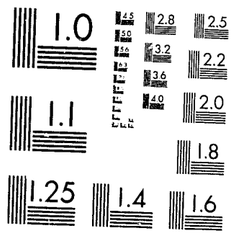

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UNITED STATES PAROLE COMMISSION

U.S. Department of Justice

RULES AND PROCEDURES MANUAL

OCTOBER 1, 1984

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INTRODUCTION

This manual contains the Commission's rules (28 C.F.R.§§2.1- 2.63) as well as the notes, procedures, and appendices that clarify and supplement these rules. If there appears to be a direct conflict between any of the procedures and a rule, the rule shall control. The notes, procedures, and appendices in this manual are intended only for the guidance of Parole Commission personnel and those agencies which must coordinate their work with the Commission. The notes, procedures, and appendicies do not confer legal rights and are not intended for reliance by private persons.

In some instances, it is necessary to implement procedural changes immediately. This will be accomplished by issuance of a "Rule and Procedure Memo" signed by the Chairman (to be subsequently ratified by the Commission). These memos are numbered in sequence according to the year issued.

§2.1 DEFINITIONS.

As used in this part:

(a) The term "Commission" refers to the United States Parole Commission.

(b) The term "Commissioner" refers to members of the United States Parole Commission.

(c) The term "National Appeals Board" refers to the Vice Chairman of the Commission and two other National Commissioners who are assigned in the headquarters office of the Commission in Washington, D.C. The Vice Chairman shall be the Chairman of the National Appeals Board. In the absence or vacancy of the Vice Chairman the Chairman of the Commission functions as the Chairman of the National Appeals Board. In the absence or vacancy of a member the Chairman of the Commission functions as a member of the National Appeals Board.

(d) The term "National Commissioners" refers to the Chairman of the Commission and the three members of the National Appeals Board. The Vice Chairman of the Commission shall be the presiding officer of the National Commissioners. In the absence or vacancy of the Vice Chairman, the Chairman of the Commission shall be the presiding officer of the National Commissioners.

(e) The term "Regional Commissioner" refers to Commissioners assigned to the Commission's regional offices.

(f) The term "eligible prisoner" refers to any Federal prisoner eligible for parole pursuant to this Part and includes any Federal prisoner whose parole has been revoked and who is not otherwise ineligible for parole.

(g) The term "parolee" refers to any Federal prisoner released on parole or as if on parole pursuant to 18 U.S.C. 4164 or 4205(f). The term "mandatory release" refers to release pursuant to 18 U.S.C. 4163 and 4164.

(h) The term "effective date of parole" refers to a parole date that has been approved following an in-person hearing held within six months of such date, or following a prerelease record review.

(i) All other terms used in this part shall be deemed to have the same meaning as identical or comparable terms as used in Chapter 311 of Part IV of Title 18 of the United States Code or Chapter I, Part O, Subpart V of Title 28 of the Code of Federal Regulations.

Notes and Procedures

2.1-01. *Calendar Days*. The term "days" refers to "calendar" days.

§2.2 ELIGIBILITY FOR PAROLE: ADULT SENTENCES.

(a) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. 4205(a) [or pursuant to former 18 U.S.C. 4202] may be released on parole in the discretion of the Commission after completion of one-third of such term or terms, or after completion of ten years of a life sentence or of a sentence of over thirty years.

(b) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. 4205(b)(1) [or pursuant to former 18 U.S.C. 4208(a)(1)] may be released on parole in the discretion of the Commission after

completion of the court-designated minimum term, which may be less than but not more than one-third of the maximum sentence imposed.

(c) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. 4205(b)(2) [or pursuant to former 18 U.S.C. 4208(a)(2)] may be released on parole at any time in the discretion of the Commission.

(d) If the Court has imposed a maximum term or terms of more than one year pursuant to 18 U.S.C. 924(a) or 26 U.S.C. 5871 [violation of Federal gun control laws], a Federal prisoner serving such term or terms may be released in the discretion of the Commission as if sentenced pursuant to 18 U.S.C. 4205(b)(2).

(e) A Federal prisoner serving a maximum term or terms of one year or less is not eligible for parole consideration by the Commission, except that a Federal prisoner sentenced prior to May 14, 1976, to a maximum term or terms of at least six months but not more than one year is eligible for parole consideration after service of one-third of such term or terms.

Notes and Procedures

2.2-01. *Territorial Prisoners.*
(a) *U.S. Territories.* Prisoners sentenced for territorial offenses in the Virgin Islands, Puerto Rico, Guam, American Samoa, and the Trust territories of the Pacific Islands come under the jurisdiction of territorial parole authorities, not the U. S. Parole Commission, even if they are confined within the United States. Prisoners sentenced for territorial offenses in all other territories come under the jurisdiction of the U. S. Parole Commission.

(b) *U. S. Code violations within Territories.* Prisoners sentenced for U. S. code violations in all territories come under the jurisdiction of the U. S. Parole Commission.

(c) *Panama Canal Zone.* Prisoners sentenced under former territorial Canal Zone law to sentences of incarceration of over one year are sent to Federal Prisons in the United States and come under the parole jurisdiction of the U.S. Parole Commission unless they have chosen to be transferred to the custody of the Republic of Panama.

2.2-02. *District of Columbia Prisoners* Under 24 D.C. Code 206 the U.S. Parole Commission has jurisdiction over all District of Columbia prisoners (including parole violators) confined in federal institutions. The date of parole eligibility for a D.C. Code prisoner is governed by D.C. law and not federal statute; and, for adult D.C. Code prisoners, if parole is revoked all 'street time' must be forfeited. In all other respects, U. S. Parole Commission regulations control.

2.2-03. *Military Prisoners* (10 U.S.C. 858; Uniform Code of Mil. Just., Art. 58).
(a) Prisoners sentenced by military courts-martial and then transferred to a federal institution come under the exclusive jurisdiction of the United States Parole Commission for parole purposes. Military authorities retain jurisdiction for clemency purposes and may reduce the maximum term to be served. Clemency may be granted either while confined or while in the community on parole or mandatory release.

(b) A prisoner paroled and revoked by military authorities, who is subsequently transferred to a federal institution, is eligible for a hearing at the time of the next visit by the United States Parole Commission. The Commission accepts the military parole revocation as final, but conducts a hearing to determine reparole suitability. Such prisoner must file a parole application prior to such hearing.

2.2-04. *Non-Parolable Sentences (21 U.S.C. §848).* Offenders sentenced under this section (continuing criminal enterprise involving narcotics) are not eligible for parole.

2.2-05. *Treaty Cases.* Cases returned to the United States under prisoner transfer treaties are treated as if sentenced under 18 U.S.C. 4205(b)(2) for all parole purposes. Exception: In Mexican and Canadian treaty cases, the 'street time' forfeiture provisions upon parole revocation are the same as those applicable to Youth Corrections Act cases.

§2.3 SAME; NARCOTIC ADDICT REHABILITATION ACT.

A Federal prisoner committed under the Narcotic Addict Rehabilitation Act may be released on parole in the discretion of the Commission after completion of at least six months in treatment, not including any period of time for "study" prior to final judgment of the court. Before parole is ordered by the Commission, the Surgeon General or his designated representative must certify that the prisoner has made sufficient progress to warrant his release and the Attorney General or his designated representative must also report to the Commission whether the prisoner should be released. Recertification by the Surgeon General prior to reparole consideration is not required. (18 U.S.C. 4254).

Notes and Procedures

2.3-01. *Certificate of Release Readiness.* This certificate is signed by the local Drug Abuse Program Manager through authority delegated by the Medical Director of the Bureau of Prisons and the Surgeon General.

§2.4 SAME; YOUTH OFFENDERS AND JUVENILE DELINQUENTS.

Committed youth offenders and juvenile delinquents may be released on parole at any time in the discretion of the Commission. (18 U.S.C. 5017(a) and 5041).

§2.5 SENTENCE AGGREGATION.

When multiple sentences are aggregated by the Bureau of Prisons pursuant to 18 U.S.C. §§4161 and 4205, such sentences are treated as a single aggregate sentence for the purpose of every action taken by the Commission pursuant to these rules, and the prisoner has a single parole eligibility date as determined by the Bureau of Prisons.

§2.6 WITHHELD AND FORFEITED GOOD TIME.

While neither a forfeiture of good time nor a withholding of good time shall bar a prisoner from receiving a parole hearing, Sec. 4206 of Title 18 of the United States Code permits the Commission to parole only those prisoners who have substantially observed the rules of the institution.

Notes and Procedures

2.6-01. *Disciplinary Infractions.* An effective or presumptive parole date may be granted by the Commission only after a thorough review of circumstances underlying any disciplinary infraction(s) and where the Commission is satisfied that the date it sets will require a period of imprisonment sufficient to outweigh the seriousness of the prisoner's misconduct. Any presumptive or effective date is contingent upon the absence of further misconduct. A parole date shall not be made contingent upon restoration of good time by the Bureau of Prisons.

§2.7 COMMITTED FINES AND RESTITUTION ORDERS.

(a) Committed Fines. In any case in which a prisoner shall have had a fine imposed upon him by the committing court for which he is to stand committed until it is paid or until he is otherwise discharged according to law, such prisoner shall not be released on parole or mandatory release until payment of the fine, or until the fine commitment order is discharged according to law under the regulations of the Bureau of Prisons. Discharge from the commitment obligation of any committed fine does not discharge the prisoner's obligation to pay the fine as a debt due the United States.

(b) Restitution Orders.

(1) Upon release of a prisoner with an unsatisfied order of restitution, such order automatically becomes a condition of parole. A reasonable plan for payment [or performance of services, if so ordered by the court] must be included in the prisoner's parole release plan to be acceptable to the Commission, and this plan becomes part of the conditions of release. Following release, this plan may be modified under Sec. 2.40(b) or (e) of this part, as circumstances may warrant.

(2) Where a prisoner applying for parole is under an order of restitution, and it appears that the prisoner has the ability to pay and has willfully failed to do so, the Commission shall require that approval of a parole release plan be contingent upon the prisoner first satisfying such restitution order. The prisoner shall be notified that failure to satisfy this condition shall result in retardation of parole under the provisions of Sec. 2.28(e).

(3) In determining whether to revoke parole for non-compliance with a condition of restitution, the Parole Commission shall consider the parolee's employment status, earning ability, financial resources, the willfulness of the failure to pay and any other special circumstances that may have a bearing on the matter. Revocation shall not be ordered unless the parolee is found to be deliberately evading or refusing compliance.

Notes and Procedures

2.07-01. *Release from Imprisonment*. The Bureau of Prisons handles disposition of all committed fines. The Commission shall render a decision irrespective of the status of the committed fine. However, if parole is granted, the order must read: "*Parole effective [ ], provided that a committed fine is paid or otherwise disposed of according to law before release.*" Allow at least sixty days lead time to allow the Bureau to process such cases.

§2.8 MENTAL COMPETENCY PROCEEDINGS.

(a) Whenever a prisoner (or parolee) is scheduled for a hearing in accordance with the provisions of this part and reasonable doubt exists as to his mental competency, i.e., his ability to understand the nature of and participate in scheduled proceedings, a preliminary inquiry to determine his mental competency shall be conducted by a hearing panel, hearing examiner or other official (including a U.S. Probation Officer) designated by the Regional Commissioner.

(b) The hearing examiner(s) or designated official shall receive oral or written psychiatric or psychological testimony and other evidence that may be available. A preliminary determination of mental competency shall be made upon the testimony, evidence, and personal observation of the prisoner (or parolee). If the examiner(s) or designated official determines that the prisoner is mentally competent, the previously scheduled hearing shall be held. If they determine that the prisoner is not mentally competent, the previously scheduled hearing shall be temporarily postponed.

(c) Whenever the hearing examiner(s) or designated official determine that a prisoner is incompetent and postpone the previously scheduled hearing, they shall forward the record of the preliminary hearing with their findings to the Regional Commissioner for review. If the Regional Commissioner concurs with their findings, he shall order the temporarily postponed hearing to be postponed indefinitely until such time as it is determined that the prisoner has recovered sufficiently to understand the nature of and participate in the proceedings, and in the case of a parolee may order such parolee transferred to a Federal Prison System facility for further examination. In any such case, the Regional Commissioner shall require a progress report on the mental health of the prisoner at least every six months. When the Regional Commissioner determines that the prisoner has recovered sufficiently, he shall reschedule the hearing for the earliest feasible date.

(d) If the Regional Commissioner disagrees with the findings of the hearing examiner(s) or designated officials as to the mental competency of the prisoner, he shall take such action as he deems appropriate.

Notes and Procedures

2.8-01. *Appearances Required*. All parole applicants and alleged parole violators, even where there is a question of mental or emotional disturbance (including those certified as incompetent), appear before the Commission when normally scheduled. An exception occurs in those cases where the prisoner is so disturbed that to force an appearance would be disrupting. In those instances, a statement by a member of the institutional staff should be prepared for the file with the concurrence of a medical officer in lieu of a personal appearance.

§2.9 STUDY PRIOR TO SENTENCING.

(a) When an adult Federal offender has been committed to an institution by the sentencing court for observation and study prior to sentencing, under the provisions of 18 U.S.C. 4205(c), the report to the sentencing court is prepared and submitted directly by the United States Federal Prison System.

(b) The court may order a youth to be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Commission shall report its findings to the court (18 U.S.C. 5010(e)).

Notes and Procedures

2.9-01. *Study Procedure (Youth Act Cases)*. Following a period of observation and study, the Commission is provided with a report from the Bureau which should contain responses to questions posed by the court, psychological/pyschiatric evaluations, etc. A Regional Commissioner shall review this material, respond to the questions posed by the court and make a recommendation with regard to sentencing. This information is incorporated into a letter and forwarded to the judge along with a copy of the Bureau's report. A copy of this letter is forwarded to the facility that produced the report. Both the report and the Commission's letter are also sent to the Chief U.S. Probation Officer responsible for preparation of the presentence investigation.

§2.10 DATE SERVICE OF SENTENCE COMMENCES.

(a) Service of a sentence of imprisonment commences to run on the date on which the person is received at the penitentiary, reformatory, or jail for service of the sentence: Provided, however, that any such person shall be allowed credit toward the service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed.

(b) The imposition of a sentence of imprisonment for civil contempt shall interrupt the running of any sentence of imprisonment being served at the time the sentence of civil contempt is imposed, and the sentence or sentences so interrupted shall not commence to run again until the sentence of civil contempt is lifted.

(c) Service of the sentence of a committed youth offender or a person committed under the Narcotic Addict Rehabilitation Act commences to run from the date of conviction and is interrupted only when such prisoner or parolee (1) is on court-ordered bail; (2) is in escape status; (3) has absconded from parole supervision; or (4) comes within the provisions of subsection (b) of this section.

§2.11 APPLICATION FOR PAROLE; NOTICE OF HEARING.

(a) A federal prisoner (including a committed youth offender or prisoner sentenced under the Narcotic Addict Rehabilitation Act) desiring to apply for parole shall execute an application form as prescribed by the Commission. Such forms shall be available at each federal institution and shall be provided to each prisoner who is eligible for an initial parole hearing pursuant to Sec. 2.12. Prisoners committed under the Federal Juvenile Delinquency Act shall be considered for parole without application and may not waive parole consideration. A prisoner who receives an initial hearing need not apply for subsequent hearings.

(b) A prisoner may knowingly and intelligently waive any parole consideration on a form provided for that purpose. If a prisoner waives parole consideration, he may later apply for parole and may be heard during the next visit of the Commission to the institution at which he is confined, provided that he has applied at least 60 days prior to the first day of the month in which such visit of the Commission occurs.

(c) A prisoner who declines either to apply for or waive parole consideration is deemed to have waived parole consideration.

(d) In addition to the above procedures relating to parole application, all prisoners prior to initial hearing shall be provided with an inmate background statement by the Federal Prison System for completion by the prisoner.

(e) At least sixty days prior to the initial hearing (and prior to any hearing conducted pursuant to Sec. 2.14), the prisoner shall be provided with written notice of the time and place of the hearing and of his right to review the documents to be considered by the Commission, as provided by Sec. 2.55. A prisoner may waive such notice, except that if such notice is not waived, the case shall be continued to the time of the next regularly scheduled proceeding of the Commission at the institution in which the prisoner is confined.

Notes and Procedures

2.11-01. *Waiver of a Hearing or Parole Grant.*
(a) A prisoner who wishes to waive any hearing or parole grant [except as noted in 2.11-01(b)] shall sign a parole waiver on the appropriate form. The original of this form (witnessed by an institutional staff member) shall be forwarded to the Regional Parole Office and placed in the prisoner's regional file and one copy shall be retained in the prisoner's institutional file. In the case of a waiver of a parole grant, the previous order shall be marked "*cancelled by waiver dated [ ]*." A new application is required if the prisoner later wishes to reapply for parole.

(b) Exception: Hearings for juvenile delinquents, revocation hearings, and hearings pursuant to 2.28(b-f) cannot be waived. Rescission hearings, or statutory interim hearings where there has been an IDC disciplinary infraction since the last hearing, may be canceled *only* by waiver of the actual parole grant.

2.11-02. *Refusal to Make Application/Recalcitrant Prisoners.*
(a) Where a prisoner declines either to apply for or waive parole consideration, institution staff should prepare a signed, dated memorandum to the prisoner's file noting that the prisoner has been advised of (1) his right to apply for parole consideration and (2) that failure to apply for parole is deemed as a waiver of parole consideration; and that the prisoner has declined to file a parole application or waiver. No action is taken by the Commission unless the prisoner has declined to file a parole application or waiver. No action is taken by the Commission unless the prisoner subsequently applies for parole.

(b) When a prisoner refuses to enter the hearing room, physical force should not be used to ensure his appearance. Instead, an official of the institution should make a written statement that the prisoner was properly advised of his right to a hearing, but refused to make such appearance. The hearing panel, in such cases, should consider that he has waived parole and enter a memo for the file to that effect.

2.11-03. *Prisoner Background Statement.* In addition to formal application for parole, all prisoners who desire to be considered for parole are provided a background statement (Form I-32). The prisoner may use this statement to bring any material he/she desires to the attention of the Parole Commission.

2.11-04. *"Safe" House Cases.* Notice and hearing procedures are applicable as they are to prisoners confined at a federal institution. Since there will be a minimum of classification material, it is suggested that the Deputy U.S. Marshal be asked (by the person arranging the hearing) to be available to answer questions from the examiner panel. The Bureau's Case Management Administrator in the Region will be responsible for obtaining any available material to be used by the examiner panel and should be contacted prior to the hearing.

2.11-05. *Prisoners Out of the Institution.* A prisoners entitled to a hearing who is unavoidably out of the institution during an examiner panel's visit is normally passed over until the next docket. Such instances occur when a prisoner has been delivered to a court on the basis of a writ, when he has been placed in a civilian hospital or other similar facility, or when he has escaped. A brief memo to the file is prepared. However, when a prisoner has been removed from an institution on a court writ of ad testificandum or for hospitalization, and is past his parole eligibility date, and return by the next docket is not anticipated, the panel is to notify the Regional Office by memo. The Regional Office should, absent reasons to the contrary, schedule a hearing at the place of confinement as if the prisoner were a federal boarder (2.16-01). For procedures in revocation cases where the alleged violator is unavailable, see 2.49-01(c) and 2.49-02(a)

§2.12 INITIAL HEARINGS: SETTING PRESUMPTIVE RELEASE DATES.

(a) An initial hearing shall be conducted within 120 days of a prisoner's arrival at a Federal institution or as soon thereafter as practicable; except that in the case of a prisoner with a minimum term of parole ineligibility of ten years or more, the initial hearing shall be conducted at least 90 days prior to the completion of such minimum term, or as soon thereafter as practicable.

(b) Following initial hearing, the Commission shall (1) set a presumptive release date (either by parole or by mandatory release) within fifteen years of the hearing; (2) set an effective date of parole; or (3) continue the prisoner to a fifteen year reconsideration hearing pursuant to Sec. 2.14(c).

(c) Notwithstanding the above paragraph, a prisoner may not be paroled earlier than the completion of any judicially set minimum term of imprisonment or other period of parole ineligibility fixed by law.

(d) A presumptive parole date shall be contingent upon an affirmative finding by the Commission that the prisoner has a continued record of good conduct and a suitable release plan and shall be subject to the provisions of Sections 2.14 and 2.28. In the case of a prisoner sentenced under the Narcotic Addict Rehabilitation Act, 18 U.S.C. Sec. 4254, a presumptive parole date shall also be contingent upon certification by the Surgeon General pursuant to Section 2.3 of these rules. Consideration of disciplinary infractions in cases with presumptive parole dates may be deferred until the commencement of the next in-person hearing or the prerelease record review required by Sec. 2.14(b). While prisoners are encouraged to earn the restoration of forfeited or withheld good time, the Commission will consider the prisoner's overall institutional record in determining whether the conditions of a presumptive parole date have been satisfied.

Notes and Procedures

2.12-01. *Reports from Probation Officers*. Before a hearing may be conducted there must be available to the examiner panel a copy of a pre-sentence report or a post-sentence report. A scheduled hearing shall be continued if neither is available to the panel. In such case the panel shall notify the Regional Office to take whatever action necessary to secure the required report.

2.12-02. *Permissible Actions*. Following initial hearing, the panel may recommend: an 'effective date' of parole [within six months from the date of the hearing]; a presumptive parole date [more than six months from the date of initial hearing but no later than fifteen years]; a fifteen year reconsideration hearing [at fifteen years from the month of the present hearing]; or continue to expiration [if the statutory release date is within fifteen years of the month of the hearing]. Prisoners will be scheduled, in addition, for statutory interim hearings automatically as required by law.

2.12-03. *Parole on the Record*.
(a) Where it appears upon pre-hearing review (1) that parole upon completion of the minimum sentence (at parole eligibility date) or within 180 days of the pre-hearing review decision is clearly warranted, (2) that such release date occurs within or above the applicable guideline range, and (3) that an in-person hearing does not appear necessary for further examination of the case, a hearing panel may recommend that parole based upon the record be granted. When such recommendation is made by a hearing panel and the Regional Commissioner concurs, a standard Notice of Action will be issued with the addition of the wording in paragraph (b) or (c). If the Regional Commissioner does not concur, the panel recommendation is voided and the case will be scheduled for hearing under standard procedure.

(b) Where parole is granted upon completion of the minimum sentence, add to each Notice of Action following the "reasons" section: *"Note: The Commission has decided to grant you a parole date upon completion of your minimum sentence on the basis of a review of your record. As the Commission is precluded by law from releasing you at an earlier time, this release date is NOT APPEALABLE."*

(c) Where parole is granted within 180 days of the date of the pre-hearing review and the parole eligibility date will have already passed, add to each Notice of Action following the "reasons" section: *"Note: Under 18 U.S.C. 4208(a), the Commission has decided to grant you an effective parole date on the basis of a review of your record without a personal hearing."*

§2.13 INITIAL HEARING; PROCEDURE.

(a) An initial hearing shall be conducted by a panel of two hearing examiners. The examiners shall discuss with the prisoner his offense severity rating and salient factor score as described in Sec. 2.20, his institutional conduct and, in addition, any other matter the panel may deem relevant.

(b) A prisoner may be represented at a hearing by a person of his choice. The function of the prisoner's representative shall be to offer a statement at the conclusion of the interview of the prisoner by the examiner panel, and to provide such additional information as the examiner panel shall request. Interested parties who oppose parole may select a representative to appear and offer a statement. The presiding hearing examiner shall limit or exclude any irrelevant or repetitious statements.

(c) At the conclusion of the hearing, the panel shall orally inform the prisoner of its recommendation and of the reasons therefor. Written notice of the official decision, or the decision to refer under Section 2.17 or Section 2.24, shall be mailed or transmitted to the prisoner within 21 days of the date of the hearing, except in emergencies. Whenever the Commission initially establishes a release date (or modifies the release date thereafter) the prisoner shall also receive in writing the reasons therefor.

(d) In accordance with 18 U.S.C. 4206, the reasons for establishment of a release date shall include a guidelines evaluation statement containing the prisoner's offense severity rating and salient factor score (including the points credited on each item of such score) as described in Sec. 2.20, as well as the specific factors and information relied upon for any decision outside the range indicated by the guidelines.

(e) No interviews with the Commission, or any representative thereof, shall be granted to a prisoner unless his name is docketed for a hearing in accordance with Commission procedures. Hearings shall not be open to the public.

(f) A full and complete record of every hearing shall be retained by the Commission. Upon a request, pursuant to Sec. 2.56, the Commission shall make available to any eligible prisoner such record as the Commission has retained of the hearing.

Notes and Procedures

2.13-01. *Panel Functioning*. Examiner panel(s) conduct hearings at the institution of confinement according to a printed schedule. The appropriate Case Manager is also in attendance. A recording device is used to record the interview. [If the hearing is continued for any reason, a tape of the discussion with the prisoner, if any, leading to the continuance is made, and a memo of the reasons for the continuance is prepared.] The hearing summary is dictated following each hearing. Except where the case is "continued to the Regional Office" for some unusual reason the summary includes a recommendation relative to parole, revocation or continuance. At the conclusion of the hearing, the prisoner (and his/her representative) is informed of the panel recommendation (and the fact that his recommendation is subject to review at the Regional Office). If there is a split recommendation, the prisoner is told the alternative recommendations (examiners need not be identified by recommendation). In original jurisdiction cases, the prisoner is told the alternative panel recommendation.

2.13-02. *Representation*.
(a) Representation is normally limited to one person. However, it is in the presiding hearing examiner's discretion, where appropriate, to permit additional representatives to appear. Any continuance due to the absence of a prisoner's representative shall be at the discretion of the presiding hearing examiner and shall be granted only for good cause. A brief memo to the file is prepared.

(b) At local or institutional revocation hearings, a person other than an attorney (Member of the Bar) shall be limited to the role of a witness or representative except that where permissible by state law, a law student may function in the role of an attorney provided (i) the inmate knowingly and intelligently consents; and (ii) the law student is under the direct supervision of a member of the bar (who is physically present). However, representation by both law student and supervisor shall not be permitted. An attorney or other representative at any other hearing shall be limited only to the role of representative as previously defined.

(c) The prisoner and his/her representative will normally be entitled to be present during the entire hearing except during deliberations of the decision-makers, or where institutional security would be jeopardized and/or personal safety of adverse witnesses might be involved. If the prisoner is removed at the request of the panel, the reasons for such exclusion from the hearing must be well documented into the record. A prisoner's representative will also be allowed to be present when the panel informs the prisoner of its recommendation and reasons regardless of the type of hearing.

(d) In cases where the witness will be unavailable, or wishes to give testimony containing matters exempt under the statute or where the witnesses' testimony would be adverse in nature and the witness does not wish, for proper grounds, to give the testimony in the presence of the prisoner, the prisoner may be removed from the hearing, or in the alternative the witness may offer a written statement to be used by the panel in their deliberations. If at all possible, this written statement should be submitted by the witness well in advance of the hearing.

(e) If the written statement so offered contains exempt material, and the witness represents a government agency, it is the duty of that witness to determine what material is exempt and to summarize that material for the benefit of the prisoner. If the witness is a private person, the Regional Office will perform that task in advance of the hearing. Where the material is submitted directly to the panel of examiners, the summary will be given to the prisoner along with his Notice of Action.

2.13-03. *Computation of guidelines*. The guidelines evaluation worksheet will be completed at all initial hearings.

2.13-04. *Provisions of Reasons*. Reasons following the appropriate guideline format will be typed on all Notices of Action denying a parole date or granting a presumptive or effective parole date. However, repetition of the reasons already given is not required (a) when an effective date is granted as a result of a pre-release review of a previous presumptive date order, and the date of release has not been changed; and (b) on any other Notice of Action where no change in the previous decision is made.

2.13-05. *Summary Formats*. Use the hearing formats as indicated in Appendix 1. In preparing correspondence, hearing summaries, reports and other documentation, use professional language which describes the subject and explains the Commission's position clearly, simply, and accurately. It should be kept in mind that much of what is written is disclosable to the prisoner or releasee and may come before the Courts, the Congress, or the public. Language which may be interpreted as discriminatory, prejudicial, or insensitively descriptive discredits the Commission and the writer, and its use violates the Commission policy.

2.13-06. *Standardized Wording on Orders*. Use the standardized wording in Appendix 2. It is conceivable that there may be an action not covered by this wording. In such instances wording should be developed to fit the action desired.

2.13-07. *Co-defendants*. Co-defendants and their parole status including sentence and guideline data, any reasons for departure from the guidelines, and months served will be listed, when available, in initial and reconsideration summaries.

2.13-08. *Conditions of Parole*. Special conditions (including drug aftercare) should be recommended, where appropriate, by the hearing panel at the time the presumptive date (whether by parole or mandatory release) is determined (normally at the initial hearing). Where appropriate, special conditions may be added or modified at any time prior to the prisoner's release.

2.13-09. *Additions to Docket*. Where by reason of transfer a prisoner has missed his initial hearing, subsequent hearing or revocation hearing, the prisoner may be added to the docket at the request of the Warden and with the approval of the Senior Examiner designated by the Regional Commissioner. No other interviews for cases not on the docket will be conducted without written approval from the Regional Commissioner.

2.13-10. *Visitors at Hearings*.
(a) *In General*. As a general principle, Parole Commission hearings are not open to the public. However, where good cause exists, visitors may be permitted to attend provided their presence will not interfere with the orderly course of the proceedings. The presiding hearing examiner determines who will be admitted to the hearing room. If he or she cannot make the final decision in accordance with subsection (b), he or she will communicate with the authorized official.

(b) *Criteria*. The Commission has found it appropriate to allow the following classes of visitors (other individuals must be considered by the presiding examiner on a case by case basis). Persons having a direct interest in a case shall be considered under procedures dealing with representatives.

(1) U.S. Parole Commission, Bureau of Prisons, or U.S. Probation Service employees; and Federal Judges or Magistrates.

(2) Federal or State Legislators; state judges, state parole or probation personnel.

(3) Newspaper or Magazine Correspondents (permission must be granted by the Regional Commissioner).

(4) Researchers (prior permission must be granted by the Chairman).

(5) Students in fields related to criminal justice.

(c) *Restrictions*.
(1) Visitors are not to participate in hearing proceedings. Examiners will not discuss cases with visitors in any instance until after a recommendation has been made and the summary dictated.

(2) Visitors will not be permitted to use recording devices.

(3) Examiners may request visitors to leave the hearing room when it is affecting the progress of the hearing. Examiners should also remove visitors from the room prior to hearing cases which, in their judgement, involve matters usually sensitive as far as the prisoner is concerned.

(4) Visitors should not be permitted to enter or leave the hearing room during the proceedings (for sake of the dignity or orderly proceedings).

(5) Except for visitors listed under subsection b(1), permission must be granted in writing by the prisoner (at a revocation hearing the attorney must also be in agreement) for visitors to be present at hearings. It must be explicitly and forcefully made clear to the prisoner that he has a right not to have visitors present, and that such action will not affect the Commission action on his case in any way. Panel members should be careful that a prisoner does not feel coerced to allow such visitors to be present.

(6) Visitors should not be present at hearings on original jurisdiction cases, or cases which in the judgement of the examiner will be referred to the Regional Commissioner as original jurisdiction cases.

(7) No visitor shall remain in the hearing room during deliberations or dictation unless specifically authorized by the examiner panel.

2.13-11. *Interested Parties Opposing Parole.*
(a) A victim/witness (verified by the Bureau of Prisons Victim/Witness Coordinator) or a criminal justice official [e.g., U.S. Attorney, FBI or DEA Agent] may attend a specific parole hearing to oppose parole without special permission. Any other person wishing to attend a hearing to oppose parole must obtain permission from the Regional Commissioner in advance of the hearing. Requests for such permission must be in writing. Interested persons opposing parole are encouraged to submit written comments in lieu of a personal appearance. Where a personal appearance is made, any persons opposing parole will be requested to select one person as a spokesperson. However, it is in the presiding examiner's discretion, where appropriate, to permit additional persons to be present. A continuance due to the absence of an interested party opposing parole shall be in the discretion of the presiding examiner and shall be granted only for good cause. A brief memo to the file is to be prepared.

(b) An interested party opposing parole shall be provided an opportunity to make a statement at the appropriate time determined by the presiding hearing examiner. The prisoner may be excluded at the request of such person for good cause, or when it appears to the hearing panel that institutional security or the personal safety of such person might be involved. The reason for any such exclusion must be documented in the record and any testimony out of the prisoner's presence must be promptly summarized for the prisoner with an opportunity for response.

(c) Upon request, any victim/witness (verified through the Bureau of Prisons Victim/Witness Coordinator) or criminal justice system official may be notified of the Commission's official decision in accordance with 2.24-13. A separate memo to the Regional Office is to be prepared by the panel pointing out the above request for notification. The hearing panel may inform an interested party opposing parole of its recommended decision following the hearing, but the applicable reasons (e.g., guideline indicants) are to be provided only under 2.24-13.

§2.14 SUBSEQUENT PROCEEDINGS.

(a) Interim proceedings. The purpose of an interim hearing required by 18 U.S.C. 4208(h) shall be to consider any significant developments or changes in the prisoner's status that may have occurred subsequent to the initial hearing.

(1) Notwithstanding a previously ordered presumptive release date or fifteen-year reconsideration hearing, interim hearings shall be conducted by an examiner panel pursuant to the procedures of Sec. 2.13(b), (c), (e), and (f) at the following intervals from the date of the last hearing:

(i) In the case of a prisoner with a maximum term or terms of less than seven years, every eighteen months (until released);

(ii) In the case of a prisoner with a maximum term or terms of seven years or more, every twenty-four months (until released). However, in the case of a prisoner with an unsatisfied minimum term, the first interim hearing shall be deferred until the docket of hearings immediately preceding the month of parole eligibility.

(2) Following an interim hearing, the Commission may:

(i) Order no change in the previous decision;

(ii) Advance a presumptive release date, or the date of a fifteen-year reconsideration hearing. However, it shall be the policy of the Commission that once set, a presumptive release date or the date of a fifteen-year reconsideration hearing shall be advanced only (1) for superior program achievement under the provisions of Sec. 2.60; or (2) for other clearly exceptional circumstances.

(iii) Retard or rescind a presumptive parole date for reason of disciplinary infrations. In a case in which disciplinary infractions have occurred, the interim hearing shall be conducted in accordance with the procedures of Section 2.34(c-f). (Prior to each interim hearing, prisoners shall be notified on the progress report furnished by the Federal Prison System that any finding of misconduct by an Institutional Disciplinary Committee since the previous hearing will be considered for possible action under this subsection);

(iv) If a presumptive date falls within six months after the date of an interim hearing, the Commission may treat the interim hearing as a prerelease review in lieu of the record review required by paragraph (b) of this section.

(b) Pre-Release reviews. The purpose of a prerelease review shall be to determine whether the conditions of a presumptive release date by parole have been satisfied.

(1) At least sixty days prior to a presumptive parole date, the case shall be reviewed on the record, including a current institutional progress report.

(2) Following review, the Regional Commissioner may:

(i) Approve the parole date;

(ii) Advance or retard the parole date for purpose of release planning as provided by Sec. 2.28(e);

(iii) Retard the parole date or commence rescission proceedings as provided by Sec. 2.34;

(iv) Advance the parole date for superior program achievement under the provisions of Sec. 2.60.

(3) A pre-release review pursuant to this section shall not be required if an in-person hearing has been held within six months of the parole date.

(4) Where: (i) there has been no finding of misconduct by an Institutional Disciplinary Committee nor any allegation of criminal conduct since the last hearing; and (ii) no other modification of the release date appears warranted, the administrative hearing examiner may act for the Regional Commissioner under paragraph (b)(2) of this section to approve conversion of the presumptive parole date to an effective date of parole.

(c) Fifteen-year reconsideration hearings. A fifteen-year reconsideration hearing shall be a full reassessment of the case pursuant to the procedures at Sec. 2.13.

(1) A fifteen-year reconsideration hearing shall be ordered following initial hearing in any case in which a release date is not set.

(2) Following a fifteen-year reconsideration hearing, the Commission may take any one of the actions authorized by Sec. 2.12(b).

Notes and Procedures

2.14-01. *Statutory Interim Hearing.*
(a) Statutory interim hearings are scheduled each 18th or 24th month (or the preceding month when the panel does not visit the institution during the specified month) after the month of any previous hearing, as required by law. An exception occurs when the minimum term date will not have arrived by the time of a statutory interim date. In such cases the first interim hearing will be deferred until the docket immediately preceding completion of the minimum term.

(b) Where a statutory interim hearing is scheduled for a time subsequent to a presumptive date record review, the statutory interim hearing shall be cancelled if the record review results in an effective parole date. [For example, a prisoner is scheduled for a presumptive date after 21 months (with a statutory interim hearing at 18 months). During the 17th month, a presumptive date record review is conducted, and the effective parole date is approved. The statutory interim hearing is not to be conducted]. If the prisoner has already been docketed for a statutory interim hearing, the institution shall delete his name from the docket upon receipt of the notice of the approved effective date. [See 18 U.S.C. §4208(a)].

(c) Following a Statutory Interim Hearing, the panel may recommend:

(1) No change in the presumptive parole date (if the presumptive date is within six months, the panel may recommend that it be changed to an "effective" date.);

(2) Advancement of a presumptive parole date (or change from a "Continue to Expiration" or "Fifteen-Year Reconsideration Hearing" to a presumptive or "effective" date) but only for documented exceptional circumstances, or superior program achievement pursuant to 28 C.F.R. 2.60;

(3) Retardation of a presumptive parole date to a "Continue to Expiration" or "Fifteen-Year Reconsideration Hearing") on the basis of disciplinary infractions [in cases with disciplinary infractions the interim hearing will be conducted as a rescission hearing].

2.14-02. *Pre-Release Record Review.* Following a Pre-release Record Review (a record review which may be conducted by an examiner or analyst), the Regional Commissioner may:

(1) Approve the release date [order an "effective" date];

(2) Approve an effective parole, but advance or retard the release date for release programming; or advance the release date for superior program achievement pursuant to 28 C.F.R. 2.60;

(3) Approve an effective parole, but retard the release date for not more than 90 days without a hearing on account of disciplinary infractions; or

(4) Schedule a rescission hearing.

§2.15 PETITION FOR CONSIDERATION OF PAROLE PRIOR TO DATE SET AT HEARING.

When a prisoner has served the minimum term of imprisonment required by law, the Federal Prison System may petition the responsible Regional Commissioner for reopening the case under Sec. 2.28(a) and consideration of parole prior to the date set by the Commission at the initial or review hearing. The petition must show cause why it should be granted, i.e., an emergency, hardship, or the existence of other extraordinary circumstances that would warrant consideration of early parole.

§2.16 PAROLE OF PRISONER IN STATE, LOCAL, OR TERRITORIAL INSTITUTION

(a) Any person who is serving a sentence of imprisonment for any offense against the United States, but who is confined therefor in a state reformatory or other state or territorial institution, shall be eligible for parole by the Commission on the same terms and conditions, by the same authority, and subject to recommital for the violation of such parole, as though he were confined in a Federal penitentiary, reformatory, or other correctional institution.

(b) Federal prisoners serving concurrent state and Federal sentences in state, local, or territorial institutions shall be furnished upon request parole application forms. Upon receipt of the application and any supplementary classification material submitted by the institution, parole consideration shall be made by an examiner panel of the appropriate region on the record only. If such prisoner is released from his state sentence prior to a Federal grant of parole, he shall be given a personal hearing as soon as feasible after receipt at a Federal institution.

(c) Prisoners who are serving Federal sentences exclusively but who are being boarded in state, local, or territorial institutions may be provided hearings at such facilities or may be transferred by the Federal Prison System to Federal Institutions for hearings by examiner panels of the Commission.

(d) Federal Youth Corrections Act offenders who are committed under 18 U.S.C. §3401 and who are given commitments of six months or less, shall be given parole consideration on the record only.

Notes and Procedures

2.16-01. *Federal Boarders.* Federal Boarders in a State facility are entitled to an initial or subsequent hearing by an examiner panel at the State facility in which they are confined unless they waive this right or are transported to a federal facility. Normally, prisoners are heard at state or local facilities, but there may arise situations in which transfer to a federal facility is appropriate. Hearing procedures shall be the same as if such prisoner were confined at a federal institution. Federal Boarders should receive "timely" notice so that a representative may be obtained. A copy of the appeal form is to be transmitted with the Notice of Action. Procedural matters, including the furnishing of forms, are the responsibility of the Bureau of Prisons. By special arrangement, however, the Commission's Regional Office might agree to assume some of these responsibilities.

2.16-02. *Court Designated Parole.* Where the maximum sentence is at least six months but not more than one year, the Court may designate a parole date [18 U.S.C. 4205(f)]. Upon release, the parolee is subject to the conditions of parole and revocation for violation of such conditions by the Commission. When the court has designated parole in such cases and the prisoner is in a non-federal institution, the Regional Office must issue the "Court designated Parole Certificate."

2.16-03. *Federal Prisoners Serving Concurrent State and Federal Sentences in Non-Federal Institutions.*
(a) A prisoner who is serving concurrent state and federal sentences in a state institution shall be considered for parole by an examiner panel on the record only. This procedure is to be used for initial, interim, and rescission considerations. The timing of initial consideration is determined by the standards of 28 C.F.R. Section 2.12.

(b) Upon notification that the prisoner has commenced service of the concurrent federal term, the Regional Office should forward a request for a progress report from the state institution in which the prisoner is incarcerated along with the parole application packet. For those prisoners with a minimum term of parole ineligibility of ten years or more, this packet should be sent to the institution at least 120 days prior to the month in which the prisoner's eligibility date falls. The Regional Office will ensure that both a sentence computation record and a pre or post sentence report are available or obtained prior to parole consideration. The authorization to disclose this report or a summary thereof must be obtained from institutional authorities for the Commission to consider this information. Each progress report must be stampdated when received in the Regional Office. Disclosure of regional file material and the state progress report should be afforded to a concurrent state and federal prisoner pursuant to 28 C.F.R. Section 2.55.

(c) The prisoner will not be informed of the examiner panel's recommendation until it has been finalized. Only the final Commission action will be forwarded via the standard Notice of Action. A copy of the appeal form is forwarded with the Notice of Action.

(d) Original jurisdiction cases: If a case is designated as original jurisdiction by the Regional Commissioner, notice of the referral and designation will be sent to the prisoner, along with the basis for the designation. Original jurisdiction procedures are applicable to such prisoners as in any other case.

2.16-04. *Former State Prisoners.* Federal prisoners serving concurrent state and federal terms in a state or local institution may be transferred to a federal institution to complete their federal sentence. If they have not previously been considered for parole, they are heard in the usual manner. If they have been considered by the Commission while in the "state" institution on the record without a personal hearing, a special hearing shall be conducted as soon as feasible upon their arrival at a federal institution. The purpose of this hearing shall be solely to determine whether there is any new information sufficiently significant to affect the previous decision rendered.

2.16-05. *Youth Corrections Act Sentences Under the Magistrates Act of 1979* (18 U.S.C. §3401(g)). This legislation empowers federal magistrates to impose Youth Corrections Act Sentences of not more than six months for petty offenses and not more than one year for misdemeanor offenses.

(a) If the sentence is more than six months, the prisoner will be provided an initial hearing under procedures applying to all other YCA cases; except that the Community Programs Officer shall for cases confined in state or local facilities perform the duties specified in b(2) and (c).

(b) If the sentence is six months or less, the decision will be made on the basis of the written record by an examiner panel (regardless of whether the offender is confined in a federal, state, local or territorial institution). To assure that the record is available to the panel as soon as practicable, the following procedures have been adopted by the U. S. Probation Service and the Bureau of Prisons.

(1) The local U.S. Marshal will request designation of the Bureau of Prisons Community Programs Officer. The Community Programs Officer will insure that the prisoner is given as parole application form, a background statement (Parole Form I-32) and a waiver form by facility staff immediately upon arrival at the facility. The facility staff will return the forms to the CPO within two weeks. The CPO will then forward the BP-5, the parole forms and the pre or post sentence report, if available, to the Commission's Regional Office.

(2) Upon receipt of a parole application, the Regional Office will create a file and expedite obtaining a pre or post sentence report (if not provided by the CPO) from the United States Probation Officer. The Regional Office will then fix the parole or mandatory parole date. The Notice of Action will be sent directly to the facility with copies sent to the CPO and the USPO. In all other respects, these cases will be handled under all the standard USPC procedures relating to guideline application, notice, appeals, etc. Release planning may have to be waived in very short term cases.

(c) All cases sentenced under this Act must be mandatorily paroled no later than three months prior to the expiration of the full term. If a prisoner does not apply for parole, the federal institution or Community Programs Officer, as applicable, shall request a mandatory parole certificate in sufficient time for release. If parole is applied for and denied, the Regional Office will send the mandatory parole certificate with the Notice of Action. In cases confined in state/local facilities, the Regional Office will send the certificate directly to the facility with copies to the CPO and the USPO. The regular youth certificate will be used with the word "*Mandatory*" typed on the certificate.

§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 quorum of Commissioners as described below, 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 four votes with the appropriate Regional Commissioner and each National Commissioner having one vote. Additional votes, if required, shall be cast by the other Regional Commissioners on a rotating basis as established by the Chairman of the Commission.

(b) The following criteria will be used in designating cases as original jurisdiction cases:

(1) Prisoners who have committed serious crimes against the security of the Nation, e.g., espionage or aggravated subversive activity.

(2) Prisoners whose offense behavior (i) involved an unusual degree of sophistication or planning or (ii) was part of a large scale criminal conspiracy or a continuing criminal enterprise.

(3) Prisoners who have received national or unusual attention because of the nature of the crime, arrest, trial, or prisoner status, or because of the community status of the offender or his victim.

(4) Long-term sentences. Prisoners sentenced to a maximum term of forty-five years (or more) or prisoners serving life sentences.

(c)(1) Any case designated for the original jurisdiction of the Commission shall remain an original jurisdiction case unless designation is removed pursuant to this subsection.

(2) A case found to be inappropriately designated for the Commission's original jurisdiction, or to no longer warrant such designation, may be removed from original jurisdiction under the procedures specified in paragraph (a) of this section following a regularly scheduled hearing or the reopening of the case pursuant to Sec. 2.28. Removal from original jurisdiction may also occur by majority vote of the Commission considering an appeal pursuant to Sec. 2.27. Where the circumstances warrant, a case may be redesignated as original jurisdiction pursuant to the provisions of paragraphs (a) and (b) of this section.

Notes and Procedures

2.17-01. *Referral by Panel*. A hearing panel shall refer any case falling within the criteria for original jurisdiction cases to the Regional Commissioner. The applicant should be told that his case is being referred for possible original jurisdiction consideration and the reasons therefor. The panel should also render an alternative recommendation (in the event the case is not designated an original jurisdiction case). Advising the prisoner of the possible original jurisdiction designation and the reasons therefore is normal practice but is not a due process requirement.

2.17-02. *Regional Review*.
(a) The Commissioner may designate the case as original jurisdiction and submit the case with his recommendation to the National Commissioners. In such case, a Notice of Action shall be sent to the prisoner including the basis for his original jurisdiction (e.g., National or Unusual Attention; Unusual Sophistication or Planning). If an original jurisdiction designation is based upon the criteria of 28 C.F.R. Sec. 2.17(b)(2), then the Intelligence Unit, Department of Justice, Washington, D.C., should be notified of the pending parole consideration via teletype message, using the form provided in Appendix 4, if this has not already been done at pre-hearing review.

(b) Designation of a case meeting the criteria under §2.17 as original jurisdiction by a Regional Commissioner is presumptive not mandatory. A Regional Commissioner may decline to designate the case as original jurisdiction (with a memo to the file) and (1) let the panel recommendation stand, or (2) take other action under 28 C.F.R. Sec. 2.24.

(c) Where a report from the Justice Department or other government law-enforcement agency is considered essential and such report has not been received, the Regional Commissioner may reschedule the case for the next docket for consideration of additional information. In such case, follow-up will be made with the appropriate agency to insure an expedited report.

2.17-03. *Referral to National Commissioners*. The Regional Commissioner referring a case for original jurisdiction shall use two orders (see Appendix 2). The reasons for designation specified in 28 C.F.R. §2.17 shall be particularized to the individual case and an analysis of the case and the reasons for decision shall be set forth (see Appendix 4).

2.17-04. *Processing by National Commissioners*. Upon receipt of an original jurisdiction case, the National Commissioners, where feasible, shall process the case within 21 days. Cases not requiring a meeting of the National Commissioners shall be voted on sequentially. Cases shall be docketed and Notice of Action and other notifications shall be processed by the Central Office.

2.17-05. *Declassification*. Where a case has been previously designated as original jurisdiction and the Regional Commissioner believes it no longer warrants such classification, he may refer the case to the National Commissioners for declassification. The Regional Commissioner shall also vote on the substantive case decision. The National Commissioners shall first vote on declassification. If declassified, the case shall be treated as a non-original jurisdiction case and returned to the region for processing, unless the Regional Commissioner's proposed decision requires action under 2.24(a) [i.e., it differs from the hearing panel recommendation and 2.24(b)(1) or (2) are inapplicable]. If not declassified, the case shall be processed under original jurisdiction procedures.

2.17-06. *Rescission*. See 2.34-05.

2.17-07. *Revocation*. Where a case previously has been designated original jurisdiction or is being designated at this time, all orders (including any forfeiture of street time) will be forwarded with the Regional Commissioner's vote, reasons and rationale to the National Commissioners. Thereafter, the orders will be processed in the same manner as any other original jurisdiction decision.

§2.18 GRANTING OF PAROLE.

The granting of parole to an eligible prisoner rests in the discretion of the United States Parole Commission. As prerequisites to a grant of parole, the Commission must determine that the prisoner has substantially observed the rules of the institution or institutions in which he has been confined; and upon consideration of the nature and circumstances of the offense and the history and characteristics of the prisoner, must determine that release would not depreciate the seriousness of his offense or promote disrespect for the law, and that release would not jeopardize the public welfare (i.e., that there is a reasonable probability that, if released, the prisoner would live and remain at liberty without violating the law or the conditions of his parole).

§2.19 INFORMATION CONSIDERED.

(a) In making a parole or reparole determination the Commission shall consider, if available and relevant:

(1) reports and recommendations which the staff of the facility in which such prisoner is confined may make;

(2) official reports of the prisoner's prior criminal record, including a report or record of earlier probation and parole experiences;

(3) presentence investigation reports;

(4) recommendations regarding the prisoner's parole made at the time of sentencing by the sentencing judge and prosecuting attorney; and

(5) reports of physical, mental, or psychiatric examination of the offender.

(b) There shall also be taken into consideration such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available (18 U.S.C. 4207). The Commission encourages the submission of relevant information concerning an eligible prisoner by interested persons.

(c) The Commission may take into account any substantial information available to it in establishing the prisoner's offense severity rating, salient factor score, and any aggravating or mitigating circumstances, provided the prisoner is apprised of the information and afforded an opportunity to respond. If the prisoner disputes the

accuracy of the information presented, the Commission shall resolve such dispute by the preponderance of the evidence standard; that is, the Commission shall rely upon such information only to the extent that it represents the explanation of the facts that best accords with reason and probability. However, the Commission shall not consider in any determination, charges upon which a prisoner was found not guilty after trial unless:

(1) reliable evidence is presented that was not introduced at trial (e.g., a subsequent admission or other clear indication of guilt) or

(2) the prisoner was found not guilty by reason of his mental condition.

(d) Recommendations and information from sentencing judges, defense attorneys, prosecutors, and other interested parties are welcomed by the Commission. In evaluating a recommendation concerning parole, the Commission must consider the degree to which such recommendation provides the Commission with specific facts and reasoning relevant to the statutory criteria for parole (18 U.S.C. 4206) and the application of the Commission's guidelines (including reasons for departure therefrom). Thus, to be most helpful, a recommendation should state its underlying factual basis and reasoning. However, no recommendation (including a prosecutorial recommendation pursuant to a plea agreement) may be considered as binding upon the Commission's discretionary authority to grant or deny parole.

Notes and Procedures

2.19-01. *Prohibition Against Use of Illegal Wiretap Evidence.* Under 18 U.S.C. Sec. 2515 courts and other government authorities, including the Commission, are prohibited from using any illegal wiretap evidence for any purpose. Therefore, no information acquired from an illegal wiretap shall be used by the Commission for determining offense severity, salient factor score, or for any other purpose in parole release, revocation, reparole, rescission or any other decision.

2.19-02. *Not Guilty Verdicts After Trial.*
(a) If a prisoner is convicted after trial of a lesser included offense and acquitted on a more serious offense (e.g., conviction for carnal knowledge after trial for rape; conviction for voluntary manslaughter after trial for murder), only the conviction offense is to be considered unless the case falls under one of the exceptions listed in 28 C.F.R. 2.19(c).

(b) If a prisoner is convicted by trial of an offense, such as conspiracy, attempt, aiding or abetting, or accessory after the fact, where the severity rating is, by rule, determined by reference to the underlying offense (e.g., 28 C.F.R. 2.20 specifies that conspiracy is to be rated in the same category as the underlying offense), acquittal on the underlying offense does not bar use of the conviction offense (e.g., conviction for conspiracy to murder is graded as Category Eight even if the prisoner is acquitted of the charge of murder). However, the acquittal should be carefully considered in assessing the offender's role and level of culpability in the offense.

2.19-03. *Evidence Not Considered at Criminal Trial.* Under 28 C.F.R. 2.19(c), the Commission may consider evidence that was excluded or not considered at a criminal trial because of procedural violations (e.g., information concerning the seizure of drugs suppressed for failure to obtain a proper search warrant, or a confession suppressed for failure to properly give the *Miranda* warning). Particular care should be exercised in considering the reliability of such information since the reasons its exclusion may raise significant doubts about its reliability (e.g., coercion in the case of a confession). The Commission may also consider reliable information developed after trial (e.g., a subsequent admission of guilt).

§2.20 PAROLING POLICY GUIDELINES; STATEMENT OF GENERAL POLICY.

(a) To establish a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decision-making without removing individual case consideration, the United States Parole Commission has adopted guidelines for parole release consideration.

(b) These guidelines indicate the customary range of time to be served before release for various combinations of offense (severity) and offender (parole prognosis) characteristics. The time ranges specified by the guidelines are established specifically for cases with good institutional adjustment and program progress.

(c) These time ranges are merely guidelines. Where the circumstances warrant, decisions outside of the guidelines (either above or below) may be rendered.

(d) The guidelines contain instructions for the rating of certain offense behaviors. However, especially mitigating or aggravating circumstances in a particular case may justify a decision or a severity rating different from that listed.

(e) An evaluation sheet containing a "salient factor score" serves as an aid in determining the parole prognosis (potential risk of parole violation). However, where circumstances warrant, clinical evaluation of risk may override this predictive aid.

(f) Guidelines for reparole consideration are set forth at Sec. 2.21.

(g) The Commission shall review the guidelines, including the salient factor score, periodically and may revise or modify them at any time as deemed appropriate.

(h)(1) The Adult Guidelines shall apply to all offenders except as specified in paragraph (2).

(2) The Youth/NARA Guidelines will apply to any offender sentenced under the Youth Corrections Act, the Narcotic Rehabilitation Act, or the Juvenile Justice Act, and to any other offender who was less than 22 years of age at the time the current offense was committed, regardless of sentence type. If an offender was less than 18 years of age at the time of the current offense, such youthfulness shall, in itself, be considered as a mitigating factor.

(i) For criminal behavior committed while in confinement see §2.36 (Rescission Guidelines).

(j)(1) In probation revocation cases, the original federal offense behavior and any new criminal conduct on probation (federal or otherwise) is considered in assessing offense severity. Where there is new criminal conduct on probation, the original federal conviction is also counted in the salient factor score. Credit is given towards the guidelines for any time spent in confinement on any offense considered in assessing offense severity.

(2) Exception: Where probation has been revoked on a complex sentence [i.e., a committed sentence of more than six months followed by a probation term], the case shall be considered for guideline purposes under Sec. 2.21 as if parole rather than probation had been revoked.

