

requirements. Engaging in notice and comment rulemaking is unnecessary because the information collection provisions cannot become effective until such time as FDA obtains OMB approval of them. Moreover, notice and comment rulemaking is impracticable and contrary to the public interest in this case. There is not enough time to solicit a new round of notice and comment on the issue of establishing a delayed effective date for these information collection requirements without further delaying the implementation of this provision of the SMDA. Dispensing with notice and comment rulemaking provides that the information collection requirements of the HUD rule will go into effect at the earliest possible date after OMB review and clearance. FDA will announce the effective date of the information collection requirements of the final rule in a future issue of the Federal Register.

List of Subjects in 21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393) and under authority delegated to the Commissioner of Food and Drugs, §§ 814.102, 814.104, 814.106, 814.108, 814.110(a), 814.112(b), 814.116(b), 814.118(d), 814.120(b), 814.124(b), and 814.126(b)(1) that were published in the Federal Register of June 26, 1996 (61 FR 33232), are stayed until further notice.

Dated: October 24, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

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DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Voting Quorums

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending the voting quorum requirements in its regulations to conform to the Parole Commission Phaseout Act of 1996. This law has the effect of reducing the Commission to

three-members. The law permits the Commission to perform its functions with any quorum of Commissioners, or Commissioner, as the Commission may prescribe by regulation. Pursuant to this statutory authority, the Commission is herein prescribing appropriate voting quorums for a three-member agency. It is also eliminating a regulation that required the Commission to establish final release dates prior to abolition of the agency. This regulation was based on a provision of law enacted in 1984, which the Parole Commission Phaseout Act of 1996 has conditionally repealed. **EFFECTIVE DATE:** November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, 5550 Friendship Blvd., Chevy Chase, Maryland 20815. Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: The Parole Commission Phaseout Act of 1996, Public Law 104–232, took effect on October 2, 1996. The Act has extended the life of the Commission from November 1, 1997, to November 1, 2002. The Act also gives the Attorney General the authority, beginning on November 1, 1998 to transfer the Commission's functions to an entity within the Department of Justice. After such transfer takes place, the Commission will not be required to set final release dates that would otherwise be required by Section 235(b)(3) of the Sentencing Reform Act of 1984. The Act also mandates the downsizing of the Commission, and has reduced the Commission to three members. In keeping with this reduction, the Act authorizes the Commission to perform its functions with any quorum of Commissioners, or Commissioner, as the Commission may prescribe by regulation.

In the revisions published today, the Commission is exercising its authority to establish appropriate quorums for decisionmaking. The Commission is retaining the established system of a Regional Commissioner who renders the initial decision in most cases, with an appeal to the National Appeals Board. All three Commissioners will serve on the National Appeals Board, and appeals to the National Appeals Board will therefore assume (in part) the character of petitions for reconsideration. Decisions of a Regional Commissioner will be subject to affirmance on the vote of a National Commissioner, but two Commissioner votes (which may include the vote of the Regional Commissioner) will continue to be required to modify or reverse the decisions of a Regional Commissioner.

For original jurisdiction cases, as well as for all other types of decisions formerly requiring a quorum of more than two Commissioner votes (e.g., reopening a case to consider new and significant adverse information), a quorum of two out of three Commissioner votes is now established. These cases will therefore be decided upon a majority vote of the Commission.

The absence or recusal of a Commissioner will not suspend the majority-vote requirements of the revised regulations. In the event of the absence or recusal of a Regional Commissioner, the Chairman will designate an Acting Regional Commissioner. Reversal of the Acting Regional Commissioner's decision by the National Appeals Board will require the concurring votes of the Chairman and the Acting Regional Commissioner. Likewise, in the absence or recusal of a National Commissioner (including the Chairman), reversal of the Regional Commissioner's decision by the National Appeals Board will require the concurring votes of the National Commissioner reviewing the appeal and the Regional Commissioner. In original jurisdiction cases, initial decisions will continue to require the concurrence of two Commissioner votes. On original jurisdiction appeals, the initial decision will stand affirmed if the concurrence of two Commissioner votes for a different decision is not obtained.

Finally, the Commission will continue to promulgate regulations and establish policy by majority vote. The revision of the Commission's regulations to conform to Public Law 104–232 will include the deletion of 28 CFR 2.67. This rule reflects a provision of the Sentencing Reform Act that has now been conditionally repealed by Section 3(b)(2) of the Act, as described above.

