PART 82—[REMOVED AND RESERVED]

■ 2. Remove and reserve part 82.

Dated: October 2, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–26176 Filed 10–16–15; 8:45 am]

BILLING CODE 4339–15–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC–2015–01]

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 U.S. Parole Commission is adopting a final rule to apply the parole guidelines of the former District of Columbia Board of Parole that were in effect until March 4, 1985 in its parole decisionmaking for D.C. Code prisoners who committed their offenses while those guidelines were in effect.

DATES: Effective October 19, 2015.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, U.S. Parole Commission, 90 K Street NE., Washington, DC 20530, telephone (202) 346–7030. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION:

Background: The U.S. Parole Commission is responsible for making parole release decisions for District of Columbia felony offenders who are eligible for parole. D.C. Code section 24–131(a). The Commission took over this responsibility on August 5, 1998 as a result of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Pub. L. 105–33). The Commission immediately enacted regulations to implement its new duties, including paroling policy guidelines at 28 CFR 2.80. 63 FR 39172–39183 (July 21, 1998). In enacting these decision-making guidelines, the Commission used the basic approach and format of the 1987 guidelines of the District of Columbia Board of Parole, but made modifications to the Board's guidelines in an effort to incorporate factors that led to departures from the guidelines. 63 FR 39172–39174. In 2000, the Commission modified the guidelines for D.C. prisoners, creating suggested ranges of months to be served based on the pre- and post-incarceration factors evaluated under the guidelines, which in turn allowed the Commission to extend presumptive parole dates to prisoners up to three years from the hearing date. 65 FR 45885–45903.

Also in 2000, the U.S. Supreme Court decided the case of *Garner* v. *Jones,* 529 U.S. 244 (2000), indicating that parole rules that allow for the use of discretionary judgment may be covered by the *Ex Post Facto* Clause of the Constitution. For over twenty years, federal appellate courts had rejected claims that the Commission's use of discretionary guidelines for parole release decisions violated the constitutional ban against ex post facto laws. As a result of the Supreme Court's decision in *Garner,* the U.S. Court of Appeals for the District of Columbia Circuit held that parole release guidelines may constitute laws that are covered by the *Ex Post Facto* Clause. *Fletcher* v. *District of Columbia,* 391 F.3d 250 (D.C. Cir. 2004) (*Fletcher II*). Following upon the *Fletcher II* decision and the decision in *Fletcher* v. *Reilly,* 433 F.3d 867 (D.C. Cir. 2006) (*Fletcher III*), the U.S. District Court for the District of Columbia (Huvelle, District Judge) held that the Parole Commission's application of its 2000 paroling guidelines for several D.C. Code prisoners violated the Ex Post Facto Clause. *Sellmon* v. *Reilly,* 551 F.Supp.2d 66 (D.D.C. 2008). Several other prisoner-plaintiffs were denied relief by the district court, which showed that not every D.C. prisoner must be reconsidered under the 1987 guidelines to avoid *ex post facto* problems. Notwithstanding that ex post facto violations must be shown on a case-by-case basis, as a matter of administrative convenience, the Commission chose to apply the same rules to all similarly situated offenders. Accordingly, the Commission enacted a rule calling for application of the 1987 D.C. Board Guidelines to any offender who committed his crime between March 4, 1985 (the effective date of the ''1987 Guidelines''), and August 4, 1998 (the last day the D.C. Board exercised parole release authority) (''*Sellmon* Rule''). 74 FR 34688 (July 17, 2009) (interim rule, effective August 17, 2009) and 28 CFR 2.80(o) (November 13, 2009) (final rule).

Since the *Sellmon* decision, prisoner-plaintiffs who committed their offenses before March 1985 have sought to have the D.C. Courts find that the Commission's use of the revised 2000 parole guidelines violates the *Ex Post Facto* Clause when applied retroactively to their cases. Because of the broad discretion to grant parole which was vested in the D.C. Board of Parole under the 1972 regulations, federal courts have declined to find that Commission's use of its revised guidelines violates the *Ex Post Facto* Clause. However, the Parole Commission has decided to reconsider its use of the 2000 regulations in light of the developing case law that relates to parole guidelines and the *Ex Post Facto* Clause, and consistent with its previous decision to apply the D.C. Board of Parole's guidelines that were in effect at the time that the D.C. Code offender committed the offense, *i.e.,* the *Sellmon* rule.