GUIDELINES FOR DECISION-MAKING
[Guidelines for Decision-Making, Customary Total Time to be Served before Release (including jail time)]

OFFENSE CHARACTERISTICS: Severity of Offense Behavior	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score 1981) Very Good (10-8)	Good (7-6)	Fair (5-4)	Poor (3-0)
Category One *[formerly 'low severity']*	<=6 months	Adult Range 6-9 months	9-12 months	12-16 months
	(<=6) months	(Youth Range) (6-9) months	(9-12) months	(12-16) months
Category Two *[formerly 'low moderate severity']*	<=8 months	Adult Range 8-12 months	12-16 months	16-22 months
	(<=8) months	(Youth Range) (8-12) months	(12-16) months	(16-20) months
Category Three *[formerly 'moderate severity']*	10-14 months	Adult Range 14-18 months	18-24 months	24-32 months
	(8-12) months	(Youth Range) (12-16) months	(16-20) months	(20-26) months
Category Four *[formerly 'high severity']*	14-20 months	Adult Range 20-26 months	26-34 months	34-44 months
	(12-16) months	(Youth Range) (16-20) months	(20-26) months	(26-32) months
Category Five *[formerly 'very high severity']*	24-36 months	Adult Range 36-48 months	48-60 months	60-72 months
	(20-26) months	(Youth Range) (26-32) months	(32-40) months	(40-48) months

OFFENSE CHARACTERISTICS: Severity of Offense Behavior	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score 1981) Very Good (10-8)	Good (7-6)	Fair (5-4)	Poor (3-0)
Category Six *[formerly 'Greatest I severity']*	40-52 months	Adult Range 52-64 months	64-78 months	78-100 months
	(30-40) months	(Youth Range) (40-50) months	(50-60) months	(60-76) months
Category Seven *[formerly included in 'Greatest II severity']*	52-80 months	Adult Range 64-92 months	78-110 months	100-148 months
	(40-64) months	(Youth Range) (50-74) months	(60-86) months	(76-110) months
Category Eight* *[formerly included in 'Greatest II severity']*	100+ months	Adult Range 120+ months	150+ months	180+ months
	(80+) months	(Youth Range) (100+) months	(120+) months	(150+) months

*Note: For Category Eight, no upper limits are specified due to the extreme variability of the cases within this category. For decisions exceeding the lower limit of the applicable guideline category BY MORE THAN 48 MONTHS, the pertinent aggravating case factors considered are to be specified in the reasons given (e.g., that a homicide was premeditated or committed during the course of another felony; or that extreme cruelty or brutality was demonstrated).

U.S. PAROLE COMMISSION OFFENSE BEHAVIOR SEVERITY INDEX

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*Terms marked by an asterisk are defined in Chapter Thirteen.

CHAPTER ONE - OFFENSES OF GENERAL APPLICABILITY

101 Conspiracy
Grade conspiracy in the same category as the underlying offense.

102 Attempt
Grade attempt in the same category as the offense attempted.

103 Aiding and Abetting
Grade aiding and abetting in the same category as the underlying offense.

104 Accessory After the Fact*
Grade accessory after the fact as two categories below the underlying offense, but not less than Category One.

--- NOTE TO CHAPTER ONE
The reasons for a conspiracy or attempt not being completed may, where the circumstances warrant, be considered as a mitigating factor (e.g., where there is voluntary withdrawal by the offender prior to completion of the offense). *[[Notes and Procedures.* In grading unconsummated conspiracy offenses, care must be taken to distinguish the specific and imminent elements of the offense (which are to be considered) from those which are speculative and remote.]]

CHAPTER TWO - OFFENSES INVOLVING THE PERSON

SUBCHAPTER A - HOMICIDE OFFENSES

201 Murder
Murder*, or a forcible felony* resulting in the death of a person other than a participating offender, shall be graded as Category Eight.
[[Notes and Procedures. (1) Grade a forcible felony resulting in the death of a person other than a participating offender as Category Eight even if the death was not intentional. Example 201-1: During a robbery, an offender's weapon discharges accidentally, resulting in the death of

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*Terms marked by an asterisk are defined in Chapter Thirteen.

a bank teller. (2) Grade conduct as 'attempted murder' only where it is established from the circumstances that both (a) death was clearly the intended object; and (b) had death resulted, the offense would have been graded as Category Eight. Example 201-2: An offender places a bomb aboard an aircraft, but the bomb fails to explode. Example 201-3: During a robbery, an offender places a loaded revolver to the head of a victim and pulls the trigger, but the weapon misfires. Grade each of the above examples as 'attempted murder'. (3) An attempt to kill which, if successful, would have been classified as 'voluntary manslaughter' (Category Seven), is to be graded as 'assault with serious bodily injury clearly intended'.]]

202 Voluntary Manslaughter*
Category Seven.
[[Notes and Procedures. Example 202-1: An offender stabs and kills a person during a drunken quarrel in a tavern.]]

203 Involuntary Manslaughter*
Category Four.
[[Notes and Procedures. This offense is frequently referred to as 'negligent homicide'. Example 203-1: While driving under the influence of alcohol, an offender loses control of a vehicle and kills a pedestrian.]]

SUBCHAPTER B - ASSAULT OFFENSES

211 Assault During Commission of Another Offense
(a) If serious bodily injury* results or if 'serious bodily injury is clearly intended'*, grade as Category Seven; *[[Notes and Procedures.* Example 211(a)-1: An offender, while fleeing from a robbery, fires a weapon from a distance at a pursuing police officer. The firing of the weapon at the officer in this circumstance is sufficient to find that 'serious bodily injury' was clearly intended.]]

(b) If bodily injury* results, or a weapon is fired by any offender, grade as Category Six; *[[Notes and Procedures.* Example 211(b)-1: During a residential burglary, an offender is confronted by the victim; the offender strikes the victim with his fist and breaks the victim's jaw. Example 211(b)-2: During a bank robbery, an offender fires a weapon at the ceiling to intimidate the victims. No one is injured]].
(c) Otherwise, grade as Category Five.

212 Assault
(a) If serious bodily injury* results or if 'serious bodily injury is clearly intended'*, grade as Category Seven; *[[Notes and Procedures.* Example 212(a)-1: During an argument, an offender strikes the victim over the head with a bottle causing injuries sufficient to place the victim on the 'critical' list. Example 212(a)-2: An offender throws a vial of acid at the face of a victim.]]
(b) If bodily injury* results or a dangerous weapon is used by any offender, grade as Category Five;
(c) Otherwise, grade as Category Two.
(d) Exception: If the victim was known to be a 'protected person'* or law enforcement, judicial, or correctional official, grade conduct

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*Terms marked by an asterisk are defined in Chapter Thirteen.

under (a) as Category Seven, (b) as Category Six, and (c) as Category Three. *[[Notes and Procedures.* Grade an assault on a criminal justice official during an arrest under this section only if it involves force sufficient to create a likelihood of bodily injury (e.g., striking or kicking the officer).]]

SUBCHAPTER C - KIDNAPING AND RELATED OFFENSES

221 Kidnaping
(a) If the purpose of the kidnaping is for ransom or 'political' terrorism, grade as Category Eight.
(b) If a person is held hostage in a known place for purposes of extortion (e.g., forcing a bank manager to drive to a bank to retrieve money by holding a family member hostage at home), grade as Category Seven;
(c) If a victim is used as a shield or hostage in a confrontation with law enforcement authorities, grade as Category Seven;
(d) Otherwise, grade as Category Seven.
(e) Exception: If not for ransom or terrorism, and no bodily injury to victim, and limited duration (e.g., abducting the driver of a truck during a hijacking and releasing him unharmed an hour later), grade as Category Six.

222 Demand for Ransom
(a) If a kidnaping has, in fact, occurred, but it is established that the offender was not acting in concert with the kidnapper(s), grade as Category Seven;
(b) If no kidnapping has occurred, grade as 'extortion'.

SUBCHAPTER D - SEXUAL OFFENSES

231 Forcible Rape or Forcible Sodomy
(a) Category Seven.
(b) Exception: If a prior consensual sexual relationship is present between victim and offender, grade as Category Six.

232 Carnal Knowledge*
(a) Category Four.
(b) Exception: If the relationship is clearly consensual, and the victim is at least 14 years old, and the age difference between victim and offender is less than four years, grade as Category One.
[[Notes and Procedures. Where the victim is less than 12 years of age at the time of the offense, the aggravating factor of an extremely vulnerable victim is presumed to exist.]]

SUBCHAPTER E - OFFENSES INVOLVING AIRCRAFT

241 Aircraft Piracy
Category Eight.

242 Interference with a Flight Crew
(a) If the conduct or attempted conduct has potential for creating a significant safety risk to an aircraft or passengers, grade as Category Seven;
(b) Otherwise, grade as Category Two.

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*Terms marked by an asterisk are defined in Chapter Thirteen.

SUBCHAPTER F - COMMUNICATION OF THREATS

251 Communicating a Threat [to kill, assault, or kidnap]
(a) Category Four;
(b) Notes:
(1) Any overt act committed for the purposes of carrying out a threat in this subchapter may be considered as an aggravating factor.
(2) If for purposes of extortion or obstruction of justice, grade according to Chapter Three, Subchapter C, or Chapter Six, Subchapter B, as applicable.

CHAPTER THREE - OFFENSES INVOLVING PROPERTY

SUBCHAPTER A - ARSON AND OTHER PROPERTY DESTRUCTION OFFENSES

301 Property Destruction by Arson or Explosives
(a) If the conduct results in serious bodily injury* or if 'serious bodily injury is clearly intended'*, grade as Category Seven;
(b) If the conduct (i) involves any place where persons are present or likely to be present; or (ii) involves a residence, building, or other structure; or (iii) results in bodily injury*, grade as Category Six;
(c) Otherwise, grade as 'property destruction other than listed above' but not less than Category Five.
[[Notes and Procedures. (1) The term 'structure' is not subject to precise definition, but comparability in size to a building may be used for guidance. Thus, an automobile, a small boat, or a small detached shed would not be considered a structure. On the other hand, a ship or an oil storage complex would be considered a structure under this provision. (2) Reminder: Grade multiple separate arsons under the multiple separate offense procedure.]]

302 Wrecking a Train
Category Seven.

303 Property Destruction Other Than Listed Above
(a) If the conduct results in bodily injury* or serious bodily injury*, or if 'serious bodily injury is clearly intended'*, grade as if 'assault during commission of another offense';
(b) If damage of more than $500,000 is caused, grade as Category Six;
(c) If damage of more than $100,000 but not more than $500,000 is caused, grade as Category Five;
(d) If damage of at least $20,000 but not more than $100,000 is caused, grade as Category Four;
(e) If damage of at least $2000 but less than $20,000 is caused, grade as Category Three;
(f) If damage of less than $2000 is caused, grade as Category One.
(g) Exception: If a significant interruption of a government or public utility function is caused, grade as not less than Category Three.

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*Terms marked by an asterisk are defined in Chapter Thirteen.

SUBCHAPTER B - CRIMINAL ENTRY OFFENSES

311 Burglary or Unlawful Entry
(a) If the conduct involves an armory or similar facility (e.g., a facility where automatic weapons or war materials are stored) for the purpose of theft or destruction of weapons or war materials, grade as Category Six;
(b) If the conduct involves an inhabited dwelling (whether or not a victim is present), or any premises with a hostile confrontation with a victim, grade as Category Five;
(c) If the conduct involves use of explosives or safecracking, grade as Category Five;
(d) Otherwise, grade as 'theft' offense, but not less than Category Two.
(e) Exception: If the grade of the applicable 'theft' offense exceeds the grade under this subchapter, grade as a 'theft' offense.
[[Notes and Procedures. The term 'burglary/unlawful entry' refers to conduct involving a structure or other enclosed premises. Breaking and entering/unlawful entry of an automobile is graded as a theft offense (Offense 331).]]

SUBCHAPTER C - ROBBERY, EXTORTION, AND BLACKMAIL

321 Robbery
(a) Category Five.
(b) Exceptions:
(1) If the grade of the applicable 'theft' offense exceeds the grade for robbery, grade as a 'theft' offense.
(2) If any offender forces a victim to accompany any offender to a different location, or if a victim is forcibly detained for a significant period, grade as Category Six.
(3) Pickpocketing (stealth-no force or fear), see Subchapter D.
(c) Note: Grade purse snatching (fear or force) as robbery.

322 Extortion
(a) If by threat of physical injury to person or property, or extortionate extension of credit (loansharking)*, grade as Category Five;
(b) If by use of official governmental position, grade according to Chapter Six, Subchapter C.
(c) Exceptions:
(1) If the grade of the applicable 'theft' offense exceeds the grade under this subchapter, grade as a 'theft' offense;
(2) If a victim is physically held hostage for purposes of extortion, grade according to Chapter Two, Subchapter C.

323 Blackmail [threat to injure reputation or accuse of crime]
Grade as a 'theft' offense according to the value of the property demanded, but not less than Category Three. Actual damage to reputation may be considered as an aggravating factor.

SUBCHAPTER D - THEFT AND RELATED OFFENSES

331 Theft, Forgery, Fraud, Trafficking in Stolen Property*, Interstate Transportation of Stolen Property, Receiving Stolen Property, Embezzlement, and Related Offenses
(a) If the value of the property* is more than $500,000, grade as Category Six;

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*Terms marked by an asterisk are defined in Chapter Thirteen.

(b) If the value of the property* is more than $100,000 but not more than $500,000, grade as Category Five;
(c) If the value of the property* is at least $20,000 but not more than $100,000, grade as Category Four;
(d) If the value of the property* is at least $2000 but less than $20,000, grade as Category Three;
(e) If the value of the property* is less than $2000, grade as Category One.
(f) Exceptions:
  (1) Offenses involving stolen checks or mail, forgery, fraud, interstate transportation of stolen or forged securities, trafficking in stolen property*, or embezzlement shall be graded as not less than Category Two; *[[Notes and Procedures.* Fraudulent sale of drugs (e.g., sale of sugar as heroin) is graded as 'fraud'.]]
  (2) Theft of an automobile shall be graded as no less than Category Three. Note: where the vehicle was recovered within 72 hours with no significant damage and the circumstances indicate that the only purpose of the theft was temporary use (e.g., joyriding), such circumstances may be considered as a mitigating factor. *[[Notes and Procedures.* Theft of truck incidental to theft of cargo. Where the theft of a truck is clearly incidental to the theft of cargo (e.g., the truck is recovered abandoned within 72 hours without significant damage), the value of the truck is not counted.]]
(g) Note: In 'theft' offenses, the total amount of the theft committed or attempted by the offender, or others acting in concert with the offender, is to be used. *[[Notes and Procedures.* Example 331(g)-1: Seven persons in concert commit a theft of $70,000; each receives $10,000. Grade according to the total amount ($70,000). Example 331(g)-2: An offender fraudulently sells stock worth $20,000 for $90,000. Grade according to the loss ($70,000).]]

332 Pickpocketing [stealth-no force or fear]
Grade as a 'theft' offense, but not less than Category Three.

333 Fraudulent Loan Applications
Grade as a 'fraud' offense according to the amount of the loan. *[[Notes and Procedures.* Example 333-1: An offender falsifies collateral of $250,000 to obtain a $50,000 loan. Grade according to the value of the loan ($50,000).]]

334 Preparation or Possession of Fraudulent Documents
(a) If for purposes of committing another offense, grade according to the offense intended;
(b) Otherwise, grade as Category Two.

335 Criminal Copyright Offenses
(a) If very large scale (e.g., more than 100,000 sound recordings or more than 10,000 audio visual works), grade as Category Five;
(b) If large scale (e.g., 20,000-100,000 sound recordings or 2,000-10,000 audio visual works), grade as Category Four;
(c) If medium scale (e.g., 2,000-19,999 sound recordings or 200-1,999 audio visual works), grade as Category Three;
(d) If small scale (e.g., less than 2000 sound recordings or less than 200 audio visual works), grade as Category Two.

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*Terms marked by an asterisk are defined in Chapter Thirteen.

SUBCHAPTER E - COUNTERFEITING AND RELATED OFFENSES

341 Passing or Possession of Counterfeit Currency or Other Medium of Exchange*
(a) If the face value of the currency or other medium of exchange is more than $500,000, grade as Category Six;
(b) If the face value is more than $100,000 but not more than $500,000, grade as Category Five;
(c) If the face value is at least $20,000 but not more than $100,000, grade as Category Four;
(d) If the face value is at least $2000 but less than $20,000, grade as Category Three;
(e) If the face value is less than $2000, grade as Category Two.

342 Manufacture of Counterfeit Currency or Other Medium of Exchange* or Possession of Instruments for Manufacture
Grade manufacture or possession of instruments for manufacture (e.g., a printing press or plates) according to the quantity printed (see passing or possession)), but not less than Category Five. The term 'manufacture' refers to the capacity to print or generate multiple copies; it does not apply to pasting together parts of different notes.

SUBCHAPTER F - BANKRUPTCY OFFENSES

351 Fraud in Bankruptcy or Concealing Property
Grade as a 'fraud' offense.

SUBCHAPTER G - VIOLATION OF SECURITIES OR INVESTMENT REGULATIONS AND ANTITRUST OFFENSES

361 Violation of Securities or Investment Regulations (15 U.S.C. 77ff,80)
(a) If for purposes of fraud, grade according to the underlying offense;
(b) Otherwise, grade as Category Two.

362 Antitrust Offenses
(a) If estimated economic impact is more than one million dollars, grade as Category Four;
(b) If the estimated economic impact is more than $100,000 but not more than one million dollars, grade as Category Three;
(c) Otherwise, grade as Category Two.
[[Notes and Procedures: The term 'economic impact' refers to the estimated loss to any victims (e.g., loss to consumers from a price fixing offense).]]

CHAPTER FOUR - OFFENSES INVOLVING IMMIGRATION, NATURALIZATION, AND PASSPORTS

401 Unlawfully Entering the United States as an Alien
Category Two.

402 Smuggling of Alien(s) into the United States
Category Three.

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*Terms marked by an asterisk are defined in Chapter Thirteen.

403 Offenses Involving Passports
(a) If making an unlawful passport for distribution to another, possession with intent to distribute, or distribution of an unlawful passport, grade as Category Three;
(b) If fraudulently acquiring or improperly using a passport, grade as Category Two.

404 Offenses Involving Naturalization or Citizenship Papers
(a) If forging or falsifying naturalization or citizenship papers for distribution to another, possession with intent to distribute, or distribution, grade as Category Three;
(b) If acquiring fraudulent naturalization or citizenship papers for own use or improper use of such papers, grade as Category Two;
(c) If failure to surrender canceled naturalization or citizenship certificate(s), grade as Category One.

CHAPTER FIVE - OFFENSES INVOLVING REVENUE

SUBCHAPTER A - INTERNAL REVENUE OFFENSES

501 Tax Evasion [income tax or other taxes]
(a) If the amount of tax evaded or evasion attempted is more than $500,000, grade as Category Six;
(b) If the amount of tax evaded or evasion attempted is more than $100,000 but not more than $500,000, grade as Category Five;
(c) If the amount of tax evaded or evasion attempted is at least $20,000 but not more than $100,000, grade as Category Four;
(d) If the amount of tax evaded or evasion attempted is at least $2000 but less than $20,000, grade as Category Three;
(e) If the amount of tax evaded or evasion attempted is less than $2000, grade as Category One.
(f) Notes:
(1) Grade according to the amount of tax evaded or evasion attempted, not the gross amount of income. *[[Notes and Procedures.* Example 501(f)(1)-1: An offender fails to report income of $30,000, thus avoiding $10,000 in taxes; the severity rating is determined by the tax avoided (i.e., $10,000). This amount does not include interest or penalties.]]
(2) Tax evasion refers to failure to pay applicable taxes. Grade a false claim for a tax refund (where tax has not been withheld) as a 'fraud' offense.

502 Operation of an Unregistered Still
Grade as a 'tax evasion' offense.

SUBCHAPTER B - CUSTOMS OFFENSES

511 Smuggling Goods into the United States
(a) If the conduct is for the purpose of tax evasion, grade as a 'tax evasion' offense.
(b) If the article is prohibited from entry to the country absolutely (e.g., illicit drugs or weapons), use the grading applicable to possession with intent to distribute of such articles, or the grading applicable to tax evasion, whichever is higher, but not less than Category Two;

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*Terms marked by an asterisk are defined in Chapter Thirteen.

(c) If the conduct involves breaking seals, or altering or defacing customs marks, or concealing invoices, grade according to (a) or (b), as applicable, but not less than Category Two.

512 Smuggling Goods into Foreign Countries in Violation of Foreign Law (re: 18 U.S.C. 546)
Category Two.

SUBCHAPTER C - CONTRABAND CIGARETTES

521 Trafficking in Contraband Cigarettes (re: 18 U.S.C. 2342)
Grade as a tax evasion offense.

CHAPTER SIX - OFFENSES INVOLVING GOVERNMENTAL PROCESS

SUBCHAPTER A - IMPERSONATION OF OFFICIALS

601 Impersonation of Official
(a) If for purposes of commission of another offense, grade according to the offense attempted, but not less than Category Two;
(b) Otherwise, grade as Category Two.

SUBCHAPTER B - OBSTRUCTING JUSTICE

611 Perjury
(a) If the perjured testimony concerns another offense, grade as 'accessory after the fact', but not less than Category Three;
(b) Otherwise, grade as Category Three.
(c) Suborning perjury, grade as perjury.

612 Unlawful False Statements Not Under Oath
Category One.

613 Tampering With Evidence or Witness, Victim, Informant, or Juror
(a) If concerning a criminal offense, grade as 'accessory after the fact', but not less than Category Three;
(b) Otherwise, grade as Category Three.
(c) Exception: Intimidation by threat of physical harm, grade as not less than Category Five.

614 Misprision of a Felony*
Grade as if 'accessory after the fact' but not higher than Category Three.

615 Harboring a Fugitive
Grade as 'accessory after the fact' but not higher than Category Three. Use the category of the offense for which the fugitive is wanted as the underlying offense. *[[Notes and Procedures.* Harboring a fugitive is graded as 'accessory after the fact' to the offense for which the fugitive is wanted, but not higher than Category Three. In the case of a fugitive who is an escapee, the 'offense for which the fugitive is wanted' is considered to be the escape or the offense for which the fugitive was being held, whichever is higher.]]

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*Terms marked by an asterisk are defined in Chapter Thirteen.

616 Escape
If in connection with another offense for which a severity rating can be assessed, grade the underlying offense and apply the rescission guidelines to determine an additional penalty. Otherwise, grade as Category Three. *[[Notes and Procedures.* Grade as Category Three only if the underlying offense behavior cannot be established in accord with Commission regulations (e.g., where the information is insufficient to establish that the offender committed the underlying offense).]]

617 Failure to Appear*
(a) In Felony Proceedings. If in connection with an offense for which a severity rating can be assessed, add to the guidelines otherwise appropriate the following: (i) <=6 months if voluntary return within 6 days, or (ii) 6-12 months in any other case. Otherwise, grade as Category Three. *[[Notes and Procedures.* Grade as Category Three only if the underlying offense behavior cannot be established in accord with Commission regulations (e.g., where the information is insufficient to establish that the offender committed the underlying offense).]]
(b) In Misdemeanor Proceedings. Grade as Category One. *[[Notes and Procedures.* In the case of a failure to appear on a misdemeanor charge, grade the failure to appear and the underlying charge (if it can be established under Commission regulations) as multiple separate offenses. Example 617(b)-1: A parolee fails to appear on a misdemeanor charge involving theft of $400. Since the proceeding is a misdemeanor proceeding, the failure to appear is graded as Category One. If the parolee is also convicted of the theft, or if the Commission makes an independent finding of the theft, apply the multiple separate offense procedure.]]
(c) Note: For purposes of this subsection, a misdemeanor is defined as an offense for which the maximum penalty authorized by law (not necessarily the penalty actually imposed) does not exceed one year.

618 Contempt of Court
(a) Criminal Contempt. Where imposed in connection with a prisoner serving a sentence for another offense, add <=6 months to the guidelines otherwise appropriate. *[[Notes and Procedures.* 'Criminal Contempt' refers to conduct under 18 U.S.C. 402 (punishable by up to six months). If a criminal sentence of more than one year is imposed under 18 U.S.C. 401 for refusal to testify concerning a criminal offense, such conduct normally should be graded as if 'accessory after the fact'.]]
(b) Civil Contempt. See 28 C.F.R. 2.10.

SUBCHAPTER C - OFFICIAL CORRUPTION

621 Bribery or Extortion [use of official position - no physical threat]
(a) Grade as a 'theft offense' according to value of the bribe, demand, or the favor received (whichever is greater), but not less than Category Three. *[[Notes and Procedures.* Example 621-1: A federal employee accepts a $10,000 bribe to approve a fraudulent claim of $80,000. The applicable value to be used in grading this offense is $80,000.]]

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*Terms marked by an asterisk are defined in Chapter Thirteen.

(b) If the above conduct involves a pattern of corruption (e.g., multiple instances over a period exceeding six months), grade as not less than Category Four.
(c) If the purpose of the conduct is the obstruction of justice, grade as if 'perjury'.
(d) Notes:
(1) The grading in this subchapter applies to each party to a bribe.
(2) The extent to which the criminal conduct involves a breach of public trust, causing injury beyond that describable by monetary gain, may be considered as an aggravating factor.

622 Other Unlawful Use of Governmental Position
Category Two.

CHAPTER SEVEN - OFFENSES INVOLVING INDIVIDUAL RIGHTS

SUBCHAPTER A - OFFENSES INVOLVING CIVIL RIGHTS

701 Conspiracy Against Rights of Citizens (re: 18 U.S.C. 241)
(a) If death results, grade as Category Eight;
(b) Otherwise, grade as if 'assault'.

702 Deprivation of Rights Under Color of Law (re: 18 U.S.C. 242)
(a) If death results, grade as Category Eight;
(b) Otherwise, grade as if 'assault'.

703 Federally Protected Activity (re: 18 U.S.C. 245)
(a) If death results, grade as Category Eight;
(b) Otherwise, grade as if 'assault'.

704 Intimidation of Persons in Real Estate Transactions Based on Racial Discrimination (re: 42 U.S.C. 3631)
(a) If death results, grade as Category Eight;
(b) Otherwise, grade as if 'assault'.

705 Transportation of Strikebreakers (re: 18 U.S.C. 1231)
Category Two.

SUBCHAPTER B - OFFENSES INVOLVING PRIVACY

711 Interception and Disclosure of Wire or Oral Communications (re: 18 U.S.C. 2511)
Category Two.

712 Manufacture, Distribution, Possession, and Advertising of Wire or Oral Communication Intercepting Devices (re: 18 U.S.C. 2512)
(a) Category Three.
(b) Exception: If simple possession, grade as Category Two.

713 Unauthorized Opening of Mail
Category Two.

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*Terms marked by an asterisk are defined in Chapter Thirteen.

CHAPTER EIGHT - OFFENSES INVOLVING EXPLOSIVES AND WEAPONS

SUBCHAPTER A - EXPLOSIVES OFFENSES AND OTHER DANGEROUS ARTICLES

801 Unlawful Possession of Explosives; or Use of Explosives During a Felony
Grade according to offense intended, but not less than Category Five.

802 Mailing Explosives or Other Injurious Articles with Intent to Commit a Crime
Grade according to offense intended, but not less than Category Five.

803 Improper Transportation or Marking (re: 18 U.S.C. 832, 833, 834)
(a) If resulting in death or serious bodily injury, grade as Category Four;
(b) Otherwise, grade as Category Three.

SUBCHAPTER B - FIREARMS

811 Possession by Prohibited Person (e.g., ex-felon)
Category Three.
[[Notes and Procedures. Aliens illegally in the United States are also prohibited by federal law from possession of firearms.]]

812 Unlawful Possession or Manufacture of Sawed-off Shotgun, Machine Gun, Silencer, or Assassination kit*
(a) If silencer or assassination kit*, grade as Category Six;
(b) If sawed-off shotgun or machine gun, grade as Category Five.
[[Notes and Procedures. (1) Consider unlawful possession of a weapon combined with other offenses under the multiple separate offense procedure of Chapter Thirteen. (2) Possession/manufacture of a sawed-off rifle is graded as Category Three.]]

813 Unlawful Distribution of Weapons or Possession with Intent to Distribute
(a) If silencer(s) or assassination kit(s)*, grade as Category Six;
(b) If sawed-off shotgun(s) or machine gun(s), grade as Category Five;
(c) If multiple weapons (rifles, shotguns, or handguns), grade as Category Four;
(d) If single weapon (rifle, shotgun, handgun), grade as Category Three.

CHAPTER NINE - OFFENSES INVOLVING ILLICIT DRUGS

SUBCHAPTER A - HEROIN AND OPIATE* OFFENSES

901 Distribution or Possession with Intent to Distribute
(a) If extremely large scale (e.g., involving 3 kilograms or more of 100% pure heroin, or equivalent amount), grade as Category Eight [except as noted in (c) below];
(b) If very large scale (e.g., involving 1 kilogram but less than 3 kilograms of 100% pure heroin, or equivalent amount), grade as Category Seven [except as noted in (c) below];
(c) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) or (b) as Category Six;
(d) If large scale (e.g., involving 50-999 grams of 100% pure heroin, or equivalent amount), grade as Category Six [except as noted in (e) below];

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*Terms marked by an asterisk are defined in Chapter Thirteen.

(e) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (d) as Category Five.
(f) If medium scale (e.g., involving 5-49 grams of 100% pure heroin, or equivalent amount), grade as Category Five;
(g) If small scale (e.g., involving less than 5 grams of 100% pure heroin, or equivalent amount), grade as Category Four [except as noted in (h) below];
(h) If evidence of opiate dependence and very small scale (e.g., involving less than 1.0 grams of 100% pure heroin, or equivalent amount), grade as Category Three.

902 Simple Possession
Category One.
[[Notes and Procedures. (1) The following list contains drugs classified as opiates/synthetic opiate substances (21 C.F.R. 1308):

Acetorphine
Acetyldihydrocodeine
Acetylmethadol
Allylprodine
Alphacetylmethadol
Alphameprodine
Alphamethadol
Alpha-methylfentanyl Propionanilide
Alphaprodine
Anileridine
Benzethidine
Benzylmorphine
Betacetylmethadol
Betameprodine
Betamethadol
Betaprodine
Bezitramide
Clonitazene
Codeine
Codeine Methylbromide
Codeine-N-Oxide
Cyprenorphine
Desomorphine
Dextromoramide
Dextropropoxyphene (Bulk non-dosage form)
Diampromide
Diethylthiambutene
Difenoxin
Dihydrocodeine
Dihydromorphine
Dimenoxadol
Dimepheptanol
Dimethylthiambutene
Dioxaphetyl butyrate
Diphenoxylate
Dipipanone
Drotebanol
Ethylmethylthiambutene
Ethylmorphine
Etonitazene
Etorphine
Etorphine hydrochloride
Etoxeridine
Fentanyl
Furethidine
Heroin
Hydrocodone
Hydromorphinol
Hydromorphone
Hydroxypethidine
Isomethadone
Ketobemidone
Levomethorpan
Levomoramide
Levophenacylmorphan
Levorphanol
Metazocine
Methadone
Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane
Methyldesorphine
Methyldihydromorphine
Metopon
Morpheridine
Morphine
Morphine Methylbromide
Morphine Methylsulfonate
Morphine-N-Oxide
Moramide
Moramide-Intermediate, 2-methyl-3 morpholino-1, 1-diphenylpropane-carboxylic acid
Myrophine
Nicocodeine
Nicomorphine
Noracymethadol
Norlevorphanol
Normethadone
Normorphine
Norpipanone
Opium
Raw Opium
Opium Extracts
Opium Fluid Extracts
Powdered Opium
Granulated Opium
Tincture of Opium
Oxycodone
Oxymorphone
Pethidine (meperidine)
Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine
Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate
Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid
Phenadoxone
Phenampromide
Phenazocine
Phenomorphan
Phenoperidine
Pholcodine
Piminodine
Piritramide
Proheptazine
Properidine
Propiram
Racemethorphan
Racemoramide
Racemorphan
Sufentanil
Thebacon
Thebaine
Tilidine
Trimeperidine

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*Terms marked by an asterisk are defined in Chapter Thirteen.

(2) Certain drugs such as Talwin have opiate characteristics but are not counted as opiates/synthetic opiate substances in determining the offense severity.

(3) In accordance with 21 C.F.R. 1308, dextropropoxyphene will be counted as an opiate in determining the offense severity only when it is found in bulk form (not when found in capsule form prepared under the brand name of Darvon).

(4) Common Brand Names of Opiates (this list is not inclusive):

Amidone (Methadone)	Methadose (Methadone)
Demerol (Pethidine)	Nisentil (Alphaprodine)
Dilaudid (Hydromorphone)	Nucodan (Oxycodone)
Dolophine (Methadone)	Numorphan (Oxymorphone)
Dover's Powder (Opium)	Palfium (Dextromoramide)
Dromoran (Racemorphan)	Paracodin (Dihydrocodeine)
Ethnine (Pholcodine)	Paragoric (Opium)
Heptalgin (Phenadoxone)	Percodan (Oxycodone)
Hycodan (Hydrocodone)	Pethadol (Pethidine)
Leritine (Anileridine)	Pholdine (Pholocodine)
Levo-Dromoran (Levorphanol)	Pipadone (Dipipanone)
Levorphan (Levorphanol)	Prinadol (Phenazocine)

(5) Conversion of Common Opiates to Heroin Equivalent. Use the following chart to convert common opiates to their heroin equivalent (e.g., 67.4 grams of pure methadone x .3 = 20.22 grams of pure heroin equivalent; 42.6 grams of pure hydromorphone x 2 = 85.2 grams of pure heroin equivalent):

1 gm. alphaprodine = .09 gm. heroin
1 gm. anileridine = .1 gm. heroin
1 gm. codeine = .02 gm. heroin
1 gm. dextromoramide = .4 gm. heroin
1 gm. dextropropoxyphene = .01 gm heroin
1 gm. dihydrocodeine = .05 gm. heroin
1 gm. dipipanone = .12 gm. heroin
1 gm. hydromorphone = 2 gms. heroin
1 gm. levorphanol = 1 gm. heroin
1 gm. methadone = .3 gm. heroin
1 gm. metopon = .86 gm. heroin
1 gm. morphine = .3 gm. heroin
1 gm. opium = .03 gm. heroin
1 gm. oxycodone = .2 gm. heroin
1 gm. oxymorphone = 2 gms. heroin
1 gm. paragoric = .003 gm. heroin
1 gm. pethidine (meperidine) = .03 gm. heroin
1 gm. phenadoxone = .15 gm. heroin
1 gm. racemorphan = .6 gm. heroin]].

SUBCHAPTER B - MARIHUANA AND HASHISH OFFENSES

911 Distribution or Possession with Intent to Distribute
(a) If extremely large scale (e.g., involving 20,000 pounds or more of marihuana/6,000 pounds or more of hashish/600 pounds or more of hash oil), grade as Category Six [except as noted in (b) below];
(b) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) as Category Five;

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*Terms marked by an asterisk are defined in Chapter Thirteen.

(c) If very large scale (e.g., involving 2,000-19,999 pounds of marihuana/600-5,999 pounds of hashish/60-599 pounds of hash oil), grade as Category Five;
(d) If large scale (e.g., involving 200-1,999 pounds of marihuana/60-599 pounds of hashish/6-59.9 pounds of hash oil), grade as Category Four;
(e) If medium scale (e.g., involving 50-199 pounds of marihuana/15-59.9 pounds of hashish/1.5-5.9 pounds of hash oil), grade as Category Three;
(f) If small scale (e.g., involving 10-49 pounds of marihuana/3-14.9 pounds of hashish/.3-1.4 pounds of hash oil), grade as Category Two;
(g) If very small scale (e.g., involving less than 10 pounds of marihuana/less than 3 pounds of hashish/less than .3 pounds of hash oil), grade as Category One.

912 Simple Possession
Category One.
[[Notes and Procedures. (1) 1 liter of hash(ish) oil in liquid form = 2.2 lbs. of hash oil in solid form. (2) Marihuana offenses are normally graded by bulk quantity. In determining quantity for guideline purposes, all parts of the marihuana plant as seized and weighed in bulk (e.g., from a shipment of marihuana being imported), or as negotiated for sale if no seizure is made, are counted. Occasionally, it may be necessary to estimate the scale of the offense from acreage under cultivation or from the number of plants seized. In the absence of more specific information, use the following minimum estimates provided by the DEA. Grade 1 plant as equivalent to attempted production of 1/4 lb. of useable marihuana. Note: In the United States, marihuana is frequently grown interspersed with other crops to disguise the marihuana. In such cases, estimate 500 marihuana plants (125 lbs.) per acre. Where marihuana is the only crop under cultivation (e.g., in certain foreign locations), estimate 4,000 plants (1000 lbs.) per acre.]]

SUBCHAPTER C - COCAINE OFFENSES

921 Distribution or Possession with Intent to Distribute
(a) If extremely large scale (e.g., involving 15 kilograms or more of 100% purity, or equivalent amount), grade as Category Eight [except as noted in (c) below];
(b) If very large scale (e.g., involving 5 kilograms but less than 15 kilograms of 100% purity, or equivalent amount), grade as Category Seven [except as noted in (c) below];
(c) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) or (b) as Category Six;
(d) If large scale (e.g., involving more than 1 kilogram but less than 5 kilograms of 100% purity, or equivalent amount), grade as Category six [except as noted in (e) below];
(e) Where the Commission finds that the offender had only a peripheral role, grade conduct under (d) as Category Five;
(f) If medium scale (e.g., involving 100 grams-1 kilogram of 100% purity, or equivalent amount), grade as Category Five;
(g) If small scale (e.g., involving 5-99 grams of 100% purity, or equivalent amount), grade as Category Four;
(h) If very small scale (e.g., involving 1.0-4.9 grams of 100% purity, or equivalent amount), grade as Category Three.
(i) If extremely small scale (e.g., involving less than 1 gram of 100% purity, or equivalent amount), grade as Category Two.

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*Terms marked by an asterisk are defined in Chapter Thirteen.

922 Simple Possession
Category One.

SUBCHAPTER D - OTHER ILLICIT DRUG OFFENSES*

931 Distribution or Possession with Intent to Distribute
(a) If very large scale (e.g., involving more than 200,000 doses), grade as Category Six [except as noted in (b) below];
(b) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) as Category Five;
(c) If large scale (e.g., involving 20,000-200,000 doses), grade as Category Five;
(d) If medium scale (e.g., involving 1,000-19,999 doses), grade as Category Four;
(e) If small scale (e.g., involving 200-999 doses), grade as Category Three;
(f) If very small scale (e.g., involving less than 200 doses), grade as Category Two.

932 Simple Possession
Category One.
[[Notes and Procedures. Dosage Units. A dose of a drug is equivalent to 1 capsule, tablet, cigarette, gelatin square or other common unit of sale. If the drug is in bulk form, the lab report from DEA should have converted the drug to doses. This information should be in the Presentence Report. If this information is not available, DEA has supplied the following dosage equivalents for certain common drugs:

HALLUCINOGENS

Anhalamine	300 mg.
Anhalonide	300 mg.
Anhalonine	300 mg.
Bufotenine	1 mg.
Diethyltryptamine	60 mg.
Dimethyltryptamine	50 mg.
Lophophorine	300 mg.
LSD (Lysergic acid diethylamide)	.1 mg.
LSD tartrate	.05 mg.
MDA	100 mg.
Mescaline	500 mg.
PCP	5 mg.
Pellotine	300 mg.
Peyote	12 mg.
Psilocin	10 mg.
Psilocybin	10 mg.
STP (DOM) Dimethoxyamphetamine	3 mg.

DEPRESSANTS

Barbituates	100 mg.
Brallobarbital	30 mg.
Eldoral	100 mg.
Eunarcon	100 mg.
Hexethel	100 mg.
Methaqualone	300 mg.
Thiobarbital	50 mg.
Thiohexethal	60 mg.

***Terms marked by an asterisk are defined in Chapter Thirteen.**

STIMULANTS

Amphetamines	10 mg.
Ethylamphetamine HCL	12 mg.
Ethylamphetamine SO4	12 mg.
Methamphetamine combinations	5 mg.
Methamphetamines	5 mg.
Preludin	25 mg.

The dosage equivalents supplied by the DEA represent the amount of the pure drug that is contained in an average dose. For example, 10 milligrams (mg.) of amphetamine per dose means 10 milligrams of pure amphetamine per dose. Thus, if an offender was in possession of 50 grams of a powder which tested to be 20% pure amphetamine, the appropriate calculations would be as follows: 50 grams x 1000 = 50,000 milligrams [conversion from grams to milligrams]; 50,000 milligrams x .20 purity = 10,000 milligrams of pure amphetamine [conversion to pure amphetamine]; 10,000 milligrams / 10 milligrams per dose = 1,000 doses [division by the number of milligrams per dose]. In this example, the bulk quantity would convert to 1,000 doses of amphetamine.]]

--- NOTES TO CHAPTER NINE
(1) **Grade manufacture of synthetic illicit drugs as listed above, but not less than Category Five.** *[[Notes and Procedures.* (a) Grade manufacture of synthetic illicit drugs according to the amount actually manufactured, but not less than Category Five. Note: because of the variety of chemical processes that may be used and the differential in skill of the individuals involved, estimates as to how much a laboratory could produce in the future from materials at hand may vary widely and, thus, are not used in assessing the severity rating. (b) Grade unlawful possession or distribution of precursors of illicit drugs as Category Five (i.e., aiding and abetting the manufacture of synthetic illicit drugs).]]
(2) **'Equivalent amounts' for the cocaine and opiate categories may be computed as follows: 1 gram of 100% pure is equivalent to 2 grams of 50% pure and 10 grams of 10% pure, etc.**
[[Notes and Procedures. Drug Offense Severity Calculations.
(a) Opiate/cocaine offenses are normally graded according to the quantity/purity of the drug involved. Marihuana/hashish offenses are normally graded by bulk quantity. Other illicit drug offenses are normally graded by the number of doses.

(b) If (and only if) the above information is not available, it may be possible to determine the appropriate severity rating from other information in the file (e.g., the probation report may report the street value of the drugs involved, see Street Value Chart).

(c) The severity of drug offenses is to be classified by *scale*. In some cases, the drugs actually confiscated may not accurately reflect the scale of the offense. For example, convincing evidence of negotiations and transactions of large quantities of drugs over a long period of time may be a more appropriate basis for rating the scale of the drug offense than weight/purity if the evidence shows that only one of many shipments was actually confiscated by authorities. Any evidence used to assess the offense severity must meet the preponderance standard, and the facts relied upon must be noted specifically on the Notice of Action.

***Terms marked by an asterisk are defined in Chapter Thirteen.**

(d) *Measurement Conversion Chart*

1 ounce = 28.35 grams	1 gallon = 3.8 liters
1 pound = 453.6 grams	1 quart = .95 liters
1 pound = .45 kilograms	1 kilogram = 1,000 grams
1 kilogram = 2.2 pounds	1 gram = 1,000 milligrams

(e) *How to Convert to 'equivalent amounts'*. The following formula is to be used in calculating 100% pure equivalency for cocaine and heroin offenses:

Quantity Involved [expressed in grams] X Actual Purity [expressed as a decimal]

Example (1) If the offense involved 3 ounces of 32.6% pure cocaine, it is first necessary to convert ounces to grams, and then to multiply by the purity expressed as a decimal (i.e., .326). The necessary calculations are:

3 (ounces) X 28.35 (# of grams in an ounce) X .326 (purity) = 27.73 grams (100% pure)

Example (2) If the offense involved one-half ounce of 7% pure heroin the necessary calculations are:

.5 (ounces) X 28.35 (# of grams in an ounce) X .07 (purity) = .99 grams (100% pure)

Example (3) If the offense involved 68 grams of 23% pure heroin, the only conversion necessary is to pure heroin equivalency, i.e.:
68 (grams X .23) (purity) = 15.64 grams (100% purity)

(f) Occasionally, reference will be made in the PSI to the DEA lab report (DEA Form 7). This form is somewhat complicated in that 'gross weight' refers to the weight of drugs, plus adulterants, plus the container. 'Net weight' refers to the drugs plus the adulterants. 'Total net', which is equal to 'net weight x purity', refers to the weight of the pure drug. It is the 'total net' figure, the weight of the pure drug, that is used to assess offense severity.

(g) *Street Value Chart*. Where more specific information (e.g., weight/purity) is not available, the following listing may be used to convert a 'street value' estimate (an estimate of the value of the drugs if sold retail) to the 'scale of the offense'.

Cocaine
extremely large scale ($12 million or more)
very large scale ($4 million but less than $12 million)
large scale (more than $800,000 but less than $4 million)
medium scale ($80,000-$800,000)
small scale ($4,000-$79,999)
very small scale ($800-$3,999)
extremely small scale (less than $800)

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*Terms marked by an asterisk are defined in Chapter Thirteen.

Heroin
extremely large scale ($6 million or more)
very large scale ($2 million but less than $6 million)
large scale ($100,000 but less than $2 million)
medium scale ($10,000 but less than $100,000)
small scale (less than $10,000)
very small scale (less than $2,000 and evidence of opiate addiction)

Other Illicit Drugs
very large scale (more than $200,000)
large scale ($20,000-$200,000)
medium scale ($1,000-$19,999)
small scale ($200-$999)
very small scale (less than $200)

(h) *Determining Offense Severity Relative to Simple Possession of Drugs*. In certain cases, the Commission must determine whether the offense behavior should be considered as "simple possession" of a controlled substance or "possession with intent to distribute". In making this determination, the Commission shall examine a variety of factors (if available). These factors are shown below. The presence of any of the following factors may be considered as a presumption of possession with intent to distribute. However, this presumption may be rebutted if there are circumstances in the individual case which indicate that there was no intention to distribute.

(1) *Weight/amount/purity of the substance*: Possession of the following amounts of controlled substances are presumed to indicate possession with intent to distribute:

Heroin	1 gm. at 100% purity, or equivalent amount; or more
Cocaine	5 gms. at 100% purity, or equivalent amount; or more
Marijuana	10 lbs. or more
Hashish	3 lbs. or more
Hash Oil	.3 lbs. or more
Drugs (other than above)	1,000 doses or more

(2) *Other Factors*: The presence of any of the following factors may be considered indicative of intent to distribute: the substance has been separated into multiple, individual packets; the offender is a non-user of the substance in question; the presence of instruments used in preparing a substance for sale (e.g., a scale) or a large amount of cash at the scene of the arrest; or the offender was seized with the substance while traveling or was arrested with the substance soon after traveling.]]

CHAPTER TEN - OFFENSES INVOLVING NATIONAL DEFENSE

SUBCHAPTER A - TREASON AND RELATED OFFENSES

1001 Treason
Category Eight.

1002 Rebellion or Insurrection
Category Seven.

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*Terms marked by an asterisk are defined in Chapter Thirteen.

SUBCHAPTER B - SABOTAGE AND RELATED OFFENSES.

1011 Sabotage
Category Eight.

1012 Enticing Desertion
(a) In time of war or during a national defense emergency, grade as Category Four;
(b) Otherwise, grade as Category Three.

1013 Harboring or Aiding a Deserter
Category One.

SUBCHAPTER C - ESPIONAGE AND RELATED OFFENSES

1021 Espionage
Category Eight.

SUBCHAPTER D - SELECTIVE SERVICE OFFENSES

1031 Failure to Register, Report for Examination or Induction
(a) If committed during time of war or during a national defense emergency, grade as Category Four;
(b) If committed when draftees are being inducted into the armed services, grade as Category Three;
(c) Otherwise, grade as Category One.

SUBCHAPTER E - OTHER NATIONAL DEFENSE OFFENSES

1041 Offenses Involving Nuclear Energy
Unauthorized production, possession, or transfer of nuclear weapons or special nuclear material or receipt of or tampering with restricted data on nuclear weapons or special nuclear material, grade as Category Eight.

1042 Violations of Export Administration Act (Re: 50 U.S.C. 2410)
Grade conduct involving "national security controls" or "nuclear nonproliferation controls" as Category Six. *[[Notes and Procedures.* Conduct not covered by the above described parameters is to be graded under Chapter Twelve.]]

1043 Violations of the Arms Control Act (Re: 22 U.S.C. 2778)
(a) Grade conduct involving export of sophisticated weaponry (e.g., aircraft, helicopters, armed vehicles, or "high technology" items) as Category Six.
(b) Grade conduct involving export of other weapons (e.g., rifles, handguns, machine guns, or hand grenades) as if a weapons/explosive distribution offense under Offenses Involving Explosives and Weapons (Chapter Eight).

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*Terms marked by an asterisk are defined in Chapter Thirteen.

CHAPTER ELEVEN - OFFENSES INVOLVING ORGANIZED CRIME ACTIVITY, GAMBLING, OBSCENITY, SEXUAL EXPLOITATION OF CHILDREN, PROSTITUTION, AND NONGOVERNMENTAL BRIBERY

SUBCHAPTER A - ORGANIZED CRIME OFFENSES

1101 Racketeer Influence and Corrupt Organizations (re: 18 U.S.C. 1961-63)
Grade according to the underlying offense attempted, but not less than Category Five.

1102 Interstate or Foreign Travel or Transportation in Aid of Racketeering Enterprise (re: 18 U.S.C. 1952)
Grade according to the underlying offense attempted, but not less than Category Three.

SUBCHAPTER B - GAMBLING OFFENSES

1111 Gambling Law Violations - Operating or Employment in an Unlawful Business (re: 18 U.S.C. 1955)
(a) If large scale operation [e.g., Sports books (estimated daily gross more than $15,000); Horse books (estimated daily gross more than $4,000); Numbers bankers (estimated daily gross more than $2,000); Dice or card games (estimated daily 'house cut' more than $1,000)]; grade as Category Four;
(b) If medium scale operation [e.g., Sports books (estimated daily gross $5,000 - $15,000); Horse books (estimated daily gross $1,500 - $4,000); Numbers bankers (estimated daily gross $750 - $2,000); Dice or card games (estimated daily 'house cut' $400 - $1,000)]; grade as Category Three;
(c) If small scale operation [e.g., Sports books (estimated daily gross less than $5,000); Horse books (estimated daily gross less than $1,500); Numbers bankers (estimated daily gross less than $750); Dice or card games (estimated daily 'house cut' less than $400)]; grade as Category Two;
(d) Exception: Where it is established that the offender had no proprietary interest or managerial role, grade as Category One.

1112 Interstate Transportation of Wagering Paraphenalia (re: 18 U.S.C. 1953)
Category Three.

1113 Wire Transmission of Wagering Information (re: 18 U.S.C. 1084)
Grade as if 'operating a gambling business'.

1114 Operating or Owning a Gambling Ship (re: 18 U.S.C. 1082)
Category Three.

1115 Importing or Transporting Lottery Tickets; Mailing Lottery Tickets or Related Matter (re: 18 U.S.C. 1301, 1302)
(a) Grade as if 'operating a gambling business';
(b) Exception: If non-commercial, grade as Category One.

SUBCHAPTER C - OBSCENITY

1121 Mailing, Importing, or Transporting Obscene Matter
(a) If for commercial purposes, grade as Category Three;
(b) Otherwise, Category One.

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*Terms marked by an asterisk are defined in Chapter Thirteen.

1122 Broadcasting Obscene Language
Category One.

SUBCHAPTER D - SEXUAL EXPLOITATION OF CHILDREN

1131 Sexual Exploitation of Children* (re: 18 U.S.C. 2251, 2252)
(a) Category Six;
(b) Exception: Where the Commission finds the offender had only a peripheral role (e.g., a retailer receiving such material for resale but with no involvement in the production or wholesale distribution of such material), grade as Category Five.

SUBCHAPTER E - PROSTITUTION AND WHITE SLAVE TRAFFIC

1141 Interstate Transportation for Commercial Purposes
(a) If physical coercion, or involving person(s) of age less than 16, grade as Category Six;
(b) If involving person(s) of ages 16-17, grade as Category Five;
(c) Otherwise, grade as Category Four.
[[Notes and Procedures. The term 'for commercial purposes' refers to procuring a sexual partner for another for profit.]]

1142 Prostitution
Category One.

SUBCHAPTER F - NON-GOVERNMENTAL BRIBERY

1151 Bribery not Involving Federal, State, or Local Government Officials
(a) If the value of the bribe or of the favor received (whichever is greater) is $20,000 or more, grade as Category Three; otherwise, grade as Category Two.
(b) If the conduct involves bribery in a sporting contest, grade as Category Three.
[[Notes and Procedures. If the offender's conduct involves extortion without threat of physical harm to person or property, and does not involve federal, state, or local officials, grade as a 'theft' offense according to the value of the demand if such grading is higher than specified under Offense 1151.]]

SUBCHAPTER G - CURRENCY OFFENSES

1161 Currency Offenses (e.g., laundering money)
(a) If very large scale (e.g., the estimated gross amount of currency involved is more than $500,000), grade as Category Six;
(b) If large scale (e.g., the estimated gross amount of currency involved is more than $100,000 but not more than $500,000), grade as Category Five;
(c) If medium scale (e.g., the estimated gross amount of currency involved is at least $20,000 but not more than $100,000), grade as Category Four;
(d) If small scale (e.g., the estimated gross amount of currency involved is less than $20,000), grade as Category Three.

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*Terms marked by an asterisk are defined in Chapter Thirteen.

CHAPTER TWELVE - MISCELLANEOUS OFFENSES

If an offense behavior is not listed, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed in Chapters One - Eleven. If, and only if, an offense behavior cannot be graded by reference to Chapters One - Eleven, the following formula may be used as a guide.

Maximum Sentence Authorized by Statute [Not necessarily the sentence imposed]	Grading (Category)
< 2 yrs	1
2 - 3 yrs	2
4 - 5 yrs	3
6 - 10 yrs.	4
11 - 20 yrs.	5
21 - 29 yrs.	6
30 yrs - life	7

CHAPTER THIRTEEN - GENERAL NOTES AND DEFINITIONS

SUBCHAPTER A - GENERAL NOTES

1. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.

2. If an offense behavior involved multiple separate offenses, the severity level may be increased. Exception: in cases graded as Category Seven, multiple separate offenses are to be taken into account by consideration of a decision above the guidelines rather than by increasing the severity level. *[[Notes and Procedures.* (a) In certain instances, the guidelines specify how multiple offenses are to be rated. In offenses rated by monetary loss (e.g., theft and related offenses, counterfeiting, tax evasion) or drug offenses, the total amount of the property or drugs involved is used as the basis for the offense severity rating (e.g., a number of check thefts should ordinarily be treated according to the total loss, rather than as multiple separate offenses). In instances not specifically covered in the guidelines, the decision-makers must exercise discretion as to whether or not the multiple offense behavior is sufficiently aggravating to justify increasing the severity rating. The following chart is intended to provide guidance in assessing whether the severity of multiple offenses is sufficient to raise the offense severity level; it is not intended as a mechanical rule.

MULTIPLE SEPARATE OFFENSES

Severity	*Points*	*Severity*	*Points*
Category One	= 1/9	Category Five	= 9
Category Two	= 1/3	Category Six	= 27
Category Three	= 1	Category Seven	= 45
Category Four	= 3		

Examples: 3 Category Five Offenses [3x(9)=27] = Category Six
5 Category Five Offenses [5x(9)=45] = Category Seven
2 Category Six Offenses [2x(27)=54] = Category Seven

(b) *The term 'multiple separate offenses' generally refers to offenses committed at different times.* However, there are certain circumstances in which offenses committed at the same time are properly considered multiple separate offenses for the purpose of establishing the offense severity rating. These include (a) unrelated offenses, and (b) offenses involving the unlawful possession of weapons during commission of another offense.

Examples:
(1) An offender commits a robbery (Category Five) in which he steals $80,000 (Category Four). Because the offenses occurred at the same time and are related, grade in the highest applicable category (Category Five) and not as multiple separate offenses.
(2) An offender commits a robbery (Category Five) in which shots are fired to scare the bank employees (Category Six). Because the offenses occurred at the same time and are related, grade in the highest applicable category (Category Six) and not as multiple separate offenses.
(3) An offender when arrested for smuggling aliens is found also in possession of $8,000 worth of stolen goods. Even though the offenses were discovered at the same time, they are unrelated; therefore consideration under the multiple separate offenses procedure is appropriate.
(4) An offender commits two robberies with a sawed-off shotgun. Grade under the multiple offense procedure as 3 Category Five offenses (3 x 9 = 27 points) = Category Six.
(5) An offender robs four banks and each time he uses a sawed-off shotgun. The offense severity is based upon four robberies (4 x 9 points = 36 points) and one offense of possessing a sawed-off shotgun (9 points) for a total offense rating of Category Seven (45 points). Note that possession of a sawed-off shotgun is treated as one offense for purposes of calculating the offense severity even though the weapon was used to rob four separate banks.

(c) For offenses *graded according to monetary value (e.g., theft) and drug offenses*, the severity rating is based on the amount or quantity involved and not on the number of separate instances.

Examples:
(6) An offender forges ten $1,000 checks for a total of $10,000, and is then arrested. Grade as a $10,000 forgery, not ten separate offenses.
(7) An offender steals for resale four automobiles worth a total of $18,000, and is later arrested. Grade as an $18,000 theft, not four separate offenses.
(8) An offender breaks into a store, steals $18,000 worth of merchandise and does $4,000 damage to the store. Grade as a Category Four offense according to the combined property loss ($18,000 + $4,000 = $22,000).
(9) An offender sells 10 grams of pure heroin on four separate occasions, and is later arrested. Grade as a sale of 40 grams of pure heroin and not four separate offenses.
(10) The offender sells 14,000 doses of PCP and 1,000 lbs. of marijuana. He is then arrested. The amount of the drugs is added together based upon a proportion of the amount of drugs involved in the offense compared to the amount of the drugs needed to raise the offense to the next higher category. In this example, 14,000 doses of PCP is 70% of the amount needed to rate the offense as Category Five and 1,000 lbs. of marijuana is 50% of the amount needed to rate the offense as Category Five. The PCP and marijuana added together equal over 100% of the amount of drugs necessary for a Category Five rating, which is the correct severity rating for this offense.

(11) An offender (with a proprietary role) sells 10,000 lbs. of hashish (Category Six) and 250,000 doses of amphetamines (Category Six). He is then arrested. The applicable offense rating is Category Six which is the highest severity category for any combined amount of the above drugs.

