

DEPARTMENT OF JUSTICE**28 CFR Part 1****[AG Order No. 2323-2000]****Office of the Pardon Attorney; Rules Governing Petitions for Executive Clemency, Victim Notification and Comment****AGENCY:** Department of Justice.**ACTION:** Final rule.

SUMMARY: This rule amends the existing regulations on executive clemency to codify the Attorney General's practice of providing notice to the victims of the crime when an offender convicted of a federal felony files a petition for executive clemency. Under these procedures, the Department will invite victims to submit comments, if they wish to do so, and inform them of the President's final decision on the clemency request. The rule also defines the term "victim" for purposes of such notifications, and lists criteria considered in determining in what circumstances such victim notification is warranted.

EFFECTIVE DATE: This rule is effective September 28, 2000.

FOR FURTHER INFORMATION CONTACT: Roger C. Adams, Pardon Attorney, U.S. Department of Justice, Washington, DC 20530, telephone (202) 616-6070.

SUPPLEMENTARY INFORMATION: Since 1996, the United States Attorneys Manual (USAM) section on clemency expressly mentions the issue of victim input. Drawing on these provisions in the USAM, this rule provides that in appropriate cases (e.g., if it appears likely that clemency could be recommended in the case), reasonable effort will be made to notify the victim(s) of an offense for which clemency (commutation or pardon) is sought that a request for clemency has been made, and that the victim(s) may submit comments concerning clemency. Moreover, the rule provides that in such cases the victim(s) will be informed of the final decision on the clemency request. The term "victim" is defined consistently with the definition used in the existing Attorney General Victim/Witness Guidelines.

Administrative Procedure Act

This rule relates to matters of agency management or personnel, and is therefore exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. See 5 U.S.C. 553(a)(2). Moreover, to the extent that rulemaking procedures would otherwise be applicable, the

Department finds that this rule would be exempted from the requirements of prior notice and comment as a rule of agency organization, procedure, or practice. See 5 U.S.C. 553(b)(A). Similarly, the effective date of this rule need not be delayed for 30 days after publication because the rule is not a "substantive rule." See 5 U.S.C. 553(d).

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly it 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. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to

compete with foreign-based companies in domestic and export markets.

As a rule relating to agency management or personnel, this rule is also therefore excluded from the scope of a covered "rule" for the purposes of Chapter 8 of Title 5 U.S.C. See 5 U.S.C. 804(3)(B). Moreover, to the extent that this rule would be considered to be a rule of agency organization, procedure, or practice, it is excluded from the scope of a covered "rule" pursuant to 5 U.S.C. 804(3)(C).

Accordingly, because this action is not a covered "rule" it is exempt from the requirement for the Department to submit a report to each House of Congress and the Comptroller General before this rule can take effect as provided in 5 U.S.C. 801(a)(1).

List of Subjects in 28 CFR Part 1

Clemency, Pardon.

With the approval of the President, acting in conformity with his authority as Chief Executive and with Article II, Section 2 of the United States Constitution, and by virtue of the authority vested in me by 28 U.S.C. 509, 510, and 5 U.S.C. 301, part 1 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 1—EXECUTIVE CLEMENCY

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

Authority: U.S. Const., Art. II, sec. 2; authority of the President as Chief Executive, and 28 U.S.C. 509, 510.

2. Section 1.6 is revised to read as follows:

§ 1.6 Consideration of petitions; notification of victims; recommendations to the President.

(a) Upon receipt of a petition for executive clemency, the Attorney General shall cause such investigation to be made of the matter as he or she may deem necessary and appropriate, using the services of, or obtaining reports from, appropriate officials and agencies of the Government, including the Federal Bureau of Investigation.

(b)(1) When a person requests clemency (in the form of either a commutation of a sentence or a pardon after serving a sentence) for a conviction of a felony offense for which there was a victim, and the Attorney General concludes from the information developed in the clemency case that investigation of the clemency case warrants contacting the victim, the Attorney General shall cause reasonable effort to be made to notify the victim or victims of the crime for which clemency is sought:

(i) That a clemency petition has been filed;

(ii) That the victim may submit comments regarding clemency; and

(iii) Whether the clemency request ultimately is granted or denied by the President.

