appendix to § 2.80, the total guideline range shall be decreased by the rehearing guideline range applicable under the Appendix to § 2.80 guidelines (*e.g.*, if an extra point previously was subtracted for superior (not ordinary) program achievement and the applicable rehearing range was 18–24 months, then 18–24 months would be subtracted).

(4) Misconduct or superior program achievement since the last hearing shall be considered in accordance with the guidelines of this section.

4. Section 2.82 is amended by revising paragraph (a) to read as follows:

§ 2.82 Effective date of parole.

(a) An effective date of parole may be granted up to nine months from the date of the hearing.

* * * * *

5. Section 2.86 is amended as follows:

a. Revise the first paragraph (c) which begins "If a parole effective date is rescinded * * *," to read as set forth below;

b. Redesignate paragraph (d) as paragraph (e);

c. Redesignate the second paragraph (c) which begins "After a prisoner has been granted a parole effective date," as paragraph (d).

§ 2.86 Release on parole; rescission for misconduct.

* * * * *

(c) If a parole effective date is rescinded for disciplinary infractions, an appropriate sanction shall be determined by reference to § 2.36.

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§ 2.94 [Amended]

6. Section 2.94 is amended by removing the first sentence of paragraph (a).

7. Section 2.106 is amended as follows:

a. Revise paragraph (a);

b. Amend paragraph (b) by removing the second sentence;

c. Amend paragraph (d) by revising the paragraph heading and by redesignating present paragraph (d) as paragraph (d)(1), and adding paragraph (d)(2).

The revised and added text reads as follows:

§ 2.106 Youth Rehabilitation Act.

(a) Regulations governing YRA offenders and D.C. Code FYCA offenders. The provisions of this section shall apply to an offender sentenced pursuant to the Youth Rehabilitation Act of 1985 (D.C. Code 24–801 *et seq.*) (YRA) who committed his offense before August 5, 2000, and a D.C. Code offender sentenced under the former Federal Youth Corrections Act (former 18 U.S.C. 5005 *et seq.*) (FYCA). An offender sentenced under the YRA who committed his offense on or after August 5, 2000 is not eligible for parole or unconditional discharge from supervision, but may be terminated from a term of supervised release before

the expiration of the term. See D.C. Code 24–804(c) and 24–806(c).

* * * * *

(d)(1) Program plans and using program achievement to set the parole date. * * *

(2) The youth offender's response to treatment programs and program achievement shall be considered with other relevant factors, such as the offense and parole prognosis, in determining when the youth offender should be conditionally released under supervision. See § 2.64(e). The guidelines at § 2.80(k)–(m) on awarding superior program achievement and the subtraction of any award in determining the total guideline range shall not be used in the decision.

* * * * *

§ 2.207 [Amended]

8. Section 2.207 is amended by removing the first sentence of paragraph (a).

9. Section 2.208 is amended by adding a new paragraph (f) which reads as follows:

§ 2.208 Termination of a term of supervised release.

* * * * *

(f) Decisions on the early termination of a term of supervised release for an offender sentenced under the YRA shall be made in accordance with the provisions of this section. If the Commission terminates the term of supervised release before the expiration of the term, the youth offender's conviction is automatically set aside and the Commission shall issue a certificate setting aside the conviction. See D.C. Code 24–806 (c), (d). The set-aside certificate shall be issued in lieu of the certificate of discharge described in § 2.209.

§ 2.219 [Amended]

10. Section 2.219 is amended as follows:

a. Amend paragraph (a)(1) by removing the phrase “Not more than 5 years,” and add in its place “Five years,”;

b. Amend paragraph (a)(2) by removing the phrase “Not more than 3 years,” and add in its place “Three years,”;

c. Amend paragraph (a)(3) by removing the phrase “Not more than 2 years,” and add in its place “Two years,”;

d. Amend paragraph (a)(4) by removing the phrase “Not more than 1 year,” and add in its place “One year,”.

Dated: September 6, 2002.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 02–23154 Filed 9–12–02; 8:45 am]

BILLING CODE 4410–31–P

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 801

[CSOSA–0004–F]

RIN 3225–AA02

Federal Tort Claims Act Procedure

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Final rule.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia (“CSOSA” or “Agency”) is adopting regulations to supplement Department of Justice regulations for processing administrative claims under the Federal Tort Claims Act (“FTCA”). These supplemental regulations state in plain language what a claimant needs to do to file a claim for money damages under the FTCA with CSOSA or with the District of Columbia Pretrial Services Agency (“PSA” or “Agency”). These regulations are necessary to help ensure that persons who suffer proven monetary loss, personal injury, or wrongful death due to a negligent or otherwise wrongful act or omission of an Agency employee committed while acting within the scope of his or her employment will be properly compensated.

EFFECTIVE DATE: October 15, 2002.

ADDRESSES: Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager (telephone: (202) 220–5359; e-mail: roy.nanovic@csosa.gov).

SUPPLEMENTARY INFORMATION: The Court Services and Offender Supervision Agency for the District of Columbia (“CSOSA” or “Agency”) is adopting regulations (28 CFR part 801) supplementing Department of Justice regulations (28 CFR part 14) for processing administrative claims under the Federal Tort Claims Act (“FTCA”). A proposed rule on this subject was published in the **Federal Register** on November 20, 2001 (66 FR 58083).

As noted in the proposed rule, the District of Columbia Pretrial Services Agency (“PSA” or “Agency”) is an independent entity within CSOSA. CSOSA's supplemental regulations will be applicable to claims involving CSOSA and/or PSA.

The FTCA essentially waives the federal government's sovereign immunity to damage actions arising out of the negligent or otherwise wrongful acts committed by federal employees while acting within the scope of their employment. General regulations issued by the Department of Justice for processing FTCA claims authorize federal agencies to issue supplementing regulations. Accordingly, CSOSA has prepared supplemental regulations to state in plain language what members of the public need to do to file a claim for money damages under the FTCA due to a negligent or otherwise wrongful act of a CSOSA or PSA employee committed while acting within the scope of his or her employment. Separate administrative procedures exist for claims by employees of CSOSA or PSA for loss or damage to property incident to their own service.

Instructions for filing a claim with the Agency are contained in § 801.2. These instructions are presented in a question and answer format. The easiest and most efficient way to ensure that a claim includes sufficient information is to submit a completed Standard Form 95 (“SF 95”). The SF 95 is available both “online” and from CSOSA's Office of the General Counsel. Other means of written notification, however, are acceptable as noted in the regulations.

Section 801.3 explains how claims are processed. All claims, whether against CSOSA or PSA, are forwarded to CSOSA's Office of the General Counsel for intake, investigation, and final determination. Section 801.4 covers the claim's final disposition (acceptance of settlement or denial of claim). If you accept a settlement offer, you give up your right to bring a lawsuit against the United States or against the employee whose action or inaction gave rise to your claim. If your claim is denied or you reject the settlement offer, you have 6 months to file a civil action in the appropriate U.S. District Court.

CSOSA did not receive any comments on the proposed rule. CSOSA accordingly is adopting the proposed provisions as a final rule without further change.

Matters of Regulatory Procedure

Administrative Procedure Act

In accordance with the Administrative Procedure Act, CSOSA