(d) *Intervening Arrests*. Where offenses ordinarily graded by aggregation of value/quantity (e.g., property or drug offenses) are separated by an intervening arrest, grade (1) by aggregation of value/quantity or (2) as multiple separate offenses, whichever results in a higher severity category.

Examples:
(12) An offender commits 3 Category One larcenies (each $300). Each time the offender is arrested during the act. Ordinarily, such behavior would be graded as Category One (theft of $900). But since the offenses were each separated by intervening arrests, application of the multiple separate offense procedure (3 x 1/9 = 1/3 points) results in a higher severity category. Therefore, grade as Category Two.
(13) An offender is arrested on three separate occasions unlawfully transporting aliens. Since the offenses were separated by intervening arrests, grade as Category Four (3 x 1 = 3 points).

(e) *Income Tax Violations Related to Other Criminal Activity*. Where the circumstances indicate that the offender's income tax violations are related to failure to report income from other criminal activity (e.g., failure to report income from a fraud offense) grade as tax evasion or according to the underlying criminal activity established, whichever is higher. Do not grade as multiple separate offenses.]]

3. **In cases where multiple sentences have been imposed (whether consecutive or concurrent, and whether aggregated or not) an offense severity rating shall be established to reflect the overall severity of the underlying criminal behavior. This rating shall apply whether or not any of the component sentences has expired.**

4. **The prisoner is to be held accountable for his own actions and actions done in concert with others; however, the prisoner is not to be held accountable for activities committed by associates over which the prisoner has no control and could not have been reasonably expected to foresee.** *[[Notes and Procedures.* Example: An offender on one occasion steals $2000 worth of property and sells it to a fence, who is engaged in an ongoing operation. It if is not established that the offender was himself an active participant in the ongoing operation, he is to be held accountable only for the one incident.]]

5. **The following are examples of circumstances that may be considered as aggravating factors: extreme cruelty or brutality to a victim; the degree of permanence or likely permanence of serious bodily injury resulting from the offender's conduct; an offender's conduct while attempting to evade arrest that causes circumstances creating a significant risk of harm to other persons (e.g., causing a high speed chase or provoking the legitimate firing of a weapon by law enforcement officers).**

6. **The phrase 'may be considered an aggravating/mitigating factor' is used in this index to provide guidance concerning certain circumstances which may warrant a decision above or below the guidelines. This does not restrict consideration of above or below guidelines decisions only to these circumstances, nor does it mean that a decision above or below the guidelines is mandated in every such case.**

SUBCHAPTER B - DEFINITIONS

1. 'Accessory after the fact' refers to the conduct of one who, knowing an offense has been committed, assists the offender to avoid apprehension, trial, or punishment (e.g., by assisting in disposal of the proceeds of an offense). Note: Where the conduct consists of concealing an offense by making false statements not under oath, grade as 'misprision of felony'. Where the conduct consists of harboring a fugitive, grade as 'harboring a fugitive'.

2. 'Assassination kit' refers to a disguised weapon designed to kill without attracting attention. Unlike other weapons such as sawed-off shotguns which can be used to intimidate, assassination kits are intended to be undetectable in order to make the victim and bystanders unaware of the threat. A typical assassination kit is usually, but not always, a firearm with a silencer concealed in a briefcase or similar disguise and fired without showing the weapon.

3. 'Bodily injury' refers to injury of a type normally requiring medical attention [e.g., broken bone(s), laceration(s) requiring stitches, severe bruises].

4. 'Carnal knowledge' refers to sexual intercourse with a female who is less than 16 years of age and is not the wife of the offender.

5. 'Extortionate extension of credit' refers to any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

6. 'Failure to appear' refers to the violation of court imposed conditions of release pending trial, appeal, or imposition or execution of sentence by failure to appear before the court or to surrender for service of sentence. *[[Notes and Procedures.* 'Failure to appear' is not a strict liability offense. To consider a 'failure to appear' in the absence of a conviction for such offense, the Commission must find upon the information presented that such failure was willful.]]

7. 'Forcible felony' includes, but shall not be limited to, kidnaping, rape or sodomy, aircraft piracy or interference with a flight crew, arson or property destruction offenses, escape, robbery, extortion, or criminal entry offenses, and attempts to commit such offenses.

8. 'Involuntary manslaughter' refers to the unlawful killing of a human being without malice in the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.

9. 'Misprision of felony' refers to the conduct of one who, having knowledge of the actual commission of a felony, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority. The 'concealment' described above requires an act of commission (e.g., making a false statement to a law enforcement officer).

10. 'Murder' refers to the unlawful killing of a human being with malice aforethought. 'With malice aforethought' generally refers to a finding that the offender formed an intent to kill or do serious bodily harm to the victim without just cause or provocation.

11. 'Opiate' includes heroin, morphine, opiate derivatives, and synthetic opiate substitutes.

12. 'Other illicit drug offenses' include, but are not limited to, offenses involving the following: amphetamines, hallucinogens, barbiturates, methamphetamines, and phencyclidine (PCP).

13. 'Other medium of exchange' includes, but is not limited to, postage stamps, governmental money orders, or governmental coupons redeemable for cash or goods. *[[Notes and Procedures.* The term "other medium of exchange" does not include checks.]]

14. 'Peripheral role' in drug offenses refers to conduct such as that of a person hired as a deckhand on a marijuana boat, a person hired to help offload marijuana, a person with no special skills hired as a courier of drugs on a commercial airline flight, or a person hired as a chauffeur in a drug transaction. This definition does not include persons with decision-making or supervisory authority, persons with relevant special skills (e.g., a boat captain, chemist, or airplane pilot), or persons who finance such operations. *[[Notes and Procedures.* (a) Do not presume that an offender's role is peripheral. Grade as a peripheral role only where there is sufficient credible information to establish this. For example, a person is arrested in possession of 100 grams of pure heroin. The person claims to be a courier but does not cooperate with the arresting agency by naming the source of the heroin or the individuals who are to take the delivery. There is no additional information available establishing the offender's role. Since it cannot be established that the offender had peripheral involvement, do not grade as a peripheral role.

(b) The following are examples of offenders normally graded as having a peripheral role: (a) a crewman on a marihuana boat; (b) a person hired to operate a small launch to offload marihuana; (c) a person hired to smuggle cocaine aboard a regularly scheduled commercial flight; (d) a person hired as a lookout, chauffeur, or bodyguard.

(c) The following are examples of offenders who do not have a peripheral role: (1) an individual who is hired to go to South America and negotiate the purchase of more than 1 kilogram of pure cocaine and arrange its delivery into the United States; (2) an individual who negotiates the sale of more than 1 kilogram of pure cocaine on behalf of the owner of the drug; (3) the financier of a PCP lab producing more than 200,000 doses of PCP; (4) the captain of a freighter hired to import 20,000 pounds or more of marihuana; (5) the captain/owner of a fishing boat hired to import more than 1 kilogram of pure cocaine; (6) the pilot of a private airplane hired to import more than 1 kilogram of pure cocaine; (7) a chemist hired to operate a PCP laboratory.]]

15. 'Protected person' refers to a person listed in 18 U.S.C. 351 (relating to Members of Congress), 1116 (relating to foreign officials, official guests, and internationally protected persons), or 1751 (relating to presidential assassination and officials in line of succession).

16. 'Serious bodily injury' refers to injury creating a substantial risk of death, major disability or loss of a bodily function, or disfigurement.

17. 'Serious bodily injury clearly intended' refers to a limited category of offense behaviors where the circumstances indicate that the bodily injury intended was serious (e.g., throwing acid in a person's face, or firing a weapon at a person) but where it is not established that murder was the intended object. Where the circumstances establish that murder was the intended object, grade as an 'attempt to murder'.

18. 'Sexual exploitation of children' refers to employing, using, inducing, enticing, or coercing a person less than 16 years of age to engage in any sexually explicit conduct for the purpose of producing a visual or print medium depicting such conduct with knowledge or reason to know that such visual or print medium will be distributed for sale, transported in interstate or foreign commerce, or mailed. It also includes knowingly transporting, shipping, or receiving such visual or print medium for the purposes of distribution for sale, or knowingly distributing for sale such visual or print medium.

19. 'Trafficking in stolen property' refers to receiving stolen property with intent to sell.

20. 'Value of the property' refers to the estimated replacement cost to the victim. *[[Notes and Procedures.* The term "value of the property" refers only to primary losses; not secondary losses. Example (1): An offender defrauds a victim of $50,000. The value of the property is $50,000; not any interest or dividends that the victim would have earned had the money been put into a legitimate investment. Example (2): An offender steals tools worth $16,000; the victim sustains an additional $500 in lost wages during the time spent testifying at trial. The value of the property stolen is the value of the tools.]]

21. 'Voluntary manslaughter' refers to the unlawful killing of a human being without malice upon a sudden quarrel or heat of passion.

SALIENT FACTOR SCORE (SFS 81)

Item A: PRIOR CONVICTIONS/ADJUDICATIONS (ADULT OR JUVENILE) ..... |___|

None ..... = 3
One ..... = 2
Two or Three ..... = 1
Four or more ..... = 0

Item B: PRIOR COMMITMENT(S) OF MORE THAN THIRTY DAYS ..... |___|
(ADULT OR JUVENILE)

None ..... = 2
One or two ..... = 1
Three or more ..... = 0

Item C: AGE AT CURRENT OFFENSE/PRIOR COMMITMENTS ..... |___|

Age at commencement of current offense
26 years of age or more ..... = 2
20-25 years of age ..... = 1
19 years of age or less ..... = 0

***Exception: If five or more prior commitments of more than thirty days (adult or juvenile), place an "X" here____ and score this item ..... = 0

Item D: RECENT COMMITMENT FREE PERIOD (THREE YEARS), ... |___|

No prior commitment of more than thirty days (adult or juvenile) or released to the community from last such commitment at least three years prior to the commencement of the current offense ..... = 1

Otherwise ..... = 0

Item E: PROBATION/PAROLE/CONFINEMENT/ESCAPE STATUS ..... |___|
VIOLATOR THIS TIME

Neither on probation, parole, confinement, or escape status at the time of the current offense; nor commited as a probation, parole, confinement, or escape status violator this time ..... = 1

Otherwise ..... = 0

Item F: HEROIN/OPIATE DEPENDENCE ..... |___|

No history of heroin/opiate dependence ... = 1
Otherwise ..... = 0

TOTAL SCORE |___|

Note: For purposes of the Salient Factor Score, an instance of criminal behavior resulting in a judicial determination of guilt or an admission of guilt before a judicial body shall be treated as a conviction, even if a conviction is not formally entered.

2.20-01. *Purpose of the Guidelines*

A. *From the Parole Commission and Reorganization Act Public Law 94-233, 18 United States Code*

Sec. 4206 Parole determination criteria

"(a) If an eligible prisoner has substantially observed the rules of the institution or institutions to which he has been confined, and if the Commission, upon consideration of the nature and circumstances of the offense and the history and characteristics of the prisoner, determines:

"(1) that release would not depreciate the seriousness of his offense or promote disrespect for the law; and "(2) that release would not jeopardize the public welfare;

Subject to the provisions of subsections (b) and (c) of this section, and pursuant to guidelines promulgated by the Commission pursuant to section 4203(a)(1), such prisoner shall be released.

"(b) The Commission shall furnish the eligible prisoner with a written notice of its determination not later than twenty-one days, excluding holidays, after the date of the parole determination proceeding. If parole is denied such notice shall state with particularity the reasons for such denial.

"(c) The Commission may grant or deny release on parole notwithstanding the guidelines referred to in subsection (a) of this section if it determines there is good cause for so doing; provided, that the prisoner is furnished written notice stating with particularity the reasons for its determination, including a summary of the information relied upon."

B. *From Joint Explanatory Statement of the Committee of Conference, The Parole Commission and Reorganization Act - Section by Section Analysis*

Sec. 4206 Parole determination criteria

"This section provides the standards and criteria to be used by the Parole Commission in making parole release determinations for federal prisoners who are eligible for parole.

It is the intent of the Conferees that the Parole Commission make certain judgments pursuant to this section, and that the substance of those judgments is committed to the discretion of the Commission.

First, it is the intent of the Conferees that the Parole Commission reach a judgment on the institutional behavior of each prospective parolee. It is the view of the Conferees that understanding by the prisoner of the importance of his institutional behavior is crucial to the maintenance of safe and orderly prisons.

Second, it is the intent of the Conferees that the Parole Commission review and consider both the nature and circumstances of the offense and the history and characteristics of the prisoner. It is the view of the Conferees that these two items are most significant in making equitable release determinations and are a viable basis, when considered together, for making other judgments required by this section.

It is the intent of the Conferees that the Parole Commission, in making each parole determination, shall recognize and make a determination as to the relative severity of the prospective parolee's offense and that in so doing shall be cognizant of the public

perception of and respect for the law. It is the view of the Conferees that the U. S. Parole Commission is jointed in purpose by the Courts, the Congress and the other Executive agencies in a continuing effort to instill respect for the law. The Parole Commission efforts in this regard are fundamental and shall be manifested by parole determinations which result in the release on parole of only those who meet the criteria of this Act.

Determinations of just punishment are part of the parole process, and these determinations cannot be easily made because they require an even-handed sense of justice. There is no body of competent empirical knowledge upon which parole decision-makers can rely, yet it is important for the parole process to achieve an aura of fairness by basing determinations of just punishment on comparable periods of incarceration for similar offenses committed under similar circumstances. The parole decision-makers must weigh the concepts of general and special deterrence, retribution and punishment, all of which are matters of judgment, and come up with determinations of what is meant by "would not depreciate the seriousness of his offense or promote disrespect for the law" that, to the extent possible, are not inconsistent with the findings in other parole decisions.

The phrase "release would not depreciate the seriousness of his offense or promote disrespect for the law" involves two separate criterion and there may be situations in which one criterion is met but the other remains unsatisfied. For example, if a public official was convicted of fraud which involved a violation of the public trust and was sentenced to three years imprisonment, his release on parole after one year might satisfy the "depreciate the seriousness" criterion but the Commission could justify denying release on the grounds that such release "would promote disrespect for the law."

The use of the phrase "release would not jeopardize the public welfare," is intended by the Conferees to recognize the incapacitative aspect of the use of imprisonment which has the effect of denying the opportunity for future criminality, at least for a time. It is the view of the Conferees that the Parole Commission must make judgments as to the probability that any offender would commit a new offense based upon considerations which include comparisons of the offender with other offenders who have similar backgrounds. The use of predictive devices is at best an inexact science, and caution should be utilized. Such items as prior criminal records, employment history and stability of living patterns have demonstrated their usefulness in making determinations of probability over a substantial period of time. These are not written into the statute, however, as it is the intent of the Conferees to encourage the newly created Parole Commission to continue to refine both the criteria which are used and the means for obtaining the information used therein.

Further, this section provides that Parole Commission guidelines, shall provide a fundamental gauge by which parole determinations are made.

It is the intent of the Conferees that the guidelines serve as a national parole policy which seeks to achieve both equity between individual cases and a uniform measure of justice. The Parole Commission shall actively seek the counsel and comment of the corrections and criminal justice communications (sic) prior to promulgation of guidelines and shall be cognizant of past criticism of parole decision making.

Further, this section provides that when parole is denied, that the prisoner be given a written notice which states with particularity the reasons for such denial.

The phrase "shall be released" includes release at expiration as if on parole or without parole supervision as provided in section 4164 of Title 18, United States Code. The term "holidays" as used in this section refers to congressionally delcared Federal holidays.

This section also permits the Commission to grant or deny parole notwithstanding the guidelines only when the Commission has determined that there is good cause to do so, and then requires that the prisoner be provided "with particularity the reasons for the Commission's determination, including a summary of the information relied upon." For example, if a prisoner who has served the time required to be released on parole according to the guidelines is denied parole and this denial results in delaying his release beyond the time period recommended by the guidelines, he shall receive a specific explanation of the factors which caused the Commission to reach a determination outside the guidelines.

For the purposes of this section "good cause" means substantial reason and includes only those grounds put forward by the Commission in good faith and which are not arbitrary, irrational, unreasonable, irrelevant or capricious.

The definition of what constitutes good cause to go outside the established guidelines can not be a precise one, because it must be broad enough to cover many circumstances.

For example, in making a parole release determination above the guidelines, the Commission would consider factors which include whether or not the prisoner was involved in an offense with an unusual degree of sophistication or planning, or has a lengthy prior record, or was part of a large scale conspiracy or continuing criminal enterprise.

On the other hand, the Commission would consider factors such as a prisoner's adverse family or health situation in deciding to make a parole release determination below guidelines. By focusing on the justifications for exceptions to the guidelines, subsequent administrative review by the National Appeals Board will be facilitated and there will be more uniformity and greater precision in the grant or denial of parole.

If the decisions to go above or below parole guidelines are frequent, the Commission should reevaluate its guidelines.

▌2.20-02. *Completion of the Guidelines/Guideline Type Applicable*

A. The applicable guideline evaluation worksheet shall be completed at all initial, revocation, and rescission hearings. It will be referred to in the summary at all subsequent hearings. In each case, the panel shall review the guidelines and, prior to making a recommendation, shall consider whether there is 'good cause' for a decision outside the guidelines, or whether a decision within the guidelines is appropriate.

B. Determination of the applicable guideline type [(Adult) or (Youth/NARA)] will be made as follows:

(1) Court Commitment - Not Probation Revocation. The sentence type will determine the applicable guidelines, except that the Youth/NARA guidelines apply to all offenders less than 22 years of age at the time of the current offense behavior. The age at the time of the current offense refers to the age at the last known overt act of the offense behavior.

(2) Court Commitment - Probation Revocation. Apply the guideline type that would have been applied if the offender had not received probation and had been initially sentenced to prison; except if a federal sentence of more than one year is received for new criminal behavior, the guideline type applicable to the new sentence will be used for the violator term as well.

(3) Parole Violator - The guideline type applied to the original sentence will determine the guideline type applicable to the violator behavior; except if a federal sentence of more than one year is received for new criminal behavior, the guideline type applicable to the new sentence will be used for the violator term as well.

(4) Parole Rescission - The guideline type applied to the original sentence will determine the guideline type applicable to the rescission behavior, except if a federal sentence of more than one year is received for new criminal behavior, the guideline type applicable to the new sentence will be used for the rescission term as well.

▌2.20-03. *Calculating Time in Custody*

Time in custody means only time in actual physical custody. Time on probation does not count as time in custody. Nor does time on escape status count. Moreover, a sentence for contempt of court interrupts the running of the federal criminal sentence. Thus, any time spent as a result of a sentence of civil contempt is not counted in calculating time in custody.

A. *Original Parole Consideration.* Calculate the number of months in actual physical custody on the present federal sentence(s). Include jail time credit. If the subject was received directly from state custody, where he was serving time on state charges only, count only the time since the federal sentence began. If a subject has been in state custody for a substantial period, this may be considered in determining whether a decision below the guidelines is warranted. However, it should not be counted as time in custody for purposes of guideline calculation.

B. *Probation Revocation Cases.* Credit any time spent in actual physical custody (federal or state) for any offense considered in assessing offense severity. If a prisoner is received as a probation violator from a split sentence, also credit the months spent in federal custody prior to being placed on probation.

C. *Parole Violators (Reparole Consideration).* In reparole guideline cases, count as time in custody any time spent in actual physical custody (whether state or federal) as a result of the actions leading to parole violation. [Example: A parolee is convicted of a state charge of forgery and spends 10 months in state custody; he is in federal custody an additional 2 months at the time of his revocation hearing. Time in custody for reparole guideline purposes is 10 + 2 = 12 months.]

▌2.20-04. *Offense Severity Rating.* In applying the guidelines, the offense severity rating shall reflect the overall circumstances of the present offense behavior. Select the offense rating appropriate to the actual offense behavior that occurred. The severity rating must be explained on the Notice of Action Worksheet (in the space provided) by a brief summary of the specific facts that justified the rating. 28 C.F.R. 2.19(c) provides: "The Commission may take into account any substantial information available to it in establishing the prisoner's offense severity rating, salient factor score, and any aggravating or mitigating circumstances, provided the prisoner is apprised of the information and afforded an opportunity to respond. If the prisoner disputes the accuracy of the information presented, the Commission shall resolve such dispute by the preponderance of the evidence standard; that is, the Commission shall rely upon such information only to the extent that it represents the explanation of the facts that best accords with reason and probability. However, the Commission shall not consider in any determination, charges upon which aprisoner was found not guilty after trial unless reliable information is presented that was not introduced into evidence at such trial (e.g., a subsequent admission or other clear indication of guilt)."

Information in the file describing offense circumstances more severe than reflected by the offense of conviction (for example, information contained in a count of an indictment that was dismissed as a result of a plea agreement) may be relied upon to select an appropriately higher severity rating only if such information meets the standard indicated in 28 C.F.R. 2.19(c). The normal indicants of reliability are (a) the report is specific as to the behavior alleged to have taken place; (b) the allegation is corroborated by established facts; and (c) the source of the allegation appears credible. The prisoner is to be informed of the allegation at the hearing and given an opportunity to respond. An allegation that is vague, unsupported, or comes from an unreliable source should not be considered. Cases requiring further information or verification may be referred to the Regional Office.

The Commission's consideration of aggravating offense circumstances in applying its guidelines has been approved in the following cases: *Zannino* v. *Arnold*, 531 F.2d 687 (3d Cir. 1976) [allegation that offense was a "large-scale conspiracy" committed in an "unusually sophisticated" manner]; *Brown v. Lundgren*, 528 F.2d 1050 (5th Cir. 1976) [circumstances not given in the opinion but involved pattern of on-going criminal behavior and multiple separate offenses]; *Grattan* v. *Sigler*, 525 F.2d 329 (9th Cir. 1975) [allegation that the prisoner was a "ringleader"]; *Foddrell* v. *Sigler*, 418 F.Supp. 324 (M.D. Pa. 1976) ["sophisticated operation involving large amounts of heroin"]; and *Biancone* v. *Norton*, 421 F.Supp. 1044 (D. Conn. 1976) [multiple separate offenses]; and in the cases cited below. Similarly, Commission's consideration of unadjudicated offenses has been approved in the following cases: *Billiteri* v. *United States Board of Parole*, 541 F.2d 938 (2d Cir. 1976) [offense rated as extortion based on information in the pre-sentence report; the Court specifically rejected the contention that the Government's acceptance of a plea restricted to the conspiracy charge was a bar to the Commission from considering the actual offense behavior]; *Bistram* v. *U.S. Parole Board*, 535 F.2d 329 (5th Cir. 1976) [Commission relied upon dismissed count of kidnapping notwithstanding bargained plea to bank robbery only]; *Lupo* v. *Norton*, 371 F.Supp. 156 (D. Conn. 1974) [prisoner convicted of conspiracy to transport stolen goods was alleged to have committed robbery to obtain same]; and *Manos* v. *U.S. Board of Parole*, 399 F.Supp. 1103 (M.D. Pa. 1975). [Prisoner pleaded guilty to two counts of filing false tax reports involving less than $20,000 but Commission considered entire 22-count indictment charging a total defrauding of $150,000]. These decisions have accorded to the Parole Commission the same scope of discretion as that exercised by the sentencing courts. As stated in *Billiteri*, *supra*, at 944:

> "If therefore, the sentencing judge is not limited to a consideration of only that criminal conduct of the defendant that is related to the offense for which he was convicted, the Parole Board, which is concerned with all facets of a prisoner's character, make-up and behavior, is *a fortiori*, certainly entitled to be fully advised of the contents of the presentence report and to use it in giving an offense severity rating and for such other purposes as it finds necessary and proper. . ."

2.20-05. *Decisions Outside the Guidelines*

A. *In General*. 18 U.S.C. 4206 provides that the Commission may render a decision outside the guidelines for good cause provided the prisoner is furnished a specific explanation for such action. It is in the Commission's discretion to render a decision outside the guidelines (whether above or below) provided the circumstances warrant and such decision is adequately explained. The reasons given in the Notice of Action for a decision above or below the guidelines must explain what specific facts were relied upon to distinguish that case from the "typical" cases for which the guidelines are set. If a decision outside the guidelines follows the recommendation of the

sentencing judge, the prosecutor or another interested party, it is not sufficient to cite that recommendation as the reason for departure from the guidelines. Instead, the Notice of Action must state the reasoning and factual basis for the recommendation which was found to justify a decision outside the guidelines.

The following are examples of situations in which a decision outside the guidelines appropriately may be considered. This does not mean that these are the only situations in which a decision outside the guidelines may be considered. Nor does it mean that a decision outside the guidelines is mandated for every such case.

Each of the following examples sets forth the Commission's reason for its decision and the specific facts primarily relied upon in support of that reason. Avoid sweeping or ambiguous phrases as well as irrelevant facts. Be specific enough with the facts described so that a person not familiar with the case will know what you are talking about.

B. *Decisions Above the Guidelines*

[Examples 1-3: Aggravating Offense Factors]

1. *Aggravated nature of the offense behavior*:

. . .because of the aggravated nature of your offense behavior: victims were repeatedly beaten and threatened during the offense.

. . .because of the aggravated nature of your offense behavior: you were responsible for an offense of unusual magnitude - investors were defrauded of over ten million dollars during a period of five years.

2. *Extremely vulnerable victim(s)* [e.g., extremely young or aged, or mentally or physically handicapped].

...because of the aggravated nature of your offense behavior which involved an extremely vulnerable victim: you committed the sexual assault of a 10 year old girl.

3. *Unusually extensive, organized criminal enterprise*:

. . .because of the aggravated nature of your offense behavior: you were a ringleader in an unusually extensive, sophisticated criminal enterprise over an eighteen month period which engaged in the fencing of furs and jewelry stolen in numerous burglaries, and involved an extensive network of contacts and sophisticated methods of concealing the origin of the stolen goods.

. . .because of the aggravated nature of your offense behavior: you played a leadership role in an unusually extensive, organized criminal enterprise - a cocaine importation and distribution operation which involved monthly multi-kilo shipments over a two year period and a multi-state distribution network with over twelve co-conspirators acting under your direction.

[Examples 4-7: Parole Prognosis]

4. *Poorer Parole Risk (Repeated failure under parole; or offense committed while on bond; or lengthy history of criminally related alcohol abuse; or ongoing criminal behavior for a period of years):*

. . .because you are a poorer parole risk than indicated by your salient factor score in that you have repeatedly failed to adjust to previous periods of parole supervision.

. . .because you are a poorer parole risk than indicated by your salient factor score: you committed a state firearms act offense while on bond in your present criminal case.

. . .because you are a poorer parole risk than indicated by your salient factor score: you have an approximately twenty year history of alcohol abuse which is related to your criminal behavior.

. . .because you are a poorer parole risk than indicated by your salient factor score: [you have had an on-going involvement in loan-sharking and extortion activities since approximately 1963] [you have admitted to on-going involvements in drug trafficking for the past 11 years].

5. *More Serious Parole Risk (History of repetitive assaultive behavior):*

. . .because you are a more serious parole risk than indicated by your salient factor score due to your history of repetitive assaultive behavior: your prior record shows a conviction for aggravated assault and a conviction for armed robbery. Your present offense behavior involved a bank robbery in which an overt threat of violence was made.

6. *More Serious Parole Risk (History of repetitive sophisticated criminal behavior):*

. . .because you are a more serious parole risk than indicated your salient factor score due to your history of repetitive sophisticated criminal behavior: three out of five prior convictions involve sophisticated fraud similar to your current offense.

7. *More Serious Parole Risk (Unusually extensive and serious prior record):*

. . .because you are a more serious parole risk than indicated by your salient factor score due to your extensive and serious prior record. Your criminal record shows eight prior adult convictions for serious offenses [give specifics].

[Example 8: Institutional Misconduct]

8. *Specified instance of institutional misconduct*:

. . .because you failed to maintain a good institutional record. You were found to have [been in an unauthorized area without permission] [possessed narcotic paraphernalia] by an institutional disciplinary committee on September 9, 1976. [NOTE: Consult Rescission Guidelines for appropriate penalty].

[Example 9: Other]

9. *Other*

. . .because you have refused to [make restitution] [return the property stolen] [pay an outstanding fine] athough you have the ability to do so. [Note: where a decision above the guidelines is rendered, the Notice of Action may advise the prisoner that should there be a change in circumstances (e.g., restitution or a full accounting of his finances made), the prisoner may request reopening of the case under 28 C.F.R. 2.28(a).]

C. *Decisions Below the Guidelines*

[Examples 1-6: Mitigating Offense Factors]

1. *Mitigating Offense Factors*:

. . .The prisoner's offense was less serious than the rated offense would normally be: [give specifics] [e.g., the amount of drugs sold was usually small and no financial gain was involved] [the prisoner was only peripherally involved in the offense].

. . .The prisoner did not knowingly contemplate that his conduct would result in the harm that it did and the harm could not have been reasonably foreseen [give specifics].

2. *Diminished Mental Capacity*:

. . .The prisoner had diminished mental capacity to contemplate the seriousness of the offense [because of extremely low intelligence or extreme youthfulness].

3. *Duress*:

. . .There is confirmed evidence that duress was overtly exercised to force the prisoner to commit the offense.

4. *Attempted Corrective Measure*:

. . .There is confirmed evidence that the prisoner attempted to withdraw prior to completion of the offense or attempted to make restitution prior to discovery of the offense.

5. *Genuine Claim of Right* [Property Offenses]:

. . .because the prisoner believed he had genuine claim of right to the property involved even though the method used to obtain the property was unlawful.

6. *Extreme Provocation* [Assaultive Offenses]:

...because there was extraordinarily severe provocation by the victim or provocation combined with a diminished mental state (occurring through no fault of the offender).

[Example 7: Parole Prognosis]

7. *Better Parole Risk*

. . .The prisoner is a better parole risk than his salient factor score indicates because [give specifics] [e.g., his low salient factor score results exclusively from trivial offenses; substantial crime-free period since his last offense; he has extremely strong community resources available].

[Examples 8-10: Other]

8. *Substantial Cooperation*:

. . .The prisoner has provided substantial cooperation to the government [e.g., in the prosecution of other cases; in averting a riot] which has been otherwise unrewarded.

9. *Substantial Medical Problems*:

. . .Because of poor medical prognosis due to a heart condition [terminal cancer].

10. *Substantial Period in Custody on other Sentence(s) or Additional Committed Sentences:*

. . .The prisoner has served a substantial continuous period of time [. . . . months] in federal or state custody as a result of other charges.

. . .The prisoner faces a substantial period of time on additional committed sentences estimated as at least [. . . . months].*

*NOTE: Deportation shall not be considered a sufficient reason for a decision below the guidelines.

[Example 11: Superior Program Achievement]

11. *Superior Program Achievement*

. . .The prisoner has a record of superior program achievement [give specifics]. NOTE: Decisions below the guidelines for superior program achievement are governed by 28 C.F.R. §2.60.

2.20-06. *Salient Factor Scoring Manual*. The following instructions serve as a guide in computing the salient factor score. Obviously, no guide can include all possible situations - good judgment always must be used. When in doubt about a classification, follow as closely as possible the examples listed below. Remember, however, that the salient factor score is designed as an actuarial parole prognosis aid. You may override this actuarial predictive aid, where warranted, provided you adequately explain your reasons.

ITEM A. PRIOR CONVICTIONS/ADJUDICATIONS (ADULT OR JUVENILE) [[None = 3; One = 2; Two or three = 1; Four or more.... = 0]]

Scoring Instructions

A.1 *In General*. Except as specifically noted, count all convictions/adjudications (adult or juvenile) for criminal offenses that were committed prior to the present period of confinement. Do not count the current federal offense or state/local convictions resulting from the current federal offense. Convictions for prior offenses that are charged or adjudicated together (e.g., three burglaries) are counted as a single prior conviction, except when such offenses are separated by an intervening arrest (e.g., three convictions for larceny and a conviction for an additional larceny committed after the arrest for the first three larcenies would be counted as two prior convictions, even if all four offenses were adjudicated together).

A.2 *Convictions*

(a) Felony convictions are counted. Non-felony convictions are counted, except as listed under (b) and (c). Convictions for driving while intoxicated/while under the influence/while impaired are counted. Where it is established by the preponderance of evidence that the underlying offense behavior was more serious than the offense of conviction, assess the conviction using the criteria applicable to the underlying offense behavior.

(b) Convictions for the following offenses are counted only if the sentence resulting was a commitment of more than thirty days (as defined in item B) or probation of one year or more (as defined in Item E), or if the record indicates that the offense was classified by the jurisdiction as a felony (regardless of sentence):

1. contempt of court;
2. disorderly conduct/disorderly person/breach of the peace/ disturbing the peace;
3. driving without a licence/ with a revoked or suspended license/with a false license;
4. false information to a police officer;
5. fish and game violations;
6. gambling;
7. loitering;
8. non-support;
9. prostitution;
10. resisting arrest;
11. trespassing.

(c) Convictions for certain minor offenses are not counted, regardless of sentence. These include:

1. hitchhiking;
2. local regulatory violations;
3. public intoxication/possession of alcohol by a minor/possession of alcohol in an open container;
4. traffic violations (except as specifically listed);
5. vagrancy."

A.3 *Juvenile Conduct*. Count juvenile convictions/adjudications except as follows:

(a) Do not count any status offense (e.g., runaway, truancy, habitual disobedience) unless the behavior included a criminal offense which would otherwise be counted;

(b) Do not count any criminal offense committed at age 15 or less, unless it resulted in a commitment of more than 30 days.

A.4 *Military Conduct*. Count military convictions by general or special court-martial (not summary court-martial or Article 15 disciplinary proceeding) for acts that are generally prohibited by civilian criminal law (e.g., assault, theft). Do not count convictions for strictly military offenses. NOTE: This does not preclude consideration of serious or repeated military misconduct as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score in relation to this item).

A.5 *Diversion*. Conduct resulting in diversion from the judicial process without a specific finding of guilt (e.g., deferred prosecution, probation without plea) is not to be counted in scoring this item. However, behavior resulting in a judicial determination of guilt or an admission of guilt before a judicial body shall be counted as a conviction even if no formal conviction results.

A.6 *Setting Aside of Convictions/Restoration of Civil Rights*. Setting aside or removal of juvenile convictions/adjudications is normally for civil purposes (to remove civil penalties and stigma). Such convictions/adjudications are to be counted for purposes of assessing parole prognosis. This also applies to adult convictions/adjudications which may be set aside by various methods (including pardon). However, convictions/adjudications that were set aside or pardoned on grounds of innocence are not to be counted.

A.7 *Convictions Reversed or Vacated on Grounds of Constitutional or Procedural Error*. Exclude any conviction reversed or vacated for constitutional or procedural grounds, unless the prisoner has been retried and reconvicted. It is the Commission's presumption that a conviction/adjudication is valid. If a prisoner challenges such conviction he/she should be advised to petition for a reversal of such conviction in the court in which he/she was originally tried, and then to provide the Commission with evidence of such reversal. NOTE: Occasionally the presentence report documents facts clearly indicating that a conviction was unconstitutional for deprivation of counsel [this occurs only when the conviction was for a felony, or for a lesser offense for which imprisonment was actually imposed; and the record is clear that the defendant (1) was indigent, and (2) was not provided counsel, and (3) did not waive counsel]. In such case, do not count the conviction. Similarly, if the offender has applied to have a conviction vacated and provides evidence (e.g., a letter from the court clerk) that the required records are unavailable, do not count the conviction. NOTE: If a conviction found to be invalid is nonetheless supported by persuasive information that the offender committed the criminal act, this information may be considered as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score).

A.8 *Ancient Prior Record*. If both of the following conditions are met: (1) the offender's only countable convictions under Item A occurred at least ten years prior to the commencement of the current offense behavior (the date of the last countable conviction under Item A refers to the date of the conviction, itself, not the date of the offense leading to conviction), and (2) there is at least a ten year commitment free period in the community (including time on probation or parole) between the last release from a countable commitment (under Item B) and the commencement of the current offense behavior; then convictions/commitments prior to the above ten year period are not to be counted for purposes of Items A, B, or C. NOTE: This provision does not preclude consideration of earlier behavior (e.g., repetition of particularly serious or assaultive conduct) as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score). Similarly, a substantial crime free period in the community, not amounting to ten years, may, in light of other factors, indicate that the offender belongs in a better risk category than the salient factor score indicates.

A.9 *Foreign Convictions*. Foreign convictions (for behavior that would be criminal in the United States) are counted.

A.10 *Tribal Court Convictions*. Tribal court convictions are counted only where it is established that the subject was represented by counsel or waived counsel. [NOTE: This added requirement is due to the unique status of tribal courts.]

A.11 *Forfeiture of Collateral*. If the only known disposition is forfeiture of collateral, count as a conviction (if a conviction for such offense would otherwise be counted).

ITEM B. PRIOR COMMITMENTS OF MORE THAN THIRTY DAYS (ADULT OR JUVENILE) [[None = 2; One or two = 1; Three or more = 0]]

Scoring Instructions

B.1 *Count* all prior commitments of more than thirty days (adult or juvenile) resulting from a conviction/adjudication listed under Item A, except as noted below. Also count commitments of more than thirty days imposed upon revocation of probation or parole where the original probation or parole resulted from a conviction/adjudication counted under Item A.

B.2 *Count* only commitments that were imposed prior to the commission of the last overt act of the current offense behavior. Commitments imposed after the current offense are not counted for purposes of this item. Concurrent or consecutive sentences (whether imposed as the same time or at different times) that result in a continuous period of confinement count as a single commitment. However, a new court commitment of more than thirty days imposed for an escape/attempted escape or for criminal behavior committed while in confinement/escape status counts as a separate commitment.

B.3 *Definitions*

(a) This item only includes commitments that were actually imposed. Do not count a suspended sentence as a commitment. Do not count confinement pending trial or sentencing or for study and observation as a commitment unless the sentence is specifically to 'time served'. If a sentence imposed is subsequently reconsidered and reduced, do not count as a commitment if it is determined that the total time served, including jail time, was 30 days or less.

(b) This item includes confinement in adult or juvenile institutions, and residential treatment centers. It also includes confinement in a community treatment center. It does not include foster home placement.

(c) If a committed sentence of more than thirty days is imposed prior to the current offense but the offender avoids or delays service of the sentence (e.g., by absconding, escaping, bail pending appeal), count as a prior commitment. Note: Where the subject unlawfully avoids service of a prior commitment by escaping or failing to appear for service of sentence, this commitment is also to be considered in Items D and E.

ITEM C. AGE AT COMMENCEMENT OF THE CURRENT OFFENSE/PRIOR COMMITMENTS OF MORE THAN THIRTY DAYS (ADULT OR JUVENILE) [[Age at commencement of the current offense: 26 years of age or more = 2***; 20-25 years of age = 1***; 19 years of age or less = 0. ***EXCEPTION: If five or more prior commitments of more than thirty days (adult or juvenile), place an 'x' here [ ] and score this item .... = 0]].

Scoring Instructions

C.1 *Score 2* if the subject was 26 years of age or more at the commencement of the current offense and has fewer than five prior commitments.

C.2 *Score 1* if the subject was 20-25 years of age at the commencement of the current offense and has fewer than five prior commitments.

C.3 *Score 0* if the subject was 19 years of age or less at the commencement of the current offense, or if the subject has five or more prior commitments.

C.4 *Definitions*

(a) Use the age at the commencement of the subject's current federal offense behavior, except as noted under special instructions for federal probation/parole/confinement/escape status violators.

(b) Prior commitment is defined under Item B.

ITEM D. RECENT COMMITMENT FREE PERIOD (THREE YEARS) [[No prior commitment of more than thirty days (adult or juvenile), or released to the community from last such commitment at least three years prior to the commencement of the current offense = 1; Otherwise = 0]]

Scoring Instructions

D.1 *Score 1* if the subject has no prior commitments; or if the subject was released to the community from his/her last prior commitment at least three years prior to commencement of his/her current offense behavior.

D.2 *Score 0* if the subject's last release to the community from a prior commitment occurred less than three years prior to the current offense behavior; or if the subject was in confinement/escape status at the time of the current offense.

D.3 *Definitions*

(a) Prior commitment is defined under Item B.

(b) Confinement/escape status is defined under Item E.

(c) Release to the community means release from confinement status (e.g., a person paroled through a CTC is released to the community when released from the CTC, not when placed in the CTC).

ITEM E. PROBATION/PAROLE/CONFINEMENT/ESCAPE STATUS VIOLATOR THIS TIME [[Neither on probation, parole, confinement, or escape status at the time of the current offense; nor committed as a probation, parole, confinement, or escape status violator this time = 1; Otherwise = 0]]

Scoring Instructions

E.1 *Score 1* if the subject was not on probation or parole, nor in confinement or escape status at the time of the current offense behavior; and was not committed as a probation, parole, confinement, or escape status violator this time.

E.2 *Score 0* if the subject was on probation or parole or in confinement or escape status at the time of the current offense behavior; or if the subject was committed as a probation, parole, confinement, or escape status violator this time.

E.3 *Definitions*

(a) The term probation/parole refers to a period of federal, state, or local probation or parole supervision. Occasionally, a court disposition such as 'summary probation' or 'unsupervised probation' will be encountered. If it is clear that this disposition involved no attempt at supervision, it will not be counted for purposes of this item. NOTE: Unsupervised probation/parole due to deportation is counted in scoring this item.

(b) The term 'parole' includes parole, mandatory parole, conditional release, or mandatory release supervision (i.e., any form of supervised release).

(c) The term 'confinement/escape status' includes institutional custody, work or study release, pass or furlough, community treatment center confinement, or escape from any of the above.

ITEM F. HISTORY OF HEROIN/OPIATE DEPENDENCE [[No history of heroin or opiate dependence = 1; Otherwise = 0]]

Scoring Instructions

F.1 *Score 1* if the subject has no history of heroin or opiate dependence.

F.2 *Score 0* if the subject has any record of heroin or opiate dependence.

F.3 *Ancient Heroin/Opiate Record.* If the subject has no record of heroin/opiate dependence within ten years (not counting any time spent in confinement), do not count a previous heroin/opiate record in scoring this item.

F.4 *Definition.* For calculation of the salient factor score, the term "heroin/opiate dependence" is restricted to dependence on heroin, morphine, or dilaudid. Dependence refers to physical or psychological dependence, or regular or habitual usage. Abuse of other opiate or non-opiate substances is not counted in scoring this item. However, this does not preclude consideration of serious abuse of a drug not listed above as as negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score in relation to this item).

SPECIAL INSTRUCTIONS - PRISONERS COMMITTED AS FEDERAL PROBATION VIOLATORS

Item A Where there is criminal conduct during probation (established by conviction or adjudicated at a probation revocation hearing), the original federal offense (rather than the most recent criminal conduct) is counted in this item. Where there is no criminal conduct during probation, do not count the original offense as a prior conviction.

Item B Count all prior commitments of more than thirty days which were imposed prior to the behavior resulting in the current probation revocation. If the subject is committed as a probation violator following a 'split sentence' for which more than thirty days were served, count the confinement portion of the 'split sentence' as a prior commitment. [NOTE: the prisoner is still credited with the time served toward the current commitment.]

Item C Use the age at commencement of the probation violation, not the original offense.

Item D Count backwards three years from the commencement of the probation violation.

Item E By definition, no point is credited for this item. Exception - A case placed on unsupervised probation (other than for deportation) would not lose credit for this item.

Item F No special instructions.

SPECIAL INSTRUCTIONS - FEDERAL PAROLE VIOLATORS WITH NEW CRIMINAL BEHAVIOR

Item A The conviction from which paroled counts as a prior conviction.

Item B The commitment from which paroled counts as a prior commitment.

Item C Use the age at commencement of the new criminal behavior.

Item D Count backwards three years from the commencement of the new criminal behavior.

Item E By definition, no point is credited for this item.

Item F No special instructions.

SPECIAL INSTRUCTIONS - FEDERAL CONFINEMENT/ESCAPE STATUS VIOLATORS WITH NEW CRIMINAL BEHAVIOR IN THE COMMUNITY

Item A The conviction being served at the time of the confinement/escape status violation counts as a prior conviction.

Item B The commitment being served at the time of the confinement/escape status violation counts as a prior commitment.

Item C Use the age at commencement of the confinement/escape status violation.

Item D By definition, no point is credited for this item.

Item E By definition, no point is credited for this item.

Item F No special instructions.

2.20-07. *Principle of Parsimony*. It is the intent of the Commission to use the least restrictive sanction required to fulfill the purposes of 18 U.S.C. 4206 and 28 C.F.R. 2.20. It is expected that when a decision within the guidelines is recommended, a case generally will be placed in the lower half of the guideline range unless the offense behavior or prior record/salient factor score is among the more serious contained within the category [For example, other factors being equal, a property offense near the lower limit of the Category Four severity ($20,000) generally would be placed towards the bottom of the range; a property offense near the upper limit ($100,000) generally would be placed higher in the range; less culpable codefendants would generally be placed towards the bottom of the range; codefendants with prime responsibility would generally be placed higher in the range]. If the offense behavior involved (a) the possession of a weapon during the commission of another offense (e.g., robbery with a weapon, or possession of a weapon during a drug offense); or (b) the offense behavior involved multiple separate Category Five or higher offenses not sufficient to raise the severity level (e.g., two robberies); or (c) the offender is a parole violator with new criminal conduct, the case will normally be placed in the upper half of the applicable guideline range. It is to be stressed that this paragraph is intended to provide a methodology to promote analysis, not a mechanical rule.

§2.21 REPAROLE CONSIDERATION GUIDELINES.

(a) If revocation is based upon administrative violation(s) only [i.e., violations other than new criminal conduct] the customary time to be served before release shall be <=9 months. Minor offenses [e.g., disorderly conduct, traffic infractions, public intoxication] and possession of a small quantity of drugs for own use shall be treated under administrative violations.

(b)(1) If a finding is made that the prisoner has engaged in behavior constituting new criminal conduct, the appropriate severity rating for the new criminal behavior shall be calculated. New criminal conduct may be determined either by a new federal, state, or local conviction or by an independent finding by the Commission at revocation hearing. As violations may be for state or local offenses, the appropriate severity level may be determined by analogy with listed federal offense behaviors.

(2) The guidelines for parole consideration specified at 28 C.F.R. Sec. 2.20 shall then be applied. The original guideline type (e.g., adult, youth) shall determine the applicable guidelines for the parole violator term, except that a violator committed with a new federal sentence of more than one year shall be treated under the guideline type applicable to the new sentence.

(3) Time served on a new state or federal sentence shall be counted as time in custody for reparole guideline purposes. This does not affect the computation of the expiration date of the violator term as provided by Sections 2.47(d) and 2.52(c) and (d).

(c) The above are merely guidelines. A decision outside these guideline (either above or below) may be made when circumstances warrant. For example, violations of an assaultive nature or by a person with a history of repeated parole failure may warrant a decision above the guidelines.

Notes and Procedures

2.21-01. *Guideline Application*. See Section 2.20 and accompanying notes and procedures. The term 'a history of repeated parole failure' in 28 C.F.R. 2.21(c) refers to cases where sanctions for parole violation have repeatedly been applied previously, not to violations of multiple conditions of parole during one period of time. When a parolee has committed both new criminal conduct and administrative violations, the guidelines for new criminal conduct control.

2.21-02. *Miscellaneous Offenses*.
(a) Common offenses involving parole violators that are graded as Category One (under Sec. 2.20 Chapter Twelve) include driving while intoxicated/while under the influence/while impaired, hit and run, and possession of weapons other than firearms (e.g., possession of a switchblade knife).

(b) Certain 'minor' offenses are treated as administrative violations for guideline purposes. Generally, offenses that are defined as 'noncountable' under salient factor score (Item A) standards are to be treated as administrative violations.

(c) The offense of 'possession of drugs' is handled as follows. If it can be established that the offense is most appropriately classified as 'possession of a small quantity for own use' grade as an administrative violation. If it can be established that the offense involved 'possession with intent to distribute', grade under the applicable category. If neither of the above can be established, grade as 'simple possession' (Category One).

2.21-03. *Possession of a Weapon by a Parolee*. Possession of a firearm by a parolee will usually constitute new criminal conduct (the Federal Gun Control Act of 1968 generally prohibits persons convicted of felonies from possessing firearms, although there are certain limited exceptions: for example, this Act does not apply to persons adjudicated under the Federal Juvenile Delinquency Act). However, there may be cases in which possession of a weapon does not constitute new criminal conduct but is still a violation of the conditions of parole (e.g., possession of weapons other than firearms). For such cases, the administrative violation category of the reparole guidelines will apply.

2.21-04. *Escape by Parolee from State Custody*. Occasionally, a prisoner will be paroled to a state sentence and will subsequently escape. For guideline purposes, apply the rescission guidelines (28 C.F.R. 2.36) as if the escape had been from a federal sentence.

§2.22 COMMUNICATION WITH THE COMMISSION.

Attorneys, relatives, or interested parties wishing a personal interview to discuss a specific case with a representative of the Commission must submit a written request to the appropriate office setting forth the nature of the information to be discussed.

Such interview may be conducted by a Commissioner or assigned staff and a written summary of each such interview shall be prepared and placed in the prisoner's file.

Notes and Procedures

2.22-01. *Review and Referral of Correspondence*. Correspondence from prisoners or their relatives, friends or others, is reviewed by an Analyst and a reply is made to the writer unless content is deemed of sufficient importance to warrant referral to the Regional Commissioner for possible initiation of Commission action. Referrals will be made at the discretion of the Analyst.

2.22-02. *Correspondence from Member of Congress and Other High Officials*.
(a) All correspondence from a Member of Congress, a Federal Judge or other high government official regarding a prisoner is responded to by letter bearing the signature of the Regional Commissioner, except as noted in (b) and (c) below. When copies of the correspondence are sent to the Central Office and one or more Regional Offices, the office receiving the original will answer. Copies of responses to all congressional correspondence tagged by the Office of Legislative Affairs shall be forwarded (two copies) to the Chairman's Office.

(b) In cases currently before the National Appeals Board or National Commissioners, any such correspondence shall be referred to the Chairman of the National Appeals Board for response.

(c) In cases which have been designated as original jurisdiction, responses to congressional inquiries will be prepared by the Chairman's office. The regional office will forward the file and correspondence to the Chairman's office, and will send an interim response advising the writer that the correspondence has been received and forwarded to the Chairman's office for response.

2.22-03. *Congressional Correspondence/Privacy Act*.
(a) Members of Congress either directly or through their staff personnel frequently request information concerning inmates or persons on supervision who are their constituents. The requests should be responded to promptly and the response signed by the Chairman, Vice Chairman, or the appropriate Commissioner.

(b) The usual request is in the form of a letter from the inmate/parolee to the Congressman or Senator, which is forwarded to the Commission by a covering letter or "buck slip." These may be responded to without obtaining a waiver or form signed by the inmate. (The inmate's letter to the Congressman will be accepted as a waiver.) Include whatever information is appropriate for the response but do not disclose any information which you would not disclose to the inmate/parolee himself if he had made a request under the Privacy Act. Occasionally, a Congressional letter is received which does not contain a letter from the inmate/parolee, but specifically advises that this subject has consented disclosure of information to the Congressman or has written to the Congressman requesting assistance. Honor such requests in the same manner as enclosing the inmate/parolee's letter.

(c) Some Congressional requests will contain correspondence from family or friends, not the inmate/parolee, will mention an inmate/parolee's name without specifying the source of the request and then ask for information. If the writer does not desire any other than what is contained on the BP-5 plus the action taken in a case (as the result of a hearing or review on the record), comply and furnish this information. However, please note that the disclosure of the action taken does not include disclosure of reasons for that decision. If information which is protected by the Privacy Act is requested, advise the Congressman's Office that detailed information cannot be furnished unless the inmate/parolee provides some written authority waiving his right to privacy; and state that a copy of this letter has been forwarded to the inmate/parolee along with a waiver form and instructions advising him to sign and return the form directly to the Commission if he desires to have such information released.

(d) Some Congressmen request that responses go directly to the inmate/parolee with a copy to the Congressman's Office; these requests are to be honored.

2.22-04. *Requirement for Written Record of Telephone Calls*. The general content of all telephone calls made or received relative to a prisoner is to be made a part of the written record and signed by the Commissioner or staff person who participated in the call.

2.22-05. *Personal Visits*. Visits to a Regional or Headquarters Office are summarized for the file in all cases. All personal visits will be made upon written requests where possible and will be handled by the appropriate analyst. "Walk in" visits will be referred initially to the post or pre-release analyst. No examiner will grant a personal interview to a visitor regarding a prisoner unless authorized by a Commissioner.

2.22-06. *Visits of Federal Prisoners to Commission Offices*. The Commission's Regional Offices and its Headquarters Office shall not discuss a case with a Federal prisoner except at a duly scheduled hearing. Parolees or mandatory releasees who come to the Commission's offices shall be informed that they must instead contact their probation officer. Persons in the community under the legal custody of the Bureau of Prisons shall be informed that they must instead contact their caseworker.

2.22-07. *Contacts at Institutions*. Examiners should be careful not to be swayed in their deliberations by comments by any institution official, unless such comments are substantiated by data in the prisoner's file or made during the course of the hearing with the prisoner present. Persons making gratuitous comments to the examiners should be invited to present their thoughts in writing and make them a part of the record. Examiners should not engage in conversation outside the hearing room concerning any prisoner with any member of the public, attorney, or relative of an inmate who might be in the vicinity of an institution or who might attempt to influence an examiner at any place or at any time.

2.22-08. *Contacts Outside of Routine Channels*. From time to time, Commissioners are contacted by acquaintances and former colleagues in the criminal justice field about particular parole cases that were not within their jurisdiction at the time. In such circumstances, each Commissioner should ascertain first what case has prompted the call, and in whose jurisdiction the case properly lies. If the case is *not* within the contacted Commissioner's jurisdiction, the caller should be advised to write to the appropriate Commissioner, whether it would be a Regional Commissioner, the Chairman of the National Appeals Board (if the case is on national appeal), or the Chairman of the Commission (if the matter involves a complaint about the general policy or practice of the Commission).

§2.23 DELEGATION TO HEARING EXAMINERS.

(a) There is hereby delegated to hearing examiners the authority necessary to conduct hearings and make recommendations relative to the grant or denial of parole or reparole, revocation or reinstatement of parole or mandatory release, and conditions of parole. Hearings shall be conducted by a panel of two hearing examiners, except where specifically provided that a hearing may be conducted by a single hearing examiner or other official designated by the Regional Commissioner.

(b) The concurrence of two examiners shall be required for a panel recommendation. If a hearing is conducted by a single examiner (or other official), the case shall be reviewed on the record by an additional examiner or examiners for the required vote or votes.

(c) A panel recommendation requires two concurring examiner votes. In the event an examiner panel cannot agree upon a recommendation, the administrative hearing examiner shall vote. If the administrative hearing examiner does not concur with either member of the panel, the case shall be referred to any available hearing examiner for a further vote until a recommendation is reached. If the administrative hearing examiner is serving as a member of a hearing examiner panel or is otherwise unavailable, cases requiring his action under this paragraph will be referred to another hearing examiner.

(d) A recommendation of a hearing examiner panel shall become an effective Commission decision only upon the Regional Commissioner's approval, and docketing at the regional office.

Notes and Procedures

2.23-01. *Documentation of Decisions and Decision Modification*.
(a) To facilitate a consistent national policy, examiners shall briefly indicate in the evaluation section of the hearing summary the factors pointing to placement of a decision at the bottom, middle, or top of the guide lines. This requirement is separate from the requirement that any recommendation outside the guidelines (either above or below) be explained with specificity on the Notice of Action Worksheet.

(b) This need for specificity is present at all levels of decision review (e.g., review of panel recommendations by the Regional Commissioner; Regional Appeals, National Appeals). Therefore, the Regional Commissioner, National Commissioners, and National Appeals Board, as applicable, shall record the specific factors in the case file indicating any modification of a panel recommendation or previous Commission action.

§2.24 REVIEW OF PANEL RECOMMENDATION BY THE REGIONAL COMMISSIONER.

(a) A Regional Commissioner may review the recommendation of any examiner panel and refer this recommendation, prior to written notification to the prisoner, with his recommendation and vote to the National Commissioners for consideration and any action deemed appropriate. Written notice of this referral action shall be mailed or transmitted to the prisoner within twenty-one days of the date of the hearing. The Regional Commissioner and each National Commissioner shall have one vote and decisions shall be based upon the concurrence of two votes. Action shall be taken by the National Commissioners within thirty days of the date of referral action by the Regional Commissioner, except in emergencies.

(b) Notwithstanding the provisions of paragraph (a) of this section, a Regional Commissioner may:

(1) On his own motion, modify or reverse the recommendation of a hearing examiner panel that is outside the guidelines to bring the decision closer to (or to) the nearer limit of the appropriate guideline range; or

(2) On his own motion, modify the recommendation of a hearing examiner panel to bring the decision to a date not to exceed six months from the date recommended by the examiner panel;

(3) Return the case to the institution for a rehearing, provided that a Notice of Action is sent to the prisoner specifying the purpose of the rehearing;

(4) Designate the case for the original jurisdiction of the Commission pursuant to §2.17.

Notes and Procedures

▌2.24-01. *Review of Panel Recommendation.*
(a) Each panel recommendation will be reviewed by the Regional Administrative Hearing Examiner. A recommendation consists of two concurring examiner votes. If the panel renders a split decision, the Administrative Hearing Examiner will cast a vote. If this still does not result in a recommendation, the case will be circulated among the other examiners present until a recommendation is reached prior to referral to the Regional Commissioner.

