Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.850.

List of Subjects

24 CFR 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Pets, Public housing.

24 CFR 966

Grant programs—housing and community development, Public housing.

■ Accordingly, HUD amends 24 CFR parts 960 and 966 to read as follows:

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

■ 1. The authority citation for part 960 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z–3, and 3535(d).

Subpart C—Rent and Reexamination

■ 2. Revise § 960.261 to read as follows:

§ 960.261 Restriction on eviction of families based on income.

(a) PHAs may evict or terminate the tenancies of families who are over income, subject to paragraph (b) of this section.

(b) Unless it is required to do so by local law, a PHA may not evict or terminate the tenancy of a family solely because the family is over the income limit for public housing, if the family has a valid contract for participation in an FSS program under 24 part 984. A PHA may not evict a family for being over the income limit for public housing if the family currently receives the earned income disallowance provided by 42 U.S.C. 1437a(d) and 24 CFR 960.255.

PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

■ 3. The authority citation for part 966 continues to read as follows:

Authority: 42 U.S.C. 1437d and 3535(d).

Subpart A—Dwelling Leases, Procedures and Requirements

■ 4. Amend § 966.4 by redesignating paragraph (l)(2)(ii) as (l)(2)(iii) and adding a new paragraph (l)(2)(ii) to read as follows:

§ 966.4 Lease requirements.

* * * * *

(l) * * *

(2) * * *

(ii) Being over the income limit for the program, as provided in 24 CFR 960.261.

* * * * *

Dated: November 19, 2004.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 04–26114 Filed 11–24–04; 8:45 am]

BILLING CODE 4210–27–U

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: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is adding a procedural rule to provide that parole revocation and reparole decisions resulting from a revocation hearing for a District of Columbia Code offender may be administratively appealed. With this change, the Commission is also amending several rules to permit the initial decisions in DC parole revocation cases to be made by one Commissioner. Extending an appeal procedure to revoked DC parolees provides an avenue for these parolees to seek administrative correction of alleged errors in revocation proceedings and to present their views before a second Commissioner. The rule changes further the Commission's goal of greater uniformity in decision-making procedures for all cases within the Commission's jurisdiction.

DATES: *Effective Date:* December 27, 2004.

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: Since the Parole Commission assumed the revocation functions of the former District of Columbia Board of Parole in August 2000 under the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, the Commission has required that parole revocation and reparole decisions for District of Columbia offenders be made by the concurrence of two Commissioners. The Commission adopted this requirement to replicate the voting procedures of the former DC Board, which made its decisions on the basis of a majority of the quorum of Board members (*i.e.*, two out of three).[1] The Board did not provide for an appeal of any of its decisions, and, when the Commission took on DC revocation functions, neither did the Commission. (The Commission is required by statute to afford an appeal procedure to U.S. Code offenders.) In response to recommendations that the Commission allow DC offenders to submit appeals, the Commission has explained that staff resources were not sufficient to justify increasing the agency's workload by allowing appeals for DC offenders, and that the two-vote requirement was an acceptable substitute for an appeal procedure. See 65 FR 45885, 45886 (July 26, 2000).

Last year the Commission began modifying its procedures for post-hearing voting and appeals in DC cases. The Commission promulgated a rule permitting appeals of revocation decisions for DC supervised releasees, and made a corresponding amendment that allowed the initial revocation decision for these releasees to be made by one Commissioner. *See* 68 FR 41696–41714 (July 15, 2003). Now the Commission is adopting similar changes for DC offenders who have had parole revocation hearings. DC parolees will now have a formal avenue for seeking administrative correction of alleged errors in revocation proceedings. By extending an appeal procedure to DC parole violators, the Commission will provide for cumulative review of the case by two Commissioners for those offenders who file an appeal. Under the Commission's long-standing practice, an appeal is, whenever possible, reviewed by a Commissioner who did not participate in the decision under review. *See* 28 CFR 2.26(b)(1). For appeals from revoked DC parolees, the Commission will employ the same policies and practices that the Commission identified in the publication of the rule granting an appeal procedure for revoked DC supervised releasees. *See* 68 FR 41698.

In adding an appeal procedure for revoked DC parolees, the Commission must also ensure that the initial dispositions in these cases continue to be made in a timely manner. The

[1] The Board's use of a majority-vote procedure was required by former DC Code § 24–201.2 (renumbered § 24–401.02), but this law and others regarding the creation, powers, and rulemaking authority of the Board were abolished by section 11231(b) of the Revitalization Act.