Discussion of the Rule and Public Comment: On June 15, 2015, the Parole Commission published a proposed rule in the **Federal Register** proposing new parole guidelines for D.C. Code prisoners who committed their offenses before March 3, 1985. See 80 FR 34111 (June 15, 2015). After publishing the proposed rule change, the Parole Commission received comments from 3 organizations and several private individuals. The comments were generally in favor of adopting the rule, and included additional suggestions for amendments, which are highlighted below:

Rehearings: Many commenters recommended that the rule include the provision in the D.C. Board's 1972 regulations that called for annual rehearings. The final rule restates the D.C. Board's regulation calling for annual rehearings as suggested, but includes the portion of the D.C. Board's regulation that permits the Commission to establish a rehearing date ''at any time it feels such would be proper.''

Statutory criteria: Many commentators recommended that the Parole Commission include a restatement of the statutory criteria for release on parole. The statutory criteria for release of D.C. Code offenders, which applies to all D.C. Code prisoners and has not changed since the 1970's, are already contained in the regulations at 28 CFR 2.73. Instead, the final rule will incorporate another section of the D.C. Board's regulations that restated the Board's discretionary authority to grant parole.

Offenses committed on March 3, 1985: Several commenters noted that the *Sellmon* rules apply to offenses after March 3, 1985, and the proposed rule would apply the 1972 guidelines to offenses before that date, leaving a void with regard to offenses committed on March 3, 1985. This suggestion was adopted and the final rule states that the

1972 parole guidelines apply to offenses committed ''on or before March 3, 1985.''

Retroactive consideration: Several commenters recommended that the Commission follow the procedure it followed after publication of the *Sellmon* rule: That it determine what decision it would have made at the initial hearing, and each subsequent hearing, as if it had applied the 1972 rules at that time. Such a procedure was required in applying the 1987 guidelines at issue in *Sellmon,* because the grid score is computed at each hearing using the prior score as a starting point. The 1972 guidelines are not structured in such a way that this procedure is necessary.

Reasons for Denial of Parole: A few commenters recommended that the Commission modify the rule to require that the Commission provide reasons for denial of parole, which is not found in the 1972 regulations. The Parole Commission's regulations at 28 CFR 2.74(a) already require the Commission to ''provide the prisoner with a notice of action that includes an explanation of the reasons for the decision,'' so an additional requirement is not needed.

Further, the recommendation by several commenters that the Commission modify the rule to require it to inform the parole applicant of steps he needs to take to be deemed suitable for parole release was not required by the 1972 rules. Parole Commission hearing examiners may continue, as is current practice, to make such recommendations where appropriate, but are not compelled to do so in every case.

Transcripts of hearings/disclosure to inmate, counsel, and others: Some commenters recommend that records be made available to the prisoner, his attorney, or family. Although in 1972 the D.C. Board deemed records of parole hearings confidential and did not permit disclosure to prisoners, the Commission's regulations already provide for disclosure of documents. See 28 CFR 2.89 (miscellaneous provisions) and § 2.56 (disclosure of Parole Commission file).

Implementation: The Parole Commission will identify those prisoners who committed their offenses on or before March 4, 1985, and who have previously had a parole hearing at which the Parole Commission applied the 2000 parole guidelines for its decision and who have not received a parole effective date. The Commission will schedule special dockets for these prisoners as soon as possible, by videoconference if available, and with the goal of completing the hearings in 6 months.

Executive Order 13132

These regulations 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

The 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

The 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)

These rules are not ''major rules'' 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). The 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 do not substantially affect the rights or obligations of non-agency parties, and do 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 amends 28 CFR part 2 as follows:

PART 2—[AMENDED]

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. Amend § 2.80 by adding paragraph (p) to read as follows:

§ 2.80 Guidelines for D.C. Code Offenders.

* * * * *

(p)(1) A prisoner who is eligible under the criteria of paragraph (p)(2) of this section may receive a parole determination using the parole guidelines in the 1972 regulations of the former District of Columbia Board of Parole (9 DCMR section 105.1) (hereinafter ''the 1972 Board guidelines'').

(2) A prisoner must satisfy the following criteria to obtain a determination using the 1972 Board guidelines:

(i) The prisoner committed the offense of conviction on or before March 3, 1985;

(ii) The prisoner is not incarcerated as a parole violator; and

(iii) The prisoner has not been granted a parole effective date.

(3) The granting of a parole is neither a constitutional or statutory requirement, and release to parole supervision by Commission action is not mandatory.

(4) Factors considered: Among others, the U.S. Parole Commission takes into account some of the following factors in making its determination as to parole:

(i) The offense, noting the nature of the violation, mitigating or aggravating circumstances and the activities and adjustment of the offender following arrest if on bond or in the community under any pre-sentence type arrangement.

(ii) Prior history of criminality, noting the nature and pattern of any prior offenses as they may relate to the current circumstances.