(b) For initial and reconsideration hearings, an attempt should be made, where feasible, to ascertain the parole action taken relative to any codefendants .

(c) Each case shall then be reviewed by the Regional Commissioner who shall either accept the recommendation of the hearing examiner panel or take one of the other actions specified in 28 C.F.R. 2.24(a) or (b).

▌2.24-02. *Permissible Actions under §2.24(b)(1).*
(a) When the Regional Commissioner does not concur in a recommendation of an examiner panel to render a decision outside the Commission's guidelines, he may modify or reverse the decision to bring the date closer to or to the nearest limit of the guidelines. In such case he should specify on the Order that he is acting pursuant to 2.24(b)(1).

(b) Hearing panel errors of a non-judgemental nature (e.g., clerical errors in guideline calculation; errors in guideline assessment that are clearly contrary to written Commission policy) may also be corrected under this section. That is, this section may be used to bring a panel decision that is outside the guidelines closer to or to the nearer edge of the guideline range as calculated by the examiner panel; or as corrected by the Commissioner when the panel has made a non-judgemental error. The file shall clearly reflect the nature and date of the correction. Such errors shall be called to the attention of the examiner panel. Judgemental errors in establishing the correct guideline range, for example errors in findings on disputed circumstances of the offense or salient factor score items, are to be handled under 28 C.F.R. 2.24(a) or (b)(2) as applicable. If it is unclear whether an error in a given case is judgemental or non-judgemental, it should be treated as judgemental.

▌2.24-03. *Permissible Actions under §2.24(b)(2).* A Regional Commissioner may amend any recommendation of a hearing examiner panel to bring the decision to a date not to exceed six months from the date recommended by the examiner panel. In such case he should specify on the order that he is acting pursuant to 2.24(b)(2). *NOTES*: (1) A Regional Commissioner may not use this provision to change a fifteen year continuance to an effective or presumptive parole date; (2) In any case in which a decision outside the guidelines results, specific reasons must be provided.

▌2.24-04. *Permissible Actions under §2.24(a).* In lieu of the above, a Regional Commissioner may refer any panel recommendation, prior to written notification to the prisoner, with his recommendation and vote to the National Commissioners for reconsideration and any action they may deem appropriate under the following procedures.

(a) The Regional Commissioner referring the case indicates on the next available space of the hearing panel order: *"Refer to the National Commissioners for Reconsideration"* and signs this order. The Regional Commissioner then prepares a memorandum (with reasons in case of parole denial) to the National Commissioners with his reasons for this referral. Also, he prepares a second proposed order with his vote and attaches this order to the memorandum. NOTE: In revocation cases, the referral to NAB shall clearly indicate which of the orders is being referred. The NAB will send out all Notices of Action including those finalized in the Regional Office.

(b) A Notice of Action indicating *"Referred to the National Commissioners for Reconsideration of the Hearing Panel's Recommendation"* is prepared; the order is docketed on the Special Docket. This notice is to be sent to the inmate within twenty-one (21) days after the institutional hearing before the panel.

(c) The case is then sent to the National Commissioners. After action by the National Commissioners, the decision is docketed by the National Appeals Board docket clerk. A Notice of Action is then prepared and transmitted to the institution with a copy to the Regional Office. The case is coded and then returned to the Regional Office. (d) Upon return to the Regional Office, the new order is recorded on the Regional Special Docket.

▌2.24-05. *Permissible Actions under §2.24(b)(3).* In the event new information has been received between the time of the hearing and review by the Regional Commissioner or if the Regional Commissioner requires a clarification of an issue of fact which is crucial to the decision to be made, the Regional Commissioner may order a new hearing on the next available docket pursuant to 28 C.F.R. 2.24(b)(3), giving notice of the purpose of the hearing to the prisoner and sending the new information (if any) to the institution for timely disclosure. This subsection shall not apply when there is a difference of opinion as to the interpretation of known facts; such differences *must* be handled under 28 C.F.R. 2.24(a) or (b).

▌2.24-06. *Modification of Reasons/Correction of Errors.* The Regional Commissioner may add to, modify, or correct any of the reasons for parole denial. The Regional Commissioner may also, on his own motion, correct hearing panel errors (e.g., mathematical error in computing the release date; parole given prior to the judicially set minimum sentence). For errors which affect the guideline range, subsection 2.24-02 above controls. Correction of such error should be indicated in the file together with the initials of the person making the correction and the date of the correction.

▌2.24-07. *Processing After Decision by Regional Office.*
(a) *Notice of Action.* The decision is recorded on a Commission Regional Docket sheet and the case coded. A Notice of Action is prepared (or proofread for accuracy if prepared at the institution) and distributed as follows. The file copy is attached to the hearing summary for placement in the file. One copy (FOIA copy) is forwarded to the Central Office - Attn: Attorney/Management Analyst - for FOIA purposes (in initial hearing cases - a copy of the salient factor score is attached), and the remaining copies are sent to the institution.

(b) *Non-Appealable Decisions.* When the decision being rendered is "not appealable", the "Right to Appeal" section on the Notice of Action should be crossed through and the Notice marked 'Non-Appealable'. If parole was granted at the date of parole eligibility, the following wording should be added at the end of the "Reasons" section:

"The above date is the earliest date on which parole can be granted on your current sentence. As the Commission is precluded by law from releasing you at an earlier time, this release date is NON-APPEALABLE". NOTE: If parole on the record use the wording at 2.12-03.

2.24-08. *Statement of Notification Under 28 C.F.R. §2.24.* Whenever the decision recommended by the examiner panel is modified under 28 C.F.R. §2.24, the Notice of Action should reflect the subsection of 2.24 under which the decision has been changed.

2.24-09. *Notice of Action Worksheet.* The handwritten copy of the Notice of Action Worksheet computed by a hearing panel will be retained in the regional case file.

2.24-10. *State Cases.* After docketing/coding, the Notice of Action is transmitted with the Appeal form, the guidelines used, salient factor score, and a form letter to the State Institution explaining parole procedures and appeal rights.

2.24-11. *Notification of Warden or Superintendent.* Notification of any action of the Commission relative to a grant or a denial of parole, shall not be made to anyone except the prisoner until the Warden or Superintendent of the institution where the inmate is confined has been notified in writing (by Notice of Action). In exceptional cases, the Warden or Superintendent may be notified by telephone or telegram.

2.24-12. *Notification of Attorney in Revocation Cases.* The attorney of record in revocation cases shall receive a copy of the Notice of Action. Copies of all Notices of Action on revocation appeal shall also be sent to the attorney so long as he continues to represent the prisoner before the Commission.

2.24-13. *Notification of Victim/Witness.* Any victim/witness (verified through the Bureau of Prisons/Victim/Witness Coordinator) or criminal justice system official, upon request, may be notified in writing by the Commission of the final decision of the Regional Commissioner (or the National Commissioners) and any subsequent change in the release date by the Commission (e.g., on appeal, at statutory interim hearing). The notification may, where the Commission deems appropriate, include the specific reasons for the decision (e.g., a copy of the Notice of Action or a summary thereof).

§2.25 REGIONAL APPEAL.

(a) A prisoner or parolee may submit to the responsible Regional Commissioner a written appeal of any decision to grant (other than a decision to grant parole on the date of parole eligibility), rescind, deny, or revoke parole, except that any appeal of a Commission decision pursuant to §2.17 shall be pursuant to §2.27. This appeal must be filed on a form provided for that purpose within thirty days from the date of entry of such decision.

(b) The Regional Commissioner may affirm the decision, order a new institutional hearing on the next docket, or reverse or modify the decision. The following actions, require the concurrence of two out of three Regional Commissioners:

(1) Any modification resulting in a reduction of more than 180 days (other than a modification that brings a decision from above the appropriate guideline range closer to, or to, the nearer limit of the appropriate guideline range);

(2) Any modification resulting in a decision below the appropriate guideline range;

(3) Reversal of a decision (i.e., any modification of a fifteen-year reconsideration hearing decision to a presumptive or effective parole date).

Decisions requiring a second or additional vote shall be referred to other Regional Commissioners on a rotating basis as established by the Chairman.

(c) Within 30 days of receipt of the appeal, except in emergencies, the Regional Commissioner shall inform the applicant in writing of the decision and the reasons therefor.

(d) If no appeal is filed within thirty days of the date of entry of the original decision, such decision shall stand as the final decision of the Commission.

(e) Appeals under this section may be based upon the following grounds:

(1) That the guidelines were incorrectly applied as to any or all of the following:

(i) Severity rating;
(ii) Salient factor score;
(iii) Time in custody;

(2) That a decision outside the guidelines was not supported by the reasons or facts as stated;

(3) That especially mitigating circumstances (for example, facts relating to the severity of the offense or the prisoner's probability of success on parole) justify a different decision;

(4) That a decision was based on erroneous information, and the actual facts justify a different decision;

(5) That the Commission did not follow correct procedure in deciding the case, and a different decision would have resulted if the error had not occurred;

(6) There was significant information in existence but not known at the time of the hearing;

(7) There are compelling reasons why a more lenient decision should be rendered on grounds of compassion.

Notes and Procedures

2.25-01. *Date of Entry.* "Date of entry" of decision refers to the date stamped on the Notice of Action.

2.25-02. *Receipt of Regional Appeal.* Upon receipt of a Regional appeal, the file will be obtained and the case transmitted to the Regional Commissioner. Appellate decisions are the responsibility solely of the Regional Commissioner and may not be delegated. Notification of receipt of a regional level appeal (Form H-28) is not required.

2.25-03. *Reasons for Reopening/Modification.* When a Regional Commissioner schedules a case for an earlier presumptive or effective date, or a reinterview, he should indicate the reason under "Remarks" on the Notice of Action or prepare a memorandum indicating to the examiners the reasons for this action, including any special instructions. A copy of the memo should be sent to the institution for its file. Such memo shall be prepared for possible disclosure as specified in Section 2.28-01(b).

2.25-04. *Processing After Decision*. Upon final decision, the case will be coded docketed, and a Notice of Action transmitted to the institution for the prisoner. In "State cases" an appeal form (I-22) will be mailed with the Notice of Action for use in a possible appeal to the National Appeals Board.

2.25-05. *Privacy Act/FOIA Requests*. There should be no delay in processing an appeal by a prisoner because he has made a request for copies of file material under the Privacy Act or Freedom of Information Act.

2.25-06. *File Transfers*. If the prisoner's file has been transferred to another region prior to receipt of the regional appeal, the region to which the file has been transmitted shall assume jurisdiction.

2.25-07. *Prohibition of More Adverse Decision*. No appeal by a prisoner, shall result in a more adverse decision (i.e., a longer set off). However, if the Regional Commissioner feels that the prisoner has received an inappropriately lenient decision, he may affirm the order and note his opinion as part of the reasons for denial.

2.25-08. *Late Appeals*. Since regional appeals are not date-stamped in the institution, any regional appeal received within 45 days of the date on the Notice of Action will be accepted. After that date, 'late' appeals may be accepted for good cause in the discretion of the Regional Commissioner.

2.25-09. *Non-Appealable Actions*.
(1) The following Commission actions are not appealable:
(i) Decisions to grant an effective or presumptive parole date upon completion of the minimum sentence;
(ii) Decisions not to reopen a case under §2.28(a);
(iii) Decisions to reopen a case and schedule a new hearing under §2.28;
(iv) Decisions to retard parole under §2.28(e), or decisions to retard parole under §2.34(a);
(v) Decisions to approve, advance or retard an effective parole date following a pre-release review under §2.14(b);
(vi) Decisions to designate a case as original jurisdiction under §2.17;
(vii) Decisions to deny termination of supervision prior to five years on parole;
(viii) Decisions to let a detainer stand or schedule a dispositional revocation hearing under §2.47.

(2) Decisions which are non-appealable are to be stamped "NON-APPEALABLE" on the Notice of Action.

(3) Once a parole decision is rendered as a result of reopening the case (with the exceptions noted above) the prisoner may take an appeal whether or not the last parole decision is changed. For example, a case may be reopened for a new hearing because of "new information of substantial significance favorable to the prisoner." There is no appeal from the preliminary decision to reopen and schedule a hearing. If the final decision is to order "no change" in the previous the prisoner has a legal right to appeal an advancement of the parole date, on the basis that the "new information" warranted greater leniency than was given.

(4) In retroactive applications of guideline revision, the determination as to whether or not the prisoner is eligible for retroactive review is not appealable. However, if the prisoner is found to be eligible under the terms announced at the time of the guideline revision, any decision resulting from that finding (whether the previous decision is changed or not) is appealable.

2.25-10. *Definition*. The phrase "any modification resulting in a decision below the appropriate guideline range" includes modification of a decision from within or above the guidelines to below the guidelines as well as any modification of a decision below the guidelines to further below the guidelines.

§2.26 APPEAL TO NATIONAL APPEALS BOARD.

(a) Within 30 days of entry of a Regional Commissioner's decision under Section 2.25, a prisoner or parolee may appeal to the National Appeals Board on a form provided for that purpose. However, any matter not raised on a regional level appeal may not be raised on appeal to the National Appeals Board. The National Appeals Board may, upon the concurrence of two members, affirm, modify, or reverse the decision, or order a rehearing, except that a modification or reversal resulting in a decision below the guidelines shall require the concurrence of three members. Split decisions requiring additional votes shall be referred to the Chairman; and, if necessary, to other Regional Commissioners on a rotating basis as established by the Chairman.

(b) The National Appeals Board shall act within 60 days of receipt of the appellant's papers, to affirm, modify, or reverse the decision.

(c) Decisions of the National Appeals Board shall be final.

Notes and Procedures

2.26-01. *Processing through Regional Office*. An appeal to the National Appeals Board must be sent through the Regional Commissioner's Office. The inmate will be notified by Form H-28 that the written appeal has been received and is being processed. The case folder and appeal will be transmitted to the National Appeals Board.

2.26-02. *Voting Quorum*. Decisions shall be based upon the concurrence of two votes, except any reversal or modification in which the resulting decision is below the guideline range established by the decision under review (including any modification from a decision already below the guidelines) shall require the concurrence of three votes. Split decisions requiring additional votes shall be referred to the Chairman of the Commission, and if necessary, to additional Commissioners according to a rotating schedule determined by the Chairman of the Commission.

2.26-03. *Processing after Decision*. After voting by the National Appeals Board members, the case will be docketed and a Notice of Action prepared. The National Appeals Board decision becomes official upon docketing.

2.26-04. *Favorable New Information*. When significant new information is submitted as part of an appeal, the National Appeals Board may (a) act upon such new information, or (b) affirm the decision and notify the Regional Commissioner of the existence of such information by memo for possible reopening.

2.26-05. *Misfiled Appeals*. In the event an inmate files a written appeal of the Regional Commissioner's decision with the National Appeals Board directly, the case folder will be obtained and notification by memo will be sent by the National Appeals Board to the inmate that the written appeal has been received and is being processed.

2.26-06. *Procedure When Case Has Previously Been Considered Under 28 C.F.R.§2.24*. The fact that a National Commissioner has voted on a case referred under 28 C.F.R. Sec. 2.24 (administrative review) shall not disqualify him from voting on the same case later on an appeal under 28 C.F.R. Sec. 2.26 or 2.27.

2.26-07. *Prohibition of More Adverse Decision*. No appeal by a prisoner shall result in a more adverse decision (i.e., a longer set off). However, if the National Appeals Board feels that the prisoner has received an inappropriately lenient decision, they may affirm the order and note their opinion as part of the reasons for denial.

2.26-08. *Reasons for Reopening*. In the event the National Appeals Board reopens a case for a new hearing, such decisions shall be accompanied by the memorandum indicating to the examiners the reasons for this action, including any special instructions. A copy of the memorandum should be sent to the institution for this file.

2.26-09. *Late Appeals*. The National Appeals Board shall accept or reject late appeals under the same standards as pertain to Regional Appeals.

§2.27 APPEAL OF ORIGINAL JURISDICTION CASES.

(a) Cases decided under the procedure specified in Sec. 2.17 may be appealed within thirty days of the date of the decision on a form provided for this purpose. Appeals will be reviewed at the next regularly scheduled meeting of the Commission provided they are received thirty days in advance of such meeting. Appeals received in the office of the Commission's National Appeals Board in Washington, D.C., less than thirty days in advance of a regularly scheduled meeting will be reviewed at the next regularly scheduled meeting thereafter. A quorum of six Commissioners shall be required and decisions shall be by majority vote. In the case of a tie vote, the previous decision shall stand. This appellate decision shall be final.

(b) Attorneys, relatives, and other interested parties who wish to submit written information concerning a prisoner's appeal should send such information to the National Appeals Board Analyst, United States Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. Supporting material should be submitted at least two weeks in advance of the meeting at which the appeal will be heard, in order to permit consideration thereof by the Commission.

(c) If no appeal is filed within thirty days of the entry of the decision under Sec. 2.17 that decision shall stand as the final decision of the Commission.

Notes and Procedures

2.27-01. *Processing*. The case file is forwarded to the National Appeals Board Analyst upon receipt of the appeal for preparation of case material which is sent to the Commissioners prior to the appeal consideration by the Commission.

§2.28 REOPENING OF CASES.

(a) Favorable information. Notwithstanding the appeal procedures of Sec. 2.25 and Sec. 2.26, the appropriate Regional Commissioner may, on his own motion, reopen a case at any time upon the receipt of new information of substantial significance favorable to the prisoner and may then take any action authorized under the provisions and procedures of Sec. 2.25. Original Jurisdiction cases may be reopened upon the motion of the appropriate Regional Commissioner under the procedures of Sec. 2.17.

(b) Institutional misconduct. Consideration of disciplinary infractions and allegations of new criminal conduct occurring after the setting of a parole date are subject to the provisions of Sec. 2.14 (in the case of a prisoner with a presumptive date) and Sec. 2.34 (in the case of a prisoner with an effective date of parole).

(c) Additional sentences. If a prisoner receives an additional concurrent or consecutive federal sentence following his initial parole consideration, the Regional Commissioner shall reopen his case for a new initial hearing on the next regularly scheduled docket to consider the additional sentence and reevaluate the case. Such action shall void the previous presumptive or effective release date. However, a new initial hearing is not mandatory where the Commission has previously evaluated the new criminal behavior, which led to the additional federal sentence, at a rescission hearing under 28 C.F.R. §2.34; except where the new sentence extends the mandatory release date for a prisoner previously continued to the expiration of his sentence.

(d) Conviction after revocation. Upon receipt of information subsequent to the revocation hearing that a prisoner whose parole has been revoked has sustained a new conviction for conduct while on parole, the Regional Commissioner may reopen the case pursuant to Sec. 2.52(c)(2) for a special reconsideration hearing on the next regularly scheduled docket to consider forfeiture of time spent on parole and such further action as may be appropriate. The entry of a new order shall void any presumptive or effective release date previously established.

(e) Release planning. When an effective date of parole has been set by the Commission, release on that date shall be conditioned upon the completion of a satisfactory plan for parole supervision. The appropriate Regional Commissioner may on his own motion reconsider any case prior to release and may reopen and advance or retard an effective parole date for purposes of release planning. Retardation without a hearing may not exceed 120 days.

(f) New adverse information. Upon receipt of new and significant adverse information that is not covered by paragraph (a-e) of this section, the Regional 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 by the Regional Commissioner 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 three out of five votes, and the hearing shall be conducted in accordance with the procedures set forth in Sections 2.12 and 2.13. The entry of a new order following such hearing shall void the previously established release date.

Notes and Procedures

2.28-01. *In General*.
(a) The appropriate Regional Commissioner may on his own motion reopen a case at any time upon receipt of new information of substantial significance that falls within one of the categories specified at 28 C.F.R. 2.28. However, the Regional Commissioner shall not reopen any case during the time it is being considered by the National Commissioners or the National Appeals Board. If the new information is unrelated to the appeal, the Regional Commissioner shall retain the information for possible reopening the case after the appeal process is completed. If the information relates to the appeal, it shall be referred to the National Appeals Board for their consideration.

(b) When a Regional Commissioner reopens a case for any reason, he must specify the applicable subsection of 2.28 and give a brief description of the new information following the "remarks" section on the Notice of Action form. If more explanation is needed, a memo is to be placed with copies attached to the Notice of Action. It is essential that the examiner panel be provided with sufficient guidance so that the subsequent hearing can be properly conducted as intended. The memo must be written in such a manner that it may be disclosed to the prisoner.

2.28-02. *Basis for Reopening*. The six possible bases for reopening are as follows:
(a) *Favorable Information*.
(1) The requirement for "new information of substantial significance" is identical to the "clearly exceptional" standard of 28 C.F.R. 2.14 (a)(2)(ii).

(2) This section may also be used if an existing sentence is modified or reduced. If the sentence modification is based on new facts concerning the offense, it may be necessary to recompute the guidelines. However, a sentence modification that is not based on new information of substantial significance would not justify a reopening. Institution staff should notify the Regional Commissioner of every instance of a change in sentence structure, and the Commissioner should advise the institution by memo if no reopening is warranted.

(3) The voting quorums and procedures under this section are identical with those for Regional Appeals (28 C.F.R. 2.25).

(4) Original Jurisdiction cases may be reopened under 28 C.F.R. 2.28(a) upon the motion of the appropriate Regional Commissioner. In such case, the Regional Commissioner may refer the case directly to the National Commissioners, or may order an institutional hearing prior to the referral to the National Commissioners. A decision of a Regional Commissioner not to reopen an original jurisdiction case does not require any additional vote.

(b) *Institutional Misconduct*. Reopening for this reason is covered in 28 C.F.R. 2.14 and 2.34.

(c) *Additional Sentences*.
(1) Rescission guidelines are applied if the additional criminal conduct occurred while in federal custody or escape therefrom.

(2) An additional concurrent or consecutive federal sentence following initial hearing requires a reopening for a new initial hearing. Exception: where the new sentence results from criminal conduct occurring while in the custody of the Bureau of Prisons (including escape and offenses committed while on escape) for which the prisoner has already been sanctioned by the Commission through the rescission process, the case should be reviewed on the record and: (A) if the record review indicates that a more adverse decision may be warranted, reopen the case and schedule a new hearing. (This will most likely occur where the previous decision was to "continue to expiration", and there is a new mandatory release date as a result of the new sentence; (B) if the record review indicates that the prisoner has already been sufficiently sanctioned, let the previous decision stand; (C) if the record review indicates that the additional sentence will result in a more adverse decision than the Commission intended, a reduction may be considered. [e.g., if the prisoner has received a new regular adult sentence of less than one year to be served consecutively to a YCA term (thus not aggregable and not under the jurisdiction of the Commission), the "new information" that the prisoner will now have to serve additional 'flat time' may be used to reduce a previously set date where appropriate.] In such case, a reduction of the previous rescission decision may be made on the record following the procedures of 28 C.F.R. 2.28(a).

(d) *Conviction After Revocation*. A reopening under this subsection may be ordered as long as the prisoner remains under the jurisdiction of the Commission. If the prisoner has been rereleased but is still under the Commission's supervision, a summons or warrant may be issued to secure the prisoner's attendance at this hearing.

(e) *Release Planning*. When reopening and retarding under this subsection, indicate on the Notice of Action the reason (e.g., "lack of suitable employment", etc.). *Note*: In the rare case where retardation of a parole grant for release planning by a total of more than 120 days becomes unavoidable, the Regional Commissioner shall schedule a "special hearing" on the next available docket (see 28 C.F.R. 2.28 (e)). The purpose of this hearing shall be to explore what steps can be taken to facilitate development of an acceptable release plan. Following such hearing, the Regional Commissioner may, if necessary, retard the parole date "*until an acceptable release plan is developed.*" The Regional Commissioner shall personally review the record of each such case at least once every thirty days thereafter.

(f) *New Adverse Information*. In the case of new adverse information, a special reconsideration hearing may be ordered under this subsection upon the concurring votes of three out of five Commissioners. When the request for reopening under this subsection is sent from the region to the other Commissioners for concurring votes the entire file shall be sent for review. Notice should be sent to the prisoner that his/her parole date has been automatically retarded pending possible reopening for new information. If the case fails to obtain the necessary concurring signatures, the previous date should be reinstated; or, if the previous date has already passed, a new date set for release as soon as practicable. If the case does obtain the concurring signatures necessary for reopening for a new hearing, the Notice of Action to this effect must specify the adverse nature of the new information and the documentary material must be sent promptly to the institution. The case worker should be contacted to ensure that upon delivery of such material the prisoner will be afforded the opportunity for pre-hearing disclosure. This subsection is the appropriate mechanism for reopening cases to consider new information about the prisoner's original offense behavior or earlier criminal activities that would have resulted in a different decision had the information been presented to the Commission at the time of the initial parole hearing. The entry of a new decision automatically voids the previous decision.

2.28-03. *Hearing Type/Procedure*. Each time a case is reopened under 28 C.F.R. 2.28, the hearing type will be a "special reconsideration hearing," except when a new initial hearing is ordered in the case of additional sentences.

§2.29 RELEASE ON PAROLE.

(a) A grant of parole shall not be deemed to be operative until a certificate of parole has been delivered to the prisoner.

(b) An effective date of parole shall not be set for a date more than six months from the date of the hearing. Residence in a Community Treatment Center as part of a parole release plan generally shall not exceed one hundred and twenty days.

(c) When an effective date of parole falls on a Saturday, Sunday, or legal holiday, the Warden of the appropriate institution shall be authorized to release the prisoner on the first working day preceding such date.

Notes and Procedures

2.29-01. *Processing Parole Grants*.
(a) Institution staff shall be requested to submit completed release plans and a request for a certificate of parole to the Regional Office not later than 30 days prior to the effective parole date, when feasible. When this deadline is not met the pre-release analyst shall contact the institution to ascertain the status of the case and reasons for delay.

(b) The parole certificate shall be signed by the Regional Commissioner or by a professional staff member designated by the Regional Commissioner and be dispatched to arrive at the institution not later than five working days prior to the release date. If such certificate does not arrive by this date the institution should request instructions (preferably by teletype). In emergency situations the Commission may authorize (by telephone or teletype) the institution caseworker to issue a "temporary certificate" on behalf of the Commission.

(c) To assist the Probation Service in case classification for purposes of supervision guidelines, the Commission will add the most recently calculated salient factor score category to the parole certificate using the following wording: "Initial Risk Category: (Very Good, Good, Fair, Poor)". For mandatory release cases, the Bureau will add this data to mandatory release certificate.

(d) Release on parole should occur on the effective date shown on the Notice of Action providing the Commission has approved the release plan except as noted in (e) below. The institution should promptly advise the Commission of impending or actual delays (preferably by teletype). In emergency situations (such as disciplinary infractions immediately prior to a release date or a sudden change in release plans), the Bureau of Prisons may delay release on parole until further instructions are received from the Commission. In such case the reasons for the delay and institutional recommendation must be communicated to the Commission immediately; and the Commission shall respond within 5 working days.

(e) In the event a prisoner granted a parole date refuses to sign the parole certificate the case worker will inform the prisoner that this action is considered by the Commission to be a refusal of the parole date. If the prisoner still refuses to sign the certificate, the prisoner will not be released. The case worker will notify the Commission's Regional Office by memo that the prisoner has refused to sign the parole certificate after being advised that such refusal constitutes a waiver of parole. The memo will be added to the prisoner's file and the previous order marked *"Cancelled by Refusal to Sign Parole Certificate Per Memo From [ ] Dated [ ]."* For further consideration, the prisoner must again apply for parole. NOTE: These waiver provisions do not affect the release of a mandatory releasee who must be released by expiration of sentence, less good time credits. However, the caseworker should notify a mandatory releasee who refuses to sign the release certificate that the conditions of release are still binding regardless of whether or not the release certificate is signed. The caseworker must sign an attestation on the certificate that the conditions were read to the prisoner prior to release.

2.29-02. *Special Parole Conditions*. See 28 C.F.R. §2.40.

§2.30 FALSE INFORMATION OR NEW CRIMINAL CONDUCT; DISCOVERY AFTER RELEASE.

If evidence comes to the attention of the Commission after a prisoner's release that such prisoner has willfully provided false information or misrepresented information deemed significant to his application for parole, or has engaged in any criminal conduct during the current sentence prior to the delivery of the parole certificate, the Regional Commissioner may reopen the case pursuant to the procedures of §2.28(f) and order the prisoner summoned or retaken for hearing pursuant to the procedures of §§2.49 and 2.50, as applicable, to determine whether the order of parole should be cancelled.

Notes and Procedures

2.30-01. *Hearing Procedure*. Hearings under this section will be conducted under revocation procedures, except there can be no forfeiture of street time. If a finding of new criminal conduct is made, the following order may be rendered: *"Previous order of parole effective [ ] is hereby cancelled"*. Then, the rescission guidelines are to be applied, and a new order relative to parole grant or denial is to be entered.

2.30-02. *Warrant Issuance*. Since there can be no forfeiture of street time under this provision, any warrant issued under this provision must state that it is not to be executed after the expiration of the original sentence.

§2.31 PAROLE TO DETAINERS; STATEMENT OF POLICY.

(a) Where a detainer is lodged against a prisoner, the Commission may grant parole if the prisoner in other respects meets the criteria set forth in Sec. 2.18. The presence of a detainer is not in itself a valid reason for the denial of parole.

(b) The Commission will cooperate in working out arrangements for concurrent supervision with other jurisdictions where it is feasible and where release on parole appears to be justified.

§2.32 PAROLE TO LOCAL OR IMMIGRATION DETAINERS.

(a) When a state or local detainer is outstanding against a prisoner whom the Commission wishes to parole, the Commission may order either of the following:

(1) Parole to the actual physical custody of the detaining authorities only. In this event, release is not to be effected except to the detainer. When such a detainer is withdrawn, the prisoner is not to be released unless and until the Commission makes a new order of parole.

(2) Parole to the actual physical custody of the detaining authorities or an approved plan. In this event, release is to be effected to the community if detaining officials withdraw the detainer or make no effort to assume custody of the prisoner, providing there is an acceptable plan for community supervision.

(b) When the Commission wishes to parole a prisoner subject to a detainer filed by Federal Immigration officials, the Commission shall order the following: Parole to the actual physical custody of the immigration authorities or an approved plan. In this event, release is to be effected regardless of whether immigration officials take the prisoner into custody, providing there is an acceptable plan for community supervision.

(c) As used in this section "parole to a detainer" means release to the "physical custody" of the authorities who have lodged the detainer. Temporary detention in a jail in the county where the institution of confinement is located does not constitute release on parole to such detainer. If the authorities who lodged the detainer do not take the prisoner into custody for any reason, he shall be returned to the institution to await further order of the Commission.

§2.33 RELEASE PLANS.

(a) A grant of parole is conditioned upon the approval of release plans by the Regional Commissioner. In general, the following factors are considered as elements in the prisoner's release plan.

(1) Availability of legitimate employment and an approved residence for the prospective parolee; and

(2) Availability of necessary aftercare for a parolee who is ill or who requires special care.

(b) Generally, parolees will be released only to the place of their legal residence unless the Commission is satisfied that another place of residence will serve the public interest more effectively or will improve the probability of the applicant's readjustment.

(c) Where the circumstances warrant, the Commission on its own motion, or upon recommendation of the probation officer, may require that an advisor who is a responsible, reputable, and law-abiding citizen living in or near the community in which the releasee will reside be available to the releasee. Such advisor shall serve under the direction of and in cooperation with the probation officer to whom the parolee is assigned.

Notes and Procedures

2.33-01. *Place of Release*. Release plans are developed through the cooperative effort of the Bureau of Prisons and Probation Service staff. In the event of a disagreement as to the most appropriate district of supervision for a person released on parole or as if on parole, the Regional Commissioner shall resolve the disagreement (Note: the Regional Commissioner's authority to determine the location of supervision derives from the Commission's statutory duty to determine the conditions of supervision).

§2.34 RESCISSION OF PAROLE.

(a) When an effective date of parole has been set by the Commission, release on that date is conditioned upon continued satisfactory conduct by the prisoner. If a prisoner granted such a date has been found in violation of institution rules by an Institutional Disciplinary Committee or is alleged to have committed a new criminal act at any time prior to the delivery of the certificate of parole, the Regional Commissioner shall be advised promptly of such information. The prisoner shall not be released until the institution has been notified that no change has been made in the Commission's order to parole. Following receipt of such information, the Regional Commissioner may reopen the case and retard the parole date for up to 90 days without a hearing, or schedule a rescission hearing under this section on the next available docket at the institution or on the first docket following return to a federal institution from a Community Treatment Center or a state or local halfway house.

(b) Upon the ordering of a rescission hearing under this section, the prisoner shall be afforded written notice specifying the information to be considered at the hearing. The notice shall further state that the purpose of the hearing will be to decide whether rescission of the parole date is warranted based on the charges listed on the notice, and shall advise the prisoner of the procedural rights described below.

(c) An Institutional Disciplinary Committee hearing resulting in a finding that the prisoner has committed a violation of disciplinary rules may be relied upon by the Commission as conclusive evidence of institutional misconduct. However, the prisoner will be afforded an opportunity to explain any mitigating circumstances, and to present documentary evidence in mitigation of the misconduct at the rescission hearing.

(d) In the case of allegations of new criminal conduct committed prior to delivery of the parole certificate, the Commission may consider documentary evidence and/or written testimony presented by the prisoner, arresting authorities, or other persons.

(e) The prisoner may be represented at a rescission hearing by a person of his choice. The function of the prisoner's representative shall be to offer a statement following the discussion of the charges with the prisoner, and to provide such additional information as the examiner panel may require. However, the presiding hearing examiner may limit or exclude any irrelevant or repetitious statement.

(f) The evidence upon which the rescission hearing is to be conducted shall be disclosed to the prisoner upon request, subject to the exemptions set forth at §2.55. If the parole grant is rescinded, the Commission shall furnish to the prisoner a written statement of its findings and the evidence relied upon.

Notes and Procedures

2.34-01. *In General*. Rescission or retardation of a previously established parole date are sanctions employed by the Parole Commission to assist the Bureau of Prisons in the maintenance of institutional discipline. These sanctions also uphold the integrity of the condition that release on the established date is contingent upon the prisoner's continued good conduct. Neither rescission nor retardation of parole can be ordered for disciplinary reasons unless the Bureau of Prisons has first conducted an Institutional Disciplinary Committee Hearing. (New criminal conduct, whether in an institution or in the community, is the sole exception and is discussed in 2.34-07 below.) The purpose of a rescission hearing is to permit the prisoner to explain his misconduct and to permit the Parole Commission to reach an independent judgment as to the seriousness of the misconduct. However, an I.D.C. finding will in each case be considered conclusive that an infraction of the specified prison rule did occur.

2.34-02. *Presumptive Parole Cases*. In cases where a presumptive date of parole has been set, I.D.C. reports will be considered at the prisoner's next interim hearing or the pre-release record review, whichever comes first. However, institution staff will give the Regional Office advance copies of I.D.C. reports whenever rescission of parole is recommended. In such cases, the Regional Commissioner may schedule a special rescission hearing.

(a) *Interim Hearings*. Progress reports must be prepared at least 30 days before the hearing or the pre-release review and will contain the following notice:

> *"IF YOU HAVE A PRESUMPTIVE PAROLE DATE, any I.D.C. actions referred to in this report will be considered by the Commission as a basis for possible rescission of your parole date. You may present documentary evidence (including voluntary statements of witnesses) in mitigation of your misconduct. You may also be represented at the hearing by a person of your choice, and may request to review all disclosable documents that will be considered by the Commission."*

The complete I.D.C. file (BP-IS-115 and all supporting documents) will be made available to the examiner panel, and a copy of the file will be retained by the following the hearing for Regional Office consideration. (Pre-hearing disclosure of these documents is discussed in 2.34-06 below.) Interim hearings will be conducted pursuant to the procedures set forth at 28 C.F.R. Sec. 2.34(c)-(f), whenever the Progress Report includes I.D.C. actions.

(b) *Pre-release Record Reviews*. If the progress report prepared for a pre-release record review includes I.D.C. actions, the I.D.C. report and supporting documents will be attached to the report. The Regional Commissioner's options are then to order a rescission hearing as discussed below, retard parole without a hearing for up to 90 days, or make the presumptive date an effective date if no adverse action is warranted. Specific notice of that decision will be sent by the Commission's Regional Office.

2.34-03. *Effective Parole Cases*. The institution will immediately notify the regional office of any misconduct by a prisoner with an effective parole date. A copy of the I.D.C. report and all supporting documents shall accompany this notice, unless the prisoner is so close to the release date that parole must be retarded on emergency notice. (Supporting documents must then be sent as soon as possible.) If the misconduct is not serious enough to warrant a rescission hearing or retardation of parole, the Regional Office must promptly notify the institution that there will be no change in the previous order.

(a) *Rescission Hearings*. If the misconduct warrants a rescission hearing, the Regional Commissioner may reopen the case and retard parole for a rescission hearing on the next available docket. The hearing shall be in accordance with the procedures specified at 28 C.F.R. Sec. 2.34(c)-(f). The examiner panel will be provided with a copy of the complete I.D.C. file.

(b) *Legal Certification*. Whenever a rescission hearing is to be ordered in an effective date case, and such rescission hearing would be based upon an IDC conducted by a contract CTC, the IDC report must be referred to BOP Regional Counsel for certification as legally valid prior to the holding of the rescission hearing. If it is not feasible to certify the IDC report before the hearing, certification may be obtained after the rescission hearing. IDC reports based on proceedings conducted in facilities *other* than contract CTC's will not require certification, except that in any questionable case the Regional Commissioner may refer the IDC report for BOP legal certification before proceeding with the rescission hearing.

(c) *Retardation Without a Hearing*. Under 28 C.F.R. §2.34, a Regional Commissioner may retard a parole date for up to 90 days without a hearing for disciplinary infraction(s). If subsequent to an order to retard a parole date under this provision, the Regional Commissioner becomes aware of additional I.D.C. disciplinary infraction(s) which warrant further retardation of the parole grant, a rescission hearing shall be scheduled if the total retardation warranted exceeds 90 days from the original parole date. An exception is when the additional retardation ordered still results in a parole date preceding the arrival of the next regularly scheduled hearing panel at such institution; in such cases, this limited additional retardation may be ordered without a hearing.

2.34-04. *Notice of Action Formats*

(a) *Examples*.
Example (1) If a rescission hearing is ordered and will be conducted prior to the scheduled release date, the Notice of Action will read -

Reopen: [schedule for a rescission hearing on next docket]
Reasons: You were found guilty of [specified misconduct] by I.D.C. report dated [ ].

Example (2) If a rescission hearing is ordered but will not be conducted prior to the scheduled release date, the Notice of Action will read -

Reopen: [retard parole and schedule for a rescission hearing on the next docket]
Reasons: You were found guilty of [specified misconduct] by I.D.C. report dated [ ].

Example (3) If parole is retarded for up to 90 days without a hearing, the Notice of Action will read -

Reopen: [Retard parole for specified number of days]
Reasons: You were found guilty of [specified misconduct] by I.D.C. report dated [ ]. Provide guideline data if the retardation exceeds 60 days.

(b) *Notice of Procedural Rights in Effective Parole Cases*. Each Notice of Action reopening for a rescission hearing will include the following notice of procedural rights attached to the Inmate Copy of the Notice of Action:

"The purpose of a rescission hearing ordered by the Parole Commission is to decide whether a deferral of your parole date is warranted based on the charges listed on the attached Notice of Action. At your hearing, you may present documentary evidence (including voluntary statements of witnesses) in mitigation of your misconduct. You may also be represented at your hearing by a person of your choice, and may request your case manager to permit you to review all disclosable documents that will be considered by the Commission."

2.34-05. *Original Jurisdiction Cases*. A Regional Commissioner may refer a vote to take no action on an I.D.C. report or to retard parole up to 90 days under the procedures of 28 C.F.R. Sec. 2.17 or may take action on his own motion. If a rescission hearing is ordered, the decision following such hearing must be handled under 28 C.F.R. Sec. 2.17 if the case was previously handled under original jurisdiction procedures.

2.34-06. *Disclosure of Documents*. Normal pre-hearing disclosure procedures will apply to the I.D.C. file (BP-IS-115 and all supporting documents). If the case manager objects to disclosure of any documents or portion thereof to the prisoner on the grounds of potential harm to any person, the document will be clearly marked DO NOT DISCLOSE and the I.D.C. report will serve as the legally-required summary of withheld document(s). Examiners must exercise care not to reveal the contents of any non-disclosable document.

2.34-07. *New Criminal Behavior by a Prisoner*.
(a) The occasion may arise where a prisoner is alleged to have committed a new crime (e.g., while on pass from a C.T.C.) and no I.D.C. is conducted. In such a case, the prisoner will be scheduled for a rescission hearing upon return to an institution. The Regional Office should ensure that specific notice of the charges is given in the Notice of Action reopening the case, and that the same type of documentary evidence that would be available at an institutional revocation hearing (e.g., arrest reports, etc.) is sent to the institution prior to the rescission hearing. Where appropriate, the U.S. Probation Office may be requested to interview the witnesses and obtain statements.

(b) While the prisoner may *not* call adverse witnesses at the hearing, the truth of the charges may be contested and the prisoner may present written statements on his behalf. In the event such a hearing is ordered, the case manager is to be contacted and requested to make sure the prisoner is advised of the above procedural rights.

2.34-08. *Escape Cases*. When a prisoner with a parole date is returned to an institution following an escape, a rescission hearing is not to be conducted until the institution first completes the necessary I.D.C. action.

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2.34-09. *Rescission Guidelines*. Every decision to rescind parole, and every decision to retard paroie without a hearing, must be made pursuant to the guidelines set forth at 28 C.F.R. 2.36.

§2.35 MANDATORY RELEASE IN THE ABSENCE OF PAROLE.

(a) A prisoner shall be mandatorily released by operation of law at the end of the sentence imposed by the court less such good time deductions as he may have earned through his behavior and efforts at the institution of confinement. If released pursuant to 18 U.S.C. 4164, such prisoner shall be released, as if on parole, under supervision until the expiration of the maximum term or terms for which he was

sentenced less 180 days. If released pursuant to 18 U.S.C. 4205(f), such prisoner shall remain under supervision until the expiration of the maximum term or terms for which he was sentenced. Insofar as possible, release plans shall be completed before the release of any such prisoner.

(b) A prisoner committed under the Youth Corrections Act must be initially released conditionally under supervision not later than two years before the expiration of the term imposed by the court.

Notes and Procedures

2.35-01. *Youth Corrections Act Sentences of One Year or Less*. Youth Corrections Act cases sentenced for misdemeanors or petty offenses under the *Magistrates Act of 1979* must be conditionally released under supervision not later than three months prior to the expiration of the term imposed by the court. See 2.16-05.

§2.36 RESCISSION GUIDELINES.

(a) The following guidelines shall apply to the sanctioning of disciplinary infractions or new criminal behavior committed by a prisoner subsequent to the commencement of his sentence and prior to his release on parole. These guidelines specify the customary time to be served for such behavior which shall be added to the time required by the original presumptive or effective date. Credit shall be given towards service of these guidelines for any time spent in custody on a new offense that has not been credited towards service of the original presumptive or effective date. If a new concurrent or consecutive sentence is imposed for such behavior, these guidelines shall also be applied at the initial hearing on such term.

(1) ADMINISTRATIVE RULE INFRACTION(S) (including drug/alcohol abuse) normally can be adequately sanctioned by postponing a presumptive or effective date by 0-60 days per instance of misconduct. Escape or other new criminal conduct shall be considered in accordance with the guidelines set forth below.

(2) ESCAPE/NEW CRIMINAL BEHAVIOR IN A PRISON FACILITY (including a Community Treatment Center). The time required pursuant to the guidelines set forth in (i) and (ii) below shall be added to the time required by the original presumptive or effective date.

(i) Escape or Attempted Escape

(A) Escape or attempted escape, except as listed below	6-12 months
(B) If from non-secure custody with voluntary return in 6 days or less	<=6 months
(C) If by fear or force applied to person(s), grade under (ii) but not less than Category Five.	

Notes: (1) If other criminal conduct is committed during the escape or during time spent in escape status, then time to be served for the escape/attempted escape shall be added to that assessed for the other new criminal conduct.
(2) Time in escape status shall not be credited.
(3) Voluntary return is defined as returning voluntarily to the facility or voluntarily turning one's self in to a law enforcement authority as an escapee (not in connection with an arrest on other charges).
(4) Non-secure custody refers to custody with no significant physical restraint [e.g., walkaway from a work detail outside the security perimeter of an institution; failure to return to any institution from a pass or unescorted furlough; or escape by stealth from an institution with no physical perimeter barrier (usually a camp or community treatment center)].

(ii) Other New Criminal Behavior in a Prison Facility

Severity Rating of the New Criminal Behavior (from §2.20)	Adult Cases	Youth/NARA Cases
Category One	<=6 months	<=6 months
Category Two	<=8 months	<=8 months
Category Three	10-14 months	8-12 months
Category Four	14-20 months	12-16 months
Category Five	24-36 months	20-26 months
Category Six	40-52 months	30-40 months
Category Seven	52-80 months	40-64 months
Category Eight	100 + months	80 + months

(3) NEW CRIMINAL BEHAVIOR IN THE COMMUNITY (e.g., while on pass, furlough, work release, or on escape). In such cases, the guidelines applicable to reparole violators under §2.21 shall be applied, using the new offense severity (from §2.20) and recalculated salient factor score (such score shall be recalculated as if the prisoner had been on parole at the time of the new criminal behavior). The time required pursuant to these guidelines shall be added to the time required by the original presumptive or effective date.

(b) **The above are merely guidelines. Where the circumstances warrant, a decision outside the guidelines (above or below) may be rendered provided specific reasons are given. For example, a substantial period of good conduct since the last disciplinary infraction in cases not involving new criminal conduct may be treated as a mitigating circumstance.**

Notes and Procedures

2.36-01. *Administrative Infractions.* If a decision is rendered following a rescission hearing to defer release above the guideline range for administrative rule infractions (0-60 days per infraction), the Notice of Action must state that a decision above the guideline range is found warranted and specify the reasons therefor.

2.36-02. *Escape/New Criminal Behavior Within a Prison Facility or Within a Community Treatment Center.*
(a) *Escape or Attempted Escape Without Force or Threat.* The Notice of Action must indicate the appropriate guideline range to be added to the time required by the original presumptive or effective date, and if a decision is rendered outside the guideline range, state with specificity the factors warranting such a decision.

(b) *Other New Criminal Behavior Committed Within a Prison Facility or Within a Community Treatment Center.* New criminal conduct within the confines of a prison facility (or within a CTC) shall be assessed pursuant to the guidelines set forth in Section 2.36(a)(ii). Note: Offenses not limited to the confines of a prison facility or CTC (e.g., submitting false tax returns to the IRS from a prison facility) are graded as new criminal behavior in the community. The Notice of Action must indicate the new offense severity and guideline range as well as the Commission's decision with regard to the number of months to be served for such behavior in addition to the time required by the original presumptive or effective date.

(c) *Escape by Fear or Force.* Grade as 'Other New Criminal Behavior in a Prison Facility', but not less than Category Five. Example: A prisoner escapes from an institution work detail by overpowering the correctional officer escorting the detail. The officer does not sustain bodily injury. Grade as Category Five (i.e., add 24-36 months for adult cases). This sanction is in place of, not in addition to, the sanction for escape without force.

(d) *Minor Assaults.* Certain assaults may be rather minor (e.g., shoving, throwing non-dangerous objects), or, in some cases it may not be possible to establish which offender is the aggressor (e.g., where two prisoners are found fighting). In cases of minor assaults such as described above, grade as an administrative violation. Examples: (1) During an argument, a prisoner shoves and verbally abuses another prisoner; (2) Two prisoners are found fighting, but it cannot be established which prisoner was the aggressor; (3) A prisoner throws urine at a correctional officer from a cell while in disciplinary segregation.

2.36-03. *New Criminal Behavior in the Community (e.g., While on Pass from a Community Treatment Center, or on Furlough, Work Release, or Escape).* Apply the reparole guidelines under Section 2.21(b). Recalculate the salient factor score as if the prisoner had been on parole at the time of the new criminal behavior. If other criminal behavior is committed during an escape or while on escape status, add the time to be served for the escape or attempted escape to the time that is assessed for the other new criminal conduct. The Notice of Action must indicate the new salient factor score, the appropriate offense severity rating, and the guideline range, as well

as the Commission's decision with regard to the release date. [Note: New criminal conduct includes a new misdemeanor or felony. Minor offenses (e.g., traffic infractions, or disorderly conduct), and possession of a small quantity of drugs for the prisoner's own use, shall be treated as administrative infractions under 2.36-01 above.]

2.36-04. *Technical Escapes.* A prisoner on pass or furlough who fails to return to Bureau custody within the required time frame solely because of a new arrrest is not considered an escapee for rescission guideline purposes. However, a prisoner who fails to return at the required time and is later prevented from returning by a new arrest is treated as an escapee (without voluntary return).

§2.37 DISCLOSURE OF INFORMATION CONCERNING PAROLEES; STATEMENT OF POLICY.

(a) Information concerning a parolee under the Commission's supervision may be disclosed to a person or persons who may be exposed to harm through contact with that particular parolee if such disclosure is deemed to be reasonably necessary to give notice that such danger exists.

(b) Information concerning parolees may be released to a law enforcement agency as required for the protection of the public or the enforcement of the conditions of parole.

Notes and Procedures

2.37-01. *Disclosure of Information.*
(a) Authority for discretionary release of information under §2.37(a) is delegated to the Chief Probation Officer of the District supervising the case (in the absence of a special instruction from the Commission to the contrary). Determinations under this section shall be made under the standards established by the Administrative Office of the U.S. Courts for similar determinations for probationers, subject to any special instructions of the Commission. Any questions concerning the necessity of such disclosure may be referred to the Regional Commissioner for decision.

(b) §2.37(b) is intended to facilitate cooperation between the Parole Commission and law enforcement officials. It refers to: disclosure on a case by case basis of such information as is necessary to assist a law enforcement agency in the investigation of a specific crime (for example, notification to a law enforcement agency by a probation officer that a parolee has in the past used a modus operandi similar to one reportedly used in a recent crime); and disclosure of such information as is necessary to assist in parole supervision (for example, asking law enforcement officials whether a parolee has been questioned or has had other contacts with the law enforcement agency, or asking assistance in locating a parolee whose whereabouts are unknown). Authority for such disclosure, absent a special instruction from the Commission to the contrary, is delegated to the Chief Probation Officer of the District supervising the case. Determinations to disclose case file information shall be made under the standards established by the Administrative Office of the U.S. Courts for similar determinations for probationers, subject to any special instructions of the Commission. Any questions concerning disclosure under this section shall be referred to the Regional Commissioner for decision.

(c) In addition, §2.37(b) provides for the routine disclosure of certain information about parolees to law enforcement authorities. Where requested by the head of a law enforcement authority, the Chief Probation Officer of the applicable District shall cause to be provided periodically: (1) a list of names; (2) date of birth; (3) crime of

conviction; (4) projected sentence expiration date; and (5) F.B.I. file number for parolees currently under supervision in, or known to about to be released or transferred to, a particular jurisdiction. The Chief Probation Officer of the District may, in his discretion, provide additional identifying information (address, photograph and/or fingerprints) where he determines the provision of this information to be feasible and appropriate. The Chief Probation Officer in each District is delegated authority to make such determinations as are necessary to implement these provisions (absent a special instruction from the Commission to the contrary). Questions concerning routine disclosure of information or requests for routine disclosure of any other item of information should be referred to the Chairman of the Commission for decision.

Notes:

(1) The term "parolee" includes persons released as if on parole (mandatory releasees).

(2) Provisions for routine disclosure do not apply to WITSEC cases.

(3) Any law enforcement agency receiving information under paragraph (c) above shall be notified that such information is for law enforcement purposes only and is not to be released outside such agency. If a Chief Probation Officer determines that a law enforcement agency is making inappropriate use of such information, he may, with the approval of the Chairman of the Commission, withhold such disclosure.

(4) Disclosure of information concerning persons sentenced under the Juvenile Justice Act is governed by the following. When a juvenile delinquent is released, the post release analyst should ask the Probation Officer supervising the case to request authorization from the committing court to disclose information concerning the juvenile (a) to person(s) who may be exposed to harm through contact with that juvenile if such disclosure is deemed to be reasonably necessary to give notice that such danger exists, and (b) to a law enforcement agency where disclosure of information is required for protection of the public or enforcement of the conditions of parole. A copy of this authorization should be sent to the Commission for its file. If such authorization is granted by the committing court, disclosures may then be made as appropriate. For any disclosure consideration not covered above, contact the Commission's Legal Office.

§2.38 COMMUNITY SUPERVISION BY UNITED STATES PROBATION OFFICERS.

(a) Pursuant to sections 3655 and 4203(b)(4) of Title 18 of the United States Code, United States Probation Officers shall provide such parole services as the Commission may request. In conformity with the foregoing, probation officers function as parole officers and provide supervision to persons released by parole or as if on parole (mandatory release) under the Commission's jurisdiction.

(b) A parolee may be transferred to a new district of supervision with the permission of the probation officers of both the transferring and receiving district, provided such transfer is not contrary to instructions from the Commission.

Notes and Procedures

2.38-01. *Supervision Guidelines*. The Commission, in conjunction with the U.S. Probation Service has established parole supervision guidelines (see Appendix 6). Special supervision on a highly selective basis for the first six months may be ordered. This order will be placed on the Notice of Action in the following form: "Special Supervision Required for the first six months".

2.38-02. *Supervision Reports*. All parolees and mandatory releasees shall make monthly written reports (Probation Form 8) to the United States Probation Officer to whom they have been assigned, and such written reports shall be submitted regularly on a monthly basis regardless of level of supervision under the parole supervision guidelines.

2.38-03. *Warrant Execution and Searches by Probation Officers*. Probation Officers are not authorized by the Commission to execute warrants or to make searches of releasee's person or premises. An exception concerning limited physical examination for detection of drug abuse is covered under 28 C.F.R. 2.40-13.

§2.39 JURISDICTION OF THE COMMISSION.

(a) Jurisdiction of the Commission over a parolee shall terminate no later than the date of expiration of the maximum term or terms for which he was sentenced, except as provided by Section 2.35, Section 2.43, or Section 2.52.

(b) The parole of any parolee shall run concurrently with the period of parole or probation under any other Federal, State, or local sentence.

(c) Upon the termination of jurisdiction, the Commission shall issue a certificate of discharge to such parolee and to such other agencies as it may determine.

Notes and Procedures

2.39-01. *Notice of Discharge*. In the absence of early termination of supervision, the probation officer, on behalf of the Commission, shall issue a Notice of Discharge to the parolee at the expiration of his term. When a Special Parole Term follows a regular parole term such Notice shall be issued by the probation officer only at the completion of the Special Parole Term. When a Commission warrant has been issued, no Notice of Discharge shall be given until a final disposition of the warrant has been made.

§2.40 CONDITIONS OF RELEASE.

(a) The following conditions are attached to every grant of parole and are deemed necessary to provide adequate supervision and to protect the public welfare. They are printed on the certificates issued to each parolee and mandatory releasee:

(1) The parolee shall go directly to the district named in the certificate (unless released to the custody of other authorities). Within three days after his arrival, he shall report to his parole advisor, if he has one, and to the United States Probation Officer whose name appears on the certificate. If in any emergency the parolee is unable to get in touch with his parole advisor or his probation officer or his office, he shall communicate with the United States Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

(2) If the parolee is released to the custody of other authorities, and after release from the physical custody of such authorities, he is unable to report to the United States Probation Officer to whom he is assigned within three days, he shall report instead to the nearest United States Probation Officer.

(3) The parolee shall not leave the limits fixed by his certificate of parole without written permission from the probation officer.

(4) The parolee shall notify his probation officer within two days of any change in his place of residence.

(5) The parolee shall make a complete and truthful written report (on a form provided for that purpose) to his probation officer between the first and third day of each month, and on the final day of parole. He shall also report to his probation officer at other times as the probation officer directs.

(6) The parolee shall not violate any law, nor shall he associate with persons engaged in criminal activity. The parolee shall get in touch within two days with his probation officer or his office if he is arrested or questioned by a law-enforcement officer.

(7) The parolee shall not enter into any agreement to act as an informer or special agent for any law-enforcement agency.

(8) The parolee shall work regularly unless excused by his probation officer, and support his legal dependents, if any, to the best of his ability. He shall report within two days to his probation officer any changes in employment.

(9) The parolee shall not drink alcoholic beverages to excess. He shall not purchase, possess, use, or administer marihuana or narcotic or other habit-forming drugs, unless prescribed or advised by a physician. The parolee shall not frequent places where such drugs are illegally sold, dispensed, used, or given away.

(10) The parolee shall not associate with persons who have a criminal record unless he has permission of his probation officer.

(11) The parolee shall not have firearms (or other dangerous weapons) in his possession without the written permission of his probation officer, following prior approval of the United States Parole Commission. NOTE: Such permission may not be considered in cases in which the parolee is prohibited from such possession by any federal, state, or local law.