Commission is particularly vigilant in ensuring continued compliance with the 86-day time period for making revocation decisions for DC parolees arrested and held within the DC metropolitan area. The Commission promulgated the rule on this time limit under a consent decree that resolved class action litigation brought against the Commission regarding significant delays in the handling of DC revocation cases in the early months of the Commission's assumption of revocation functions. Over FY 2004, the number for all revocation dispositions for DC offenders increased 32% from the previous fiscal year. The Commission must be careful in apportioning its workload among the Commissioners so as to avoid violations of decision-making time limits. Therefore, in conjunction with the grant of an administrative appeal, the Commission is adopting a one-vote requirement for cases in which the Commissioner agrees with the examiner panel's recommended decisions on whether to revoke parole and to grant reparole to a DC offender. Consistent with the Commission's traditional practice in federal cases, two Commissioners must still concur in order to make a decision in those cases in which the Commissioner who first reviews the case disagrees with the panel recommendation reached by the hearing examiner and the executive hearing examiner.[2]

With these changes, the Commission's post-hearing voting procedures and appeal procedures for DC parole revocation and supervised release revocation are now identical. This result is consistent with the Commission's goal of achieving greater uniformity in its procedures for all cases under the Commission's jurisdiction. But the Commission is limiting the amendments described in this publication to the procedures that follow revocation hearings for DC parolees (including mandatory releasees), whether the hearing is a local, institutional, or dispositional revocation hearing. At this time, the Commission is not making any changes for DC offenders who have received parole release hearings, including hearings on possible reparole that are subsequent to an earlier revocation and reparole decision (*e.g.*, a rescission or special reconsideration hearing). The Commission is continuing to employ an incremental approach in making appeals available to DC offenders and in modifying the agency's voting procedures. The Commission wants to see the results of the changes made by these amendments before making any further modifications. Budget constraints and the availability of sufficient staff and Commissioners to handle the appeals are factors that affect the Commission's ability to expand or maintain an appeal procedure. *See* 68 FR 41698–99.

[2] In employing a two-vote requirement in such cases, the Commission seeks to allay the concern that one Commissioner may reject the panel recommendation and make a different decision without adhering to the collective policy of the Commission.

Implementation

Because these rule changes are only rules of procedure, the Commission is promulgating the changes as final rules without the need for notice and public comment. In July 2003, similar rules for DC supervised release cases were published, along with other rules, for an extended period of notice and comment and no comment was received. The rule amendments are made effective thirty days after the date of publication. The new rules shall be employed for any DC parolee: (1) Who has a revocation hearing on or after the effective date; or (2) who had a revocation hearing before the effective date, but the case has not been voted on by a Commissioner as of the effective date. If a DC parole revocation case has been voted on by a Commissioner before the effective date, and is before another Commissioner for a vote, the case shall be processed under the two-vote requirement under the former rule and no appeal may be submitted. An appeal may be submitted in any case in which the Commissioner who first voted on the case signed the order on or after the effective date.

The single vote procedure shall be used for decisions made under the expedited revocation procedure. A parolee who accepts an expedited offer waives the opportunity to appeal the decisions identified in the offer.

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 rule 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), 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.

Unfunded Mandates Reform Act of 1995

This 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

This rule is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This 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.

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 § 2.74 by revising paragraph (c) to read as follows:

§ 2.74 Decision of the Commission.

* * * * *

(c) The Commission shall resolve relevant issues of fact in accordance with § 2.19(c). Decisions granting or denying parole shall be based on the concurrence of two Commissioners, except that three Commissioner votes shall be required if the decision differs from the decision recommended by the examiner panel by more than six months. A decision releasing a parolee

from active supervision shall also be based on the concurrence of two Commissioners. All other decisions, including decisions on revocation and reparole made pursuant to § 2.105(c), shall be based on the vote of one Commissioner, except as otherwise provided in this subpart.

■ 3. Amend § 2.105 by revising the first sentence of paragraph (c) and adding paragraph (g). The revised and added text reads as follows:

§ 2.105 Revocation decisions.

* * * * *

(c) Decisions under this section shall be made by one Commissioner, except that a decision to override an examiner panel recommendation shall require the concurrence of two Commissioners.