(iii) Personal and social history of the offender, including such factors as his family situation, educational development, socialization, marital history, employment history, use of leisure time and prior military experience, if any.

(iv) Physical and emotional health and/or problems which may have played a role in the individual's socialization process, and efforts made to overcome any such problems.

(v) Institutional experience, including information as to the offender's overall general adjustment, his ability to handle interpersonal relationships, his behavior responses, his planning for himself,

setting meaningful goals in areas of academic schooling, vocational education or training, involvements in self-improvement activity and therapy and his utilization of available resources to overcome recognized problems. Achievements in accomplishing goals and efforts put forth in any involvements in established programs to overcome problems are carefully evaluated.

(vi) Community resources available to assist the offender with regard to his needs and problems, which will supplement treatment and training programs begun in the institution, and be available to assist the offender to further serve in his efforts to reintegrate himself back into the community and within his family unit as a productive useful individual.

(5) A prisoner who committed the offense of conviction on or before March 3, 1985 who is not incarcerated as a parole violator and is serving a maximum sentence of five years or more who was denied parole at their original hearing ordinarily will receive a rehearing one year after a hearing conducted by the U.S. Parole Commission. In all cases of rehearings, the U.S. Parole Commission may establish a rehearing date at any time it feels such would be proper, regardless of the length of sentence involved. No hearing may be set for more than five years from the date of the previous hearing.

(6) If a prisoner has been previously granted a presumptive parole date under the Commission's guidelines in paragraphs (b) through (m) of this section, the presumptive date will not be rescinded unless the Commission would rescind the date for one of the accepted bases for such action, *i.e.,* new criminal conduct, new institutional misconduct, or new adverse information.

(7) Prisoners who have previously been considered for parole under the 1987 guidelines of the former DC Board of Parole will continue to receive consideration under those guidelines.

(8) Decisions resulting from hearings under this section may not be appealed to the U.S. Parole Commission.

Dated: October 13, 2015.

J. Patricia Wilson Smoot,

Chairman, U.S. Parole Commission.

[FR Doc. 2015–26463 Filed 10–16–15; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[SATS No. KY–253–FOR; Docket ID: OSM–2009–0014; S1D1S SS08011000 SX064A000 167S180110; S2D2S SS08011000 SX064A000 16X501520]

Kentucky Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Kentucky regulatory program (the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). As a result of OSMRE's review of the Kentucky program, OSMRE has determined that two previously required amendments, 30 CFR 917.16(e) and (h), are to be removed because Kentucky's program, with regard to Ownership and Control (O&C), and Transfer, Assignment or Sale of Permit Rights (TAS) is now consistent with SMCRA and the corresponding Federal regulations.

DATES: *Effective Date:* October 19, 2015.

FOR FURTHER INFORMATION CONTACT: Robert Evans, Field Office Director, Telephone: (859) 260–3904. Email: *bevans@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See U.S.C. 1253 (a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Submission of the Proposed Amendment

OSMRE first promulgated final rules to address O&C and TAS over 20 years ago. Subsequently, OSMRE published changes to O&C and TAS, some in response to Federal Court mandates, culminating in the issuance of Federal rulemaking on December 3, 2007. 72 FR 68000. Specifically, the Federal rulemaking amended definitions pertaining to ownership, control, and transfer, assignment, or sale of permit rights and OSMRE regulatory provisions governing: Permit eligibility determinations; improvidently issued permits; ownership or control challenges; post-permit issuance actions and requirements; transfer, assignment, or sale of permit rights; application and permit information; and alternative enforcement.

Prior to the implementation of the December 2007 Federal rulemaking, OSMRE issued required amendments to the Kentucky Department of Natural Resources (KYDNR) in 1991 and 1993. These previously required amendments are codified at 30 CFR 917.16(e), as noticed in the September 23, 1991, **Federal Register** (56 FR 47907), and 30 CFR 917.16(h), as noticed in the January 12, 1993, **Federal Register** (58 FR 3833), respectively. These previously required amendments were established prior to OSMRE's final rulemaking on O&C on December 3, 2007, 72 FR 68000. On December 8, 2008, following publication in the **Federal Register,** and resolution of litigation resulting from this rulemaking, the Director of OSMRE issued a memorandum to the Regional Directors to conduct a review of the applicable provisions of all the State programs to ascertain what, if any, amendments were required to conform to the December 3, 2007, Federal rulemaking.

Following the instructions given by the Director, OSMRE's Lexington Field Office (LFO) conducted an evaluation of the Kentucky program to determine if amendments to the Kentucky program were required. Consistent with 30 CFR 732.17, LFO reviewed the Kentucky program, comparing it to the current Federal regulations using a standard no less stringent than SMCRA and no less