(12) The parolee shall permit confiscation by his Probation Officer of any materials which the Probation Officer believes may constitute contraband in the parolee's possession and which he observes in plain view in the parolee's residence, place of business or occupation, vehicle, or on his person.

(b) The Commission or a member thereof may at any time modify or add to the conditions of release pursuant to this section, on its own motion or on the request of the U. S. Probation Officer supervising the parolee. The parolee shall receive notice of the proposed modification and unless waived shall have ten days following receipt of such notice to express his views thereon. Following such ten day period, the Commission shall have 21 days, exclusive of holidays, to order such modification of or addition to the conditions of release.

(c) The Commission may require a parolee to reside in or participate in the program of a residential treatment center, or both, for all or part of the period of parole.

(d) The Commission may require a parolee, who is an addict, within the meaning of Section 4251(a), or a drug dependent person within the meaning of Section 2(8) of the Public Health Service Act, as amended, to participate in the community supervision program authorized by Section 4255 for all or part of the period of parole.

(e) A parolee may petition the Commission on his own behalf for a modification of conditions pursuant to this section.

(f) The notice provisions of paragraph (b) of this section shall not apply to modification of parole or mandatory release conditions pursuant to a revocation proceeding or pursuant to paragraph (e) of this section.

(g) A parolee may appeal an order to impose or modify parole conditions under the procedures of Section 2.25 and Section 2.26 as applicable not later than thirty days after the effective date of such conditions.

(h) A prisoner who, having been granted a parole date, subsequently refuses to sign the parole certificate, or any other consent form necessary to fulfill the conditions of parole, shall be deemed to have withdrawn the application for parole as of the date of refusal to sign. To be again considered for parole, the prisoner must reapply for parole consideration. With respect to prisoners who are required to be released to supervision through good time reductions (pursuant to 18 U.S.C. §§4161 and 4164), the conditions of parole set forth in this rule, and any other special conditions ordered by the Commission, shall be in full force and effect upon the established release date regardless of any refusal by the releasee to sign the parole certificate.

(i) Any parolee who absconds from supervision has effectively prevented his sentence from expiring. Therefore, the parolee remains bound by the conditions of his release and violations committed at any time prior to execution of the warrant, whether before or after the original expiration date, may be charged as a basis for revocation, and a warrant may be supplemented at any time.

Notes and Procedures

2.40-01. *CTC Residence.* As a condition of parole, residence in a Community Treatment Center may be required prior to release on parole. Such residence in a community treatment center shall not generally exceed 120 days.

2.40-02. *Release on Condition of Participation in Drug or Alcoholic Treatment Program.* Government privacy regulations restrict information flow between treatment facilities, the Commission, and Probation Officers in the absence of the consent of the person being treated. They allow for a blanket consent at the outset of treatment (42 C.F.R. Part 2, Sec. 2.29) and a blanket consent form has been prepared for that purpose and is to be signed by the prisoner before release. Refusal to sign this consent form will be treated in the same way as a refusal to sign the certificate of parole.

2.40-03. *Drug After-Care Condition.*
(a) Each parolee and mandatory releasee committed under the Narcotic Addict Rehabilitation Act [or others who have been determined to be dependent or addicted to drugs and committed under the Drug Abuse Prevention and Control Act (DAPCA, 21 U.S.C. §841)] shall have the special drug condition imposed unless there are compelling reasons to the contrary. This condition is: *"You shall participate, as instructed, in a program approved by the U. S. Parole Commission for treatment of narcotic addiction or drug dependency, which may include testing to determine if you have reverted to the use of drugs."* All such releasees are eligible for drug after-care services. The United States Probation Officer is responsible as the Commission's agent, and will work closely with community agencies or persons who may be under contract to the Federal Government to provide specialized after-care service.

(b) Where a special drug after-care (or alcohol or mental treatment) condition is to be placed on a Parole, Mandatory Release or Special Parole Term Certificate, this condition should be added to the Order, and Notice of Action. This also applies to cases released to detaining authorities. In such cases, the parole certificate will inform the U.S. Probation Officer that the after-care condition should be put into effect when the prisoner begins active supervision.

(c) The U.S.P.O. may, after analysis and study of a case, determine that a drug aftercare condition is no longer necessary. In such cases, he may recommend to the Regional Commissioner that this condition be deleted.

2.40-04. *Mental Health After-care.* When a prisoner appears to be in need of treatment in the community for a serious mental or emotional problem, the Commission may impose a special condition requiring such treatment. In such cases, the Commission may order parole on the condition that the parolee participate in a program of mental health under the direction of his probation officer. Such program may consist of in-patient or out-patient care as indicated upon or after release.

2.40-05. *Use of Parolees/Mandatory Releasees as Informers.*
(a) A condition of parole or mandatory release prohibits such persons from acting as an "informer" or "special agent" for any law enforcement agency without prior Commission approval. Exceptions are possible when it is decided that the benefits to society are sufficient to make the exceptions. A request must come to the Regional Commissioner from the law enforcement agency which wishes to use the services of the releasee. The period of time and the conditions under which the releasee may serve a law enforcement agency are specifically limited, and the Regional Commissioner should receive periodic (and final) reports from the using agency. For a statement of Commission policy on use of informers, see Appendix 7.

(b) The appropriate Regional Commissioner should approve or disapprove a request made under the above section. Information copies of all requests and final responses will be forwarded to the Chairman. Exception: Where such request involves an original jurisdiction case, the Regional Commissioner shall transmit this request with his recommendation and vote to the National Commissioners under the procedures of 28 C.F.R. Section 2.17.

2.40-06. *Use of Methadone.* The Commission, in conjunction with the Bureau of Prisons and the Probation Division, has set criteria for a parolee's participation in a methadone maintenance program to control heroin or other opiate addiction. Commission approval is not required where the community care agency and the U.S. Probation Officer jointly agree on the need for such a program and that the case meets the following criteria: The releasee must be at least 18 years old. He must volunteer. Abstinence methods must have been ineffective. He must have medical clearance. Methadone maintenance is administered only by those agencies that are appropriately certified by the Drug Enforcement Administration and the Federal Drug Administration, and is employed only in conjunction with other appropriate supportive community care and supervision services.

2.40-07. *Restriction on Use of Alcohol.* The Commission has decided that it will impose no special condition barring the use of alcoholic beverages. The regular conditions prohibit "excessive" use of intoxicants. Where the Commission orders that a releasee participate in some form of after-care for alcoholism, this should be added as a special condition.

2.40-08. *Association with Persons with Criminal Records.* The U.S. Probation Officer supervising the case shall have authority to grant or deny permission to a parolee or mandatory releasee regarding association with person(s) having a criminal record. A special condition requiring approval by the Regional Commissioner of such association shall supersede this authority.

2.40-09. *Modification of Conditions.*
(a) When a United States Probation Officer wishes to propose a special condition, or revision of the existing conditions of supervision, he shall make such proposal on Parole Form F-1. The original of that form shall constitute notice to the releasee of his recommendation. In most instances he should discuss the matter with the releasee and present the notice in person. The notice should be dated at the time it is given to the releasee. Where the releasee agrees to the proposed revision he may so specify on the form and waive the ten day period (to which he is entitled if he wishes to submit comments to the Commission relative to the proposal).

(b) If necessary, the notice may be mailed by certified mail and the 10 day period for comments begins on the date the notice is received by the releasee, as stated on the postal service document showing receipt. This date must be shown on the F-1 form sent to the Commission.

(c) Approval or disapproval of the proposal may be made by the Regional Commissioner at any time after the comments of the releasee are received, but must be made within 21 days, excluding holidays, of such receipt.

(d) The releasee himself may petition the Commission directly by writing a letter or similar communication to the Regional Commissioner. The Commission will normally ask for comments from the probation officer in such instances before approving or disapproving the petition. The Commission is not required to respond within the 21 day period when the parolee petitions for modification of the conditions of his release.

(e) The Regional Commissioner may add to or revise the conditions of release on his own motion, but will permit a ten day period for the releasee to comment in writing and will normally also ask for responses (oral or written) from the probation officer.

(f) Special conditions may be imposed or other modification made as part of a revocation proceeding without regard to notice or any period of time for comments by any party.

(g) A Notice of Action shall be used when modifying a condition of release, and such notice serves to advise the releasee of his rights to appeal the action to the Regional Commissioner. A decision *not* to change a condition previously imposed is not appealable.

2.40-10. *Special Conditions.* Special conditions (including drug aftercare) should be recommended, where appropriate, by the hearing panel at the time the presumptive date (whether by parole or mandatory release) is determined (normally at the initial hearing). Where appropriate, special conditions may be added or modified at any time prior to the prisoner's release. After release, conditions may be added or modified pursuant to 28 C.F.R. 2.40(b).

2.40-11. *Appeal of Conditions.* The parolee may also appeal the original imposition of conditions. When an inmate objects to the conditions of release he remains subject to them nonetheless until such time as the Commission might revise them on appeal. The prisoner may obtain an appeal form from his casemanager prior to his release if he contemplates filing an appeal. The time limit for appeal expires 30 days after the date of his release from custody.

2.40-12. *Felony Registration and Similar Ordinances.* Certain communities have ordinances which call for registration with the police or other authority of residents who have a record of felony conviction. Other laws may specify that a convicted person may not drive an automobile or be issued certain licenses or that persons with a history of narcotic addiction must register under certain conditions and cannot be issued public licenses. Each probation officer should be familiar with ordinances of this kind in the district and notify persons under supervision of their obligation to comply with such ordinances.

2.40-13. *Physical Examination for Detection of Drug Abuse.*
(a) Parolees with Special drug aftercare condition. A probation officer may direct a parolee under the 'special drug aftercare condition' to permit reasonable examination of the parolee's person by the probation officer (or other drug treatment personnel)

for the detection of drug abuse (e.g., fresh needle marks). The purpose of this provision is to assist in early detection of certain forms of drug abuse so that proper counseling and treatment can be initiated. This procedure is intended as an additional, supplemental tool, and not as a replacement for urine specimen analysis. In conducting such examinations, the following procedures apply:

(1) Examinations are to be made with due concern for the dignity and privacy of the parolee.

(2) Examinations under this provision should normally be limited to the arms, legs below the knees, head (including nose) and neck. Use of a magnifying glass to facilitate inspection is permitted. Only for good cause in extraordinary circumstances (and with the advance permission of the Regional Commissioner) may any more intrusive inspection be authorized.

(3) Examinations should normally be made by a person of the same sex as the parolee. Where this is not feasible, a person of the same sex as the parolee must be present when such examination is conducted.

(4) Since the primary purpose of the provision is early detection of drug abuse for treatment purposes, revocation consideration will not generally be based solely on evidence of such examination. Should evidence relating to such examination be submitted by a probation officer as part of any application for revocation consideration, the probation officer shall submit a separate statement citing the relevant experience/training of the person conducting such examination.

(5) Use of force is not authorized. Refusal to submit to a reasonable examination under this provision may be charged as a violation of parole.

(b) Parolees not under Special drug aftercare condition. If the probation officer suspects drug abuse, the probation officer may ask the parolee to consent to submission of a urine specimen and/or physical examination under the procedures of paragraph (a) of this section. If the parolee refuses to consent, the Commission is to be notified promptly. The Probation Officer should state the basis of the suspicion of drug abuse and request the Commission to add the following as a special condition of parole: 'You shall submit to testing for detection of drug abuse as directed by your probation officer.' Such request should be via Form F-1 (see 2.40-09).

2.40-14. *Seizure of Contraband in Plain View.*
(a) Where specifically authorized as a condition of parole (either at the time of release or as a special condition later added) a Probation Officer may require the parolee to surrender to him materials which the Probation Officer believes may constitute contraband and thus a violation of parole conditions (e.g., dangerous drugs, weapons), and which he observes in plain view in the course of his contacts with the parolee. The Commission shall be promptly notified of any such seizure of contraband. A receipt for any material confiscated must be given to the parolee.

(b) Safety of all parties involved, or in the vicinity, is the prime consideration in the seizure of contraband. Thus, any use of force is prohibited and consent to the confiscation is required. Refusal of consent shall be a basis for a request by the Probation Officer for a warrant.

(c) Where possession of contraband material constitutes a criminal offense, such must be reported to the appropriate law enforcement authority with delivery to them of the contraband. Probation Officers should obtain from the law enforcement authorities in their District instruction in proper identification and chain of custody procedures to permit use of the materials for criminal proceedings and/or revocation of parole.

(d) Contraband materials must be in plain view (open sight). Plain view cannot be the result of a search by the Probation Officer. Thus, the Probation Officer may not conduct a search (e.g., enter rooms uninvited or open bureau drawers, glove boxes, or trunks of cars) to cause 'plain view' of contraband articles.

§2.41 TRAVEL APPROVAL.

(a) The probation officer may approve travel outside the district without approval of the Commission in the following situations:

(1) Vacation trips not to exceed thirty days.

(2) Trips, not to exceed thirty days, to investigate reasonably certain employment possibilities.

(3) Recurring travel across a district boundary, not to exceed fifty miles outside the district, for purpose of employment, shopping, or recreation.

(b) Specific advance approval by the Commission is required for other travel outside the district, including any travel outside the contiguous forty-eight states, employment requiring recurring travel more than fifty miles outside the district (except employment at offshore locations), and vacation travel outside the district exceeding thirty days. A request for such permission shall be in writing and must demonstrate a substantial need for such travel.

(c) A special condition imposed by the Regional Commissioner prohibiting certain travel shall supersede any general rules relating to travel as set forth above.

Notes and Procedures

2.41-01. *Travel Outside the District Which Requires Approval of the Commission.* In non-original jurisdiction cases, travel decisions under 2.41(b) may be made by an analyst or examiner (where there is concurrence between the analyst or examiner and the probation officer recommendation). Otherwise, such decisions shall be made by the Regional Commissioner. In original jurisdiction cases, the Regional Commissioner may approve or deny such travel on his own motion or may refer the case with his recommendation and vote to the National Commissioners. In such case, the quorum at 28 C.F.R. 2.17 shall be required. Travel as part of transfer to another district does not require Commission approval, but evidence of the completed transfer should be sent to the originating region. Travel outside the contiguous forty-eight states includes travel to or from Alaska, Hawaii, territories, or foreign countries.

2.41-02. *Temporary Surrender of Passport.* The U.S. Probation Officer may require the parolee to surrender his passport for any time up to the duration of parole supervision if the Probation Officer believes that a parolee may take unauthorized trips outside the United States (e.g., a drug offender who is suspected of travelling abroad to arrange new importation ventures). If the parolee refuses to surrender his passport, the Probation Officer may contact the Regional Office and request that a special condition be added. The Regional Commissioner shall determine whether a reasonable basis for the proposed condition appears to exist. (The Probation Officer should, when the passport is surrendered, notify the nearest U.S. passport office so that the parolee cannot obtain a replacement.)

2.41-03. *Probation Officer's Recommendation Relative to Foreign Travel.* Certain foreign countries prohibit entry of convicted felons. It is the responsibility of the Probation Officer, prior to making a favorable recommendation to the Commission to authorize foreign travel, to ascertain that such travel is not contrary to the law of the country being entered.

§2.42 PROBATION OFFICER'S REPORTS TO COMMISSION.

A supervision report shall be submitted by the responsible probation officer to the Commission for each parolee after the completion of 12 months of continuous supervision and annually thereafter. The probation officer shall submit such additional reports as the Commission may direct.

Notes and Procedures

2.42-01. *In General.* Exclusive authority and responsibility for decisions relating to a grant or denial of application for parole, imposition of reasonable conditions of parole or mandatory release, and modification and revocation of parole have been vested in the U.S. Parole Commission by statute. The U.S. Probation Officer acts as the agent of the Parole Commission in the performance of duties relating to the supervision of a releasee. The probation officer is authorized to exercise only such discretion as has been delegated to him by the Parole Commission in the supervision of releasees.

2.42-02. *Reporting of Violations.* The authority to issue a summons to appear or a warrant for the retaking of a releasee is exercised by the Parole Commission. The following guidelines are established by the U.S. Parole Commission for U.S. Probation Officers' use in reporting alleged violation of parole or mandatory release.

(a) *Law Violations.* The probation officer shall immediately report to the Parole Commission the arrest of a releasee for a new criminal offense which is punishable by any term of imprisonment. Do not wait for conviction or final disposition to report the arrest but submit dispositional information as soon as it becomes available.

(b) *Technical Violations and Lesser Law Violations Not Punishable by Imprisonment (e.g., Traffic Infractions).* The Parole Commission delegates to the probation officer the authority to exercise discretion as to when technical violations or infractions are reported except that all violations shall be reported immediately under the following circumstances:

(1) The releasee fails to report to his parole advisor or the U.S. Probation Officer within 10 days after his release and his whereabouts is unknown.

(2) The releasee leaves the limits fixed by his certificate of parole without the permission of the probation officer and fails to return or contact his probation officer within 15 days, or leaves the continental United States for any period of time without the permission of the Parole Commission, or violates a special condition of parole regarding travel.

(3) The releasee's whereabouts are unknown for more than 30 days.

(4) The releasee fails to submit written monthly reports for 2 consecutive months even though his whereabouts are known to the probation officer.

(5) The releasee has entered into an agreement to act as an informant or special agent for a law enforcement agency without advanced approval of the Parole Commission.

(6) The releasee has purchased, possessed, or administered a controlled substance under circumstances which lead the probation officer to believe the releasee is abusing controlled substances on an on-going basis or is involved in the distribution of controlled substances. The probation officer must support the alleged violation through personal observation or other evidence if the releasee has not been arrested.

(7) The releasee has continued to associate with persons who have a criminal record after the releasee has been directed specifically by the probation officer to discontinue the association [except that all associations with persons with a criminal record by a releasee classified as an original jurisdiction case by the Commisson shall be reported immediately].

(8) The releasee possesses a firearm or other dangerous weapon without the permission of the U.S. Probation Officer and the approval of the Parole Commission.

(9) The releasee violates any special condition of parole or mandatory release.

(c) *Pattern of Violations.* Violations of the conditions of parole or mandatory release shall be reported immediately to the Parole Commission if, in the opinion of the probation officer, the violation behavior is part of a continuing pattern of infractions or is indicative of serious adjustment problems likely to culminate in criminal activities. The written report of violation should contain the probation officer's recommended action (e.g., warrant, summons, reprimand, modification of conditions, etc.).

(d) *Methods of Reporting Violations.* Violations which must be reported immediately will be reported by special report under procedures set forth in this chapter. All violations not reported immediately shall be reported on the Supervision Progress Report (Parole Form F-3).

§2.43 EARLY TERMINATION.

(a)(1) Upon its own motion or upon request of the parolee, the Commission may terminate supervision, and thus jurisdiction, over a parolee prior to the expiration of his maximum sentence.

(2) Except in the case of a youth offender sentenced to a term of one year or less under 18 U.S.C. §3401(g), a committed youth offender may not be granted an early termination of jurisdiction earlier than after one year of continuous supervision on parole. When termination of jurisdiction prior to the expiration of sentence is granted in the case of a youth offender, his conviction shall be automatically set aside. A certificate setting aside his conviction shall be issued in lieu of a certificate of termination.

(b) Two years after release on supervision, and at least annually thereafter, the Commission shall review the status of each parolee to determine the need for continued supervision. In calculating such two-year period there shall not be included any period of release on parole prior to the most recent release, nor any period served in confinement on any other sentence. A review will also be conducted whenever early termination is recommended by the supervising probation officer.

(c)(1) Five years after release on supervision, the Commission shall terminate supervision over such parolee unless it is determined, after a hearing conducted in accordance with the procedures prescribed in 18 U.S.C. 4214(a)(2), that such supervision should not be terminated because there is a likelihood that the parolee will engage in conduct violating any criminal law. Such hearing may be conducted by a hearing examiner or other official designated by the Regional Commissioner. In calculating such five-year period, there shall not be included any period of release on parole prior to the most recent release or any period served in confinement on any other sentence.

(2) If supervision is not terminated under paragraph (c)(1) of this section the parolee may request a hearing annually thereafter, and a hearing shall be conducted with respect to termination of supervision not less frequently than biennially.

(3) A parolee may appeal an adverse decision under paragraphs (c)(1) or (2) of this section pursuant to §§2.25, 2.26, or 2.27 as applicable.

(d) The Regional Commissioner in the region of supervision shall have authority to make decisions under this section pursuant to the guidelines set forth below; except that in the case of a parolee classified under the provisions of §2.17, an affirmative decision to terminate supervision under paragraph (b) of this section, or a decision to terminate or continue supervision under paragraph (c) of this section shall be made pursuant to the provisions of §2.17.

(e) Early termination guidelines: In determining whether to grant early termination from supervision, the Commission shall apply the following guidelines:

(1) Absent case-specific factors to the contrary, termination of supervision shall be considered indicated when:

(i): A parolee originally classified in the very good risk category (pursuant to §2.20) has completed two continuous years of supervision free from any indication of new criminal behavior or serious parole violation; and

(ii): A parolee originally classified in other than the very good risk category (pursuant to §2.20) has completed three continuous years of supervision free from any indication of new criminal behavior or serious parole violation.

Note: As used in this section, an indication of new criminal behavior includes a new arrest if supported by substantial evidence of guilt, even if no conviction or parole revocation results.

(2) Decisions to continue the parolee under supervision past the period indicated above may be made where case-specific factors justify a conclusion that continued supervision is needed to protect the public welfare. Such case-specific factors may relate to the current behavior of the parolee (for example, a parolee whose behavior begins to deteriorate as the normally expected time for termination approaches) or to the parolee's background (for example, a parolee with a history of repetitive assaultive conduct or substantial involvement in large scale or organized criminal activity). In such cases, an additional period of supervision prior to termination of jurisdiction may be warranted.

(3) Decisions to terminate supervision prior to completion of the three year period specified in paragraph (e)(1)(ii) of this section may be made where it appears that the parolee is a better risk than indicated by the salient factor score as originally calculated. However, termination of supervision prior to the completion of two years of difficulty-free supervision will not be granted unless case-specific factors clearly indicate that continued supervision would be counterproductive.

(4) Cases with pending criminal charge(s) shall not be terminated from supervision until disposition of such charge(s) is known.

(5) After five continuous years of supervision, decisions to terminate will be made in accordance with subsection (c) of this rule.

Notes and Procedures

2.43-01. *In General.*

(a) Probation Officers are instructed to submit to the appropriate Regional Office of the Commission a report (Parole Form F-3) for every parolee and mandatory releasee after one year of active supervision and annually thereafter, except when the releasee's term will expire within 90 days after the anniversary date of his release to supervision. Any period of confinement in a penal type of institution as a result of another sentence shall not be counted as active supervision.

(1) In the case of a parolee who was committed under the Youth Corrections Act with a maximum sentence of six years or more, a terminal report shall, in addition, be submitted to the Commission six months prior to the expiration of the full term, and the case shall be reviewed to determine if early unconditional discharge should be granted to set aside the conviction.

(2) In the case of a parolee who was committed under the Youth Corrections Act with a maximum sentence of one year or less, the terminal report shall be submitted to the Commission five weeks before the expiration of the full term, and the case shall be reviewed to determine if early unconditional discharge should be granted to set aside the conviction.

(b) After review and referral of the annual supervision report in cases who have been under supervision for two or more years, the Regional Commissioner shall determine whether the releasee shall be continued under supervision or whether supervision (and thus jurisdiction) shall be terminated. A Commission order shall be used to record when termination is ordered and the case shall be docketed on a docket provided for that purpose (Early Termination Docket). If the parole is not terminated the Regional Commissioner shall write "no change" on the F-3 form and initial such action. Where the releasee has been under supervision less than two years and the probation officer recommends continued supervision and the Analyst concurs, the file need not be referred to the Regional Commissioner. No Notice of Action need be sent following any review based on a supervision period of less than five years.

(c) If early termination is ordered, a Certificate of Early Termination shall be issued with a copy to the probation officer. Certificates of Early Termination shall be signed either by the Regional Commissioner or his designee, and the termination shall be effective as of the date it is signed, except that termination in the case of a military parolee will become effective 30 days from the date of signature, with the effective date of termination noted on the H-15 form. NOTE: (i) if the parolee is serving a sentence imposed by a military court, a copy of the Certificate shall be sent to the appropriate Clemency Board (addresses follow); Army Clemency Board, SFCP, c/o

OSA Mail Room, Room 1E526, Washington, D.C. 20310; Air Force Clemency and Pardon Board, SAF MIPC, Commonwealth Building, Washington, D.C. 20330; Navy Clemency and Pardon Board (use for Navy and Marine personnel), 801 N. Randolph St., Suite 905, Washington, D.C. 22203; (ii) if the parolee has been transferred to the United States under a treaty, a copy shall be sent to the Office of International Affairs, Criminal Division, U.S. Department of Justice, Washington, D.C. 20530.

(d) In cases committed under the Youth Corrections Act a Certificate of Uncondi-tional Discharge shall be issued in lieu of a Certificate of Early Termination.

(e) In all cases of early termination (including YCA cases), F.B.I. Form R-84 should be completed and sent to: *F.B.I. Identification Division, Washington, D.C. 20537, Attn: Recording Section.* Copies of Certificates of Discharge or Early Termination need not be sent to the F.B.I.

(f) Parolees may petition the Commission directly for termination. In such instances no decision shall be made to terminate parole early without considering a recommendation of the U.S. Probation Officer.

(g) Unless early termination is ordered each releasee will continue to make written monthly reports (Parole Form 8) to the probation officer. Such reports will be submitted regularly until supervision is terminated, despite the fact that the probation officer may classify the releasee under high or low activity supervision status according to the Supervision Guidelines. Reduction of written reporting is not permitted.

(h) After five years under continuous supervision (excluding any time in confine ment since the last release from federal custody on the sentence) the Regional Commissioner shall either (1) terminate supervision; or (2) order a personal hearing with the releasee to be held locally by one hearing examiner or other official designated by the Commissioner.

(i) The above hearing will be conducted under the same procedures as revocation hearings in that the releasee is entitled to receive reasonable advance notice of the hearing and that he has the right to have an attorney and witnesses appear in his behalf, and to the cross-examination of adverse witnesses. He also has the right to request a court-appointed attorney, and the probation officer should be instructed to provide Form CJA-22 if such a request is made. The releasee does not have the right to disclosure of file material in the same manner as when a decision to grant or deny parole is being made, but (as in a revocation hearing) should be allowed to see material at the time of the hearing which was added to the file since his release and which may be used by the Commissioner in making his determination relative to termination of supervision. These include any reports from a probation officer to the Commission except material which is exempt under Federal statute from being disclosed.

(j) The purpose of such hearing is to obtain information upon which the Regional Commissioner might determine whether or not there is a likelihood that the parolee will engage in conduct violating any criminal law. A summary (Appendix 1-E) is prepared. No recommendation is given to the releasee by the examiner, nor is concurrence by a second examiner needed. Upon final determination by the Commissioner, a Notice of Action is issued to the releasee, through the probation officer. Such Notice should contain the right of appeal of such actions pursuant to 28 C.F.R. Sections 2.25 and 2.26, since the parolee has completed five years of active supervision. If the Regional Commissioner makes an Order different from the recommendation made by the Hearing Examiner, the reasons for the differing action shall be made a part of the file.

2.43-02. *Original Jurisdiction Cases.*
(a) *Prior to Five Years of Supervision.* Cases designated Original Jurisdiction (OJ), which have been on parole supervision for less than five years, shall be processed as described in 2.43-01. If the Regional Commissioner orders "NO CHANGE" and supervision is continued (no referral to the National Commissioners is necessary). However, if after review of an OJ case, the Regional Commissioner *votes for termination of supervision,* the case *must be* referred to the National Commissioners for termination to be approved. If termination is ordered, the file shall be returned to the Regional Office for processing and certificate preparation.

(b) *Following Five Years of Supervision.*

(1) After five years of supervision, a Regional Commissioner may vote for termination without ordering a termination hearing. In such cases, a referral to the National Commissioners must be made. If a decision is made in favor of termination, the case is returned to the Regional Office for processing and certificate preparation. If the decision is for continued supervision, the National Commissioners will enter an order as follows: "Continue Supervision -Schedule for Termination Hearing".

(2) Following completion of the hearing, the Regional Commissioner will vote and refer the case to the National Commissioners. A Notice of Action to the releasee will be sent by the Regional Office at the same time the case is forwarded to the National Commissioners. This notice will advise the releasee that his case has been referred to the National Commissioners.

(3) After five years of supervision, the Regional Commissioner may order a five year termination hearing and then vote either for termination or continued supervision. In such cases the process will be the same as (b)(2) above after the hearing has been held.

(4) If a supervision is continued, the releasee may appeal pursuant to 28 C.F.R. 2.27.

2.43-03. *Special Parole Terms.*
(a) When early termination of a regular parole term is ordered and Special Parole Term is to follow, the probation officer is to be authorized by letter to amend the applicable dates on the Special Parole Term Certificate to show that the Special Parole Term is to begin immediately and that the expiration date is to be moved forward.

(b) Since Special Parole Terms are not aggregated with regular parole terms, a new schedule for submission of Form F-3 must be established at the time a Special Parole Term begins. Such reports are due after each year under supervision after the month in which the Special Parole Term began.

(c) The time to be counted for (1) early termination guidelines and (2) a five-year termination hearing is to be counted from the beginning of the special parole term without credit for time on any regular parole supervision.

§2.44 SUMMONS TO APPEAR OR WARRANT FOR RETAKING OF PAROLEE.

(a) If a parolee is alleged to have violated the conditions of his release, and satisfactory evidence thereof is presented, the Commission or a member thereof may:

(1) issue a summons requiring the offender to appear for a preliminary interview or local revocation hearing.

(2) issue a warrant for the apprehension and return of the offender to custody.

A summons or warrant may be issued or withdrawn only by the Commission, or a member thereof.

(b) Any summons or warrant under this section shall be issued as soon as practicable after the alleged violation is reported to the Commission, except when delay is deemed necessary. Issuance of a summons or warrant may be withheld until the frequency or seriousness of violations, in the opinion of the Commission, requires such issuance. In the case of any parolee charged with a criminal offense, issuance of a summons or warrant may be withheld, or a warrant may be issued and held in abeyance pending disposition of the charge.

(c) A summons or warrant may be issued only within the prisoner's maximum term or terms except that in the case of a prisoner released as if on parole pursuant to 18 U.S.C. Section 4164, such summons or warrant may be issued only within the maximum term or terms, less one-hundred eighty days. A summons or warrant shall be considered issued when signed and placed in the mail at the Commission Headquarters or appropriate regional office.

(d) The issuance of a warrant under this section operates to bar the expiration of the parolee's sentence. Such warrant maintains the Commission's jurisdiction to retake the parolee either before or after the normal expiration date of the sentence and to reach a final decision as to revocation of parole and forfeiture of time pursuant to §2.52(c).

(e) A summons or warrant issued pursuant to this section shall be accompanied by a statement of the charges against the parolee, the applicable procedural rights under the Commission's regulations and the possible actions which may be taken by the Commission. A summons shall specify the time and place the parolee shall appear for a revocation hearing. Failure to appear in response to a summons shall be grounds for issuance of a warrant.

Notes and Procedures

2.44-01. *Requests for Warrants.*
(a) Requests for warrants/summons from the probation officer shall not be declined without the approval of the Regional Commissioner. Declinations of warrants on reports of parolee actions without requests for a warrant shall be decided by the analyst unless such report indicates a continuing pattern of behavior or a propensity for violence. In such case, it shall be referred to the Regional Commissioner. The analyst may refer any report to the Regional Commissioner that in his opinion indicates a warrant should be issued.

(b) A warrant declined by the Regional Commissioner needs no further action. Finality of issuing a warrant rests with the Regional Commissioner.

(c) Should a Regional Commissioner be unavailable when it is necessary to make a decision concerning the issuance of a warrant, then the violation warrant material must be directed to another Commissioner for consideration. This procedure is as follows:

(1) The sending region will transmit the information normally contained in a warrant application via teletype, telecopier or telephone to any available Regional Commissioner.

(2) The receiving region will then type the warrant, and the Regional Commissioner of the receiving region will issue or decline the warrant. Following issuance or declination, the sending region will be notified via teletype, telecopier or telephone.

(3) If the warrant is issued, the receiving region will then distribute the warrant by sending the original and one copy of the warrant to the appropriate U.S. Marshal and one copy to the sending region. The sending region will prepare the warrant application and related materials which will be forwarded to the appropriate distribution points.

(d)(1) The following language should be typed on all warrants issued for YCA and NARA releasees "Do not execute or use as a detainer after (full term Date)." *EXCEPTION*: If there is evidence that the releasee is in absconder status omit this sentence and substitute: "Subject is in absconder status -execute warrant whenever subject is apprehended." If after the warrant is issued information is received that the releasee is an absconder, notify the Marshal by letter or teletype signed by the Regional Commissioner (1) that the subject is in absconder status - execute warrant whenever subject is apprehended; and (2) instruct the Marshal to draw a line through the sentence "Do not execute after (full term date)" and to attach this letter or teletype to the warrant.
(2) In FJDA cases, the following language should be typed on all warrants "Do not execute or use as a detainer after (date of offender's 21st birthday)." *EXCEPTION*: In the very rare case that the juvenile offender was more than age 19 at time of original commitment, consult Regional Bureau of Prisons staff for the date that federal jurisdiction ends.

(e) Preference for CTC Placement: In the case of administrative violations, a Community Treatment Center or similar placement is generallly to be preferred to returning the parolee to prison.

2.44-02. *Summons Issuance.*
(a) A summons to appear at a revocation hearing may be issued if, in the opinion of the Regional Commissioner, incarceration pending revocation proceedings is not warranted by the frequency or seriousness of the alleged violation or violations, the parolee is not likely to fail to appear for revocation proceedings, and the parolee does not constitute a danger to himself or others. The summons shall state (on the reverse side) the charges to be considered at the hearing. Summonses may be served by certified mail, return receipt requested, to the parolee by the Regional Office or may be served in person by a U.S. Marshal.

(b) A summons may also be issued to require the appearance of the parolee at a preliminary interview. In such cases, the words "revocation hearing" must be struck from the summons form and "preliminary interview" typed above the stricken words. The preliminary interview will then be conducted as usual, except that if probable cause is found the Regional Commissioner may issue a warrant or a summons to appear at a revocation hearing. Further, if revocation is ordered following the hearing, a warrant must be issued to authorize the marshal to take the alleged violator into custody.

2.44-03. *Warrant Application.*
(a) When satisfactory evidence is received indicating that a parolee or mandatory releasee has violated the conditions of his release to the extent that a warrant should be issued and it can be issued timely, a warrant application is prepared. NOTE: A warrant cannot be issued during a special parole term for a violation that occurred during a regular parole term.

(b) Charges on the warrant application should be listed chronologically and separately, beginning with the earliest charge. It is recommended that the warrant application be limited to convictions and to administrative charges if, sustained, indicate a substantial infraction of the conditions of release. However, see 2.44-04(c) ("Public Safety" cases) for an exception to Commission's policy on waiting for convictions.

(c) Specific charges alleging violations should be numbered and should be limited to one distinct statement of violation. Only information that adequately defines and describes the specifics of an alleged violation should be contained in the warrant application.

(d) Except in unusual cases warrant applications will not allege convictions that have been sustained by the subject more than one year prior to the date of the warrant request. An unusual case should have specific reasons for including the conviction.

2.44-04. *Warrant Issuance in Criminal Cases/Public Safety Cases.*
(a) A parole violator warrant is normally issued for the purpose of returning a parolee to custody as soon as possible. However, where there is a pending criminal proceeding, execution of the warrant may be delayed pending disposition of local criminal charges, even if the parolee is released on bond. EXCEPTION: If the parolee is alleged to have committed a crime of violence, and there appears to be a risk of future violent crime, the warrant should be issued with instructions for the immediate arrest of the parolee as soon as the parolee is released from local custody. (See instructions #1 or #3 on Form H-24, depending on the circumstances.) These cases are to be referred to as "public safety cases." Such instructions would also be appropriate if other factors indicate that the parolee is a particularly poor risk for continued release.

(b) Issuance of warrants in public safety cases must be accomplished with a minimum of delay. The "satisfactory evidence" requirement of 28 C.F.R. Sec. 2.44(a) [which is less stringent than the "probable cause" standard of Sec. 2.48(a)] would be met by the fact of arrest plus a reasonably specific written or oral report of the circumstances of the alleged crime and the nature of the evidence. If additional evidence will be needed to support a probable cause finding once the parolee is arrested, the probation officer should be instructed to secure that evidence for presentation at the preliminary interview.

(c) Upon receipt of a warrant request in "public safety cases", a decision must be made within 24 hours. A telephone request may be accepted if strictly necessary *and* the Commission is assured that the probation officer can obtain sufficient evidence of parole violation for the preliminary interview. If the Regional Commissioner is absent, any available Commissioner may be contacted by telephone and the warrant issued pursuant to 2.44-01(d). *As soon as the warrant is signed and placed in the mail, the originating office must send a teletype to the U.S. Marshal and Probation Officer, advising of the warrant issuance and conveying the appropriate instructions.*

(d) In the case of a warrant issued upon a telephone request, the warrant application will list each charge *"per telephone call from U.S. Probation Officer [name] on [date], based upon [e.g., arrest report dated . . . . etc.]".* The U.S. Probation Officer should be instructed to follow up the telephone request with a written report as soon as possible.

2.44-05. *Criteria for Warrant Issuance.*
(a) A warrant may be issued for violation of any general or special condition of parole.

(b) A warrant should be issued in cases which there is a new criminal conviction (other than for a minor offense), unless the Regional Commissioner finds good cause for non-issuance of the warrant, and states his reasons therefor in writing.

(c) A warrant should be issued when the parolee's continuance on parole is incompatible with the welfare of society or promotes disrespect for the parole system. Specific acts in violation of parole must be stated and documented as to time, place and circumstances of the alleged violation.

(d) A warrant may be issued for "treatment" in the absence of a violation of release conditions in NARA and YCA commitment cases *only* but not in other types of cases.

(e) A warrant should be issued in accordance with the criteria contained herein, and not merely to substitute for local prosecution.

2.44-06. *Mechanics of Alleging a Parole Violation.* A warrant application serves two functions: (1) it advises the releasee of the violation with which he is charged and the evidence for that violation, and (2) it provides (at the preliminary interview and at the revocation hearing) allegations of violation containing simple, accurate, complete statements of fact. Five elements are covered in each warrant application charge. To provide uniformity, these elements are approached in the same sequence for all charges of violation. The mechanics of alleging a violation are set forth below. It should be remembered that drafting a warrant application is one place where a certain amount of repetition achieves clarity. Unless the specific acts are so intertwined that they are supported by identical evidence, they should be separately stated.

1.	When	[on] [on or about] [July 3, 1973] [from on or about July 3, 1973 to on or about Sept. 3, 1973]
2.	Who	[subject] [John J. Jones]
3.	What	[committed a criminal act (burglary) (driving a car without owner's permission)] [left his place of residence] [left his employment] [failed to file monthly reports]
4.	Where	[in Tampa, Florida] [in Municipal Court, Miami, Florida] [in Circuit Court of Jefferson County, Mobile, Alabama]
5.	Evidence: Source and particulars	[According to a statement of his mother, Mrs. Janet Jones dated July 15, 1973] [P.O. Anderson's letter/report dated July 20, 1973] [Police report of July 23, 1973, #6660 by Officer Henry Harris]

2.44-07. *Format.* The charges in the headings on the Warrant Application should be as shown below in quotation marks. (The condition number should *NOT* be used.)

Condition 1 - "FAILURE TO REPORT FOR SUPERVISION"

Condition 2 - "FAILURE TO REPORT FOR SUPERVISION AFTER RELEASE BY DETAINING AUTHORITIES"

Condition 3 - "LEAVING DISTRICT WITHOUT PERMISSION"

Condition 4 - "FAILURE TO REPORT CHANGE IN RESIDENCE"

Condition 5 - (a) "FAILURE TO SUBMIT SUPERVISION REPORT(S)"
(b) "FALSIFYING SUPERVISION REPORT(S)"
(c) "FAILURE TO REPORT TO PROBATION OFFICER AS DIRECTED"

Condition 6 - (a) (LIST THE PARTICULAR OFFENSE)
(b) "ASSOCIATION WITH PERSON(S) ENGAGED IN CRIMINAL ACTIVITY"
(c) "FAILURE TO REPORT ARREST"

Condition 7 - "ACTING AS ("INFORMER") ("SPECIAL AGENT") FOR A LAW ENFORCEMENT AGENCY"

Condition 8 - (a) "FAILURE TO WORK REGULARLY"
(b) "FAILURE TO SUPPORT LEGAL DEPENDENTS"
(c) "FAILURE TO REPORT CHANGE IN EMPLOYMENT"

Condition 9 - (a) "EXCESSIVE USE OF ALCOHOLIC BEVERAGES"
(b) "(PURCHASE OF) (POSSESSION OF) (USE OF) (ADMINISTERING OF) (MARIHUANA) (NARCOTIC DRUG) (DANGEROUS OR HABIT-FORMING DRUG) OR (SOLD) (DISPENSED) (USED) (GIVEN AWAY)"

Condition 10 - "ASSOCIATION WITH A PERSON(S) HAVING A CRIMINAL RECORD"

Condition 11 - "UNAUTHORIZED POSSESSION OF FIREARMS (OR OTHER DANGEROUS WEAPONS)"

Condition 12 - "FAILURE TO RESIDE IN COMMUNITY TREATMENT CENTER".

Special Condition - "VIOLATION OF SPECIAL CONDITION" -- (TO BE NAMED)

§2.45 SAME; YOUTH OFFENDERS.

(a) In addition to the issuance of a summons or warrant pursuant to Section 2.44 above, the Commission or a member thereof, when of the opinion that a youth offender will be benefitted by further treatment in an institution or other facility, may direct his return to custody or issue a warrant for his apprehension and return to custody.

(b) Upon his return to custody, such youth offender shall be scheduled for a revocation hearing.

§2.46 EXECUTION OF WARRANT AND SERVICE OF SUMMONS.

(a) Any officer of any Federal correctional institution or any Federal officer authorized to serve criminal process within the United States, to whom a warrant is delivered, shall execute such warrant by taking the parolee and returning him to the custody of the Attorney General.

(b) On arrest of the parolee the officer executing the warrant shall deliver to him a copy of the Warrant Application listing the charges against the parolee, the applicable procedural rights under the Commission's regulations and the possible actions which may be taken by the Commission.

(c) If execution of the warrant is delayed pending disposition of local charges, for further investigation, or for some other purpose, the parolee is to be continued under supervision by the probation officer until the normal expiration of the sentence, or until the warrant is executed, whichever first occurs. Monthly supervision reports are to be submitted, and the parolee must continue to abide by all the conditions of release.

(d) A summons to appear at a preliminary interview or revocation hearing shall be served upon the parolee in person by delivering to the parolee a copy of the summons. Service shall be made by any federal officer authorized to serve criminal process within the United States, and certification of such service shall be returned to the appropriate regional office of the Commission.

Notes and Procedures

2.46-01. *Execution of a Warrant.*
(a) In General: When an alleged violator is taken into custody other than on the basis of Commission's warrant, (as a result of new criminal charges being filed or a sentence imposed) the Commission's warrant is not executed until he is released by the other authorities, except by further order of the Regional Commissioner. Where a subsequent federal sentence is imposed, the warrant is returned to the issuing region. If the violator is placed in a federal facility outside the issuing region then the unexecuted warrant and the file is forwarded to the region where the violator is located. The region where the violator and institution are located then places the warrant.

(b) By U.S. Marshal: A United States Marshal shall take custody of an alleged violator when so instructed by the Commission. Upon execution of the warrant, the U.S. Marshal delivers a copy of the warrant application to the parolee and also notifies the U.S. Probation Officer and furnishes him with a copy of the warrant application. Thereafter the Marshal notifies the Parole Commission in the region where the warrant was issued, and retains custody of the alleged violator until notified of further disposition.

(c) By Warden: When an alleged violator receives a new federal sentence prior to revocation by the Commission, the warrant is filed with the institution and placed as a detainer. A copy of the warrant application is given to the alleged violator at this time. When released from the new sentence (or prior thereto, if ordered by the Regional Commissioner as a result of a dispositional review), the warrant) is executed by taking the alleged violator into custody on the warrant. If no dispositional revocation hearing has been conducted, the prisoner at this time is also provided with an Attorney-Witness Election Form (Form I-16) on which he signifies whether he desires an attorney or witnesses at the hearing. He is also provided with a CJA Form 22, on which he may request a court-appointed attorney, or waive the opportunity.

2.46-02. *Withdrawing an Improperly Executed Warrant.* When a warrant has been executed contrary to the Commission's instructions, the parolee is to be released from custody of the violator warrant by an order stating the following: *Release and conditionally reinstate to supervision from custody of warrant dated [ ]. Said warrant is to be held in abeyance per previous instructions.*

2.46-03. *Other Withdrawal of Warrants.*
(a) If there is any other justifiable reason (other than mistaken execution) for withdrawing an executed warrant, then the Notice of Action should read as follows: *Release and conditionally reinstate to supervision from custody of warrant dated [ ]. Said warrant is to be held in abeyance pending [specify what event (e.g., resolution of local charges) the Commission is awaiting before execution of the warrant].*

(b) The U. S. Marshal is to be instructed in a letter forwarding the Notice of Action to draw a diagonal line through the entry indicating execution of the warrant, and to attach a clean copy of the reverse side of a Commission warrant (provided by the Regional Office) to the back of the original warrant.

2.46-04. *Calculating Possible Violator Term.* Upon receiving notification that a parole violator warrant has been executed, the post-release analyst shall promptly review the case to determine the amount of time remaining before the full term expiration date of the sentence. If less than six months remain to be served at the time of warrant execution, the following precautions shall be taken:

(a) If there is no possibility of street time forfeiture or if the amount of street time tentatively subject to forfeiture plus the time remaining to be served at the time of warrant execution totals less than six months, the Regional Commissioner shall request the Bureau of Prisons (by letter or teletype): (1) to calculate an adjusted mandatory release date [assuming forfeiture of any street time tentatively subject to forfeiture]; (2) to promptly notify the Commission of such adjusted mandatory release date; and (3) to automatically release the prisoner on such adjusted mandatory release date if the prisoner is in a Bureau of Prisons facility, unless the Commission in the meantime orders a different release date.

(b) If the prisoner is in U.S. Marshals' custody, the Marshal shall be notified by letter or teletype signed by the Regional Commissioner that the prisoner may not be held in custody beyond the adjusted mandatory release date provided by the Bureau of Prisons. The analyst shall follow up to ensure release by such date. (See 2.48-03(b)).

(c) The Commission shall take all feasible steps to ensure that the revocation decision is made and communicated to the Marshal's Service and/or Bureau of Prisons before the adjusted mandatory release date.

§2.47 WARRANT PLACED AS A DETAINER AND DISPOSITIONAL REVIEW.

(a) When a parolee is serving a new sentence in an institution, a parole violation warrant may be placed against him as a detainer.

(1) If such prisoner is serving a new sentence in a federal institution, a revocation hearing shall be scheduled within 120 days of notification of placement of the detainer, or as soon thereafter as practicable, provided the prisoner is eligible for and has applied for an initial hearing on the new sentence, or is serving a new sentence of one year or less. In any other case, the detainer shall be reviewed on the record pursuant to subsection (a)(2) of this rule.

(2) If the prisoner is serving a new sentence in a state or local institution, the violation warrant shall be reviewed by the Regional Commissioner not later than 180 days following notification to the Commission of such placement. The parolee shall receive notice of the pending review, and shall be permitted to submit a written application containing information relative to the disposition of the warrant. He shall also be notified of his right to request counsel under the provisions of §2.48(b) to assist him in completing this written application.

(b) Following a dispositional record review, the Regional Commissioner may:

(1) Pursuant to the general policy of the Commission, let the warrant stand as a detainer and:

(i) If the prisoner is serving a state or local sentence, order that a revocation hearing be scheduled (A) upon return to a federal institution or (B) upon completion of the period in confinement required by the minimum of the applicable guideline range as tentatively assessed, but not less than twenty-four months, whichever (A) or (B) comes first. However, a hearing under this subsection will not be scheduled for a prisoner in state or local custody serving a new term for life without possibility of parole, or sentenced to death, or who is incarcerated outside the United States.

(ii) If the prisoner is serving a federal sentence, order that the revocation hearing be scheduled to coincide with the initial hearing on the new federal sentence or upon release from the new sentence, whichever comes first.

(2) Withdraw the warrant, and either order reinstatement of the parolee to supervision upon release from confinement or close the case if the expiration date has passed.

(c) Revocation hearings pursuant to this section shall be conducted in accordance with the provisions governing institutional revocation hearings, except that a hearing conducted at a state or local facility may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Regional Commissioner. Following a revocation hearing conducted pursuant to this section, the Commission may take any action specified in §2.52.

(d)(1) A parole violator whose parole is revoked shall be given credit for all time in federal, state, or local confinement on a new offense for purposes of satisfaction of the reparole guidelines at §§2.20 and 2.21.

(2) However, it shall be the policy of the Commission that the revoked parolee's original sentence (which due to the new conviction, stopped running upon his last release from federal confinement on parole) again start to run only upon release from the confinement portion of the new sentence or the date of reparole granted pursuant to these rules, whichever comes first. This subsection does not apply to cases where, by law, the running of the original sentence is not interrupted by a new conviction (e.g., YCA; NARA; Mexican or Canadian treaty cases).

(e) If a Regional Commissioner determines that additional information is required in order to make a decision pursuant to paragraph (a)(2) of this section, he may schedule a dispositional hearing at the state or local institution where the parolee is confined to obtain such information. Such hearing may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Regional Commissioner. The parolee shall have notice of such hearing, be allowed to testify in his behalf, and have opportunity for counsel as provided in §2.48(b).

Notes and Procedures

2.47-01. *Parolees Incarcerated in Federal Institutions (and persons serving new federal sentences housed in state institutions).*

(a) *Lodging Warrant as a Detainer.*

(1) When a U.S. Probation Officer advises the Regional Office that a parolee has been sentenced to incarceration for a new federal offense (usually supported by a copy of a Judgment and Commitment Order) the Commission should issue a parole violator warrant or supplement a previously issued warrant to reflect the conviction.

(2) Where a warrant has been held in abeyance by the U.S. Marshal, the Marshal will advise the Regional Office that issued the warrant of the parolee's transfer to a federal institution for service of the new sentence, and will return the warrant unexecuted to the Regional Office.

(3) In the event the institution designated for service of the new federal sentence is outside the region in which the warrant was issued, the Post Release Analyst will forward the unexecuted warrant and file to the Post Release Analyst in the region where the parolee is incarcerated.

(4) The Post Release Analyst will forward the unexecuted warrant with instructions to the Warden to place the warrant as a detainer.

(5) IN YCA, NARA, AND MEXICAN/CANADIAN TREATY CASES ONLY: The Warden shall be instructed to execute the warrant when the case is placed on the hearing docket.

(b) *Scheduling the Hearings.*

(1) *For offenders serving new sentences over which the U.S. Parole Commission has jurisdiction:*

(A) If the offender is eligible for a prompt initial hearing and applies for parole on the new sentence within approximately 120 days: The Post Release Analyst should forward to the institution two revocation packets with instructions to the Warden to schedule the parolee for a joint initial/dispositional revocation hearing within 120 days of commitment, or as soon thereafter as practicable. These instructions should indicate that if the prisoner waives initial hearing, or if the prisoner is scheduled for a joint initial/dispositional revocation hearing and subsequently waives the initial hearing, the Commission is to be notified immediately and the prisoner notified that this also constitutes waiver of the dispositional revocation hearing. The case will then be processed under (1)(B) below.

(B) If the offender either waives 120 day parole consideration - OR - is serving a new federal sentence with a period of parole ineligibility of 10 years: Upon receipt of the detainer notice, the Post Release Analyst will send Form H-13 (Notice of Pending Dispositional Review) to the prisoner and the prisoner will be afforded a dispositional review under 2.47-02 of this section. If, following this review, the warrant remains as a detainer, the prisoner should be scheduled for a dispositional revocation hearing to coincide with the initial hearing on the new sentence, or upon mandatory release from the new sentence if application for parole is never made.

(C) If the prisoner has already had an initial hearing on the new federal sentence, he/she shall be sent a Notice informing him that his case is being reopened under 28 C.F.R. §2.28(c) for joint consideration of both the new federal sentence and the violator term. This hearing will follow the procedures for the combined initial/dispositional revocation hearing, with the resulting orders following the wording specified for joint initial/dispositional hearings.

(2) *For offenders serving new sentences in federal institutions over which the U.S. Parole Commission does not have jurisdiction* (e.g., sentences of one year or less; state boarders in federal custody). The Post Release Analyst should forward two revocation packets to the institution with instructions to the Warden to place the prisoner on the docket for a dispositional revocation hearing within 180 days from the date of notification of detainer placement, or as soon thereafter as practicable.

(c) *Hearing Procedures.*

(1) Both combined dispositional revocation/initial hearings and dispositional revocation hearings in federal custody will be conducted under the procedures governing institutional revocation hearings (see 28 C.F.R. §2.50); except that if the prisoner requests a representative in addition to legal counsel at a combined hearing, the representative shall be considered a voluntary witness.

(2) Release guidelines will be computed pursuant to 28 C.F.R. §§2.20 and 2.21, and a recommendation made with respect to: (A) revocation; (B) forfeiture of street time credit; (C) commencement of the violator term; (D) setting of a presumptive release date. NOTE: At a joint initial/dispositional hearing this will concern both the new sentence and the violator term. NOTE: The Commission may grant a reparole date nunc pro tunc if the circumstances warrant.

(3) Interim hearings should be scheduled every 24 months if *either* the new sentence *or* the original sentence is seven years or more; otherwise, such hearings should be scheduled every eighteen months.

2.47-02. *Parolees Incarcerated in State/Local Institutions.*

(a) *Lodging Warrant as Detainer.*

(1) Once the U.S. Probation Officer advises the Regional Office that the parolee has been sentenced to imprisonment for a new state/local crime (usually supported by a copy of the Judgment and Commitment Order) the Commission should issue a parole violator warrant or supplement a previously issued warrant to state the new conviction. The Regional Office will forward the warrant to the U.S. Marshal in the district where the parolee will serve the new state/local sentence, with instructions to place the warrant as a detainer. NOTE: These procedures would also apply to a parolee serving a state term as a probation/parole violator, if the violation behavior occurred while also on federal parole.

(2) Where a warrant was issued prior to notice of the new conviction and the parolee is incarcerated outside the issuing region, the U.S. Marshal in possession of the warrant will forward it unexecuted to the U.S. Marshal where the parolee is incarcerated on the new sentence, so that it may be placed as a detainer at the state/local institution. The U.S. Marshal then prepares the detainer notice and sends a copy of the notice to the issuing Regional Office. This office retains jurisdiction over the parolee's case until after the first dispositional review, after which the file should be sent to attention of the post release analyst in the region in which the state/local facility is located.

(b) *Dispositional Review.* Upon receipt of the detainer notice, the Post Release Analyst will forward Form H-13 (Notice of Dispositional Review) to the Warden at the correctional institution where the parolee is incarcerated. The notice should be sent in sufficient time to permit receipt of the application and completion of the Commission's review before the 180 day time period has passed. In the event that an application or written statement is not timely received, the dispositional review should nevertheless be conducted within 180 days of notification. If an application or written statement is submitted after the dispositional review has been completed, (*e.g.*, due to delay in court appointment of counsel), the case should be examined to determine whether it should be reopened under 28 C.F.R. §2.28.

(c) *Scheduling the Hearing.*

(1) If the decision of the Commission is to let the warrant stand as a detainer, the case should be placed in a suspense file system for a dispositional revocation hearing to be conducted during the month of completion of the minimum of the applicable guideline range as tentatively assessed by the Regional Commissioner, but not less than upon completion of 24 months in custody on the new sentence, or as soon thereafter as practicable. In the event the parolee is released prior to such date, the warrant will be executed by the U.S. Marshal and the parolee designated to a federal institution for an institutional revocation hearing. Note: The decision of the Regional Commissioner in tentatively assessing the minimum of the guideline range is not appealable.

(2) Approximately 90 days prior to the date set above, the Post Release Analyst commence the scheduling of a dispositional revocation hearing. If the prisoner does not complete the required forms or wishes not to have the dispositional hearing, the dispositional revocation hearing will be postponed until such completion. The Post Release Analyst will follow up with institutional officials to assure that the parolee has received the forms. Depending upon the official designated by the Commission to conduct the hearing, the Post Release Analyst will exercise one of the following options:

(A) Hearing Examiner Panel Option:

(1) The Post Release Analyst will direct a copy of the warrant application and a letter to the parolee (with a copy to the Warden and U.S. Probation Officer), advising the parolee that a dispositional revocation hearing will be conducted at the state/local institution. The parolee will be advised of his right to counsel and voluntary witnesses and instructed to complete and return to the Regional Office within 30 days, Parole Form I-16 (Attorney Witness Election Form) and CJA Form 22 (Appointment of Counsel).

(2) Upon receipt of the above forms the Post Release Analyst will forward CJA Form 22 to the U.S. Magistrate in the district in which the state/local facility is located, if appointment of counsel is requested.

(3) After the Commission is advised of appointment of counsel, a letter will be directed to the parolee (with copies to counsel, Warden, and U.S. Probation Officer) informing him of the date and location of the hearing.