(2) In determining whether contacting the victim is warranted, the Attorney General shall consider the seriousness and recency of the offense, the nature and extent of the harm to the victim, the defendant's overall criminal history and history of violent behavior, and the likelihood that clemency could be recommended in the case.

(3) For the purposes of this paragraph (b), "victim" means an individual who:

(i) Has suffered direct or threatened physical, emotional, or pecuniary harm as a result of the commission of the crime for which clemency is sought (or, in the case of an individual who died or was rendered incompetent as a direct and proximate result of the commission of the crime for which clemency is sought, one of the following relatives of the victim (in order of preference): the spouse; an adult offspring; or a parent); and

(ii) Has on file with the Federal Bureau of Prisons a request to be notified pursuant to 28 CFR 551.152 of the offender's release from custody.

(4) For the purposes of this paragraph (b), "reasonable effort" is satisfied by mailing to the last-known address reported by the victim to the Federal Bureau of Prisons under 28 CFR 551.152.

(5) The provisions of this paragraph (b) apply to clemency cases filed on or after September 28, 2000.

(c) The Attorney General shall review each petition and all pertinent information developed by the investigation and shall determine whether the request for clemency is of sufficient merit to warrant favorable action by the President. The Attorney General shall report in writing his or her recommendation to the President, stating whether in his or her judgment the President should grant or deny the petition.

Dated: August 9, 2000.

Janet Reno,
Attorney General.

Approved: September 15, 2000.

William J. Clinton,
President.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720-AA49

Civilian Health and Medical Program of the Uniformed Service (CHAMPUS); Prosthetic Devices

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements Section 702 of the National Defense Authorization Act for Fiscal Year 1998, which authorizes purchase of prosthetic devices, as determined by the Secretary of Defense, to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease. The Act changes the existing limited provisions for prosthetic devices, expanding coverage to include the cost sharing of other prostheses, e.g., noses, ears and fingers.

DATES: This rule is effective May 20, 1999.

ADDRESSES: The Office of TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, CO 80011-9043.

FOR FURTHER INFORMATION CONTACT: Margaret Brown, Office of Medical Benefits and Reimbursement Systems, telephone (303) 676-3581.

SUPPLEMENTARY INFORMATION: This final rule implements section 702 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85) to provide purchase of prosthetic devices, as determined by the Secretary of Defense, to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease. The current policy is restrictive as it limits purchase of prosthetic devices to artificial limbs, eyes, and voice prostheses. This final rule expands provisions for prosthetic devices to include ears, noses and fingers. It is being published to confirm that the interim final rule, which was published August 20, 1999, is adopted as a final rule without change.

Comments Received

It was recommended that we remove the parenthetical phrase (See House Conference Report 103, 340, p. 300) from Regulatory Procedures. Comments were adopted and the deletion was made.

Regulatory Procedure

Executive order 12866 requires certain regulatory assessments for any

significant regulatory action defined as one which would result in an annual effect on the economy of \$100 million or more, or have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This final rule is not a significant regulatory action under E.O. 12886, nor would it have a significant impact on small entities. The changes set forth in the final rule are minor revisions to the existing regulation.

Regulatory Planning and Review

The final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3511). This rule is being issued to confirm that the interim rule published August 20, 1999 (64 FR 45453) is final and does not include further amendments.

List of Subject in 32 CFR Part 199

Claims, Handicapped, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, the interim rule amending 32 CFR 199, as published August 20, 1999, is adopted as a final rule without change as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; and 10 U.S.C. Chapter 55.

2. Section 199.4 is amended by revising paragraph (d)(3)(vii) and (g)(48) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(d) * * *

(3) * * *

(vii) *Prosthetic devices.* The purchase of prosthetic devices is limited to those determined by the Director, OCHAMPUS to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease.

(g) * * *

(48) *Prosthetic devices.* Prostheses other than those determined by the Director, OCHAMPUS to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease. All dental prostheses are excluded, except for those specifically required in