



DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC- 2025-001]

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 remove and reserve a procedural rule which concerns prisoners serving any combination of U.S. and D.C. Code sentences that have been aggregated by the U.S. Bureau of Prisons (“mixed code” offenders) and considered for parole on the basis of a single parole eligibility and mandatory release date on the aggregate sentence.

DATES: This regulation is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Helen Krapels, General Counsel, U.S. Parole Commission, 90 K Street, N.E., Third Floor, Washington, D.C. 20530, telephone (202) 346-7031. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: 28 CFR 2.65 pertains to the procedure for considering “mixed code” cases, *i.e.*, offenders serving D.C. Code and U.S. Code sentences that the U.S. Bureau of Prisons has aggregated into one sentence. As a result of the D.C. Circuit Court’s ruling

in *Ford v. Massarone*, 902 F.3d 309 (D.C. Cir. 2018), and the limited number of cases that this regulation would apply to, the U.S. Parole Commission has decided to remove 28 CFR 2.65. In *Ford*, the D.C. Circuit Court of Appeals found that the prisoner with an aggregate federal and District of Columbia sentence was entitled to have his initial D.C. parole hearing on the date he had served his minimum D.C. sentence, rather than shortly before his subsequent projected federal parole date, even though the prisoner would need to remain in prison on his federal sentence until his federal parole date. By removing 28 CFR 2.65, the U.S. Parole Commission will schedule “mixed code” prisoners for their initial parole hearing based on the parole eligibility date of their aggregate sentence as calculated by the Bureau of Prisons. The U.S. Parole Commission will evaluate whether the prisoner should be paroled under both federal and D.C. code parole statutes and regulations. To address any remaining “mixed code” prisoners, detailed guidance will be provided to agency staff as to the procedures noted in *Ford v. Massarone*.

Because this is a procedural rule, the matter was voted on *seriatim*.

Executive Orders 12866, 13563 and 14219

This regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulation Planning and Review,” section 1(b), Principles of Regulation; Executive Order 13565, “Improving Regulation and Regulatory Review,” section 1(b), General Principles of Regulation; and Executive Order 14219, “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative.” The Commission has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

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

This 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).

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 (Subtitle E–Congressional Review Act)

This rule is not a “major rule” 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 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. Moreover, this is a rule of agency practice or procedure that does not substantially affect the rights or obligations of non-agency parties, and does 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 is amending 28 CFR part 2 to read as follows

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**PART 2 - PAROLE, RELEASE, SUPERVISION AND RECOMMITMENT OF
PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS**

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

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

§ 2.65 [Removed and Reserved]

2. Remove and reserve § 2.65.

Patricia K. Cushwa,
Chairman (Acting),
U.S. Parole Commission,

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