(4) The Post Release Analyst will prepare a revocation packet(s) to be hand-carried to the state/local institution by the designated hearing examiner/panel.

(B) Other Designated Official (U.S. Probation Officer): The Post Release Analyst will prepare a revocation packet and forward same to the U.S. Probation Officer designated to conduct a revocation hearing, instructing him to schedule an institutional revocation hearing (month/year). The U.S. Probation Officer will then be responsible for carrying out the procedures otherwise performed by the Post Release Analyst, with copies of executed forms and correspondence forwarded to the Regional Office.

(d) *Dispositional Revocation Hearing Procedures*.

(1) Dispositional revocation hearings for parolees in state/local institutions shall be conducted in accordance with the rules governing institutional revocation hearings at 28 C.F.R. §2.50, except that the hearing may be conducted by one examiner or other designated official.

(2) The examiner or designated U.S. Probation Officer conducting the revocation hearing will prepare a reparole guideline worksheet and revocation hearing summary. NOTE: The Commission may grant a reparole date nunc pro tunc if the circumstances warrant.

(3) Interim record reviews will be scheduled at either (18) or (24) months from the date of the dispositional revocation hearing dependant on whether the original federal sentence was (less than seven years) (seven years or more). If the prisoner comes into federal custody prior to a scheduled interim record review, he/she will be afforded an interim hearing during the month of the previously scheduled record review.

(4) Upon completion of the hearing process, the case will be referred to the pre-release analyst who will assure the proper processing of the case with respect to statutory interim reviews and pre-release processing. In addition to the Notice of Action, a letter is to be sent to the Warden (with a copy to the Chairman of the State Parole Board) explaining the maximum jurisdiction of the U.S. Parole Commission should the state release the prisoner prior to the date specified on the Notice of Action.

(e) *Parole to a State/Local Sentence*. If the prisoner is still in state custody as the date chosen for reparole approaches, a pre-release review will be conducted. If the decision is to grant an effective parole to the state sentence:

(1) The Bureau of Prisons will be notified to amend their time computation record and provide the Commission with a recalculated full term expiration date which will be placed on the parole certificate;

(2) The Marshals Service will be notified to withdraw the warrant on the date specified [*NOTE*: SINCE THE REVOCATION HEARING HAS ALREADY SET THE DATE FOR COMMENCEMENT OF THE VIOLATOR TERM, WITHDRAWING THE WARRANT AT THIS TIME DOES NOT CANCEL THE VIOLATION OR RESTORE STREET TIME OR AFFECT THE COMMENCEMENT OF THE VIOLATOR TERM].

§2.48 REVOCATION, PRELIMINARY INTERVIEW.

(a) Interviewing Officer: A parolee who is retaken on a warrant issued by a Commissioner shall be given a preliminary interview by an official designated by the Regional Commissioner to enable the Commission to determine if there is probable cause to believe that the parolee has violated his parole as charged, and if so, whether a revocation hearing should be conducted. The official designated to conduct the preliminary interview may be a United States Probation Officer in the district where the prisoner is confined, provided he is not the officer who recommended that the warrant be issued.

(b) Notice and Opportunity to Postpone Interview: At the beginning of the preliminary interview, the interviewing officer shall ascertain that the Warrant Application has been given to the parolee as required by Sec. 2.46(b), and shall advise the parolee that he may have the preliminary interview postponed in order to obtain representation by an attorney or arrange for the attendance of witnesses. The parolee shall also be advised that if he cannot afford to retain an attorney he may apply to a United States District Court for appointment of counsel to represent him at the preliminary interview and the revocation hearing pursuant to 18 U.S.C. Sec. 3006A. In addition, the parolee may request the Commission to obtain the presence of persons who have given information upon which revocation may be based. Such adverse witnesses shall be requested to attend the preliminary interview unless the parolee admits a violation or has been convicted of a new offense while on supervision or unless the interviewing officer finds good cause for their non-attendance. Pursuant to Sec. 2.51 a subpoena may be issued for the appearance of adverse witnesses or the production of documents.

(c) Review of the Charges: At the preliminary interview, the interviewing officer shall review the violation charges with the parolee, apprise the parolee of the evidence which has been presented to the Commission, receive the statements of witnesses and documentary evidence on behalf of the parolee, and allow cross-examination of those witnesses in attendance. Disclosure of the evidence presented to the Commission shall be made pursuant to Sec. 2.50(d).

(d) At the conclusion of the preliminary interview, the interviewing officer shall inform the parolee of his recommended decision as to whether there is probable cause to believe that the parolee has violated the conditions of his release, and shall submit to the Commission a digest of the interview together with his recommended decision.

(1) If the interviewing officer's recommended decision is that no probable cause may be found to believe that the parolee has violated the conditions of his release, the responsible Regional Commissioner shall review such recommended decision and notify the parolee of his final decision concerning probable cause as expeditiously as possible following receipt of the interviewing officer's digest. A decision to release the parolee shall be implemented without delay.

(2) If the interviewing officer's recommended decision is that probable cause may be found to believe that the parolee has violated a condition (or conditions) of his release, the responsible Regional Commissioner shall notify the parolee of his final decision concerning probable cause within 21 days of the date of the preliminary interview.

(3) Notice to the parolee of any final decision of a Regional Commissioner finding probable cause and ordering a revocation hearing shall state the charges upon which probable cause has been found and the evidence relied upon.

(e) Release notwithstanding probable cause: If the Commission finds probable cause to believe that the parolee has violated the conditions of his release, reinstatement to supervision or release pending further proceeding may nonetheless be ordered if it is determined that:

(1) continuation of revocation proceedings is not warranted despite the violations found; or

(2) incarceration pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations, and that the parolee is not likely to fail to appear for further proceedings, and that the parolee does not constitute a danger to himself or others.

(f) Conviction as probable cause: Conviction of a Federal, State, or Local crime committed subsequent to release by a parolee shall constitute probable cause for the purposes of this section and no preliminary interview shall be conducted unless otherwise ordered by the Regional Commissioner.

(g) Local revocation hearing: A postponed preliminary interview may be conducted as a local revocation hearing by an examiner panel or other interviewing officer designated by the Regional Commissioner provided that the parolee has been advised that the postponed preliminary interview will constitute his final revocation hearing.

Notes and Procedures

2.48-01. *Preliminary Interview.*
(a) The preliminary interview is to be conducted (offered to the parolee) without unnecessary delay. Where the alleged violator is arrested outside of his district of supervision, the documents specified in warrant application are to be transmitted immediately to the probation officer designated to conduct the interview. The probation officer supervising the case or recommending the warrant may not conduct the preliminary interview.

(b) Releasee is advised of his right to be represented by counsel (retained or court-appointed) at a postponed preliminary interview and at the revocation hearing. Parole

Form F-2 and CJA-22 are provided him for this purpose and he shall be given a copy of these forms. Releasee is advised of his right to have witnesses (including adverse witnesses) appear or be interviewed on his behalf at a postponed preliminary interview and at the revocation hearing.

(c) When the parolee contests the charges against him, it will be customary for the parolee's supervising probation officer to be available as a witness at a preliminary interview in the district of supervision, for questioning by either the interviewing officer or the parolee, unless there is good cause for non-appearance (e.g., distance or possibility of aggressive confrontation).

2.48-02. *Authorization of Continuance.* One continuance (postponement of a preliminary interview) may be granted by the interviewing officer for up to 30 days to permit the alleged violator to obtain counsel and/or witnesses. The continuance should be recorded in writing. Any further continuances, for cause, shall be approved by the Regional Commissioner. In cases where the alleged violator is detained by the court on a charge and where the violation warrant has been inadvertently executed, a decision will be made as to whether or not a local revocation will be held at the place of detention or when he is returned to a Federal institution. In such cases the legal office should be contacted for advice.

2.48-03. *The Probable Cause Finding.*
(a) The interviewing officer shall prepare and submit to the Regional Commissioner a summary of the interview which shall include recommended findings of whether there is probable cause to believe that a violation has occurred. A copy of the summary, minus the confidential section (see Appendix 3), is also given to the alleged violator (and his attorney if any) by the probation officer when he sends the original to the Commission. He shall make use of a checklist to guide him as he advises the alleged violator of his rights and the Commission's procedures. The probation officer's summary shall be in the format illustrated in Appendix 3. Accompanying it should be any statements prepared by the prisoner and other pertinent material submitted which has not previously been submitted to the Regional Office.

(b) Upon review of the summary of the preliminary interview, the Regional Commissioner shall either (1) order the prisoner reinstated to supervision; (2) direct that a revocation hearing be conducted in the locality of the charged violation(s) or place of arrest; or (3) direct that the prisoner be transferred to a Federal institution for a revocation hearing. In the absence of probable cause, the Regional Commissioner shall find "insufficient grounds for revocation based on the evidence presented" and reinstate the releasee to supervision, or close the case if his time would have expired had the warrant not been issued. *Every decision to release a parolee shall be implemented without delay.* The Post-release analyst shall send a teletype marked "urgent" to the U.S. Marshal (and the holding facility, if known) stating that the Regional Commissioner has ordered the parolee's release without delay; the U.S. Marshal shall be requested to confirm by return teletype or telephone call as soon as release is effected. The analyst shall verify by telephone that the order has been carried out or request immediate compliance, if a return teletype or call is not received within 24 hours of the order to release.

(c) The Regional Commissioner may also release the subject to the community pending a revocation hearing. In such case, the Commissioner should inform the Marshal in writing to release the subject *pending further instructions*. The warrant should be held in abeyance at the Marshal's office, but a summons should be issued to order the subject to appear at the revocation hearing. When, in such cases, the ultimate decision is to revoke, the Marshal should be instructed by teletype to again take the subject into custody pursuant to the original warrant. Such teletype must be from the Regional Commissioner to the U.S. Marshal, and must reflect an actual statement

on an order signed by the Regional Commissioner that the U.S. Marshal is to reassume custody forthwith. If a letter directing the parolee's return to custody is sent in lieu of a teletype, it must be signed by the Regional Commissioner.

"Situation 1: Appearance at a Preliminary Interview on the basis of a Summons. After the Commissioner makes a finding that probable cause exists he may schedule a revocation hearing and (a) issue a warrant to be forwarded to the U.S. Marshal with appropriate instructions (assume custody), or (b) he may issue a summons to be either mailed to the parolee (return receipt requested) or forwarded to the U.S. Marshal with instructions to serve it upon the parolee.

"Situation 2: Appearance at a Preliminary Interview on the basis of a Warrant. If the Commissioner finds probable cause after the Preliminary Interview, reinstatement to supervision or release pending further proceedings may be ordered pursuant to 28 C.F.R. Sec. 2.48(e). If release pending further proceedings is ordered the Commissioner should inform the U.S. Marshal in writing (letter or teletype) to release the subject pending further instructions. The warrant will be held in abeyance at the U.S. Marshal's office, but a summons should be issued to order the subject to appear at the revocation hearing. If no release pending further proceedings is ordered, subject remains in the custody of the U.S. Marshal on the basis of the warrant.

"Situation 3: Appearance at a local revocation hearing on the basis of a summons.

"a. No Warrant issued previously. If parole is revoked and a continuance is ordered, the Commissioner must issue a warrant and forward it to the U.S. Marshal with instructions to assume custody. Subject may be ordered to voluntarily surrender to the U.S. Marshal if it is deemed appropriate by the Regional Commissioner. In this instance, a certified letter, return receipt requested, with Notice of Action enclosed should be forwarded to the subject. Copies of this letter should be sent to the U.S. Marshal and U.S. Probation Officer (and attorney if necessary).

"b. Warrant previously issued -- subject released pending local revocation hearing. If parole is revoked and a continuance is ordered, the Commissioner must instruct the U.S. Marshal, in writing (letter or teletype) to again take subject into custody by the further execution of the original warrant. Subject may be ordered to voluntarily surrender to the U.S. Marshal if it is deemed appropriate by the Regional Commissioner. In this instance a certified letter, return receipt requested, with a Notice of Action enclosed, should be forwarded to subject. Copies of this letter should be sent to the U.S. Marshal and U.S. Probation Officer (and attorney if necessary)."

2.48-04. *Notification of Results of Preliminary Interview.* The parolee shall be promptly notified of the Regional Commissioner's decision. If probable cause is found, he shall be notified in writing of the charges upon which such finding was made and the evidence relied upon. (See Appendix 3). Copies of this letter should be sent to the U.S. Probation Office, the U.S. Marshal, and counsel for the parolee whether appointed or retained.

2.48-05. *Violators in Other Regions.*
(a) If a local revocation hearing is ordered by the Regional Commissioner and the alleged violator is in custody in another region, the case should be transferred to thecustody region with the request to make necessary arrangements and to conduct the hearing.

(b) In the case of a violator convicted of a new crime and sentenced to incarceration in a region different from the region of supervision, the region of supervision shall retain control of the case through the dispositional record review stage. Transfer of case responsibility (and the case file) shall be effected upon the scheduling of a revocation hearing or dispositional revocation hearing.

2.48-06. *Supplemental Warrant Application.*
(a)(1) When new violations are brought to the attention of the Regional Commissioner, a supplemental warrant application may be issued at any time prior to the normal expiration of supervision. Alleged violations may not be added to the warrant application after the normal expiration of supervision except as specified in (2) below. Violations not added to the warrant application may not be used as a basis for finding a violation of parole or as a basis for forfeiting street time. However, if parole is revoked on other charges, such information (e.g., violations occurring or discovered after the normal expiration of supervision) may be considered relative to the determination regarding reparole.

(2)(A) Violations of parole occurring or discovered after the normal expiration of supervision may be added to an outstanding warrant only if the parolee is an absconder from supervision for whom a timely warrant has been issued. If the absconding charge cannot be sustained at the revocation hearing, the later occurring or discovered charges may not be used to revoke parole or forfeit street time.

(B) Information which administratively updates a charge already listed on the warrant application (e.g., a conviction on a pending charge) may be listed on a supplemental warrant application at any time, even if the term of supervision has expired.

(b) If the new charges are received *after* the preliminary interview has been conducted, the prisoner and his attorney, if any, shall be informed by *letter* that such charges will be considered at the revocation hearing. If the hearing is a local revocation hearing, the letter will also state that the alleged violator may request adverse witnesses. A letter of notification should also be issued if new evidence received after the probable cause finding requires the reinstatement of charges upon which a finding of no probable cause was made. The reinstated charge and the new evidence should be described. Once probable cause has been found on one charge or set of charges, no further preliminary interview need be held on supplemental charges.

(c) Additional charges which come to light during the preliminary interview may be used, and a supplemental warrant application should be issued if time permits.

2.48-07. *Recommended Finding of No Probable Cause.* If the interviewing officer finds no probable cause to believe a violation has occurred, he shall contact the Regional Office immediately for instructions. A new preliminary interview should be held in any case where defects, vagueness or omissions in the warrant application can be corrected by a supplemental warrant application.

2.48-08. *No Preliminary Interview Where There Is A Conviction.*
(a) Since the conviction of an offense committed while under supervision constitutes "probable cause" that at least one condition of parole or mandatory release was violated, no preliminary interview is required in such cases. For any serious criminal offense, therefore, a preliminary interview will not be conducted where there is definite information of a conviction. The probation officer should obtain documentary verification of any conviction and transmit it to the Regional Office. The designation request should not be delayed, however, unless there is reasonable doubt as to the authenticity of the information that a conviction has occurred.

on an order signed by the Regional Commissioner that the U.S. Marshal is to reassume custody forthwith. If a letter directing the parolee's return to custody is sent in lieu of a teletype, it must be signed by the Regional Commissioner.

"Situation 1: Appearance at a Preliminary Interview on the basis of a Summons. After the Commissioner makes a finding that probable cause exists he may schedule a revocation hearing and (a) issue a warrant to be forwarded to the U.S. Marshal with appropriate instructions (assume custody), or (b) he may issue a summons to be either mailed to the parolee (return receipt requested) or forwarded to the U.S. Marshal with instructions to serve it upon the parolee.

"Situation 2: Appearance at a Preliminary Interview on the basis of a Warrant. If the Commissioner finds probable cause after the Preliminary Interview, reinstatement to supervision or release pending further proceedings may be ordered pursuant to 28 C.F.R. Sec. 2.48(e). If release pending further proceedings is ordered the Commissioner should inform the U.S. Marshal in writing (letter or teletype) to release the subject pending further instructions. The warrant will be held in abeyance at the U.S. Marshal's office, but a summons should be issued to order the subject to appear at the revocation hearing. If no release pending further proceedings is ordered, subject remains in the custody of the U.S. Marshal on the basis of the warrant.

"Situation 3: Appearance at a local revocation hearing on the basis of a summons.

"a. No Warrant issued previously. If parole is revoked and a continuance is ordered, the Commissioner must issue a warrant and forward it to the U.S. Marshal with instructions to assume custody. Subject may be ordered to voluntarily surrender to the U.S. Marshal if it is deemed appropriate by the Regional Commissioner. In this instance, a certified letter, return receipt requested, with Notice of Action enclosed should be forwarded to the subject. Copies of this letter should be sent to the U.S. Marshal and U.S. Probation Officer (and attorney if necessary).

"b. Warrant previously issued -- subject released pending local revocation hearing. If parole is revoked and a continuance is ordered, the Commissioner must instruct the U.S. Marshal, in writing (letter or teletype) to again take subject into custody by the further execution of the original warrant. Subject may be ordered to voluntarily surrender to the U.S. Marshal if it is deemed appropriate by the Regional Commissioner. In this instance a certified letter, return receipt requested, with a Notice of Action enclosed, should be forwarded to subject. Copies of this letter should be sent to the U.S. Marshal and U.S. Probation Officer (and attorney if necessary)."

▌2.48-04. *Notification of Results of Preliminary Interview.* The parolee shall be promptly notified of the Regional Commissioner's decision. If probable cause is found, he shall be notified in writing of the charges upon which such finding was made and the evidence relied upon. (See Appendix 3). Copies of this letter should be sent to the U.S. Probation Office, the U.S. Marshal, and counsel for the parolee whether appointed or retained.

▌2.48-05. *Violators in Other Regions.*
(a) If a local revocation hearing is ordered by the Regional Commissioner and the alleged violator is in custody in another region, the case should be transferred to thecustody region with the request to make necessary arrangements and to conduct the hearing.

(b) In the case of a violator convicted of a new crime and sentenced to incarceration in a region different from the region of supervision, the region of supervision shall retain control of the case through the dispositional record review stage. Transfer of case responsibility (and the case file) shall be effected upon the scheduling of a revocation hearing or dispositional revocation hearing.

▌2.48-06. *Supplemental Warrant Application.*
(a)(1) When new violations are brought to the attention of the Regional Commissioner, a supplemental warrant application may be issued at any time prior to the normal expiration of supervision. Alleged violations may not be added to the warrant application after the normal expiration of supervision except as specified in (2) below. Violations not added to the warrant application may not be used as a basis for finding a violation of parole or as a basis for forfeiting street time. However, if parole is revoked on other charges, such information (e.g., violations occurring or discovered after the normal expiration of supervision) may be considered relative to the determination regarding reparole.

(2)(A) Violations of parole occurring or discovered after the normal expiration of supervision may be added to an outstanding warrant only if the parolee is an absconder from supervision for whom a timely warrant has been issued. If the absconding charge cannot be sustained at the revocation hearing, the later occurring or discovered charges may not be used to revoke parole or forfeit street time.

(B) Information which administratively updates a charge already listed on the warrant application (e.g., a conviction on a pending charge) may be listed on a supplemental warrant application at any time, even if the term of supervision has expired.

(b) If the new charges are received *after* the preliminary interview has been conducted, the prisoner and his attorney, if any, shall be informed by *letter* that such charges will be considered at the revocation hearing. If the hearing is a local revocation hearing, the letter will also state that the alleged violator may request adverse witnesses. A letter of notification should also be issued if new evidence received after the probable cause finding requires the reinstatement of charges upon which a finding of no probable cause was made. The reinstated charge and the new evidence should be described. Once probable cause has been found on one charge or set of charges, no further preliminary interview need be held on supplemental charges.

(c) Additional charges which come to light during the preliminary interview may be used, and a supplemental warrant application should be issued if time permits.

▌2.48-07. *Recommended Finding of No Probable Cause.* If the interviewing officer finds no probable cause to believe a violation has occurred, he shall contact the Regional Office immediately for instructions. A new preliminary interview should be held in any case where defects, vagueness or omissions in the warrant application can be corrected by a supplemental warrant application.

▌2.48-08. *No Preliminary Interview Where There Is A Conviction.*
(a) Since the conviction of an offense committed while under supervision constitutes "probable cause" that at least one condition of parole or mandatory release was violated, no preliminary interview is required in such cases. For any serious criminal offense, therefore, a preliminary interview will not be conducted where there is definite information of a conviction. The probation officer should obtain documentary verification of any conviction and transmit it to the Regional Office. The designation request should not be delayed, however, unless there is reasonable doubt as to the authenticity of the information that a conviction has occurred.

(b) The Regional Commissioner shall require a preliminary interview in marginal cases, for example: (1) where there was a conviction for a minor offense and there is a strong possibility that the releasee will be reinstated to supervision; or (2) where other administrative charges clearly constitute the more serious violations; or (3) where the conviction is for an infraction (such as a minor traffic violation, loitering or disorderly conduct) and a fine (rather than imprisonment) is the usual disposition.

(c) Where a forfeiture of collateral constitutes a conviction, in the majority of cases it will fall within the marginal cases described above, and the preliminary interview must be held. Decisions to defer prosecution, suspend acceptance of a guilty plea, or to enter a conviction which under certain state statutes is by its own terms "not final", are not "convictions" and do not remove the need for a preliminary interview nor provide a basis for denial of local revocation hearing (see 2.48-09).

(d) At the time of issuing a violator warrant where a conviction is used as a basis for such warrant, the United States Marshal shall be instructed by use of Form H-24 (with a copy to the probation officer) to furnish a copy of the warrant application to the prisoner (and the probation officer for information purposes only) and, where no preliminary interview is being held, to transfer the prisoner to a federal institution immediately upon receipt of a designation order from the Bureau of Prisons. This order is initiated by the Regional Office of the Parole Commission, and in such case the Regional Office will ask for designation without delay. Prior to designation and transfer, the parolee should be advised in writing by letter that probable cause for violation was established by his new conviction, and of the charges to be considered at his institutional revocation hearing, and his impending transfer.

(e) In cases where a conviction is not used as a basis for a warrant but the Commission is advised of a conviction following such issuance, the Regional Office may advise the Marshal and the probation officer to refrain from holding the preliminary interview which would normally be conducted in the absence of any such conviction. Coincident with such information a supplemental warrant application should be issued for delivery to the prisoner alleging the offense for which the releasee was convicted.

2.48-09. *"Non-Final", Indian Tribal Court, and Foreign Convictions.* Circumstances may arise in which it becomes difficult to determine when a court disposition of criminal charges brought against a parolee or mandatory releasee constitutes a "conviction" of federal, state, or local law. It is essential to be certain that the subject has really sustained a conviction before taking actions regarding forfeiture of street time, denial of a preliminary interview, or denial of a local revocation hearing. Cases in which there is room for doubt as to whether the disposition is a conviction should be referred to the legal counsel's office for advice prior to entering a decision.

(a) For purposes of forfeiture of street time, denial of a preliminary interview, or denial of a local revocation hearing, do not count the following convictions:

(1) "Non-Final" Convictions. A decision to defer prosecution, suspend acceptance of a guilty plea, or enter a conviction which by its own terms is not final is included in this heading. [These dispositions result from a procedure deliberately designed to shield the defendant from adverse consequences of a formal conviction. For example, some state traffic courts will expressly make convictions "non-final" in order to avoid the effect of a state law that requires a person's driving license be revoked if "convicted" of certain traffic offenses. Such convictions only become "final" if the defendant subsequently violates probation. Diversionary programs that involve a guilty plea or finding but no formal conviction also come under this heading].
(2) Foreign Convictions.
(3) Indian Tribal Court Convictions.

(b) For purposes of evidence in Revocation Proceedings:

(1) The following may be treated as conclusive evidence of law violation:
(i) "Non-Final" convictions of U.S. Laws [where a guilty plea or court finding of guilt was actually entered].
(ii) Indian Tribal convictions [when it is determined that the parolee had counsel or that counsel was waived].
(iii) Foreign Convictions.

NOTE: A rare exception to the Commission's ability to rely upon these convictions as conclusive would be when the parolee provides evidence that the conviction was obtained by blatantly improper means (fraud, duress, etc.) or that the conduct committed is not recognizable as a criminal violation under U.S. domestic law.

(2) Indian Tribal Convictions [where there is no positive showing of counsel or waiver of counsel] should be handled as are allegations of U.S. law violation where there is no conviction. That is, the underlying evidence and testimony may be relied upon in order to make an independent finding of a law violation.

2.48-10. *Preference for CTC Placement.* In the case of administrative violations, a e Community Treatment Center or similar placement is generally to be preferred to returning the parolee to prison.

§2.49 PLACE OF REVOCATION HEARING.

(a) If the parolee requests a local revocation hearing, he shall be given a revocation hearing reasonably near the place of the alleged violation(s) or arrest, if the following conditions are met:

(1) The parolee has not been convicted of a crime committed while under supervision; and

(2) The parolee denies that he has violated any condition of his release.

(b) If there are two or more alleged violations, the hearing may be conducted near the place of the violation chiefly relied upon as a basis for the issuance of the warrant or summons as determined by the Regional Commissioner.

(c) A parolee who voluntarily waives his right to a local revocation hearing, or who admits any violation of the conditions of his release, or who is retaken following conviction of a new crime, shall be given a revocation hearing upon his return to a Federal institution. However, the Regional Commissioner may, on his own motion, designate a case for a local revocation hearing.

(d) A parolee retaken on a warrant issued by the Commission shall be retained in custody until final action relative to revocation of his release, unless otherwise ordered by the Regional Commissioner under Sec. 2.48(e)(2). A parolee who has been given a revocation hearing pursuant to the issuance of a summons under Sec. 2.44 shall remain on supervision pending the decision of the Commission.

(e) A local revocation hearing shall be scheduled to be held within sixty days of the probable cause determination. Institutional revocation hearings shall be scheduled to be held within ninety days of the date of the execution of the violator warrant upon which the parolee was retaken. However, if a parolee requests and receives any postponement or consents to a postponed revocation proceeding, or if a parolee by his

actions otherwise precludes the prompt conduct of such proceedings, the above-stated time limits may be extended. A local revocation hearing may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Regional Commissioner.

Notes and Procedures

▌2.49-01. *Local Revocation Hearings.*
(a) If an alleged violator, at the time of the preliminary interview, denies on the Form F-2 that he is guilty of violation and had not been convicted of a crime while under supervision, and requests a local revocation hearing, the probation officer will send the original of the Attorney-Witness Election Form to the Regional Office. The Regional Commissioner will determine the proper location for the local revocation hearing. This should be reasonably near the place of the alleged violation, or if more than one violation is charged, the violation chiefly relied upon; or the place of arrest. The Regional Commissioner has the authority to instruct the Marshal to transport the prisoner to another district, if necessary. Except in unusual circumstances, the place of the hearing will be at or near the place where the alleged violator is in custody on the warrant. The statute requires a local hearing if the above criteria are met, even if no attorney or witness will be present.

(b) When an alleged violator at the preliminary interview refuses to sign the Preliminary Interview and Revocation Hearing Form (Form F-2), the probation officer (in his summary report) so notifies the Regional Commissioner, who determines whether or not to conduct a local revocation hearing. The alleged violator should be expressly informed by the probation officer that his refusal to sign the Form F-2 will be construed as a waiver of his opportunity for a local hearing.

(c) After it has been ascertained that the alleged violator meets the criteria for a local revocation hearing, no date or place for such hearing will be arranged until the United States District Court to whom a request for counsel might have been forwarded has responded, if such request has been made, or a private attorney has been obtained. In any event, this date shall be set no later than 60 days from the date the Commission finds probable cause and orders the holding of a revocation hearing. This is a statutory limit to the Commission's ability legally to hold a local revocation hearing. In an emergency, an official other than a hearing panel may be designated to conduct a hearing within the 60 day limit. The 60 day limit may be extended only if a continuance is granted, or if the actions of the alleged violator (e.g., refusal to participate) prevents the holding of a timely hearing. At times the alleged violator may be temporarily unavailable for a hearing within the 60 day period because he is ill, detained on a writ, has escaped from custody or other such reason. In such cases the hearing will be held as soon as practical at the place of confinement. In cases where the 60 day time limit has not been observed, the examiner panel should ascertain from the parolee what, if any, prejudice has been caused by the delay.

(d) When a date and place has been established and the examiner panel is on the scene and prepared to proceed with the hearing, one continuance only may be granted for good cause (for example, attorney and/or witnesses are unavoidably detained). In this event, either the releasee or his attorney (both if present) will sign the Commission's continuance form. The continued hearing will be set within 60 days from the date the continuance was requested, and will be granted only for unusual cause. Continued hearings granted by the examiner panel in the field will be arranged by the Regional Office. Any further continuance may only be granted 'for good cause' by a Regional Commissioner.

(e) After it has been determined that a local revocation hearing is to be conducted, arrangements must be made for suitable quarters and for recording services. The probation officer and the Regional Office make these arrangements. The hearing generally should be conducted in the nearest federal courthouse in the district selected. It might also be held in a correctional center, detention center or local jail where indicated. The alleged violator and his attorney, if there is one, will be notified by the Regional Office of the time and place of the hearing.

(f) Following the local revocation hearing (except where only a summons was used), the prisoner remains in the Marshal's custody until he has received official written notification of the decision. If revocation is ordered, the Bureau of Prisons designates an institution for service of the remainder of the sentence. A copy of Appeal Form (I-22) is sent with the Notice of Action.

(g) For purposes of denial of a local revocation hearing, do not use "non-final", Indian Tribal Court, or foreign convictions (see 2.48-09).

▌2.49-02. *Institutional Revocation Hearings*
(a) An alleged violator who does not qualify for a local revocation hearing under 2.49-01 shall be given a revocation hearing upon return to a federal institution. This hearing must be offered within 90 days of the date of execution of the warrant, unless the alleged violator has requested and received any postponement or delay in the preliminary interview or revocation proceedings. In such case, the 90 day period is extended only by the period of actual delay. At times the alleged violator may be temporarily unavailable for a hearing within the 90 day period because he is ill, detained on a writ, has escaped from custody or other such reasons. In such cases the hearing will be held as soon as practical at the place of confinement. In cases where the 90 day limit has not been observed, the examiner panel should ascertain from the parolee, what, if any, prejudice has been caused by the delay.

(b) The request for designation of an alleged parole violator is forwarded to the Regional Office of the Bureau of Prisons, Case Management. Since an institutional revocation hearing must be held within 90 days of the date of execution of the warrant, any delay in designation over two days must be followed up promptly by telephonic inquiry. When a Regional Commissioner has requested the Bureau of Prisons to designate a federal institution for custody of an alleged violator, a courtesy copy of each teletype request shall be sent to the probation officer who requested the warrant and also the U.S. Marshal who is currently holding the prisoner in custody. The teletype will request that the Marshal notify the post-release analyst if the prisoner cannot be moved within ten days of the request. The post-release analyst is responsible for contacting the Marshal's service to request prompt action in the case of delay.

(c) Upon arrival at the institution designated, the alleged violator shall be placed upon the next available hearing docket. In all cases, the alleged violator will be offered the Attorney-Witness Election Form (I-16) by a member of the institution staff, and will either waive representation by an attorney and/or the right to present voluntary witnesses, or request appointment of an attorney (if he has none) and/or state the witnesses he wishes to be present. If he wishes a court-appointed attorney, CJA Form 22 must also be completed. Completion of this form will be assisted by a staff member, who will mail it to the proper U.S. District Court. If the alleged violator wishes a continuance for the purpose of obtaining voluntary witnesses or an attorney (appointed or retained), Form I-21 will be used to request such continuance. One continuance only to the next docket may be granted by the panel. The releasee shall be given a copy of the Attorney-Witness Election Form or the Form CJA-22 upon request.

(d) Upon refusal of an alleged violator to sign an Attorney-Witness Election Form (Form I-16) the examiner panel shall orally advise him of his right to receive a continuance for the purpose of obtaining an attorney and/or witnesses, if he has none If he does not make a request for a continuance by signing the proper form, the hearing shall be held immediately regardless of his refusal.

(e) Addition to Dockets. Upon arrival at the institution the presiding examiner shall inquire as to the number of alleged violators who have arrived since the "list of eligibles" was prepared. A determination must be made at that time as to which of those alleged violators *must* be added to the docket in order to comply with the statutory time limit (90 days from the date of execution of the warrant). Alleged violators who have indicated that they desire appointment of an attorney or that they need to obtain voluntary witnesses must appear before the panel to request a continuance. After a request for designation of a federal institution has been made for an alleged violator, the Regional Office should make copies of the pertinent documents leading up to the issuance of the warrant and the revocation hearing. To this packet of material should be added the most current Annual Summary Report (Form F-3).

(f) At the time of the submission of a "list of eligibles" to be heard at the institution, the Regional Office is notified of the names of any alleged violators who plan to have the attorney representation or witnesses' testimony.

▌2.49-03. *Institutional Revocation Hearings for Alleged Violators In District of Columbia or Outside the Contiguous 48 States.*

(a) If an alleged violator who had been serving a District of Columbia sentence (not a federal sentence) has a D.C. institution designated by the Bureau of Prisons as the place of confinement, the Regional file is transferred to the D.C. Board of Parole and the revocation hearing and the decision is made by the District of Columbia Board of Parole. The Commission has no further interest in the case unless and until the prisoner is transferred to a federal facility at some later date, at which time the D.C. Board of Parole should re-transfer the file to the Regional Office. Note: this does not apply to prisoners serving federal sentences, who remain under U.S. Parole Commission jurisdiction.

(b) When an institution outside the contiguous 48 states is designated as the place of confinement, the revocation hearing shall be conducted in the same manner and by the same process as if in a federal institution.

▌§2.50 REVOCATION HEARING PROCEDURE.

(a) The purpose of the revocation hearing shall be to determine whether the parolee has violated the conditions of his release and, if so, whether his parole or mandatory release should be revoked or reinstated.

(b) The alleged violator may present witnesses and documentary evidence in his behalf. However, the presiding hearing officer or examiner panel may limit or exclude any irrelevant or repetitious statement or documentary evidence.

(c) At a local revocation hearing, the Commission may on the request of the alleged violator or on its own motion, request the attendance of persons who have given statements upon which revocation may be based. Those witnesses who are present shall be made available for questioning and cross-examination in the presence of the alleged violator unless the presiding hearing officer or examiner panel finds good cause for their non-attendance. Adverse witnesses will not be requested to appear at institutional revocation hearings.

(d) All evidence upon which the finding of violation may be based shall be disclosed to the alleged violator at the revocation hearing. The hearing officer or examiner panel may disclose documentary evidence by permitting the alleged violator to examine the document during the hearing, or where appropriate, by reading or summarizing the document in the presence of the alleged violator.

(e) In lieu of an attorney, an alleged violator may be represented at a revocation hearing by a person of his choice. However, the role of such non-attorney representative shall be limited to offering a statement on the alleged violator's behalf with regard to reparole or reinstatement to supervision.

(f) A revocation decision may be appealed under the provisions of §2.25 and §2.26, or §2.27 as applicable.

Notes and Procedures

▌2.50-01. *Purpose of Revocation Hearing.* The fundamental purpose of a revocation hearing is to determine whether there has been a violation of conditions of parole and/or mandatory release of sufficient frequency or severity to warrant removal from the community. Because the releasee stands to loss his conditional freedom he has certain rights to due process during the revocation process; but he is not entitled to a full adversary hearing as in a new criminal procedure. A primary illustration of the difference between a criminal trial and a revocation hearing is that in a criminal trial, a conviction may be obtained only if the Government proves its facts beyond a reasonable doubt. In a revocation hearing, the panel need only find that a violation is shown by a preponderance of the evidence [18 U.S.C. Sec. 4214(d)]. This simply means that the weight of all the evidence before the panel must be toward showing a violation. In addition, there is a more relaxed rule of evidence, permitting letters, affidavits, and reports in lieu of testimony: *Morrissey* v. *Brewer* (Supreme Court, 1972). Hearsay testimony (reporting what another, not present, has said concerning the alleged violator) is also permissible under this rule.

▌2.50-02. *Procedural Rights of Alleged Violator.* The following procedural rights are applicable:

(1) Notice to the parolee of the conditions of parole alleged to have been violated, and the time, place, and purposes of the scheduled hearing (Warrant Application - Parole Form H-20 and Hearing Notice);

(2) Opportunity for the parolee to be represented by an attorney (retained by the parolee, or if he is financially unable to retain counsel, counsel shall be provided pursuant to Section 3006A) or, if he chooses, a representative as provided by rules and regulations, unless the parolee knowingly and intelligently waives such representation;

(3) Opportunity for the parolee to be apprised of the evidence against him, and if he so requests, to confront and cross-examine adverse witnesses, unless the Commission specifically finds substantial reasons for not so allowing. (Adverse witnesses are authorized at local revocation hearings only). It will be customary for the parolee's supervising probation officer to be available as a witness at a local revocation hearing in the district of supervision, for questioning by either the examiner(s) or the parolee, unless there is good cause for non-appearance (e.g., distance or possibility of aggressive confrontation). Other persons who provided information bearing on the charges need not be present at the hearing unless requested for personal confrontation; where needed, however, they may be requested or subpoened to testify;

(4) Written notice of the Commission's determination not later than twenty-one days, excluding holidays, after the date of the revocation hearing. If parole is revoked, a digest (Notice of Action) shall be prepared by the Commission setting forth the factors considered and reasons for revocation and any continuance.

2.50-03. *Reporter or Recording Device*. Reporter or recorder devices brought in by the alleged violator or his attorney are not permissible. No reproduction of the hearing other than provided by the Commission will be permitted.

2.50-04. *Sworn Testimony*. Sworn testimony may be taken by order of the Regional Commissioner, or in the discretion of the hearing examiner conducting a revocation hearing, where such testimony would appear to be useful in resolving a factual dispute or otherwise appears warranted. Sworn testimony is taken as follows: The examiner instructs the witness to raise his/her right hand, then asks, 'Do you solemnly swear or affirm under penalty of perjury that the testimony you are about to give in the case now in hearing will be the truth, the whole truth and nothing but the truth, so help you God?'

2.50-05. *Continuance of Violator Hearing*. One continuance to the next hearing docket date may be granted by the examiner panel at the request of the subject for the purpose of securing counsel or witnesses, or at the request of counsel for further preparation of the case.

(a) The time of continuance is fully at the discretion of the examiner panel. A Commission Order shall be executed to give written notice of this decision. A special form, which is available at the institution in the record office, shall be executed in duplicate giving reasons for the continuance. A memo for the file is made and a copy of the continuance form is given to the prisoner and a copy put in the file.

(b) A second continuance to the next hearing docket may be granted by the examiner panel only for urgent and compelling reasons. The Commission Order and second continuance form will be executed and processed as per paragraph (a) above. No further continuance shall be granted by the examiner panel. Requests for more than two continuances or for a longer time must be in writing to the Regional Commissioner and must be made at least ten days prior to the scheduled hearing docket.

(c) Rejection of an attorney - if counsel is present, but alleged violator indicates that he does not wish to be represented by that particular attorney, the examiner panel after determining the basis for the alleged violator's refusal should grant a continuance and request the caseworker to assist the alleged violator in executing another CJA Form 22 or permit communication with family, etc., if a retained attorney is desired.

2.50-06. *Lawyer's Role in Revocation Proceeding*.
(a) Taken in part from a 1971 decision by the U.S. Court of Appeals for the Second Circuit, (*U.S. v. John Bey*): "There is no question but a lawyer's role is welcomed in a revocation process. It is important to obtain accurate factual exposition and evaluation of facts. At times, alleged violators may suffer from absence of trained legal assistance. A trained lawyer might well have discovered mitigating circumstances and hidden significances not reported or revealed in alleged violator's explanation of alleged charges." A competent counsel should augment the flow of relevant information and guard against error and distortions, which will benefit both the examiner panel and violator.

(b) The examiner panel must be in FULL CONTROL. Violation hearings should not become legal battles but must follow a fact finding process. The lawyer must be informed that this type of hearing is informal. If necessary, counsel should be informed that he will not be permitted to employ disruptive tactics or to impede the flow of relevant information.

(c) An alleged violator may instead of an attorney have a representative appear with him at a revocation hearing. Such person is restricted to making a short statement at the conclusion of the hearing. If he has information relative to the charges placed against the releasee he is classified as a witness rather than a "representative".

2.50-07. *Hearing Procedure*.
(a) Advise of legal rights - procedural safeguards. Use Revocation Checklist as a guide for introduction to the hearing.

(b) At the opening of the hearing the parolee will be told that the Parole Commission will consider all facts which come out (both mitigating and aggravating) during the course of the hearing.

(c) Identify counsel and witnesses.

(d) Questions should be directed to the alleged violator and he alone must answer, but he may confer with counsel at any time.

(e) Each charge will be read as it appears on the Warrant Application (Parole Form H-20). Supporting information under each charge may either be read or paraphrased.

(f) When the charges set forth in the Warrant Application are reviewed, the alleged violator will be required to either admit or deny each charge. If the attorney advises the alleged violator to stand mute, or invoke the Fifth Amendment to the Constitution, the examiner panel must require the subject to personally indicate that this is his desire. If the alleged violator does stand mute or invokes the Fifth Amendment, that then is his answer to the charges. He should be further advised that the hearing will still proceed. A finding of fact will be made even if he does not make a statement, and a decision will be made based on the information available. Be certain to keep control of the hearing. If the parolee or his attorney threatens a court procedure, inform them that is their privilege.

(g) After each charge is read and subject has admitted or denied the charge, he has the right to present evidence and give an explanation. The violator can confront the USPO - if it is a local revocation hearing - as well as confront and cross-examine any adverse witnesses. However, the examiner panel for good cause may disallow confrontation of adverse witnesses by the alleged violator. In such case, the panel must indicate in its summary the reason why confrontation was not allowed.

(h) Questioning by Examiner Panel: The examiner panel controls the hearing and rules out any irrelevant and repetitious information, and denies the appearance of any adverse witnesses if good cause exists (*Morrissey*). The attorney or witnesses may not question or cross-examine the examiner panel, but must be limited to giving information relative to the alleged violation charges, and whether in their opinion the alleged violator should be reinstated to supervision.

(i) If during the course of discussion and review of alleged charges the violator admits to other charges not known to the Commission previously, the violator should be told that this fact may be used against him and that a violation finding can be made on same. Further, the alleged violator must be given time to prepare a defense, and if this results in a continuance of proceedings a supplemental warrant must be prepared.

(j) In a local revocation hearing, the alleged violator's probation officer normally shall be permitted to be present throughout the proceeding, except during the deliberation of the panel.

2.50-08. *Information on Parolee's Standing as a Good Parole Risk.*
(a) The Parole Commission statute requires that a parole hearing be conducted within 120 days of revocation: 18 U.S.C. Sec. 4208(a). The prisoner should therefore be informed specifically at this stage of the proceeding that the panel will also render a recommendation as to reparole suitability, as well as to revocation, and that this hearing will serve for both purposes.

(b) Revocation may be based only on those charges set forth in the Warrant Application or Supplement or admitted during the course of the revocation hearing. However, adverse information bearing on the subject's behavior while under supervision may be considered in assessing the parolee's standing as a good parole risk. This information, and its potential significance for the Commission's decision-making process, should be fully discussed with the alleged violator.

2.50-09. *Recommendation of Examiner Panel.*
(a) Following the discussion of the charges and the parolee's reparole suitability, the hearing panel will make its recommendation. When the parolee is recalled to the hearing room, the recommmendation and reasons are announced. The attorney and supervising probation officer are permitted to be present when recommendations are given in revocation hearings.

(b) Advise that the examiner panel action is a recommendation and that within 21 days an official decision will be mailed [i.e., a Notice of Action with reasons for revocation, plus the reasons for continuance, if applicable]. Advise that the attorney will also be notified when a final decision is reached by a copy of the Notice of Action which will be sent to him. Inform the parolee that he has the right to appeal the official decision.

2.50-10. *Disclosure of Documents at the Revocation Hearing.*
(a) Any documents to be considered by the panel *must* be disclosed at the hearing upon request. Disclosure will be accomplished by passing the documents across the hearing table for examination by the parolee and his counsel, except when there is material which clearly must not be disclosed (e.g., confidential sources, where there is danger of harm, or psychiatric material). In such cases, the document is to be summarized to give the basic allegation, if such can be done without revealing the sensitive information, and the rest of the document read verbatim.

(b) No copies may be given of any document in the file. The proper means of obtaining copies is via written request to the Commission or by request to the institution staff for documents in the institution file.

2.50-11. *Notification of Attorney.* See 2.24-12.

§2.51 ISSUANCE OF A SUBPOENA FOR THE APPEARANCE OF WITNESSES OR PRODUCTION OF DOCUMENTS.

(a) (1) Preliminary Interview or Local Revocation Hearing: If any person who has given information upon which revocation may be based refuses, upon request by the Commission to appear, the Regional Commissioner may issue a subpoena for the appearance of such witness. Such subpoena may also be issued at the discretion of the Regional Commissioner in the event such adverse witness is judged unlikely to appear as requested.

(2) In addition, the Regional Commissioner may, upon his own motion or upon a showing by the parolee that a witness whose testimony is necessary to the proper disposition of his case will not appear voluntarily at a local revocation hearing or provide an adequate written statement of his testimony, issue a subpoena for the appearance of such witness at the revocation hearing.

(3) Both such subpoenas may also be issued at the discretion of the Regional Commissioner if it is deemed necessary for orderly processing of the case.

(b) A subpoena issued pursuant to paragraph (a) of this section above may require the production of documents as well as, or in lieu of, a personal appearance. The subpoena shall specify the time and the place at which the person named therein is commanded to appear, and shall specify any documents required to be produced.

(c) A subpoena may be served by any Federal officer authorized to serve criminal process. The subpoena may be served at any place within the judicial district in which the place specified in the subpoena is located, or any place where the witness may be found. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person.

(d) If a person refuses to obey such subpoena, the Commission may petition a court of the United States for the judicial district in which the parole proceeding is being conducted, or in which such person may be found, to require such person to appear, testify, or produce evidence. The court may issue an order requiring such person to appear before the Commission, and failure to obey such an order is punishable by contempt.

Notes and Procedures

2.51-01. *In General.* When an alleged violator requests the presence of adverse witnesses at the local revocation hearing the Commission will ascertain whether the witnesses requested have provided information to be used as a basis for revocation. If witnesses will not appear voluntarily, the Commission will make a decision on the necessity of the witness and whether issuance of a subpoena is required.

2.51-02. *Federal Employees and Probation Officers.*
(a) Federal employees may be subpoenaed to appear at preliminary interviews (if they are adverse witnesses) and at local revocation hearings, without witness fees, provided that reimbursement is made for transportation at the prevailing rate approved for such travel.

(b) Probation officers are obliged to appear upon request of the Commission at a preliminary interview or revocation hearing (18 U.S.C. 3655). A subpoena is not normally required for the appearance of an officer from within the district the hearing was conducted. However, probation officers should be subpoenaed when their presence is required at a Commission hearing outside their judicial district. The Probation Division bears the expense of producing probation officers as witnesses whenever their presence is requested by competent authority. To exercise fiscal control they require that a subpoena be issued prior to authorizing such travel outside a judicial district.

▌2.51-03. *Non-Federal Witnesses*
(a) All other witnesses including law enforcement officers may be reimbursed (either directly or to his agency) when attendance is required by subpoena at the prevailing rate per day of appearance and for the time necessarily occupied in going to and returning from the Commission proceeding, and at the prevailing rate per mile for going from and returning to their places of residence. Witnesses who must attend proceedings so far removed from their places of residence as to prohibit attendance and return on the same day, shall receive the prevailing additional allowance per day for expenses of subsistence.

(b) Witnesses shall be paid following the conclusion of the preliminary interview or revocation hearing to which they have been called to testify. The hearing examiner shall provide Form OBD-3 to the witness. Upon completion of this form the hearing examiner will instruct the witness to take the form to the local U.S. Marshal's office and receive payment in cash. If travel or per diem is involved the hearing examiner may instruct the witness that the U.S. Marshal's office will issue a check upon receipt of the witness form. If advance funds are needed in the case of long distance travel the witness should be instructed to advise the Marshal's Service.

(c) All witnesses shall be advised that only authorized expenses of travel and subsistence shall be paid. Witnesses traveling more than 100 miles must be paid actual travel expenses.

▌2.51-04. *Policy Limitations*
(a) While the Commission's subpoena power is broad, its use should, except in emergencies, be restricted to adverse witnesses within the district where the proceeding is held, when such persons have refused to attend or are unlikely to attend. A subpoena for a requested adverse witness from outside the district should be issued only when an affidavit in lieu of testimony is insufficient to settle the factual dispute raised by the alleged violator.

(b) The alleged violator bears a heavy burden to prove that a witness to testify on his behalf will not appear voluntarily or give a written statement without subpoena. The witness should be essential to determining the basic facts in genuine dispute, rather than merely testimonial to mitigating circumstances, which can more conveniently be obtained by letter or affidavit. Witnesses in mitigation will in no event be required to attend a preliminary interview, since the fact of violation is the principal issue, rather than mitigating circumstances.

▌2.51-05. *Subpoena To Aid in Apprehending Absconders*. A subpoena may be issued at the request of any Federal law enforcement agency (e.g., U.S. Marshal's Service, FBI) engaged in searching for a fugitive from a Parole Commission warrant. Such subpoena will direct a third party to produce documents (such as telephone records) to the requesting agency when such records may help in locating the fugitive. Each subpoena will contain the following provisions: (1) In lieu of appearance at the time and place specified by the subpoena, compliance with this subpoena may be made by providing the documents listed herein to the Deputy U.S. Marshal serving the subpoena; (2) These records are sought in an ongoing investigation; therefore, disclosure is not to be made of the subpoena or the production of records thereunder to any person.

▌§2.52 REVOCATION DECISIONS.

(a) Whenever a parolee is summoned or retaken by the Commission, and the Commission finds by a preponderance of the evidence, that the parolee has violated a condition of the parole, the Commission may take any of the following actions:

(1) Restore the parolee to supervision including where appropriate: (i) Reprimand (ii) Modification of the parolee's conditions of release (iii) Referral to a residential community treatment center for all or part of the remainder of his original sentence; or

(2) Revoke parole.

(b) If parole is revoked pursuant to this section, the Commission shall also determine, on the basis of the revocation hearing, whether reparole is warranted or whether the prisoner should be continued for further review.

(c) A parolee whose release is revoked by the Commission will receive credit on service of his sentence for time spent under supervision except as provided below:

(1) If the Commission finds that such parolee intentionally refused or failed to respond to any reasonable request, order, summons or warrant of the Commission or any agent thereof, the Commission may order the forfeiture of the time during which the parolee so refused or failed to respond, and such time shall not be credited to service of the sentence.

(2) If the parolee has been convicted of a new offense committed subsequent to his release on parole, which is punishable by a term of imprisonment, forfeiture of the time from the date of such release to the date of execution of the warrant shall be ordered and such time shall not be credited to service of the sentence. An actual term of confinement or imprisonment need not have been imposed for such conviction; it suffices that the statute under which the parolee was convicted permits the trial court to impose any term of confinement or imprisonment in any penal facility. If such conviction occurs subsequent to a revocation hearing the Commission may reopen the case and schedule a further hearing relative to time forfeiture and such further disposition as may be appropriate. However, in no event shall the violator term imposed under this subsection, taken together with the time served before release, exceed the total length of the original sentence.

(d) (1) Notwithstanding the above, prisoners committed under the Narcotic Addict Rehabilitation Act or the Youth Corrections Act shall not be subject to any forfeiture provision, but shall serve uninterrupted sentences from the date of conviction, except as provided in Sec. 2.10(b) and (c).

(2) The commitment of a juvenile offender under the Federal Juvenile Delinquency Act may not be extended past the offender's twenty-first birthday unless the juvenile has attained his nineteenth birthday at the time of his commitment, in which case his commitment shall not exceed the lesser of two years or the maximum term which could have been imposed on an adult convicted of the same offense.

Notes and Procedures

▌2.52-01. *Specific Findings Prerequisite to Forfeiture of Street Time.*
(a) A separate order requiring the forfeiture of none, a specific number of days, or all of the "street time" is to be entered if revocation is ordered. 'Street time' may only be forfeited as provided in paragraphs (b), (c), and (d) below.

(b) *Absconders and Willful Refusals to Respond.*
(1) *Absconders*: An absconder is subject to forfeiture of all the time he was intentionally in absconder status. The term "absconding" describes not only the parolee who intentionally leaves the district of supervision without permission, but also one who intentionally conceals himself from active supervision within the district.

Normally, a precise date from which to measure the absconder period will be found in the USPO letter or in the USPO's testimony. This date might be the date the USPO first tried to contact the parolee unsuccessfully and first discovered that he or she had left his place of residence and his whereabouts became unknown. However, the date may in some cases, be the date of actual departure (if known *for certain*) or the date a written permission terminated, if the absconder failed to return within the time set (a copy of such permission should be presented or verified at the hearing). In any case the date should be conclusive and not a date arrived at by guess-work; it must be a specific date mentioned in the documentary evidence available or in the testimony. The voluntary return of the parolee, or execution of the warrant (or filing of a detainer) marks the limit of the period which can be forfeited. If no clear earlier date is possible, the date on which the warrant was issued should be used. NOTE: In all cases of failure to report or submit to supervision, the failure must have been intentional. For example, if the parolee was hospitalized because of an emergency, no forfeiture should be made. A parolee who absconds and then is detained as a result of a subsequent criminal charge should have time forfeited from the date he absconded till the date taken into custody on such charge (federal, state, local).

(2) *Willful Refusal to Respond*: The same need for conclusiveness applies to a finding that a parolee failed to respond to any order of his probation officer or of the Commission. If the parolee refused to respond to an order of his probation officer, the date selected must be the date the parolee was to have responded and failed. If a summons was disobeyed, the date the period begins is the date the hearing or interview was to have been held. The end of the forfeited period is the date the parolee finally reported to his probation officer, or the date a warrant was filed as a detainer or executed. Street time may also be forfeited for any period of time during which a parolee continuously and willfully fails to abide by one of the conditions of parole (e.g., failing to submit supervision reports, failing to report for drug testing) even though a parolee complies with all other conditions of release.

(c) *New Convictions*.
(1) Any new conviction (whether felony or lesser charge) which is punishable by any term of confinement or imprisonment in a penal facility requires forfeiture of all "street time", except as noted under paragraph (2) and (3). Actual imprisonment need not have been imposed. If in doubt as to whether the offense is at all punishable by a term of imprisonment, the decision as to possible forfeiture must be withheld pending investigation by the probation office. *Note*: In some cases, a minor conviction that is classified under the "administrative section" of the reparole guidelines will nonetheless require "street time" forfeiture.

(2) For purposes of forfeiture of "street time" do not use "non-final", Indian Tribal Court, or foreign convictions (see 2.48-09). However, the fact that a conviction is under appeal or is subject to being set aside at some later date does not alter the validity of the conviction for the purpose of forfeiting street time.

(3) Where forfeiture of cash bond (collateral) in lieu of court appearance constitutes a conviction, such conviction may not be used to forfeit street time. This is because the offense is deemed to be one not punishable by imprisonment since the offender has the option of evading imprisonment by forfeiting collateral.

(4) Where a prisoner, in appealing the revocation of his parole, specifically denies that a conviction was sustained, the Regional Commissioner should request the United States Probation Officer to submit a copy of the judgment of conviction (certified if possible by the clerk of the court). In this way, disputes of this nature (which are

rare) can be conclusively resolved. However, in all cases in which the fact of conviction is *not* expressly denied, the Commission is entitled to rely upon the written report of the United States Probation Officer stating that a conviction has been sustained and that it is or is not of a type requiring forfeiture of time on parole pursuant to 18 U.S.C. §4210(b). It is not grounds for a rehearing in such a case that further evidence to prove the fact of conviction was not obtained. If the prisoner actively contests the fact of conviction before the National Appeals Board, the correct remedy would be to decide the case on all other issues and to remand the case to the Regional level so that the issue concerning the conviction can be resolved. If the prisoner turns out to be correct, the Regional Commissioner would then reopen the case under 28 C.F.R. §2.28 for appropriate action.

(d) *Exceptions*:
(1) No forfeiture is possible for those committed under the Youth Corrections Act or the Narcotic Addict Rehabilitation Act or those serving a Mexican or Canadian sentence in this country pursuant to their transfer under the treaties with those countries for the execution of penal sentences. However, absconding by a YCA, NARA, or Mexican or Canadian sentenced offender will produce the same result by extending the term of sentence. A separate order should show (by dates) the time to be added to the sentence.

(2) For cases sentenced under the District of Columbia (D.C.) Code, forfeiture of all 'street time' is mandatory, regardless of the basis of revocation.