* * *

* * * * *

(g) A parolee may appeal a decision made under this section to revoke parole, to grant or deny reparole, or to modify the conditions of release. The provisions of § 2.26 on the time limits for filing and deciding the appeal, the grounds for appeal, the format of the appeal, the limits regarding the submission of exhibits, and voting requirements apply to an appeal submitted under this paragraph.

Dated: November 18, 2004.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 04–26188 Filed 11–24–04; 8:45 am]

BILLING CODE 4410–31–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1960

Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters; Subpart I for Recordkeeping and Reporting Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is issuing a final rule amending the occupational injury and illness recording and reporting requirements applicable to Federal agencies, including the forms used by Federal agencies to record those injuries and illnesses. The final rule will make the Federal sector's recordkeeping and reporting requirements essentially identical to the private sector by adopting applicable OSHA recordkeeping provisions as requirements for Federal agencies. In addition to eliminating the problems in the existing system whereby injuries and illnesses suffered by some groups of employees, such as contract employees, are not recorded, this final rule will produce more useful injury and illness records, collect better information about the incidence of occupational injuries and illnesses at the establishment level, create reporting and recording criteria that are consistent among Federal agencies, enable injury and illness comparisons between the Federal and private sectors, and promote improved employee awareness and involvement in the recording and reporting of job-related injuries and illnesses. The final rule will also assist in achieving the stated goal in Executive Order 12196 that Federal agencies comply with all OSHA standards, and generally, assure worker protection in a manner comparable to the private sector. This final rule applies to all Federal agencies of the Executive Branch subject to Executive Order 12196, and does not apply to military personnel and uniquely military equipment, systems, and operations.

The requirements of this final rule do not diminish or modify in any way a Federal Agency's responsibility to report or record injuries and illnesses as required by the Office of Workers' Compensation Programs under the Federal Employees' Compensation Act (FECA).

DATES: This final rule becomes effective January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Acting Director, Thomas K. Marple, Office of Federal Agency Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3622, Washington, DC 20210, Telephone 202–693–2122.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 19 of the Occupational Safety and Health Act (the ''OSH Act'') (29 U.S.C. 668) includes provisions to ensure safe and healthful working conditions for Federal sector employees. Under that section, each Federal agency is responsible for establishing and maintaining an effective and comprehensive occupational safety and health program consistent with the standards promulgated by OSHA under Section 6 of the OSH Act. Executive Order 12196, Occupational Safety and Health Programs for Federal Employees, issued February 26, 1980, prescribes additional responsibilities for the heads of Federal agencies, the Secretary of Labor, and the General Services Administrator. Among other things, the Secretary of Labor, through OSHA, is required to issue basic program elements with which the heads of agencies must operate their safety and health programs. These basic program elements are set forth at 29 CFR Part 1960. Section 19 of the OSH Act, the Executive Order, and the basic program elements under 29 CFR Part 1960 apply to all agencies of the Executive Branch except military personnel and uniquely military equipment, systems, and operations. This final rule will amend the basic program elements under 29 CFR Part 1960, Subpart I, to make pertinent private sector recordkeeping requirements under 29 CFR Part 1904 applicable to all Executive Branch Federal agencies. By amendment to the OSH Act on September 28, 1998 (through the Postal Employees' Safety Enhancement Act), the U.S. Postal Service is already complying with the recordkeeping requirements under Part 1904.

Pursuant to Section 19(a) of the OSH Act, each head of a Federal agency is responsible for keeping adequate records of all occupational injuries and illnesses. Section 1–401(d) of the Executive Order provides the Secretary of Labor with the authority to prescribe recordkeeping and reporting requirements for Federal agencies. Under 29 CFR Part 1960, Subpart I, each Federal agency is currently responsible for keeping records of all occupational injuries and illnesses. Section 19 of the OSH Act also provides the Secretary of Labor with access to occupational injury and illness records and reports kept and filed by Federal agencies ''unless those records and reports are specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy, in which case the Secretary of Labor shall have access to such information as will not jeopardize national defense or foreign policy.''

In its role as the lead Agency for implementing and reviewing compliance with Executive Order 12196 and the basic program elements set forth at 29 CFR Part 1960, OSHA requires Federal agencies to comply with all occupational safety and health standards, and generally, to assume responsibility for worker protection in a manner comparable to private employers. The OSH Act authorizes the Secretary of Labor to issue two types of final rules, ''standards'' and