Implementation

This rule change will apply to all cases decided after the effective date shown above. The guidelines at 28 CFR 2.20 and all other applicable regulations will continue to govern the Commission's decisions to grant, deny, and revoke parole. The revised regulations will affect only the internal voting procedures of the Commission, and will not implicate the merits of any prisoner's case for parole or change the way in which hearings are conducted. Hence, notice and public comment are not required. See 5 U.S.C. 553(b)(A).

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a

significant regulatory action for the purposes of Executive Order 12866, and the rule has, accordingly, not been reviewed by the Office of Management and Budget. The 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).

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 amends 28 CFR Part 2 as follows:

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. 28 CFR Part 2, § 2.1(c), (d), and (e) are revised to read as follows:

§ 2.1 Definitions.

(c) The term *National Appeals Board* refers to the three-member Commission sitting as a body to decide appeals taken from decisions of a Regional Commissioner, who participates as a member of the National Appeals Board. The Vice Chairman shall be Chairman of the National Appeals Board.

(d) The term *National Commissioners* refers to the Chairman of the Commission and to the Commissioner who is not serving as the Regional Commissioner in respect to a particular case.

(e) The term *Regional Commissioner* refers to Commissioners who are assigned to make initial decisions, pursuant to the authority delegated by these rules, in respect to prisoners and parolees in regions defined by the Commission.

3. 28 CFR Part 2, § 2.17(a) is revised to read as follows:

§ 2.17 Original jurisdiction cases.

(a) Following any hearing conducted pursuant to these rules, a Regional Commissioner may designate certain cases for decision by a majority of the Commission, as original jurisdiction cases. In such instances, he shall forward the case with his vote, and any additional comments he may deem germane, to the National Commissioners for decision. Decisions shall be based upon the concurrence of two votes, with the Regional Commissioner and the

National Commissioners each having one vote.

4. 28 CFR Part 2, § 2.26(b) is revised to read as follows:

§ 2.26 Appeal to National Appeals Board.

(b)(1) The National Appeals Board may: Affirm the decision of a Regional Commissioner on the vote of a single Commissioner other than the Commissioner who issued the decision from which the appeal is taken; or modify or reverse the decision of a Regional Commissioner, or order a new hearing, upon the concurrence of two Commissioners. The Commissioner first reviewing the case may in his discretion circulate the case for review and vote by the other Commissioners notwithstanding his own vote to affirm the Regional Commissioner's decision. In such event, the case shall be decided by the concurrence of two out of three votes.

(2) All Commissioners serve as members of the National Appeals Board, and it shall in no case be an objection to a decision of the Board that the Commissioner who issued the decision from which an appeal is taken participated as a voting member on appeal.

5. 28 CFR Part 2, § 2.27(a) is revised to read as follows:

§ 2.27 Petition for reconsideration of original jurisdiction cases.

(a) A petition for reconsideration may be filed with the Commission in cases decided under the procedure specified in § 2.17 within thirty days of the date of such decision. A form is provided for this purpose. A petition for reconsideration will be reviewed at the next regularly scheduled meeting of the Commission provided the petition is received thirty days in advance of such meeting. Petitions received by the Commission less than thirty days in advance of a regularly scheduled meeting will be reviewed at the next regularly scheduled meeting. The concurrence of two Commissioners shall be required to modify or reverse the decision for which reconsideration is sought. If such concurrence is not obtained, the previous decision shall stand. A decision under this rule shall be final.

6. 28 CFR Part 2, § 2.28(f) is revised to read as follows:

§ 2.28 Reopening of cases.

(f) *New adverse information.* Upon receipt of new and significant adverse information that is not covered by paragraphs (a) through (e) of this section, a Commissioner may refer the case to the National Commissioners with his recommendation and vote to schedule the case for a special reconsideration hearing. Such referral shall automatically retard the prisoner's scheduled release date until a final decision is reached in the case. The decision to schedule a case for a special reconsideration hearing shall be based on the concurrence of two Commissioner votes, including the vote of the referring Commissioner. The hearing shall be conducted in accordance with the procedures set forth in §§ 2.12 and 2.13. The entry of a new order following such hearing shall void the previously established release date.

7. 28 CFR Part 2, § 2.64 is revised to read as follows:

§ 2.64. Quorum.

Any Commission action authorized by law may be taken on a majority vote of the Commissioners holding office at the time the action is taken.

§ 2.67 [Removed]

8. 28 CFR Part 2, § 2.67 is removed.

Dated: October 21, 1996.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[IN-119-FOR; State Amendment No. 94-5]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with exceptions and additional requirements, a proposed amendment to the Indiana regulatory program (hereinafter referred to as the "Indiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of changes to the Indiana surface mining rules concerning OSM Regulatory Reform I and III issues, required program amendments, and State initiatives. The primary focus of