(e) *Forfeiture of Street Time*. In all cases, the possibility of forfeiture must be discussed with the prisoner at the time of review of the specific charge giving rise to that possibility, and the possible period which may be forfeited must be discussed at that time. NOTE: Street time shall be forfeited in any case in which (a) parole has been revoked and, (b) the parolee has been convicted of a new crime (as described above) regardless of whether such crime was initially charged as a violation of parole.

(f) *Conviction After Revocation Hearing*. When a conviction occurs *after* a revocation hearing (and there was none prior to the revocation hearing) the Regional Commissioner shall reopen the case and schedule a subsequent hearing with the violator. Following such hearing, a new order may be made relative to forfeiture of "street time". Note: The provision of this hearing in order to forfeit "street time" is a statutory requirement.

(g) *Credit for Time in Confinement*. Upon revocation, credit is to be given a prisoner towards service of his maximum sentence for every day in federal confinement not previously credited (including confinement on a warrant later withdrawn; and confinement on an improperly executed warrant, whether or not the prisoner was also in state or local custody). In conducting revocation hearings where street time is forfeited, examiners should be alert to situations where a parolee has spent time in confinement as described above. In such case, the following should be added to the Order: *"Time spent in confinement from date to date is to be credited toward service of maximum sentence"*. It is to be noted that whether credit toward the reparole guidelines is given is a separate determination governed by 28 C.F.R. §2.21.

2.52-02. *Reparole Guidelines*. Reparole guidelines should be completed for all revocation hearings. NOTE: The revocation packet prepared for use by the examiners should include the previous salient factor score sheet and pre-sentence investigation to facilitate recomputation of the salient factor score.

2.52-03. *Driving While Impaired*. In the case of a parolee found to have violated parole by driving under the influence of (while impaired by) alcohol or drugs, revocation will be the presumptive sanction if the parolee is found to have been driving in a life threatening manner or has caused a serious accident, or if the violation is the second or subsequent such violation during the current period of supervision. Whenever parole is not revoked, the presumptive response will be imposition of a special condition that the parolee undergo an aftercare treatment program for alcoholism and surrender his driver's license to the U.S. Probation Officer for a period of time determined by the Regional Commissioner (normally 90-180 days). Consideration of the public welfare shall guide the Commissioner in determining whether such action may be withheld in a particular case.

§2.53 MANDATORY PAROLE.

(a) A prisoner (including a prisoner sentenced under the Narcotic Addict Rehabilitation Act, Federal Juvenile Delinquency Act, or the provisions of 5010(c) of the Youth Corrections Act) serving a term or terms of five years or longer shall be released on parole after completion of two-thirds of each consecutive term or terms or after completion of thirty years of each term or terms of more than 45 years (including life terms), whichever comes earlier, unless pursuant to a hearing under this section, the Commission determines that there is a reasonable probability that the prisoner will commit any Federal, State, or local crime or that the prisoner has frequently or seriously violated the rules of the institution in which he is confined. If parole is denied pursuant to this section, such prisoner shall serve until the expiration of his sentence less good time.

(b) When feasible, at least sixty days prior to the scheduled two-thirds date, a review of the record shall be conducted by an examiner panel. If a mandatory parole is ordered following this review, no hearing shall be conducted.

(c) A prisoner released on mandatory parole pursuant to this section shall remain under supervision until the expiration of the full term of his sentence unless the Commission terminates parole supervision pursuant to Sec. 2.43 prior to the full term date of the sentence.

(d) A prisoner whose parole has been revoked and whose parole violator term is five years or more shall be eligible for mandatory parole under the provisions of this section upon completion of two-thirds of the violator term and shall be considered for mandatory parole under the same terms as any other eligible prisoner.

Notes and Procedures

2.53-01. *Review Procedure*.
(a) Upon receipt of a progress report from the institution prior to the "two-thirds" date, an examiner panel shall conduct a record review. A recommendation to parole normally should be made in order to provide a period under supervision for all except those who have the greatest probability that they will commit any federal, state or local crime following release. A parole should not be recommended, however, for prisoners who have seriously or frequently violated the rules of the institution.

(b) Unless mandatory parole is ordered on the basis of the record review, the case should be placed on the next hearing docket for a personal Mandatory Parole Hearing. If the Regional Commissioner disagrees with a panel recommendation to grant Mandatory Parole on the record, he may order that the case be heard as originally scheduled. If parole is not recommended following such hearing, the panel may recommend any such action as may be appropriate.

2.53-02. *Release Certificate*. The Commission's regular parole release certificate (Parole Form H-8) shall be used, except that the word "Mandatory" should be typed beneath the title of the form.

2.53-03. *Concurrent State Sentences*. If Mandatory Parole at two-thirds of a federal term is not granted on the basis of a record review, and the prisoner is serving a state sentence concurrently, no personal hearing is required. If the prisoner is merely "boarded" in a state institution such personal hearing must be conducted as in cases confined in federal facilities.

2.53-04. *Previous Hearing Within 120 Days*. If a personal hearing is conducted within 120 days of an inmate's "two-thirds date" the examiner panel may recommend relative to Mandatory Parole without the need for a subsequent review on the record or separate Mandatory Parole hearing. Any serious institutional misconduct following such determination will be reported to the Commission in accordance with procedures relative to any parole grant, and in such event a rescission may be scheduled.

2.53-05. *Effective Date*. The effective date of Mandatory Parole normally shall be the date on which two-thirds of the maximum term(s) occurs. In the event a Mandatory Parole Hearing is not conducted prior to such date (i.e., where such prisoner has previously waived such hearing) the effective date shall be set as soon as practicable thereafter, but in no case later than the date the prisoner would otherwise be released on the basis of "good time" credits.

§2.54 REVIEWS PURSUANT TO 18 U.S.C. 4215(c).

The Attorney General, within thirty days after entry of a Regional Commissioner's decision, may request in writing that the National Appeals Board review such decision. Within sixty days of the receipt of the request the National Appeals Board shall, upon the concurrence of two members, affirm, modify, or reverse the decision, or order a rehearing at the institution or regional level. The Attorney General and the prisoner affected shall be informed in writing of the decision, and the reasons therefor.

§2.55 DISCLOSURE OF FILE PRIOR TO PAROLE HEARINGS: PREHEARING REVIEW.

(a) Procedure.
(1) At least 60 days prior to a scheduled hearing pursuant to §§2.12 or 2.14, each prisoner shall be furnished a notice of his right to request disclosure of the reports and other documents that may be relied upon by the Commission in making its determination.

(2) Upon request by the prisoner, review of disclosable documents in the institution file will be permitted by the Federal Prison System, pursuant to its regulations, within fifteen days of the request. Such review may be requested prior to the hearing, or at any other time thereafter.

(3) The prisoner shall be permitted to obtain, prior to a hearing, copies of any disclosable documents within the scope of this section that may have been retained in the Commission's regional office file, provided that the regional office receives such request at least thirty days in advance of such hearing to allow for processing.

(b) Scope of disclosure. The scope of disclosure under this section shall be limited to the following reports and other documents which the Commission utilizes in making its parole determinations:

(1) At initial hearings and reconsideration hearings, official reports and other documents conveying relevant information concerning the prisoner's offense behavior, prior record, history and characteristics, institutional performance, and parole release plan.

(2) At interim review hearings pursuant to §2.14 of these rules, official reports and other documents informing the Commission of factors which have changed, or which may have changed, since the date of the last hearing.

(c) Exemptions to disclosure. A document may be withheld from disclosure to the extent it contains:

(1) Diagnostic opinions, which if known to the prisoner could lead to a serious disruption of his institutional program;

(2) Material which would reveal a source of information obtained upon a promise of confidentiality; or

(3) Any other information, which if disclosed, might result in harm, physical or otherwise to any person. (18 U.S.C. 4208(c)).

(d) Summarization of material withheld.
(1) If any document, or portion thereof, is deemed by the originating agency to fall within an exemption to disclosure, and non-disclosure appears warranted, such agency shall identify the material to be withheld and the basis for withholding under paragraph (b) of this section, and shall furnish for disclosure to the prisoner a summary conveying the general nature of the assertion(s) contained in the document withheld, with as much specificity as circumstances will permit. However, such summary should not be so specific that the protected items of information would be subject to identification.

(2) All official reports bearing upon the parole determination should be sent to the institution in which the prisoner is confined. Preparation for disclosure (including any necessary summarizing) must be completed prior to the submission of the report.

(3) Documents which have not been cleared for disclosure or summarized may not be considered by the Commission in its determination, without a signed waiver of disclosure from the prisoner.

(e) Waivers of disclosure. If any document relevant to the parole determination has not been disclosed to the prisoner within the time limits specified in this rule, the prisoner shall be offered the opportunity to waive prehearing disclosure of such document without prejudice to the prisoner's right to review the document (or a summary thereof) at any time thereafter. If the prisoner chooses not to sign a waiver, the examiner panel shall continue the hearing to the end of the docket, or to the next docket, in order to permit adequate disclosure. A continuance for the purpose of permitting disclosure may not be extended beyond the next hearing docket.

(f) Late-received documents. In the event an official report or other document is received following the parole hearing but during the pendency of the parole determination proceeding, and such document contains new and significant adverse information, the prisoner shall be placed on the next docket for a re-hearing and the document shall be promptly forwarded for inclusion in the prisoner's institutional file. The Commission shall notify the prisoner of such hearing and of his right to request disclosure of the document pursuant to the provisions of this section. If such document is determined not to contain new and significant information, it shall not be considered in the parole determination.

(g) Reopened cases. Whenever a case is reopened for a new hearing under §2.28 or related sections, the relevant supporting document(s) shall be sent to the institution wherein the prisoner is confined and the prisoner shall be informed of his right to request disclosure of such documents.

Notes and Procedures

2.55-01. *Disclosure Procedures*. See Appendix 5.

§2.56 DISCLOSURE OF PAROLE COMMISSION REGIONAL OFFICE FILE (PRIVACY ACT DISCLOSURE).

(a) Procedure. Copies of disclosable documents pertaining to a prisoner or parolee which are contained in the Regional Office files of the Commission may be obtained at any time by that prisoner or parolee upon written request pursuant to the Privacy Act of 1974. Such requests shall be answered within forty business days of its receipt, absent an emergency. Other persons may obtain copies of such documents only upon proof of authorization from the prisoner or parolee concerned.

(b) Scope of disclosure. Disclosure under the Privacy Act of 1974 shall extend to Commission documents concerning the prisoner or parolee making the request. Documents which are contained in the regional file and which are prepared by agencies other than the Commission shall be referred to the appropriate agency for a response pursuant to its regulations, unless such document has previously been prepared for disclosure pursuant to §2.55 or is fully disclosable on its face. Any request for copies of court documents (incuding the presentence investigation report) must be directed to the appropriate court.

(c) Exemptions to disclosure. A document may be withheld from disclosure to the extent it contains:

(1) Diagnostic opinions, which if known to the prisoner could lead to a serious disruption of his institutional program;

(2) Material which would reveal a source of information obtained upon a promise of confidentiality; or

(3) Any other information, which if disclosed, might result in harm, physical or otherwise, to any person.

(d) Specification of documents withheld. Documents that are withheld pursuant to paragraph (c) of this section shall be identified for the requester together with the applicable exemption for withholding each document or portion thereof. In addition, the requester must be informed of his or her right to appeal any non-disclosure to the Office of Privacy and Information Appeals (Associate Attorney General).

(e) Hearing record. Upon request by the prisoner or parolee concerned, the Commission shall promptly make available a copy of any verbatim record (e.g., tape recording) which it has retained of a hearing, pursuant to 18 U.S.C. 4208(f).

(f) Costs. In any case in which reproduction costs exceed three dollars (e.g., reproduction of over thirty pages or of one cassette and twenty-four pages), prisoners will be notified that they will be required to reimburse the United States for such reproduction costs. The Regional Commissioner may waive such reimbursement upon a showing of the prisoner's inability to pay. The Regional Commissioner may require payment in advance of making a disclosure in circumstances where deemed necessary.

(g) Cross References. The Commission's authority to promulgate rules governing disclosure pursuant to the Privacy Act of 1974 may be found at 28 C.F.R. 16.85.

Notes and Procedures

2.56-01. *Disclosure Procedures*. See Appendix 5.

§2.57 SPECIAL PAROLE TERMS.

(a) The Drug Abuse Prevention and Control Act, 21 U.S.C. Sections 801 to 966, provides that, on conviction of certain offenses, mandatory "special parole terms" must be imposed by the court as part of the sentence. This term is an additional period of supervision which commences upon completion of any period on parole or mandatory release supervision from the regular sentence; or if the prisoner is released without supervision, commences upon such release.

(b) At the time of release under the regular sentence, whether under full term expiration or under a mandatory release certificate or a parole certificate, a separate Special Parole Term certificate will be issued to the prisoner by the Federal Prison System.

(c) Should a parolee be found to have violated conditions of release during supervision under his regular sentence, i.e., before commencement of the Special Parole Term, he may be returned as a violator under his regular sentence; the Special Parole Term will follow unaffected, as in paragraph (a) of this section. Should a parolee violate conditions of release during the Special Parole Term he will be subject to revocation on the Special Parole Term as provided in Sec. 2.52, and subject to reparole or mandatory release under the Special Parole Term.

(d) If a prisoner is reparoled under the revoked Special Parole Term a certificate of parole to Special Parole Term is issued by the Commission. If the prisoner is mandatorily released under the revoked "Special Parole Term" a certificate of mandatory release to Special Parole Term will be issued by the Federal Prison System.

(e) If regular parole or mandatory release supervision is terminated under Sec. 2.43, the Special Parole Term commences to run at that point in time. Early termination from supervision from a Special Parole Term may occur as in the case of a regular parole term, except that the time periods considered shall commence from the beginning of the Special Parole Term.

Notes and Procedures

2.57-01. *Special Parole Term Procedure*.
(a) Any special conditions imposed during parole or mandatory release shall also apply to the special parole term and shall be placed on the special parole term certificate. The Special Parole Term will be treated as aggregated with the regular parole or mandatory release term for purposes of modification or removal of conditions or special conditions.

(b) A person serving a special parole term shall be considered the same as a regular parolee. This includes the possibility of termination from supervision if merited, as well as the possibility of relocating outside the United States if justified. However, the special parole term will be treated as a separate consecutive term (without credit for any time spent on any regular parole term) for purposes of the (1) early termination guidelines and (2) the five year hearing requirement in reference to termination of jurisdiction.

(c) The special parole term is not applicable to sentences under the FJDA, YCA, and NARA. In a "split sentence" situation, the special parole term is considered to be part of the sentence that was suspended and this will not take effect unless probation is revoked.

§2.58 PRIOR ORDERS.

Any order of the United States Board of Parole entered prior to May 14, 1976, including, but not limited to, orders granting, denying, rescinding or revoking parole or mandatory release, shall be a valid order of the United States Parole Commission according to the terms stated in the order.

§2.59 ABSENCE OF HEARING EXAMINER.

In the absence of a hearing examiner, a Regional Commissioner may exercise the authority delegated to hearing examiners in Section 2.23.

§2.60 SUPERIOR PROGRAM ACHIEVEMENT.

(a) Prisoners who demonstrate superior program achievement (in addition to a good conduct record) may be considered for a limited advancement of the presumptive date previously set according to the schedule below. Such reduction will normally be considered at an interim hearing or pre-release review. It is to be stressed that a clear conduct record is expected; this reduction applies only to cases with documented sustained superior program achievement over a period of 9 months or more in custody.

(b) Superior program achievement may be demonstrated in areas such as educational, vocational, industry, or counselling programs, and is to be considered in light of the specifics of each case.

(c) Upon a finding of superior program achievement, a previously set presumptive date may be advanced. The normal maximum advancement permissible for superior program achievement during the prisoner's entire term shall be as set forth in the following schedule. It is the intent of the Commission that the maximum be exceeded only in the most clearly exceptional cases.

(d) Partial advancements may be given [for example, a case with superior program achievement during only part of the term or a case with both superior program achievement and minor disciplinary infraction(s)]. Advancements may be given at different times; however, the limits set forth in the following schedule shall apply to the total combined advancement.

(e) Schedule of Permissible Reductions for Superior Program Achievement.

Total months required by original presumptive date:	Permissible reduction
14 months or less	Not applicable.
15 to 22 months	Up to 1 month.
23 to 30 months	Up to 2 months.
31 to 36 months	Up to 3 months.
37 to 42 months	Up to 4 months.
43 to 48 months	Up to 5 months.
49 to 54 months	Up to 6 months.
55 to 60 months	Up to 7 months.
61 to 66 months	Up to 8 months.
67 to 72 months	Up to 9 months.
73 to 78 months	Up to 10 months.
79 to 84 months	Up to 11 months.

85 to 90 months ..... Up to 12 months.
91 plus months ..... Up to 13 months.

Plus up to 1 additional month for each 6 months or fraction thereof, by which the original date exceeds 96 months.

(f) For cases originally continued to expiration, the statutory good time date (calculated under 18 U.S.C. 4161) will be used for computing the maximum reduction permissible and as the base from which the reduction is to be subtracted for prisoners serving sentences of less than five years. For prisoners serving sentences of five years or more, the two-thirds date (calculated pursuant to 18 U.S.C. 4206(d)) will be used for these purposes. If the prisoner's presumptive release date has been further reduced by extra good time (19 U.S.C. 4162) and such reduction equals or exceeds the reduction applicable for superior program achievement, the Commission will not give an additional reduction for superior program achievement.

Notes and Procedures

2.60-01. *Application*.
(a) The following procedures apply to all types of considerations: Initial hearings (where the prisoner has been in custody for the required period), interim hearings, pre-release reviews, etc.

(b) Whenever credit for superior program achievement is given, the following wording will be added to the Notice of Action: "The above decision includes a [ ] month credit for superior program achievement, specifically: *(describe the nature, extent, and duration of superior program achievement)*".

(c) For purposes of applying this rule, the original presumptive date refers to the number of months in custody which would be required without consideration of superior program achievement.

Example A - Initial Hearing - Calculate the number of months to be served without reference to superior program achievement. If 45 months would be required, the maximum permissible reduction for superior program achievement (during the entire term) is 5 months. Note: Superior program achievement will only be considered at initial hearings if the prisoner has at least nine months in custody.

Example B - Interim and Pre-Release Reviews - Calculate the number of months in custody required by the original presumptive date; check to see if the allowable credit for superior program achievement has already been awarded.

(d) For cases originally continued to expiration, the statutory good time date will be used both for computing the maximum reduction permissible and as the base from which the reduction is to be subtracted for sentences of less than five years. For sentences of five years or more, the two-thirds date will be used for these purposes. If the prisoner's date has been further reduced by extra good time and such reduction equals or exceeds the reduction permissible for superior program achievement, the Commission will not give an additional reduction for superior program achievement.

Example C - Prisoner's statutory good time date occurs at 37 months. The permissible reduction for superior program achievement is up to 4 months. The prisoner has earned 4 or more months extra good time; reduction for superior program achievement is not applicable.

(e) This rule provides criteria and standards for consideration of superior program achievement. It does not in any way affect the voting quorums for Commission actions required under 2.17, 2.23, 2.24, 2.25, 2.26, 2.27.

§2.61 QUALIFICATIONS OF REPRESENTATIVES.

(a) A prisoner or parolee may select any person to appear as his or her representative in any proceeding, and any representative will be deemed qualified unless specifically disqualified under paragraphs (b) or (c) of this section. However, an examiner or examiner panel may bar an otherwise qualified representative from participating in a particular hearing, provided good cause for such action is found and stated in the record (e.g., willfully disruptive conduct during the hearing by repeated interruption or use of abusive language). In certain situations, good cause may be found in advance of the hearing (e.g., that the proposed representative is a prisoner in disciplinary segregation whose presence at the hearing would pose a risk to security, or has a personal interest in the case which appears to conflict with that of the parole applicant).

(b) The Commission may disqualify any representative from appearing before it for up to a five-year period if, following a hearing, the Commission finds that the representative has engaged in any conduct which demonstrates a clear lack of personal integrity or fitness to practice before the Commission (including, but not limited to, deliberate or repetitive provision of false information to the Commission, or solicitation of clients on the strength of purported personal influence with U.S. Parole Commissioners or staff).

(c)(1) In addition to the prohibitions contained in 18 U.S.C. 207, no former employee of any Federal criminal justice agency (in either the Executive or Judicial Branch of the Government) with the exception of the Federal Defender Service, shall be qualified to act as a representative for hire in any case before the Commission for one year following termination of Federal employment. However, such persons may be employed by, or perform consulting services for, a private firm or other organization providing representation before the agency, to the extent that such employment or service does not include the performance of any representational act before the Commission.

(2) No prisoner or parolee may serve as a representative before the Commission, at the hire of individual clients, in any case.

§2.62 RECOMMENDATION FOR REDUCTION OF MINIMUM SENTENCE.

Under 18 U.S.C. 4205(g) the sentencing court may reduce a minimum sentence upon the motion of the Director of the Bureau of Prisons. Where it appears that a prisoner with a minimum sentence exceeding the applicable guideline range under Sec. 2.20 of this part would otherwise be suitable for release at or after service of the time required by the maximum of the applicable guideline range, the Commission may recommend to the Director of the Bureau of Prisons a motion under 18 U.S.C. 4205(g) for reduction of the minimum sentence to permit such release by the Commission.

Notes and Procedures

2.62-01. *Application*. At an initial consideration (hearing or record review), the hearing panel may recommend *"Referral under 28 C.F.R. 2.62 for reduction of minimum term to [ ] months"*. *Note*: due to the amount of time required for processing, cases granted an effective parole date will not be considered under this provision.

▌2.62-02. *Voting Quorum.*
(a) Upon review by the Regional Commissioner (following initial hearing or subsequent reopening), the provisions of 28 C.F.R. 2.24 are applicable. The operative effect of this provision is as follows. The Regional Commissioner may accept a panel recommendation; take more favorable action than recommended by the panel on his own vote [2.24(b)(1)]; or take less favorable action than a panel recommendation by up to six months on his own vote [2.24(b)(2)]. The absence of a specific panel recommendation is to be considered as a negative panel recommendation. Where the Regional Commissioner recommends less favorable action than a specific panel recommendation by more than six months, the case must be referred to the National Commissioners [2.24(a)].

(b) The voting quorum for original jurisdiction cases is that of 28 C.F.R. 2.17.

▌2.62-03. *Notification to Warden, Prisoner.*
(a) Where favorable action is recommended, the Notice of Action shall read as follows (following the reasons section): *Referral under 28 C.F.R. 2.62 to be forwarded by separate memo.*

(b) Where a presumptive parole is granted upon completion of a judicial minimum sentence above the guidelines, but favorable action is not recommended under this provision, the Notice of Action shall read as follows (following the reasons section): *Referral under 28 C.F.R. 2.62 not deemed warranted.*

▌2.62-04. *Decisions Not Appealable.* Commission decisions to recommend or not to recommend under this provision are not appealable.

▌2.62-05. *Referral to Bureau of Prisons.* While the Commission's recommendation to the Bureau of Prisons will be forwarded by memorandum to the Warden of the institution at which such prisoner is confined (or in the case of state boarders, to the Bureau's Regional Director) immediately following the Commission action, the Bureau of Prisons will normally hold such memorandum until approximately eight months prior to the time for release recommended by the Commission. The Bureau will then review the prisoner's institutional record and formally consider the Commission's recommendation.

▌2.62-06. *Cases Without Initial Hearing.* A prisoner with a Category Seven or lower offense serving a minimum sentence of ten years or more (who is not eligible for a prompt initial hearing) may request that the Bureau have a file prepared and submitted to the Commission's regional office for a special record review. Following the record review, the Commission may consider action under this provision (Note: the Regional Commissioner may schedule a special interview for the prisoner by a hearing panel prior to considering a recommendation under this provision).

▌2.62-07. *Referral to Pardon Attorney.* The Chairman of the Commission shall establish liaison with the Pardon Attorney and shall make available the records of cases recommended for a reduction of the minimum term by the Commission that are not granted, for such consideration as the Pardon Attorney may deem warranted.

▌2.62-08. *Application for Reduction of Minimum Term for D.C. Code Violators.*
(a) The Parole Commission is authorized by the D.C. Code at Section 24-209 to exercise the "same power and authority" over District of Columbia prisoners incarcerated in Federal institutions as the D.C. Board has over prisoners in D.C. institutions. Therefore, in addition to making parole release decisions for these District of Columbia prisoners, the U.S. Parole Commission may petition the sentencing court for reduction of a minimum sentence under the criteria used by the D.C. Board under D.C. Code Section 24-201(c). These criteria are essentially the same as Federal parole release criteria at 18 U.S.C. Section 4206.

(b) For D.C. Code violators, the Bureau of Prisons does not have authority to approach the sentencing court for a reduction of the minimum sentence as it does for U.S. Code violators. Thus, whenever the Bureau of Prisons wishes to recommend reduction of a minimum term, the Bureau of Prisons will notify the Regional Commissioner of that case and the reasons for the recommendation.

(c) *Procedures.* The procedures of 2.62-01, 02, 03, 04, 06 and 07 are applicable to such cases with the following exceptions: (1) The provision in 28 C.F.R. 2.62, which excludes recommendations lower than the top of the applicable guideline range, does not apply to D.C. Code cases; (2) Any long-term D.C. cases not eligible for prompt initial hearings may request consideration under 2.62-06 (Category Eight cases are not excluded).

(d) *Time of Filing Recommendations.* Since the D.C. Code provides that the Commission must find the prisoner eligible for *immediate* release, decisions to file a motion under this section may tentatively be made following initial hearing but the actual motion should not be filed until approximately eight months prior to the date recommended [the institution should be notified to provide a special progress report for this consideration nine months prior to the date tentatively selected].

(e) *Preparation of a Motion for Reduction of Sentence.* After decision by the Regional Commissioner, the case file is to be forwarded to the legal section with a memorandum requesting preparation of the motion for reduction of sentence. The memorandum from the region should set forth the recommendation and reasons therefor. After preparation of the motion by the legal section, the motion will be transmitted to the court under signature of either the Regional Commissioner (or the Chairman or Vice Chairman, if more expeditious).

▌§2.63 REWARDING ASSISTANCE IN THE PROSECUTION OF OTHER OFFENDERS; CRITERIA AND GUIDELINES.

(a) Under the limited circumstances described below, the Commission may consider as a factor in the parole release decision-making a prisoner's assistance to law enforcement authorities in the prosecution of other offenders. The following criteria must be met:
(1) The assistance must have been an important factor in the investigation and/or prosecution of an offender other than the prisoner. Other significant assistance (e.g., providing information critical to prison security) may also be considered.
(2) The assistance must be reported to the Commission in sufficient detail to permit a full evaluation to be made, and must be supported by the personal endorsement of the responsible United States Attorney or an official of equivalent rank. However, no promises, express or implied, as to a Parole Commission reward shall be given any weight in evaluating a prosecutorial recommendation for leniency.
(3) The release of the prisoner must not threaten the public safety.
(4) The assistance must not have been adequately rewarded by other official action.

(b) If the assistance meets the above criteria, the Commission may consider providing a reduction of up to one year from the presumptive parole date that the Commission would have deemed warranted had such assistance not occurred. If the prisoner would have been continued to the expiration of sentence, any reduction will be taken from the presumptive parole date that would have been deemed warranted if the maximum sentence had been long enough to permit the Commission to exercise full discretion. Reductions exceeding the one year limit specified above may be considered only in exceptional circumstances.

Notes and Procedures

2.63-01. *Application.*
(a) Determine the presumptive parole date that would have been appropriate if (1) the assistance had not occurred, and (2) the Commission had discretion to set a presumptive release date unrestricted by maximum sentence length. Consider any reduction for assistance to the government from this date. [For example, if a 40 month presumptive parole date would have been appropriate under the above conditions, a reduction of up to one year for substantial assistance to the government is to be considered from this 40 month date (even though the prisoner may have an earlier mandatory release date). If this prisoner had a mandatory release date at 28 months or earlier, his or her assistance would be presumed to have already been adequately rewarded.]

(b) The above guidelines indicate the total reward contemplated by the Commission whether the cooperation is given at one time or over a period of time.

(c) The requirement of personal endorsement by the responsible United States Attorney or an official of equivalent rank (e.g., a state/county chief prosecutor) is prospective only. Any recommendation dated prior to January 1, 1984 submitted by an Assistant United States Attorney or an official of equivalent rank may be considered under this procedure.

Miscellaneous Procedures

M-01 *Aggregated/Non-Aggregated Sentences.*

(a) *Aggregation of sentences.* Under federal law, adult sentences will be aggregated (combined to form a single term) for purposes of determining good time release and parole eligibility dates.

(b) *Aggregation for parole.* Under Title 18 U.S.C. Sec. 4205(a), a prisoner may be released after serving one-third of the term or terms of confinement.

1. For sentences under Sec. 4205(a), eligibility for parole consideration will be calculated at one-third of the term or terms of confinement; except for any term or terms totaling more than 30 years, parole eligibility is after ten years of such term or terms.

2. For sentences under 18 U.S.C. Sec. 4205(b)(2), eligibility for parole is at the Commission's discretion.

3. For combined sentences (18 U.S.C. Sec. 4205(b)(2) and 4205(a)), parole eligibility will be considered for hearing purposes to be at the one-third point of the 4205(a) sentence, calculated from the beginning date of the aggregated sentences (and adjusted for jail time credit).

(c) *Sentences that are not aggregated for parole eligibility purposes.*

1. FJDA sentences. Federal Juvenile Delinquency Act (FJDA) sentences can only be aggregated with other FJDA sentences.

2. YCA sentences. Youth Correction Act (YCA) sentences are not aggregated with other sentences or with each other.

3. NARA sentences. NARA sentences are not aggregated with other sentences.

4. Split sentences. "Split sentences" (confinement and probation imposed on a single count) are not aggregated with other sentences.

(d) *Multiple count terms.* The court may impose a term of confinement on one count and impose probation on another count, and specify the probation to be consecutive to the term of confinement. While the general structure is similar to a true "split sentence," it varies in that two or more counts are involved and the Commission will have parole jurisdiction over the period of confinement, provided all other parole criteria are met.

(e) *Parole Consideration of Non-Aggregable Consecutive Sentences.* Whenever a non-aggregable consecutive sentence is added to sentences being served, the prisoner may apply for parole on both sentences (if no initial hearing on the first sentence has been held). If he has already had an initial hearing on the first sentence, he receives an initial hearing on the next docket, even though the consecutive term has not yet commenced to run. At the initial hearing, all factors will be considered, and a new presumptive release date or continuance shall be ordered. (Subsequent hearings will be at the appropriate interval after the date of the most recent initial hearing.)

If the consecutive sentence carries no minimum term of imprisonment, a single presumptive release date may be set for both sentences as if they were aggregable. The order is to be in two parts: (1) ordering parole from the first to the second sentence; and (2) ordering parole from the consecutive sentence. Both parts of the parole order should be for the same presumptive release date. The parole certificate would indicate that the prisoner was paroled from the consecutive sentence.

If the consecutive sentence carries a minimum term, the Commission will set two presumptive release dates: The first date will effect the release of the prisoner to the consecutive sentence only. The second date will effect actual release to the community. In such case, the first date will have to be set to permit completion of the minimum term prior to the second (actual) presumptive parole date. For example, assume an initial hearing in the case of a prisoner with a six year Y.C.A. term followed by a six year (non-aggregable) regular adult sentence. If parole release is desired for 36 months, the first date will be for one year in custody, to permit completion of the 24 month minimum term on the consecutive sentence, prior to release. The second date would be for the 36th month of total confinement (the date the prisoner completes his minimum term). During service of the two-year minimum term, no interim review hearing will be held. Only the pre-release record review shall be conducted.

M-02 *Dockets Maintained.*

(a) *Regional Dockets.* The following dockets are maintained: (1) Regular Docket [Approved recommendation of the hearing examiner panel or recommendation modified by Regional Commissioner (C.F.R. 2.24(b))]; (2) Regional Appeal Docket; (3) Warrant Docket [Issuance and withdrawal of warrants]; (4) Special Docket [(a) Referrals to NAB (initiated by Regional Commissioner) (C.F.R. 2.24(a)); (b) Reopened cases (C.F.R. 2.28); (c) Original jurisdiction referrals (C.F.R. 2.17)]; and (5) Termination of Jurisdiction Docket.

(b) *National Appeals Board Docket.* The National Appeals Board will maintain one docket. It will include: (1) Regular Appeals (inmate initiated) (C.F.R. 2.26); (2) Original Jurisdiction Decisions (C.F.R. 2.17); (3) Regional Commissioner Referrals (C.F.R. 2.24); (4) Original Jurisdiction Appeals (C.F.R. 2.27); and (5) Special Orders.

M-03 *FOIA Procedures* (*Commission Orders and Notice of Action*).

(a) Each region will monthly mail to the Central Office (Attn: Attorney Management Analyst) the FOIA copy of each Notice of Action and, if applicable, attached salient factor score. Each region will also separately mail to the Central Office copies of all

Commission Orders signed by the Regional Commissioner in appeal and reopen cases and the accompanying FOIA copies of the Notice of Action.

(b) The Attorney Management Analyst shall maintain indexed binders for each region, by month, containing this information with prisoner identifying information deleted. The Attorney Management Analyst shall also maintain copies of all Commission Orders and Notices of Action of the National Commissioners and National Appeals Board.

M-04 *Courtesy Hearings*. When resources permit, the Commission, upon the request of a state parole board, will endeavor to provide a hearing for a state prisoner when such prisoner is confined in a federal institution outside the requesting state and such institution is located at a substantial distance from the requesting state. The requesting state will be asked to provide specific instructions for the conduct of the hearing, as to any criteria to be considered, and as to whether a specific recommendation is desired.

M-05 *Disqualifications of Commission Personnel*. A hearing examiner or Commissioner shall disqualify himself when it reasonably appears that he may have a conflict of interest or that his participation in the hearing might place the Commission in an adverse situation. The disqualification should be recorded on tape and made a part of the hearing, followed by a memorandum to the file.

M-06 *Standards for Prisoner Interviews*.

The processing of a parole case requires the exchange of substantial amounts of information between the parties involved. Interviews must be scheduled promptly and be conducted in circumstances that are conducive to the achievement of their purpose. It is the responsibility of the custodian of those defendants who have not been released from custody to provide adequate facilities and the timely presence of prisoners for interview.

Some of the physical conditions essential to a successful interview are:

1. A quiet, private room free of distractions (if glass is necessary for observation, interviewee should be able to face away from glass).
2. Walls should be adequate to provide a sound barrier.
3. Atmosphere should be pleasant, relaxing, unthreatening, uncluttered and conducive to communication.
4. Freedom of telephone calls or other interrupting intrusions.

Some conditions deleterious to the purpose of the interview and unfair to the parties involved are:

1. Questions or statements can be overheard by others.
2. Poor acoustics or bad lighting.
3. Distractions caused by other voices, movements or noises in the area.
4. Uncomfortable furniture.
5. Interviews through or behind bars.
6. Unnecessary physical restraints.
7. Scheduling of interview causes prisoner to miss a meal, medical or other basic needs.

M-07 *Designation of Personnel Other Than Hearing Examiners to Conduct A Hearing*.

(a) *Assignment of Commission Staff*. A case analyst may conduct any hearing as assigned by the Regional Commissioner. Any other Commission staff may conduct hearings upon designation and assignment by the Chairman. Case-by-case designation is not required.

(b) *Local Revocation/Dispositional Revocation/Five Year Termination Hearings*. Where appropriate, the Regional Commissioner may designate an official (e.g., a federal probation officer or state parole board member) other than an institutional official as a hearing examiner to conduct such hearing. A Commission order providing for such designation will be entered in the case file. The recommendation of such official shall be treated as a hearing examiner recommendation for purposes of any hearing panel quorum requirement [NOTE: if the designated official does not sign a Commission order, the Regional Office can complete the Commission order by printing his/her name and cross-referencing the recommendation in the summary submitted by the designated official].

(c) *Any Other Hearing*. Where appropriate, the Chairman may designate an official (e.g., a federal probation officer or state parole board member) other than an institutional official to participate on a hearing panel for any type of hearing. The recommendation of such official(s) shall be treated as a hearing examiner recommendation for purposes of any panel quorum requirement. Designation under this section will normally be by teletype with a copy to the prisoner's case file. [NOTE: this section contemplates the designated official joining a Parole Commission hearing examiner in conducting a hearing. Only in an extreme emergency will two non-Commission personnel be used to constitute a hearing panel.]

M-08 *Court Modification of Sentences*. Federal law prohibits a sentencing court to modify a term of sentence after 120 days from the date of sentencing. When a court makes such modification after the 120 day limit the Commission's counsel should be notified and he will oppose such modification.

APPENDIX 1-A - PRE-HEARING ASSESSMENT FORMAT

Name:_____ Institution:_____
Reg. No.:_____
Date of Birth:_____ Months in Custody:_____as of_____
Sentences (Length/Type):_____ Parole Eligibility Date:_____
_____ [__Two-Thirds] [__Stat. MR] Date:_____
(***whichever date comes first)
Detainer: [__No] [__Yes]
Fines/Restitution: [__No] [__Yes] Reviewer:_____ Date:_____

I. PRESENT OFFENSE:
(a) The prisoner was convicted by [__plea] [__trial] of:

(b) (***Describe offense behavior giving dates offense commenced/ended; note if information comes from other than PSI).

(c) The offense behavior is rated as Category _____ severity because:

II. SFS: (***List mo.-yr./offense/dispo. of 5 most significant convictions/ commitments).

A=[ ] Subject has [__0; __1; __2; __3; or __4] [__5 or more] prior convictions.

B=[ ] Subject has _____ prior commitments of more than 30 days that were imposed prior to the last overt act of the current offense - see dispositions listed above.

C=[ ] Subject was _____ years old at the commencement of the [__current offense] [__probation violation behavior]. Subject [__does not have] [__has] five or more prior commitments.

D=[ ] Subject [__has no prior commitments] [__was last released from a countable commitment] [__less than three years prior to the current offense] [__three or more years prior to the current offense]. Date of last release:_____.

E=[ ] Subject [__is not] [__is] a Probation/Parole/Confinement/Escape Status violator. (***Take this point if on any such status at any time during the current offense or if committed as a probation violator this time; and give specifics.)

F=[ ]Subject [__does not have] [__has] a history of Opiate Dependence: (***If point is taken, give specifics.)_____

[___] = Total Score

III. The [__adult] [__youth/NARA] guideline range is _____ months. (***Youth/NARA guidelines also apply to prisoners age 21 or less at the last overt act of the current offense regardless of the sentence.) [__Also, subject [__failed to appear] [__escaped] [__attempted to escape] [__from] [__secure] [__non-secure] [__custody] [__with voluntary return in 6 days or less] which requires [__<=6] [__6-12] months to be added to the original guideline range. Aggregate guideline range is _____ months.]

IV. Other Significant Prior Record/Stability Factors: (***Include psychological/psychiatric problems, if applicable; drug abuse other than mentioned above; or other significant positive/negative stability factors as relevant; also include any particularly aggravating or mitigating factors concerning prior record)

V. Codefendants: [__None] (***If yes, give name, register number, sentence, institution, guideline data, months to be served before release, where known.)

VI. Form USA-792, AO-235, AO-337: [__None] (***If present; note comments.)

VII. Parole on the Record: [__Yes] [__No]. (***If yes, complete VIII, IX & X.)

VIII. Evaluation: The applicable guideline range is _____ months. (***Explain factors sufficient to warrant a decision above/below guidelines; or factors relative to placement at top/middle/bottom of guidelines; and add other comments if applicable.)

IX. Panel Recommendation: [__Parole Effective] [__Continue to a Presumptive Parole] after service of _____ months, [_____]. _____ __

X. 4205(g) recommendation: [__N/A] [__No] [__Yes, after service of _____ months during _____.]
month/year

(***PRE-REVIEWER INSTRUCTIONS: Complete Form H-39 and refer file to AHE and/or Case Analyst if Form USA-792, AO-235 or other correspondence requests notification in advance to attend hearing and/or be notified of parole decision. If the PSI is not absolutely clear on any offense behavior or salient factor score item, call or write the Probation Officer and/or U.S. Attorney (requesting Form USA-792) to clarify before completing this Assessment.)

(***NOTE TO TYPIST: Do not type the instructions in (***) or [__] unless checked or marked.)

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APPENDIX 1-B - INITIAL HEARING SUMMARY FORMAT

Cassette No._____
Name:_____ Severity Category:_____ SFS:_____
Reg. No.:_____ Guideline Range:_____
Institution:_____ Recommended release:_____
Hearing Date:_____ after service of _____ months.
Hearing Panel:_____

I. The panel has discussed the prisoner's severity rating, salient factor score, and guidelines with the prisoner. The prisoner [__admits] [__contests] the description of the offense behavior, salient factor score items, and/or guideline range. (***Summarize prisoner's statement;

if prisoner contests any of the above information, indicate the panel's finding (e.g., the panel, after review of the record and the prisoner's explanation, finds the (SFS) to be (7).))

II. Modifications/Additions/Corrections from Prehearing Assessment. [__None] (***If any changes, explain reasons for changes (e.g., new information, correction or error). Note relevant information received since pre-hearing assessment.)

III. INSTITUTIONAL FACTORS:
(a) Discipline
(b) Program Achievement

IV. FINES/RESTITUTION: [__N/A] (***If yes, indicate amount ordered, type of fine - committed/non-committed; amount paid to date and report discussion of payment plan to satisfy order.)

V. RELEASE PLANS: (***Resources available; recommendation for CTC placement and/or specical conditions of parole; status of detainers).

VI. REPRESENTATIVE: [__None]
(a) Name; (b) Relationship; (c) Address [city/state]; (d) Comments.

VII. EVALUATION: The applicable guideline range is _____ months. (***Explain factors sufficient to warrant a decision above/below guidelines; or factors relative to placement at top/middle/bottom of guidelines; and add other comments if applicable.)

VIII. PANEL RECOMMENDATION: [__Continue to] [__Expiration] [__a Presumptive Parole] [__Parole effective] [__after the service of _____ months,]
[__Continue for a Ten-Year Reconsideration Hearing in _____ (month/year)]

IX. 4205(g) RECOMMENDATION: [__N/A] [__No] [__Yes, after service of _____ months during _____ (month/year).]

(***NOTE TO TYPIST: Do not type the instructions in (***) or [__] unless checked or marked.)

- -

APPENDIX 1-C - REVIEW SUMMARY

(If Statutory Interim Hearing becomes rescission hearing, use the rescission hearing format but label the hearing as a Statutory Interim Hearing)

Name: _____ Hearing Type*: _____
Reg. No.: _____ Two-Thirds or Stautory MR Date: _____
Institution: _____ (whichever comes first)
Date: _____ Full Term Date: _____
Panel: _____

PREVIOUS COMMISSION ACTION: Give date of last consideration and action taken. If this is a special review (reopen or appeal), summarize the reasons given for that action.

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*Hearing types may include Statutory Interim Hearings, Special Review Hearings (by reopening or appeal), and Mandatory Parole Hearings (at two-thirds of the sentence).

CODEFENDANTS: List names and parole status, if known. If there are no codefendants, this paragraph need not be used.

INSTITUTIONAL ADJUSTMENT AND RELEASE PLANS: Refer to latest progress report but summarize in a sentence or two the overall institutional adjustment. If there is any record of either misconduct or outstanding program achievement, describe. Briefly, describe the plans for living in the community (including any plan for release through a CTC, release to a detainer, or for aftercare services).

REPRESENTATIVE: Identify and summarize statements made by a representative. If there is none, use this paragraph, but state "None".

EVALUATION: Refer to the guidelines computed at the initial hearing and any reasons given suggesting a decision either above or below these guidelines. Describe reasons for any changes made in the guidelines data.

In statutory interim hearings, this section should deal only with reasons why the previously established decision should or should not be changed. In mandatory parole hearings (two-thirds of term), this section should deal only with the question of whether the inmate has seriously or frequently violated institutional rules and regulations or there is a likelihood that he will again violate the law.

RECOMMENDATION: Use standard wording insofar as possible.

REASONS: If reasons are clearly stated on the Notice of Action Worksheet, state: See Notice of Action Worksheet. (Reasons need not be typed on summary.)

APPENDIX 1-D REVOCATION SUMMARY

Name: Hearing Type*:
Register No.: Projected M.R. Date:
Institution: (if an estimate is practical)
Date: Full Term Date:
Panel:

COUNSEL AND WITNESSES:
If there was no attorney or witnesses, state "None".

List name, address, and phone number of attorney. List names, addresses and relationship of witnesses. Specify which were "voluntary" witnesses for subject and which were "adverse" witnesses.

Remarks by attorney or witnesses should be included elsewhere in the summary - not in this section.

PREVIOUS COMMISSION ACTION: State in narrative form the events which have occurred during subject's term. State the original offense and sentence, date of parole (or mandatory release or Special Parole Term) and district to which released. If released to a detainer so specify and state when subject actually began active supervision in the community.

State date Warrant was issued and place and date Warrant was executed. State date and place preliminary interview was held and describe the entries made on Forms CJA-22 and F-2, (or I-16) especially whether subject admitted or denied the charges, and whether he requested a court-appointed attorney.

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*Institution Revocation, Local Revocation, Dispositional Revocation

REVIEW OF CHARGES: Each charge in the Warrant Application should be described and summarized separately on the basis of the documents in the file and the prisoner's statements. Although it is not necessary to repeat verbatim the details of the charges as listed on the Warrant Application, include in the summary the details of the behavior which led to each charge. Be sure to state whether subject admits or denies each charge and summarize his explanation or statement of extenuating circumstances in each instance.

Include the facts of any additional violations which may have come to light during the course of the hearing. A separate section need not be used for this purpose; merely include these along with the charges as placed on the Warrant Application, but tell how they came to light at the time of the hearing.

FINDINGS OF FACT: The following format (as an example) should be used for this section:

The panel finds as a fact that subject violated (parole) (Special Parole Term) (mandatory release) as charged as indicated below:

Charge #1 - Use of Dangerous Drugs
Basis: Your admission to the examiner panel.

Charge #2 - Failure to Submit Monthly Supervision Reports
Basis: Report from USPO Connery dated June 10, 1976.

Charge #4 - Possession of Narcotic Paraphenalia
Basis: Conviction in U.S. Court, Philadelphia, on July 1, 1976.

The panel makes no finding relative to the following charges:

Charge #3 - Failure to report arrest

Charge #5 - Shoplifting

COMMUNITY RESOURCES AND PAROLE RISK: State briefly the plan proposed when last released and to what extent it was carried out. Summarize briefly adjustment under supervision. Describe present plan for community living if parole (or mandatory release) is not revoked. Describe any period of custody facing subject when released from the Federal term.

EVALUATION: Describe the subject in terms of assets, problems, maturity, and likelihood of successful community adjustments. Evaluate subject's adjustments while under supervision including time elapsed before violations occurred, and describe his cooperation with his probation officer or aftercare staff, if any. Cite reparole guidelines information.

RECOMMENDATION: Use standardized wording insofar as possible. Three recommendations must be made: (a) relative to revocation; (b) relative to parole credit computation (see note below); and, (c) relative to continuance.

REASONS FOR CONTINUANCE (if any): If reasons are clearly stated on the Notice of Action Worksheet, state: See Notice of Action Worksheet. (Typist need not copy reasons on summary.)

NOTE: PAROLE CREDIT COMPUTATION (if parole is revoked): State as part of the recommendation that subject will receive credit for (one of the following):

(a) all of the time spent on parole; or,
(b) none of the time spent on parole; or,
(c) time spent on parole from date of release to (date) at which time he failed to report as required.

NOTE: Typist will include on the NOTICE OF ACTION the findings of fact, the basis for each finding, reasons for continuance and information relative to credit for "street time".

APPENDIX 1-E - RESCISSION SUMMARY

Name:
Register No.:
Institution:
Date:

Hearing Type: Rescission
Two-Thirds or Statutory MR Date:
(whichever comes first)
Full Term Date:
Panel:

PREVIOUS COMMISSION ACTION Give brief details and date of Commission action to retard the parole date.

MISCONDUCT DETAILS

A. Official version: Describe the misconduct as stated by the official records. If the disciplinary committee has not concluded its preceedings at the time of the scheduled hearing the case should be continued to the next docket.

B. Inmate's comment: Summarize the inmate's explanation, if any, of his misconduct, and his view of its seriousness.

REPRESENTATIVE Identify representative and summarize his statements. If there was no representative, state "None".

FINDINGS OF FACT The following format (as an example) should be used for this section:

The panel finds that you have committed the following violations:

(A) You were found in possession of marijuana on 8/8/80

Basis: IDC findings dated 8/12/80.

(B) You escaped from the Denver CTC on 6/20/80

Basis: Incident report dated 6/21/80
Your admission to the Examiner Panel

(C) You were in possession of a stolen vehicle while on pass from Denver CTC on 9/9/80

Basis: Arrest Report dated 9/9/80
CPO report dated 9/10/80

EVALUATION Evaluate the inmate's explanation of the violations. Evaluate whether parole should be rescinded. Refer to rescission guidelines. Note aggravating and mitigating circumstances.

RECOMMENDATION
1. relative to rescission, and
2. relative to continuance, if any.

REASONS FOR CONTINUANCE (if any). If reasons are clearly stated on the Notice of Action Worksheet, state: See Notice of Action Worksheet. (Typists need not copy reasons on summary)

NOTE: Typists will include on the Notice of Action the findings of fact, the basis for each finding and the reasons for continuance.

APPENDIX 1-F - PAROLE TERMINATION HEARING

Name: Hearing Type: *
Register No.: Full Term Date:
Date: Examiner:

COUNSEL OR WITNESSES List name and address only - Describe their comments below (Note whether attorney is court-appointed). If none present, state "None".

SENTENCE DATA Cite original offense, date of commitment, and date and type of release to supervision. Describe any time spent in confinement since release on the federal sentence and give total number of months under supervision in the community. In a sentence or two, highlight prior criminal record.

COMMUNITY ADJUSTMENT
Cite district of supervision and any major changes in residence. In narrative style, describe employment history, family or marital status, including any major changes. Describe any arrests, convictions or parole violations during supervision period. If there have been no arrests or parole violations, state that fact. If there were aftercare services provided, describe participation and present status. (If there were no such services, no references to this fact need be made).

STATEMENTS OF COUNSEL/WITNESSES Summarize statements made by attorneys or witnesses (if any) relative to subject's community adjustment.

EVALUATION Summarize statements made in other sections, describe releasee as a person and give basis and justification for the decision.

RECOMMENDATION Standard wording insofar as possible.

REASONS FOR CONTINUED SUPERVISION Give specific language to be placed on a Notice of Action.

The following are examples only:

There is a likelihood of conduct which would violate the law because:

(a) "You have had a serious arrest record during your supervision period."

(b) "You have seriously violated conditions of your release."

(c) "You are subject to personal pressures of (specify) which may lead to criminal conduct."

(d) "Your association with persons involved in criminal behavior and which may lead to criminal conduct."

APPENDIX 1-G - COMBINED DISPOSITIONAL REVOCATION/INITIAL HEARING SUMMARY FORMAT

Name: Hearing Date:
Reg. No.: Institution:
Date of Birth: Severity Category:
SFS: Guideline Type: Detainer:
Guideline Range: In Continuous Custody:
Pre-Hearing Reviewer(s): Release to Community Recommended After Service of ____ Months
Panel:

****

I. PREVIOUS COMMISSION ACTION (Original Sentence):

a. Offense and Sentence Data (length and type)

b. Parole Data (type of release/date of release/number of days remaining to be served/date warrant issued/date warrant executed - if executed)

II. CURRENT VIOLATION:

a. Offense (give offense of conviction and description of the offense behavior)

b. Sentence Data (length/type/parole eligibility date/MR date/FT date)

c. Review of Charges (see instructions in Appendix 1-C (Revocation Summary))

d. Other (e.g., codefendant information/Forms 792/235/337)

e. Prisoner Version and Comments

III. FINDINGS OF FACT:

a. Note findings and basis (see instructions in Appendix 1-C (Revocation Summary))

b. Rate the offense severity giving reasons for the rating.

IV. SALIENT FACTORS:

(a/b) Prior Convictions/Commitments: Subject has ( ) prior convictions resulting in ( ) prior commitments of more than 30 days. (list year/offense/disposition of 5 most significant convictions/commitments and summarize thereafter)

(c) Subject was ( ) years old at time of current offense and (has) (does not have) five or more prior commitments: (describe as applicable)

(d) Subject (has) (does not have) a recent commitment-free period of three years: (describe as applicable)

(e) Subject (is) (is not) a Probation/Parole/Confinement/Escape Status Violator This Time: (describe as applicable)

(f) Subject (has) (does not have) a history of Opiate Dependence: (if applicable describe)

Prisoner (admits) (contests) factual basis of the salient factor score items. (summarize prisoner's explanation):

V. OTHER SIGNIFICANT PRIOR RECORD/STABILITY FACTORS: (psychological/ psychiatric problems; drug abuse other than noted above; or other positive/negative stability factors as relevant including any particularly aggravating or mitigating factors concerning prior record)

VI. INSTITUTIONAL FACTORS:

(a) Discipline

(b) Program Achievement

VII. RELEASE PLANS: (note what resources are likely to be available upon release, with consideration given to recommending CTC placement and/or adding special conditions of parole where advisable)

VIII. COUNSEL/WITNESSES/REPRESENTATIVE: (give name, relationship, address and comments of each)

IX. EVALUATION: Note applicable guideline range and explain factors sufficient to warrant a decision above/below guidelines; or factors relative to placement at top/middle/bottom of guidelines. Note any comments/recommendations.

X. PANEL RECOMMENDATION: Regarding revocation; credit for street time; release on the new federal sentence; commencement of the unexpired portion of the original sentence; release on the unexpired portion of the original sentence.

XI. REASONS:

For Revocation: PLEASE COPY FROM FINDINGS OF FACT SECTION OF THE SUMMARY

For Continuance: PLEASE COPY FROM THE REPAROLE GUIDELINE WORKSHEET

APPENDIX 2 - STANDARD WORDING ON ORDERS [EXAMPLES]

I. PAROLE HEARINGS (INITIAL AND SUBSEQUENT; INCLUDING FIFTEEN YEAR RECONSIDERATION).

(A) "Parole effective after service of ( ) months (date)" (used only when date is within six months from date of hearing)

(B) "Continue to a Presumptive Parole after service of ( ) months (date)" (used when date is later than six months from date of hearing)

(C) "Continue to a Presumptive Parole after service of ( ) months (date) or Continue to Expiration, whichever comes first." [use when parole prior to the statutory release date (sentences of less than five

years) or prior to the two-thirds date (sentences of five years or more) is desired, but extra good time may result in even earlier release].

NOTE: The following conditions, among others, may be added:

". . . .with placement through a Community Treatment Center recommended".

". . . .to a (concurrent) (consecutive) sentence".

". . . .provided the committed fine is paid or otherwise disposed of according to law".

". . . .to the actual physical custody of detaining authorities only". if not taken into custody on the detainer, place on the next docket for a special reconsideration hearing.

". . . .to the actual physical custody of detaining authorities, or if detainer is not exercised parole (presumptive parole) to the community effective (date)." Allow an additional 30 days for release planning.

". . . .to the actual physical custody of immigration authorities, or if detainer is not exercised parole (presumptive parole) to the community effective (date)." Allow an additional 30 days for release planning.

NOTE: When parole is to a detainer, the written reasons given should be associated with the date of release to the detainer; the reason for setting the alternative date of parole to the community 30 days later is to allow for release planning. If a detainer is withdrawn sufficiently in advance to make this additional 30 day period unnecessary, the institution should notify the Commission.

(D) "Continue for a Fifteen-year Reconsideration Hearing in (month & year)."

(E) "Continue to Expiration" [use where parole prior to the statutory release date (sentences of less than five years) or prior to the two-thirds date (sentences of five years or more) is not desired]. NOTE: For purposes of determining quorum requirements for actions under 2.24(b)(2), 2.25, or 2.28(a) the statutory release date should be used for sentences of less than five years and the two-thirds date should be used for sentences of five years or more.

II. SPECIAL CONDITIONS

(A) ". . .with the special drug aftercare condition"
NOTE: The special parole condition must be typed out in full on the Notice of Action immediately after the order, i.e., "You shall participate as instructed by your Probation Officer in a program approved by the Parole Commission for treatment of narcotic addiction or drug dependency, which may include testing to determine if you have reverted to the use of drugs."

(B) ". . .with the special alcohol aftercare condition"
NOTE: The special alcohol condition must be spelled out, "You shall participate in a community based program for the treatment of alcoholism as directed by your U.S. Probation Officer."

(C) ". . .with the special mental health aftercare condition"
NOTE: The special mental health aftercare condition must be spelled out, "You shall participate in an in-patient or an out-patient mental health program as directed by your U.S. Probation Officer."

(D) ". . .with the condition that you reside in a Community Treatment Center until. . ."

(E) ". . .with special supervision for ( ) months" (not to exceed six months).

III. PSYCHIATRIC CONTINUANCE

(A) "Continue to (one year later) or until such time as the medical staff shall advise the Regional Commissioner that subject is sufficiently recovered mentally to participate in a parole hearing." (According to regulations the institutional staff is required to submit a progress report at least every six months on the mental health of the inmate)

IV. ORIGINAL JURISDICTION (Use Two Orders)

(A) "Refer to Regional Commissioner for Original Jurisdiction consideration."

(B) (Alternate Decision) "Continue, etc."

V. ORIGINAL JURISDICTION - ORDER OF REGIONAL COMMISSIONER

(A) "Your case has been designated as Original Jurisdiction and referred to the National Commissioners for decision."

(B) "Your case has been previously classified as Original Jurisdiction - Refer to National Commissioners for declassification."

(C) "Your case has been previously classified as Original Jurisdiction - Refer to National Commissioners for declassification and reconsideration pursuant to 28 C.F.R. 2.24(a)."

VI. RESCIND PAROLE EFFECTIVE DATE (Use two orders)

(A) 1. "Rescind Parole Grant effective (date)."

2. (a) "Continue to a Presumptive Parole (date). This requires service of an additional _____ (mos.)(days)."
(b) "Parole effective (date). This requires service of an additional _____ (mos.)(days)."
[NOTE: Use if within six months from the date of the hearing]
(c) "Continue to expiration. This requires service of an additional _____ (mos.)(days)."

(B) 1. "no decision to rescind."

2. "Parole effective (date)."

NOTE: Instruct typists to copy the findings of fact and the basis for each finding on the Notice of Action.

VII. ACTIONS AT STATUTORY INTERIM HEARING

(A) "No change in Presumptive Parole date (____)."

(B) "No change in Fifteen-Year Reconsideration date (____)."
(C) "No change in Continuance to Expiration."

(D) "No change in Presumptive Parole date." "Parole effective (date)."

(E) "Reopen and retard (or rescind) Presumptive Parole date." SPECIFY NEW ACTION. NOTE: In cases of significant disciplinary infractions only.

(F) "Reopen and advance (Presumptive Parole date) (Continue to Expiration)." SPECIFY NEW ACTION. NOTE: In cases of exceptional circumstances or superior program achievement only.

VIII. PRE-RELEASE REVIEW (ON THE RECORD)

(A) "No change in Presumptive Parole and Parole effective (date)."

(B) "Reopen and retard Presumptive Parole date of (date) [up to 90 days for disciplinary reasons; up to 120 days for program planning] and Parole effective (date)."

(C) "Reopen and retard Presumptive Parole date of (date) and schedule for a rescission hearing (on the next appropriate docket) (upon return to a federal institution)."

(D) "Reopen and advance Presumptive Parole date of (date) for superior program achievement and Parole effective (date)."

IX. REOPENINGS

(A) "Reopen and (Parole effective, Continue, etc.)

(B) "Pursuant to 28 C.F.R. 2.28(f), reopen and schedule for a special reconsideration hearing to consider new adverse information."

(C) "Pursuant to 28 C.F.R. 2.28(f) and 2.30, reopen [issue warrant] and schedule for a special reconsideration hearing to consider new adverse information.

X. DISPOSITIONAL RECORD REVIEW

(A) "Let the Detainer Stand and Schedule a Dispositional Revocation Hearing --

...to coincide with the initial hearing on your new federal sentence, or upon release from your new sentence, whichever comes first."

...during (mo/yr) or upon return to federal custody, whichever comes first."

(B) "Withdraw detainer and close case." (where expiration date has passed)

(C) "Withdraw detainer and reinstate to supervision when released from present sentence."

XI. DISPOSITIONAL REVOCATION/COMBINED DISPOSITIONAL REVOCATION/INITIAL HEARINGS

[Two orders should be used, with the first addressing the revocation and street time decisions, and the second addressing the recommencement/reparole decision. The following examples pertain to prisoners with sentences other than YCA, NARA, Canadian/Mexican transfer cases. In YCA, NARA, and Canadian/Mexican transfer cases, the federal term runs uninterruptedly (unless absconding is also found as a violation of parole) so the wording concerning the commencement of the unexpired portion of the federal sentence is to be deleted; and the wording as to the street time credit changed appropriately].

(A) NEW STATE SENTENCES (Dispositional Revocation Hearing Orders)

Revoke parole; none of the time spent on parole shall be credited. The unexpired portion of your federal sentence shall commence upon your release from state custody or upon federal reparole to your state sentence, whichever comes first;

...(Continue for a presumptive) parole from the violator term (date).

....Continue for a fifteen-year reconsideration hearing (mo/yr 15 years from date of dispositional hearing).

(ADD AT THE BEGINNING OF THE 'REASONS' SECTION)

...If you are released from state custody prior to the above date, you will be taken into federal custody. You will then have a presumptive parole on the above date unless you are released earlier by expiration of sentence less good time. If you are still in state custody as of the above date, you will have a presumptive parole from the violator term to your state sentence on the above date.

...If you are released from state custody prior to the above date, you will be taken into federal custody and provided a ten year reconsideration hearing on the above date, unless you are released earlier by expiration of sentence less good time. If you are still in state custody as of the above date, you will be given a ten year reconsideration hearing in state custody.

...Number of days owed on federal parole violator term = (____) (use for sentences where street time is forfeited)

...Maximum expiration date on federal parole violator term is (____). (use for YCA, NARA, Mexican/Canadian Treaty cases)

...In addition, you have been scheduled for an interim record review during (mo/yr); if you are returned to federal custody before that time an interim hearing will be conducted during the month scheduled for the record review.

NOTE: If it is evident that the time remaining on the new sentence plus the amount of time remaining on the violator term will fall short of the appropriate 'time-served' decision, the order may be modified to reflect commencement upon release from the new sentence and a 'continue to expiration' on the violator term.

(B) NEW FEDERAL SENTENCES

1. Orders for Combined Initial/Dispositional Revocation Hearings

Revoke parole; none of the time spent on parole shall be credited. The unexpired portion of your original federal sentence will commence upon your release by parole or mandatory release from the new sentence.

...(Continue for a presumptive) parole on the new sentence after service of months (date); (Presumptive) parole on the violator term as of the same date.

...Continue to expiration on the new sentence; Continue to expiration on the violator term.

...Continue to expiration on the new sentence; Continue to a presumptive parole on the violator term (date) [or by expiration of sentence less good time, whichever comes first] NOTE: Add the wording in brackets if there is a question as to whether expiration of sentence will occur prior to the appropriate presumptive parole date.

...Continue to a fifteen-year reconsideration hearing on the new sentence; Defer consideration on the violator term.

...Continue to expiration on the new sentence; Continue to a fifteen-year reconsideration hearing during (__ mo/yr 15 years from date of dispositional revocation hearing) on the violator term.

NOTE: Use the reparole guideline worksheet and add wording so that the offense behavior statement references both "new offense/parole violation behavior"; the months in custody reflect "federal" or "state and federal" as appropriate; the guideline reference is to "Parole/Reparole Guidelines". The severity rating should reflect all aspects of the parole violation behavior, even if there were instances of criminal conduct involved in the parole violation which are not a part of the offense for which the new federal sentence was imposed.

2. Orders for Dispositional Revocation Hearings Not Combined with Initial Hearings

Revoke parole; none of the time on parole shall be credited. The unexpired portion of your original federal sentence shall commence upon your release from your new sentence or upon reparole to your new sentence, whichever comes first;

...(Continue for a presumptive) parole from the violator term (date).

...Continue for a fifteen-year reconsideration hearing (mo/yr 15 years from date of dispositional revocation hearing).

NOTE: If it is evident that the time remaining on the new sentence plus the amount of time remaining on the violator term will fall short of the appropriate 'time-served' decision, the order may be modified to reflect commencement upon release from the new sentence and a 'continue to expiration' on the violator term.

XII. TERMINATION OF SUPERVISION

(A) "Terminate supervision effective (date)."

(B) "Continue under supervision [Five Year Hearings Only].

There is a likelihood that you will engage in conduct violating a criminal law." [The Notice of Action and the Hearing Summary should also specify the basis for this finding of likelihood.]

XIII. MANDATORY PAROLE (AT TWO-THIRDS OF TERM)

(A) "Mandatory Parole at two-thirds of the term."

(B) "Deny Mandatory Parole and Continue to Expiration" (use when there is a finding after a hearing that there have been serious violations of institutional rules or there is a likelihood of further criminal conduct).

(C) "Schedule for a Mandatory Parole Hearing on the next docket."

XIV. REVOCATION HEARINGS (Use three separate orders)

(A) With Regard to Revocation

1. "Revoke parole"
2. "no finding of violation"
3. "the violation(s) found deemed not sufficient for revocation"

(B) With Regard to Service of the Term

1. "All of the time spent on parole shall be credited." (Use when there are administrative violations only, and no absconding or failure to report)
2. "Time spent on parole from date of release to (date on which absconding status began) shall be credited." (Use when there are administrative violations only and there are absconding or failure to report)
3. "None of the time spent on parole shall be credited." (Use when there is a criminal conviction)
4. "No credit on the sentence shall be given for the period beginning ( ) and ending ( )." (Use in YCA, NARA, and Mexican/ Canadian Treaty cases - absconding cases only).

(C) With Regard to Continuance or Reinstatement

1. "Continue [to a Presumptive Parole after service of ( ) months (date), for a fifteen-year reconsideration hearing, or to expiration] if no 'effective parole date' is established."
2. "Reinstate to supervision forthwith (after review and concurrence by Regional Commissioner.)"
3. "Subject to be released and case closed." (use when the expiration date has passed) (after review and concurrence by the Regional Commissioner)

NOTE: Substitute the words "Mandatory Release" for "Parole" where indicated.

XV. REGIONAL APPEALS

(A) "Order dated (date) Affirmed."

1) No new information submitted significant enough to affect the decision.

2) Reasons given support order.

(B) "Order dated (date) Reversed or Modified as follows. . . ."

(C) "Regional Appellate Hearing ordered held before the Regional Commissioner."

XVI. NATIONAL APPEALS BOARD

(A) "Review decision dated ( ) Affirmed"

(B) "Review decision dated ( ) Modified" (state new action)

(C) "Review decision dated ( ) Reversed" (state new action)

(D) "Original Jurisdiction Classification dated ( ) reversed. Case declassified."

APPENDIX 3 - PRELIMINARY INTERVIEW PROCEDURES FOR PROBATION OFFICERS

- -

SUMMARY REPORT OF PRELIMINARY INTERVIEW

NAME: DATE OF INTERVIEW:
REGISTER NUMBER: PLACE OF INTERVIEW:
TYPE OF RELEASE: INTERVIEWING OFFICER:
DATE WARRANT ISSUED:

I. PROCEDURES FOLLOWED: (Specify date warrant was executed, date your office was notified of warrant execution, date of your first contact with alleged violator, and note here any reasons for delay which may have arisen and your actions with regard to them).

II. WITNESSES PRESENT: (List names and addresses. Note any request for an adverse witness that you denied and your reason. Also note whether any requested witness failed to attend).

III. REVIEW OF CHARGES:

Charge No. 1: (State the charge as it appears on the warrant application and whether the alleged violator admits or denies the charge).

Parolee's Evidence: (Summarize the parolee's explanation of the charge, and the documents and/or witness statements offered).

Adverse Witnesses: (Summarize the statements of adverse witnesses in attendance. Note and attach to the report any written statement offered in place of a personal appearance. Do not attach copies of reports which have already been furnished to the Commission).

Charge No. 2: (As Above).

Other Admitted Violations: (State with specificity the circumstances of the violation admitted, including date, time and place).

IV. COMMUNITY RESOURCES: (Summarize parolee's activities during the time span since the last adjustment report to the time that the Commission's warrant was executed, and the implications for community adjustment, if reinstated. The summary should generally include those adjustment factors covered by the standard parole supervision progress report form F-3. List proposed residence, employment, and other community resources available to this parolee if reinstated to supervision, including any information presented by the alleged violator relative to his continued standing as a good parole risk).

V. WITNESSES INTERVIEWED: (Summarize the testimony of any witnesses interviewed upon request by the alleged violator).

VI. RECOMMENDATION AS TO PROBABLE CAUSE: The Interviewing Officer shall give recommended finding with respect to each charged violation, as to whether probable cause has been established to believe the prisoner has violated his parole.

(_____) (_____)
(DATE) (INTERVIEWING OFFICER)

END OF PAGE

- -

CONFIDENTIAL PAGE (For the Parole Commission Only)

VII. INTERVIEWING OFFICER'S EVALUATION: The Interviewing Officer may at his option give his evaluation of the alleged violator's responses and the alleged violator's continued standing as a good parole risk in light of the charges listed on the warrant application. Other confidential information may be discussed in this section only.

(_____) (_____)
(DATE) (INTERVIEWING OFFICER)

UNITED STATES PAROLE COMMISSION

NAME:_____ DATE OF INTERVIEW:_____
REGISTER NUMBER:_____

PRELIMINARY INTERVIEW CHECKLIST OF PROCEDURAL AND LEGAL RIGHTS

/ / Has received a copy of warrant application (Form H-20).
/ / Advised of right to counsel and completed CJA-22.
/ / Completed Form F-2, Part I.
/ / All adverse witnesses have been asked to appear and have either refused or are present at this time, or good cause has been stated for refusal to request their appearance.

/ / All charges on Form H-20 (and supplements, if any) read to alleged violator and response (admission or denial) and explanation obtained for each charge.
/ / All documentary evidence described in Form H-20 is available and has been disclosed to the alleged violator (or, in the case of reports from confidential informers or other sensitive material, summarized to the degree necessary to permit an adequate response to the allegations).
/ / Recommended decision as to whether there is probable cause to believe that a violation has occurred, with specificity as to each charge, made known to the alleged violator at the conclusion of the interview.
/ / Advised that the Commission will notify him of its final decision as to probable cause by letter following receipt of the Interviewing Officer's report.
/ / Completed Form F-2, Part II, at conclusion of interview.

- -

Re: _____
Reg. No.: _____

Dear _____:

This is to inform you that the Regional Commissioner has found probable cause to believe that you have violated the conditions of your [parole] [mandatory release], and has ordered a hearing to determine whether or not your release should be revoked. The purpose of this hearing will be to make a final determination as to whether or not you violated the conditions of your parole as charged, and if so, whether the violations warrant revocation. If revocation is ordered, the Commission will also determine whether to reparole you or to require service of all or any part of your violator term.

The specific charges upon which this finding is based are charges [list charges by number]. The evidence relied on is indicated on the warrant application and in the summary report of the preliminary interview [do not refer to the summary report if no probable cause was found by the interviewing officer].

Your transfer to a federal institution has been ordered for the purpose of holding a revocation hearing following your arrival at that institution.

The Commission has ordered that a local revocation hearing be held in [specify district]. [This hearing has been tentatively scheduled for ( ), 19), at ( ) (a.m.) (p.m.)]. [The date and time of your hearing will be arranged].*

By copy of this letter, the United States Marshal is instructed to ensure the appearance of the above-named at his revocation hearing.

Sincerely,

Post Release Case Analyst

cc: (Attorney for parolee or mandatory releasee)
cc: U.S.P.O.
cc: U.S. Marshal
cc: (Revocation packet for the institution)

*In local revocation hearings only, the following sentence should be included following the date and time of the hearing: "No new information was presented at your preliminary interview that would warrant your release pending the revocation hearing."

EXCERPTS FROM PROBATION OFFICERS MANUAL

A. PRELIMINARY INTERVIEW.

1. Purpose of Interview. A parolee who has not been convicted of a new crime while under supervision must be afforded a preliminary interview to enable the Commission to determine whether there is probable cause to believe a violation has occurred, and if so, whether a revocation hearing is warranted. Prisoners with new convictions will be taken directly to a Federal institution by the U.S. Marshal, where they will receive a violation hearing, unless the Commission orders a preliminary interview.

Since the conviction of an offense committed while under supervision constitutes "probable cause" that at least one condition of parole or mandatory release was violated, no preliminary interview is required in such instances. In marginal cases, especially where a conviction was for a minor offense and there is a strong possibility that the parolee will be reinstated to supervision, the Regional Commissioner may require a preliminary interview notwithstanding the conviction. Generally, however, a preliminary interview will not be conducted where there is definite information of a conviction. Where the conviction is for minor offense (as minor traffic violations, loitering, or disorderly conduct) and a fine (rather than imprisonment) is the usual disposition, the preliminary interview should be held regardless of the fact that imprisonment could have been imposed.

2. Designation of an Interviewing Officer. When the probation office is notified by the U.S. Marshal that a parolee has been arrested on a Commission warrant and is being held in custody for a preliminary interview, the chief probation officer shall immediately designate a probation officer to conduct the preliminary interview. The probation officer so designated shall promptly visit the parolee and offer to conduct a preliminary interview. This officer must not have supervised the parolee at any time. If no probation officer is available who has not previously supervised the parolee, the chief probation officer shall contact the post release analyst at the appropriate regional office of the Parole Commission relative to the designation of some other official.

3. Place of Interview. If the parolee is arrested on a violator's warrant, the place for the preliminary interview should be arranged with the Marshal who has custody. With cooperation of the Marshal the alleged violator may be interviewed in the probation office or at the jail. The alleged violator remains in the Marshal's custody until further instructions are received from the Parole Commission or the Bureau of Prisons. If the parolee is responding to a summons, the probation officer will make the arrangements for the place of the interview.

4. Role of Interviewing Officer. The role of the interviewing officer shall be to act as an impartial fact finder. He should not discuss the case with the parolee's supervising officer prior to the interview. At the interview, the interviewing officer must make a thorough examination of the facts and should question all witnesses present, including the parolee and his probation officer if necessary to clear up any unexplained matters that bear upon the alleged violations. His summary report to the Commission must be a complete report of the results of the interview, and serves as the basis of the Commission's final probable cause decision. In addition, the interviewing officer should provide the Commission with a status report which covers the time span since the last adjustment report to the time that the Commission's warrant was executed. This

report gives the Commission updated information concerning the parolee's overall adjustment while on supervision. If the parolee is an absconder, this updated information enables the Commission to determine if the parolee's behavior during his absence from official supervision should impact on their revocation decision.

5. Initial Visit. Two forms are presented at the initial visit of the interviewing officer: The Preliminary Interview and Revocation Hearing Form (Form F-2) and the Form CJA-22. The parolee may be given copies of these forms if requested.

a. Form F-2. This form is in two parts. Part I is presented at the initial visit. It advises the parolee of the procedures to be followed and of his rights to obtain voluntary witnesses and/or an attorney. He may also ask that adverse witnesses be present at the postponed preliminary interview. If the parolee wishes to proceed with the interview he must acknowledge that he has been informed of his rights and waives his right to an attorney, if he has none. Part II is not completed until after the preliminary interview itself has been conducted. The interviewing officer must be thoroughly familiar with the explanation of the parolee's procedural and legal rights contained in the Form F-2, and must read or explain them before requesting the parolee to make his choice.

b. Appointed Attorney (Form CJA-22). If the parolee desires a postponement and being without funds, wishes to obtain a court-appointed lawyer, he completes both Part I of the Form F-2 (to request a postponement) and Form CJA-22 to request the court to appoint counsel. Form CJA-22 is then taken to the local U.S. District Court by the interviewing officer.

If the parolee does not desire appointment of counsel, he should initial Item 1 and sign the Form CJA-22. The Form should be witnessed by the probation officer and retained in the file. The financial information need not be completed unless the parolee is requesting appointment of counsel.

c. Postponement. No postponement shall exceed 30 days without permission of the Parole Commission regional office. The probation officer shall contact the parolee's attorney as soon as he has been retained or appointed, and a date set for the interview.

d. Refusal by the Alleged Violator to Sign Forms or to Respond to the Charges. If a parolee refuses to sign forms presented to him he should be informed of his rights to a postponement, to an attorney, and to request a local revocation hearing if he denies the charges and has not been convicted of a new offense while under supervision. If he persists, the interview should proceed, and he should be expressly informed by the probation officer that his refusal to sign the Form F-2 will be construed as a waiver of his opportunity to have a local revocation hearing. If the parolee makes no response to the charges he should be informed that a probable cause decision will be based on the evidence presented at the interview. The probation officer should also attach or place directly on the form a detailed statement attesting that the parolee was advised of his rights but refused to sign the form.

6. Conducting the Interview.

a. Reading the Charges. The "Warrant Application" (Form H-20) is attached to the Warrant and serves as the official statement of the charges against the parolee. A copy of the Warrant Application is given to the parolee by the Marshal upon arrest. The Warrant Application describes the reports upon which

the Commission is prepared to rely upon in revoking parole. These documents must be shown the parolee just prior to the reading of charges which they support. In the case of absconders arrested beyond their districts of supervision, these documents may not be available when the probation officer is first notified of the arrest. In such cases, the designated officer will immediately contact the Commission's regional office by telephone, requesting the forwarding of the necessary documents. These documents must be available at the preliminary interview. The interview commences with the reading of each charge, the documentary evidence referred to in the warrant application pertaining to that charge is presented to the parolee for his examination. The interviewing officer receives the document back before proceeding with the interview. The alleged violator will then be offered the opportunity to respond to each charge as it is read. In certain cases it will be obvious that a document should not be disclosed. Stated briefly, the three categories of sensitive information are:

(1) Material revealing the identity of a confidential source;
(2) Material, the disclosure of which would harm any person, physically or otherwise;
(3) Material comprising a diagnostic or psychiatric evaluation.

For example, a probation officer's letter discussing allegations, made to him by a member of the parolee's family or other confidential source, that the parolee was engaged in the sale of heroin need not be shown at the preliminary interview. In such cases, the basic charge of parole violation should be extracted from the contents and stated orally to the parolee by the interviewing officer in order to permit a response thereto. In the case of the letter described above, the interviewing officer need only state in general terms that the parolee is alleged to have bought or sold heroin during a certain period of time, and that the letter itself was reported in confidence and cannot be shown.

Material not directly supportive of the charges is irrelevant and need not be shown. In the case of a letter containing, for example, sensitive psychiatric material in addition to an otherwise disclosable statement of the nature of violation, those circumstances should be read verbatim and the rest simply omitted, without further need for summary. (The officer writing the letter may be consulted on the problem of disclosure so long as the merits of the case themselves are not discussed).

Copies of documents are not to be given under any circumstances. The parolee may request copies in advance of a revocation hearing from the Commission's regional office.

b. Sufficiency of the Evidence to Support a Recommended Decision. Under the Supreme Court decision in Morrissey v. Brewer (1972), the Commission may base a revocation decision on documentary evidence including letters, affidavits, and other material that would not be admissable in a criminal trial. Thus, for example, a conviction is not required to support a finding of probable cause to believe that the parolee has committed a violation of the law. Similarly, hearsay testimony (reporting what another person, not present, has said concerning the parolee), may be relied upon in arriving at a finding of probable cause, as well as a decision to revoke parole. For example, if an adequate arrest report is available, the arresting officer need not be present to affirm the charges for which the parolee was arrested. It must be kept in mind that this is only a preliminary finding. Evidence which is sufficient to support a request for a warrant will normally be sufficient to support a finding of probable cause if it persuades the interviewing officer that there is a likelihood that a violation has occurred.

c. Witnesses at the Preliminary Interview.

i. Request for Witnesses to Appear at a Postponed Preliminary Interview. The parolee may present voluntary witnesses and may request the presence of adverse witnesses for the purpose of cross-examination. An adverse witness is defined as any person (including the parolee's probation officer) who has given information upon which revocation may be based. This limits such witnesses to those referred to on the Warrant Application or in the documents specified therein. A request for adverse witnesses must be in writing, either on Form F-2 at the time the parolee requests a postponement, or by letter (e.g., from an attorney). The interviewing officer shall request the presence of such witnesses unless there is good reason why they cannot appear (e.g., outside the district, confidential informer, etc.) and shall indicate the reason for such refusal in his summary report.

ii. Subpoenas. If an adverse witness refuses to appear upon request, and a good reason is not given (or such witness is unlikely to appear), the Commission's regional office should be notified relative to the issuance of a subpoena. Subpoenas are normally issued only for adverse witnesses, and issuance is discretionary upon the part of the Regional Commissioner.

iii. Field Interviews. A voluntary witness who cannot, for some reason, attend the interview, may be interviewed by the officer prior to a postponed preliminary interview if the parolee so requests. The officer's written report of that interview shall be considered at the postponed preliminary interview as a part of the record, and forwarded to the Commission with the summary report. Information relevant to the charges must be disclosed to the parolee during the interview.

iv. Testimony and Questioning of Witnesses. If after reading of a charge and the receiving of the parolee's response thereto, the parolee or his attorney wishes to question the adverse witnesses present, he may do so, provided the interviewing officer limits irrelevant or repetitious questioning. Before the questioning of an adverse witness begins, the interviewing officer should discuss the response with the parolee to elicit the parolee's version of the facts, if not explained previously. The relevancy of the questioning will be readily apparent from its relation to the explanation received. It should be stressed at all times that a co-equal purpose of the preliminary interview is to hear the parolee's side of the story, as well as to review the evidence against him. All witnesses may be questioned as to whether or not a violation occurred, as well as to elicit mitigating circumstances if the parolee is not seriously contesting the facts of violation. The interviewing officer may question any witness to clear up any unresolved point of fact.

v. Exclusion of Witnesses. At the parolee's request, the interviewing officer may require adverse witnesses to step outside the hearing room while the parolee or his voluntary witnesses give their testimony. If done, the parolee's witnesses as well are to be excluded during the testimony of the adverse witnesses. This is a standard precaution to insure that witnesses are not influenced in their testimony by testimony already given. This procedure may also be initiated by the interviewing officer.

d. Completion of Form F2, Part II. After the charges are read and the evidence presented, the parolee must sign Form F-2, Part II in order to indicate whether he wishes to request a local (if he is eligible) or institutional revocation hearing in the event of probable cause finding. If he requests a local hearing, he must write on the Form F-2 the names of the adverse witnesses whose appearance he desires.

e. Checklist. A checklist of procedural and legal rights is available to aid the interviewing officer in the conduct of the interview. It is not necessary to read the checklist out loud or to complete a copy for retention in the file.

f. Recommended Decision of Interviewing Officer.

i. Informing the Parolee of the Recommended Decision. At the conclusion of the interview, the interviewing officer shall inform the parolee that the Parole Commission will make the decision as to probable cause. The interviewing officer then informs the parolee of his recommended decision as to whether there is probable cause to believe that the parolee has violated a condition or conditions of his release, and shall specify the charges upon which he relies in his recommended decision. The parolee's own response, including an admission, is considered evidence for this purpose.

ii. Nature of Recommended Decision. This recommended decision is purely a fact finding decision. In order to support a finding of no probable cause, the officer must be satisfied that no violation has occurred. While the interviewing officer may recommend that the Commission reinstate the parolee notwithstanding the violation (on the basis of mitigating evidence presented at the interview), the officer is still obliged to recommend a finding of probable cause if the evidence that a violation has occurred has not been discredited by the officer's own examination or by the parolee's response. Most importantly, when the officer finds probable cause, he must state exactly what violation he has found. He must make his finding clear in his report to the Commission if his finding differs in any way from the way the violation is described in the Warrant Application.

g. Summary Report. Promptly following the interview, regardless of the finding, a Summary Report must be prepared and sent to the Commission's regional office (including the completed Form F-2). One copy of the report (minus the confidential section) shall be given to the parolee, and to his attorney, if any, and one copy retained for the probation office file. The format for this report and the contents can be found in Appendix 4.18 of the U.S. Probation Officers Manual. The outer envelope must be marked: URGENT: SUMMARY OF PRELIMINARY INTERVIEW. The parolee shall be held in custody pending notification of the Commission's decision unless appearing as a result of an issue of a summons.

h. Recommended Finding of No Probable Cause. In the event the interviewing officer recommends a finding of no probable cause to believe that any violation has occurred, the Commission's regional office is to be notified immediately by telephone to ascertain whether the Regional Commissioner will confirm the recommended decision and order the immediate release of the parolee. If the Regional Commissioner finds probable cause notwithstanding the recommended decision, the parolee will be promptly notified and held for a revocation hearing.

B. LOCAL REVOCATION HEARING.

1. Arrangements. When it has been determined that the Commission will conduct a local revocation hearing, the regional office will advise the Marshal and the probation officer of the location of the hearing. Since this is a contested procedure, there is a need for facilities which will insure privacy and be adequate for the taking of testimony. In cooperation with the probation officer, the Marshal is asked to arrange for suitable quarters. If possible,

the Commission prefers to use the nearest probation office, the quarters of a United States Magistrate, or other suitable place in the nearest probation office or the nearest Federal court building, provided the place is not a jail or detention facility.

2. Notification of Hearing. After arrangements are completed, the Parole Commission will inform the probation officer of the exact time and place of the hearing. By copy of the letter the attorney, if named, the Marshal, and the alleged violator will also be officially notified.

3. Reporting Service. Ordinarily, the examiner will use recording equipment for the purpose of conducting the hearing; however, there may be instances when the Regional Commissioner may ask for reporting services in lieu of recording devices.

4. Adverse Witnesses. When the parolee denies he violated parole and requests o that adverse witnesses be present for confrontation, the probation officer should ask requested witnesses who have supplied adverse information bearing on the alleged violation to appear at the revocation hearing. If any witnesses will not attend or appear unlikely to attend, notify the Commission relative to issuance of a subpoena. The Commission will not issue subpoenas for any witness, adverse or non-adverse unless the Commission finds a need for such witness and the witness cannot or will not appear upon request, and will not submit an adequate signed statement in lieu of personal testimony. The need for an adverse witness who is not to be found within the district will be determined by the Commission on the basis of the Summary Report and the evidence submitted to it. A signed statement may be required of such witnesses (including a U.S. probation officer, if outside the district) in lieu of a personal appearance.

5. Non-Adverse Witnesses. If the parolee desires the issuance of a subpoena for a witness to appear on his behalf, the parolee must submit a separate showing of need for the testimony of such witness, and must show that the requested witness will not voluntarily appear or offer a written statement giving his testimony other than under subpoena. Where appropriate, the Commission may request that such witnesses be interviewed by a U.S. probation officer in the locality, in lieu of requiring a personal appearance at the revocation proceeding.

APPENDIX 4 - STANDARD FORMATS FOR REFERRAL TO NATIONAL COMMISSIONERS

(A) ADMINISTRATIVE REVIEW (28 C.F.R. 2.24)

TO: National Commissioners

FROM: _____ Regional Commissioner, (_____) R.O.

RE: _____ Reg. No. _____

A. This case is referred pursuant to 28 C.F.R. 2.24.

B. Panel Recommendation:

C. Commissioner's Evaluation: [Reminder: codefendant sheets should be included in the file.]

D. Commissioner's Order and Vote: _____

E. Reasons: Give reasons as they should appear on the Notice of Action.

- -

(B) ORIGINAL JURISDICTION (28 C.F.R. 2.17)

TO: National Commissioners

FROM: _____ Regional Commissioner, (_____) R.O.

RE: _____ Reg. No.: _____
(Name)

A. This case is referred pursuant of 28 C.F.R. 2.17. [give category of referral: (b)(1) National Security; (b)(2)(i) Unusual Degree of Sophistication or Planning; (b)(2)(ii) Large Scale or Continuing Criminal Enterprise; (b)(3) Unusual Attention; (b)(4) Long Term Sentence] based upon the following: [Give Supporting Evidence for Referral].

Note: For (b)(2)(i), supporting evidence would include: the number of trips made to plan or case an operation; use of electronic or mechanical devices; use of forged documents or paper corporations to promote stock or mail frauds; the use of private planes, boats or multiple motor vehicles to carry out a plan.

For (b)(2)(ii), supporting evidence would include: the length of time the operation was in existence; the number of co-conspirators involved; the monetary amount of drugs, stocks, or other merchandise involved.

For (b)(3), the source of the unusual attention should be cited with specificity: newspaper articles; interest by groups or persons (letters, telephone calls, teletypes).

B. Regional Commissioner Evaluation, Order and Vote: [Reminder: codefendant sheets should be included in the file.]

C. Reasons: Give reasons as they should appear on Notice of Action.

NOTE: In considering cases for possible original jurisdiction consideration please consider the total case picture. Because one or more of the examples cited as supporting evidence is present does not mean that the case is original jurisdiction. Each case should be considered on an individual basis and the examples used are only some points to look for.

Notice To Department of Justice
(Original Jurisdiction Cases)

MNEMONIC CODE: (Obtain from Chief of Case Operations)

TO: ORGANIZED CRIME AND RACKETEERING SECTION
ATTN: DAVID MARGOLIS, CHIEF
DEPARTMENT OF JUSTICE - ROOM 2515

FROM: (_____)
REGIONAL COMMISSIONER

(_____) REGIONAL OFFICE

SUBJECT: O.J. DESIGNATIONS

THE FOLLOWING CASE(S) HAS (HAVE) BEEN DESIGNATED O.J. AND IS (ARE) BEING FORWARDED TO THE NAB, WASH., D.C., FOR PAROLE CONSIDERATION:

DATE OF BIRTH:
F.B.I. #:
OFFENSE COMMITTED:
DATE OF SENTENCE:
SENTENCING DISTRICT:

RESPONSE WILL BE MADE WITHIN THREE DAYS BY THIS UNIT TO BOTH THE CENTRAL OFFICE AND THE REGIONAL OFFICE.

APPENDIX 5 - DISCLOSURE PROCEDURES

(a) Prisoners have two separate methods by which they may obtain disclosure of Parole Commission documents concerning them:

(1) PCRA (prehearing) Disclosure.

The PCRA gives each prisoner the right to reasonable disclosure of his or her file within a thirty day period preceding the parole hearing. The Commission's regulation under this statute provides that advance notice be given sixty days before any scheduled parole hearing in order to permit such disclosure.

The scope of this disclosure is limited to the documents which the Commission intends to consider at the hearing. Disclosure under the PCRA is primarily a review of the institution file. However, the prisoner may also request disclosure of any relevant documents that may have been retained in the Regional Office.

The statute contains three exemptions to disclosure. If any document or portion thereof is deemed exempt from disclosure by the originating agency, a summary of the withheld information must be prepared. Providing the prisoner a summary permits the Commission to review the entire document. Unless a document is available for disclosure to the prisoner (or a summary has been provided if the document contains exempt information) the Commission cannot lawfully rely upon that document in reaching a parole decision. The rule governing PCRA disclosure is set forth at 28 C.F.R. Section 2.55 (See Appendix 5-A).

(2) Privacy Act Disclosure.

The Privacy Act of 1974 allows each member of the public to obtain disclosure of government documents concerning him or her. Federal prisoners have limited disclosure rights under the Privacy Act pursuant to an exemption granted to the Parole Commission by the U.S. Attorney General (28 C.F.R. Section 16.85). These limited rights of disclosure under the Privacy Act are called the Commission's "Alternate Means of Access".

The Commission's "Alternate Means of Access" permits a prisoner or parolee (or any person authorized by the prisoner or parolee) to request copies of Parole Commission documents in the Commission's Regional Office file, under a deadline of 40 working days (absent an emergency). Documents originated by an agency other than the Parole Commission may be referred to the appropriate agency for response, or disclosed by the Commission staff if the document is clearly disclosable.

The same exemptions apply to disclosure under the Privacy Act "Alternate Means of Access" as apply to PCRA disclosure, except that the Commission need not furnish summaries. Instead, the Commission must identify each document that is not fully disclosed and the applicable exemption, and inform the prisoner of his right to appeal any non-disclosure to the Assistant Attorney General, Office of Legal Policy. The covering letter which accompanies the documents sent to the requestor is used for this purpose.

The rule governing Privacy Act disclosures is set forth at 28 C.F.R. Section 2.56 (See Appendix 5-B).

(b) The Freedom of Information Act. Members of the public (e.g., newspaper reporters) have only one method of obtaining copies of documents concerning prisoners and parolees. Under the Freedom of Information Act (FOIA), a request may be filed for any document in the Commission's possession. However, a prisoner cannot use the FOIA to request disclosure of his or her own file. (Such requests are automatically treated as Privacy Act requests.) Also, the extent to which one person can use the FOIA to gain information about other persons is limited by the privacy interests of the persons about whom such information is sought. All such requests are handled by the General Counsel's Office.

(c) The Privacy Act of 1974 also places limits on the type of information about prisoners and parolees that can be given out to other persons. Written consent is usually necessary from the prisoner or parolee concerned and all files are treated as confidential material. However, "public sector" information can be disclosed to any person (i.e., the data on the BP-5 and the last Commission action -- but no information or only a bare minimum, where warranted, can be disclosed to the public in "protection cases." Also a number of "routine use" exceptions have been approved by I the U.S. Attorney General, permitting routine disclosure of more sensitive information in certain instances (for example, a routine use covers legitimate law enforcement or prosecutorial requests). These "routine uses" and other aspects of the Privacy Act of 1974 are covered in Appendix 5-C.

APPENDIX 5-A - PREHEARING DISCLOSURE (PCRA)
(Regional Office & BOP Procedures)

I. Regional Office File and Disclosure Procedure.

A. Prior to initial parole hearings.

1. Normally, all pre-hearing disclosure should be taken care of at the institutional level. For this reason, any official report that the Commission receives concerning a prisoner prior to the initial hearing should be forwarded to the institution upon receipt and no copy need be retained. (In some cases, a sensitive document may have to be retained by the Commission if the sender will not permit the documents to be sent to an institution.) A "dummy file" should be kept at the regional office only if the document is a private letter for or against parole, or a document is specifically marked as being intended for the Parole Commission only (e.g., an AO-235).

If an official document is received that has no instructions as to disclosure, or if no summary has been provided (and the agency originating the document does not generally permit disclosure of such documents) the document should be returned to the sender with a letter briefly informing the originating agency that pursuant to 18 U.S.C. Section 4208(c) instructions must

be provided if the Commission is to consider the information and that any summary of withheld information should be sent directly to the institution where the prisoner is confined along with the original document for the Commission's review.

2. If the prisoner makes a written request to inspect "any reports or documents which the Parole Commission may have in its Regional Office" (Parole Form I-24), the date of receipt of that request should be entered in a separate PCRA Disclosure Log or on the "Privacy Act Log Sheet" if it is identified as a Privacy Act request. The office disclosure specialist should then review the request and obtain the parole file (if there is one) for the necessary processing.

If the Regional Office has retained no documents on the requester, the log sheet should be marked "no file" and the request should be returned to the prisoner marked "no file".

3. If documents have been retained in the Regional Office, disclosure should be made as instructed, of the documents or summaries thereof by sending copies to the prisoner with a cover letter briefly listing the contents and specifying the exemption involved in the case of non-disclosure. However, in the case of private letters, the Regional Office disclosure specialist must make the disclosure decision. Normally, letters urging parole will all be copied and included in the packet to be furnished to the prisoner. Letters urging no parole should be scrutinized carefully and should not be released if there is any indication that the author of the letter would be exposed to actual harm through disclosure, or if the author was expecting confidentiality for his letter. An appropriate summary in the case of non-disclosure would usually read "letter from private citizen recommending against parole." -- but if there are specific factual assertions about the prisoner these assertions should be summarized too, if feasible.

4. Form I-24 advises the prisoner that if the request is received by the regional office thirty days before the hearing, pre-hearing disclosure will be made. Therefore, all pre-hearing disclosure requests should be handled day-to-day on a priority basis, and take precedence over Privacy Act requests. However, Privacy Act processing time should be kept within the 40 working day time limit.

B. Prior to interim review hearings.

1. Prior to an interim review hearing the scope of disclosure available to the prisoner is limited to "reports and other documents informing the Commission of factors which have changed, or which may have changed, since the date of the last hearing": 28 C.F.R. Section 2.55(b)(2) and Section 2.14(a). In most cases, the relevant information will be contained in the institution file (specifically in the progress report). In such cases, the I-24 request will be answered by a brief letter informing the prisoner that the Commission does not have in its file any document relevant to factors that have changed since the last hearing, that is not also available in the institution file. If the Parole Commission has retained any such document, and disclosure is not already available from the institution file, disclosure would be made as outlined above.

C. Prior to Fifteen-Year Reconsideration Hearing. A request for disclosure will cover all documents in the file.

D. Late-Received Documents. In the case of a document containing information adverse to the prisoner that is received after the parole hearing has been held but before all review and appellate procedures have ended, the prisoner must be scheduled for a hearing if the Commission intends to use such document. In such case, the institution staff must be given explicit instructions to offer the prisoner disclosure of such document. This means that if the document gives the Commission no useful information or no information that it does not already have from a better source (e.g., the presentence report), the document may be filed with the notation "not considered - no new and significant information". If a rehearing of an initial hearing is ordered (e.g., when a significant document is received during appeal) the rehearing would be a new initial hearing.

E. Rescission Hearings and Reconsideration Hearings. Whenever a rescission hearing under Section 2.34 or a special reconsideration hearing is ordered under Section 2.28, the scope of prehearing disclosure is limited to the new information that warranted the reopening of the case. Such documents must be promptly sent to the institution when the case is reopened so that disclosure can be offered to the prisoner.

II. Pre-Hearing Disclosure at the Institutional Level.

A. Prior to initial hearings, institution staff have responsibility to:

1. Ensure that adequate documentation (including a complete pre or post sentence report) is available for the examiner panel.

2. Contact preparing agencies for disclosure instructions where permission to disclose has not been received or no summary of excluded information has been provided.

3. Prepare a copy folder of relevant documents for retention by the Commission.

4. As soon as the parole docket is made up, ensure that parole Form I-24 is given to each inmate:

(i) If the inmate requests to review documents in the institution file, staff will ensure that within 15 days of their receipt of such request the inmate is afforded the opportunity to review the disclosable portions of the institution file. If more relevant documents are subsequently received, the inmate must be notified so that all relevant and disclosable documents are offered for review prior to the hearing.

(ii) If the inmate requests disclosure of documents in Parole Commission's file, the regional office file copy of the I-24 form must be sent to the Commission's Regional Office without delay.

5. Institution staff will also ensure that prior to the parole hearing, each inmate has been given opportunity to sign any waivers necessary to permit the holding of such hearing (pre-hearing notice/representative/disclosure). All these waivers are on the reverse of the Form I-24.

B. Each file will be divided into three parts: (The Commission's folder will consist of Parts (2) and (3)).

(1) Bureau of Prisons use only - no disclosure is made and parole examiners do not use it.

(2) Parole Commission/Bureau of Prisons Joint Use. The non-disclosable portions of the pre-sentence reports, psychiatric reports, and other materials are to be kept in this part with summaries in the disclosable part of the file.

(3) Disclosable part. The prisoner may review any document in this file prior to the hearing. Copies may be obtained at any time under Bureau of Prisons regulations, except that the Pre-Sentence Investigation Report may not be copied without the court's permission.

C. Determining what to exempt and how to summarize.

1. The law contains three major exemptions:

(1) Diagnostic opinions, which if known to the prisoner could lead to serious disruption of his institutional program;

(2) Material which would reveal a source of information obtained upon a promise of confidentiality; or

(3) Any other information, which if disclosed, might result in harm, physical or otherwise to any person. [18 U.S.C. Section 4208(c)].

2. Institution staff (and other agencies responsible for the preparation of documents to be considered in the parole determination) may use the exemptions only if there is some prospect of harm resulting from disclosure. Harm may be either physical or mental (for example, a serious and unwarranted invasion of privacy).

3. If a document is disclosable in part, the document must be copied and the sensitive portions excised from the copy, which is then to be placed in the disclosable part of the file, along with the necessary summary. A record must be retained indicating what exemption was deemed applicable. The complete document is to be placed in the "joint-use" folder.

4. Summarization of adverse incident reports and supporting documents will be facilitated by ensuring that the IDC report (BP-IS115) in all cases adequately summarizes the facts resulting in the IDC action. This report will be deemed to be the legally-required summary of any non-disclosable document that was relied upon by the IDC.

5. Where no IDC finding is involved, for example, a sensitive psychiatric report, a general statement indicating the general conclusion of the report (i.e., "report that subject still needs to overcome emotional difficulties") would adequately summarize a report that, if disclosed in detail, might seriously injure the prisoner's self-image.

However, a mere recitation of the applicable exemption would not serve as a legally adequate summary. The summary must describe the general nature of the assertion concerning the prisoner with as much specificity as the circumstances will permit. However, the summary should not be so specific that the protected items of information (e.g., an informant's identity) would be subject to identification.

APPENDIX 5-B - PRIVACY ACT DISCLOSURE

I. Regional Office Processing of Privacy Act Requests

1. A prisoner or parolee may at any time submit a privacy request for copies for all or any particular documents in the regional office file folder that bears his name. Such a request must be in writing. If the request comes from anyone else in his behalf (clergyman, wife, etc.) a written consent to disclosure signed by the subject is required. If the request comes from a lawyer, some proof of the attorney-client relationship must exist. If such a request is received without the necessary consent, the request must be forwarded to the subject with a consent form and a brief cover letter explaining the need for the subject's authorization.

2. Proof that an attorney has been appointed to represent the requester by a Court will substitute for specific consent to disclosure. In the case of Congressional requests, a copy of the prisoner's letter requesting assistance or a statement in the Congressional letter that such request was received, will also be deemed sufficient authorization.

3. A "Privacy Act Log Sheet" must be maintained in each office to record all disclosure requests received and the date action is completed upon each request. Its contents are more fully discussed below. In addition, a separate file must be maintained containing a Privacy Act folder for each completed request, in order to keep a record of what disclosure was made.

4. The applicable deadline for completing action on a properly filed request is 40 working days from receipt in the regional office, absent an emergency. If a Privacy Act request is pending when a national appeal is also received, the request must be completed before the file is transmitted to the National Appeals Board. However, if the file is already before the National Appeals Board, and time will permit, disclosure will be made when the file is returned to the region after the appeal is decided. If need be, the request will be processed by NAB personnel to meet the deadline, or will be returned temporarily with the file for processing in the region if there is adequate time before the appeal must be decided.

5. Upon receipt of the request in the regional office, the office disclosure specialist should note the date of receipt on the "Privacy Act Log Sheet". The specialist should then review the request; obtain the parole file for processing, and determine how much of the file needs to be xeroxed. The following items do not have to be copied:

(1) Presentence report and AO-235: These are court documents and are not covered by the Privacy Act.

(2) Documents originated by the Bureau of Prisons: These records are available for inspection and copying at the institution.

(3) Any documents which fall outside the terms of the request itself. READ THE REQUEST CAREFULLY.

(4) Any other documents from an exempt source (e.g., sensitive investigative material from a Congressional Committee). However, Congressional correspondence from Congressmen on behalf of constituents should be processed for disclosure.

(5) Documents which have previously been disclosed to the prisoner by the furnishing of copies, unless the prisoner clearly states that such copies have become lost.

6. The specialist should copy any requested documents coming from other federal agencies, bureaus and departments and refer them to the originating agency for a disclosure determination under cover letter; unless disclosure instructions have already been received pursuant to the PCRA, or the document is clearly a disclosable one. Otherwise, agencies are required to process such documents for disclosure under the Privacy Act. The agencies should be asked to respond to the requester directly. However, reports or documents from state or local law enforcement agencies should be processed for disclosure in the regional office. At times, it may be simpler for the specialist to check with the originating agency by phone and edit their document as instructed. Specialist may do this where appropriate.

7. Once the xeroxing has been completed and appropriate referrals made, the specialist should decide whether any of the remaining documents or portions thereof should be withheld from disclosure under the exemptions described below. If a portion of a document needs to be exempted, the specialist should obliterate the sensitive passage from a xerox copy of the document for disclosure to the requester. A copy should be retained in the requester's Privacy Act folder with a line through the deleted passage for future reference. Copies of documents totally withheld should also be filed in the Privacy Act folder, except for pre-sentence reports.

8. After the exempting process is finished, the specialist should prepare the cover letter to be appended to the requester's disclosed file documents. The letter must clearly identify disclosed documents (including names, dates, etc.) so that the documents can be accurately identified by a person reading the letter. Documents or portions thereof that are withheld under the exemptions of 28 C.F.R. Section 2.56(c) must also be identified, together with the applicable exemption. Summarization of withheld information does not have to be made since this requirement pertains only to disclosure under the PCRA.

9. Once the cover letter/response has been prepared, the specialist should make two copies of the cover letter, inserting one copy in the inmate file and the second in the Privacy Act folder. Thus, the Privacy Act folder should contain the following documents: (1) a copy of the Privacy Act request; (2) a copy of the cover letter response; (3) copies of all file documents withheld from disclosure; (4) copies of all file documents with excised information clearly marked; and (5) miscellaneous correspondence regarding referrals between agencies and bureaus, and other components of the Department of Justice. Fully disclosed documents and copies of documents referred to another unit for disclosure need not be retained in the folder. Privacy Act folders should be kept in a separate, locked file cabinet and filed by the subject's name in alphabetical order. The specialist should then forward the response to the requester, noting the date on the Privacy Act Log Sheet. The original request should be retained in the inmate file.

10. The specialist should retain on the Privacy Act Log Sheet a running record of the requests received and responses made by the regional office under the Privacy Act. The specialist should also record the number of documents withheld from disclosure and the number of documents where partial excisions were made. Finally, the specialist should list the number and type of exemptions utilized. These records provide the information for a summary which is submitted to the General Counsel's Office annually to comply with the Department of Justice reporting requirements.

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EXEMPTING MATERIAL FROM DISCLOSURE

As noted in 28 C.F.R. Section 2.56(c), a document, or any portion thereof, may be withheld from disclosure if it contains:

(1) Diagnostic opinions, which if known to the prisoner, could lead to a serious disruption of his institutional program;

(2) Material which would reveal a source of information obtained upon a promise of confidentiality; or

(3) Any other information, which if disclosed, might result in harm, physical or otherwise, to any person.

More than one exemption may be invoked if applicable.

(1) Diagnostic Opinions

The term "diagnostic opinions" is broadly defined to include not only medical, psychiatric, or psychological studies, but also general evaluations of a prisoner or parolee's progress or history by one other than a health professional; for example, a probation officer or case-manager. These evaluations may commonly be found in supervision reports of U.S. Probation Officers (Parole Form F-3), Commission hearing summaries, and regional or national staff memoranda regarding a prisoner's administrative appeal.

Reports from health professionals, whether they are employees of the Bureau of Prisons or under contract to provide services for that agency, should be referred to the Bureau for processing since the documents were originated by Bureau agents. Under present Bureau of Prisons policy, psychiatric/psychological reports are now placed in the disclosable section of the prisoner's Central File. Thus, if the examiners or Commission staff describe the findings of an already disclosable study in a Commission document (e.g., the hearing summary), there would be no reason for that material to be excised. Letters or reports from a requester's private physician on the requester's physical or mental health (generally written at the behest of the requester) should be disclosed to the requester unless the document contains information conceivably not known to the requester which would clearly have a serious adverse impact upon his institutional or community adjustment (e.g., prediction of a relapse in the case of a cancer patient).

Diagnostic opinions or evaluations cannot be withheld from disclosure merely because they are negative in tone or content. In deciding whether use of the exemption is appropriate, the specialist should consider the characteristics of the requester, the content of the document, the nature and progress of the relationship between the subject of the opinion and the originator, and whether the subject has previously been confronted with the opinions of the staff member. For example, little harm normally exists in disclosing to a prisoner, whose parole has been revoked, the opinion of his former probation officer that the prisoner was progressing poorly in the community just prior to his revocation. On the other hand, it may be sensible to delete the judgment of a probation officer or institutional staff member that the subject will never make a successful adjustment to the community life when the parolee or prisoner is apparently making an attempt to participate and cooperate in community or institutional programs.

The specialist should not routinely excise general opinions of Commission staff or probation officers such as "subject has a violent and extensive prior criminal record" or that "he has a disturbing history of

disciplinary infractions". Prisoners do have a right to be confronted with adverse opinions regarding their history, personality, or institutional behavior, except where there is a clear concern as to institutional safety and the possibility that the disclosure might seriously discourage the parolee or prisoner from engaging in further community or prison programs. Routine withholding of agency staff memoranda (or the identity of the originator) is not an acceptable practice.

2. Material Revealing A Source of Information Obtained Upon A Promise of Confidentiality

The purpose of this exemption is to protect from physical harm or real mental anguish those persons who provide information upon an express or implied promise that the information will remain confidential. The exemption primarily extends to information disseminated by undercover law enforcement officers or informers employed by law enforcement agencies, but it may also cover material given by any correctional or law enforcement officer or private party.

Such information will most often be found in warrant requests from probation officers and the documentary evidence in support of the request, e.g., police reports and witness statements. It is also found in recommendation against parole.

The exemption applies where either an express promise or an implied promise of confidentiality is deemed to exist. An implied promise exists in favor of any person described on the file as a confidential informant or undercover law inforcement officer, or where the circumstances described in the file clearly shows that the informant would rationally expect or need confidentiality. (See instructions concerning recommendations against parole).

The exemption covers not only the identity of the person giving the information, but extends to any material which tends to identify the source of the information.

The decision on whether or not to use this exemption depends on such factors as the nature of contents of the documents, the prospect of actual harm to the informant if the information is disclosed, and the likelihood that the requester already knows the identity of the informant.

Generally, the exemption should be used only where the information is adverse to the requester, e.g., if the parolee has left his place of residence or has returned to the use of heroin, and the informer is in a position of vulnerability (e.g., wife, child, former girlfriend). The specialist should examine the requester's past record to determine whether he has committed crimes of violence or could reasonably be expected to take retaliatory action against the informer. If it clearly appears from the file that the requester already knows the source of the adverse information, there is no reason for withholding the information and its source to the parolee/prisoner. For example, if file documents reflect that an informant has testified against the requester in open court, or that a family member has given adverse information regarding the requester to the media, such parties cannot legitimately expect the same information to be confidential when it is made available to the Parole Commission. However, great care should be taken in not engaging in a "guessing game" as to whether or not the requester actually knows the identity of the source if such does not clearly appear from the file itself.

The exemption may be employed to strike the names of arresting or investigative officers only where there is a clear possibility of retaliatory action (e.g., where the prisoner is a member of organized crime or a professional narcotics ring). However, the identities of any victims or witnesses mentioned in police reports and other official documents should be protected where there is an obvious expectation on their part that their identity and statements would remain confidential and a reasonable prospect of actual harm if such information were disclosed.

3. Information, Which if Disclosed, Might Result in Harm

This exemption is utilized to cover those situations where sensitive information needs to be withheld from disclosure because there is a prospect of physical danger, mental anguish, or property or financial loss resulting from disclosure. Thus, the exemption may be applied where disclosure of information would constitute an unwarranted invasion of personal privacy as well as entail a prospect of physical danger. Personal information about other inmates mentioned in a prisoner's file would be exempt under this provision. In particular, the whereabouts of other prisoners should be withheld unless it is clear that the requester already has that information.

This exemption can also be used to protect other persons who are not "confidential sources" but who are discussed in the file. Potentially embarrassing personal details about co-defendants who are not in the prison system might be deleted based on this exemption, unless the information is critically important to the requester, or is already a matter of public record, in which case disclosure may be justifiable. In addition, this exemption is particularly useful to withhold information that might cause any individual a substantial loss in money, property, employment, or reputation.

Hearing examiners' identities should be protected under this section where there is a split decision. This would not apply to administrative hearing examiners, since they do not routinely visit prisons and are thus not as subject to possible retaliation as examiners might be. Delete both names in such cases. Wherever names are deleted make sure the prisoner cannot count the missing letters and so determine the identity of the author of the adverse recommendation.

APPENDIX 5-C - EXCEPTIONS TO CONFIDENTIALITY OF FILES AND SPECIAL DISCLOSURE REQUESTS

1. Routine Uses

In performing their official duties, Commission staff may repeatedly employ inmate and supervision files in certain established contexts without the need for securing the consent of the file subject. The "routine uses" of agency files are exempted from the general rule of non-consensual disclosure enunciated in the Privacy Act. The Privacy Act requires the Commission to publish such routine uses in the Federal Register.

The principal approved routine uses are:

(1) Sharing file data with other agents of the Department of Justice who have a need to know such data in order to perform their official duties.

(2) Providing assistance to Federal, State, local or foreign enforcement officials investigating a violation of law.

(3) Providing assistance to Federal, State, or local agency which must make a decision relating to a current or former inmate.

(4) Providing assistance to a Federal agency in conjunction with hiring, employee investigations, security clearance, licensing and related activities.

(5) Releasing certain information to the news media. NOTE: Whenever possible the Office of Public Information should be used for this purpose.

(6) Releasing information to Congressmen inquiring about constituents who have contacted them.

(7) Releasing material of historical significance to Archives.

(8) Providing information concerning a parolee to persons who might be exposed to harm through contact.

(9) Relating to any member of the public information which is in the public sector.

(10) Responding to inquiries from inmates, their families, or authorized representatives.

(11) Provision of certain identifying data (e.g., lists of parolees under supervision) to law enforcement officials [see 28 C.F.R. §2.37(b) and accompanying procedures].

Whenever Commission staff discloses file material outside of the Department of Justice pursuant to a routine use, the circumstances and extent to the dissemination must be recorded for the inmate/supervision file of the particular prisoner/parolee.

A routine use meriting special attention is found at 28 C.F.R. §2.37(a) and the accompanying procedures. This rule permits third parties to be warned of a particular danger a parolee may pose to them. It does not require dissemination of the parolee's criminal record and background to the general public. The duty to disclose only arises when the probation officer or staff member becomes aware of a special relationship, e.g., employer-employee, between the third party and the parolee. If from circumstances of the relationship, a prospect of harm to the third party can be reasonably forseen, disclosure of the possibility of such harm should be confidentially made to the third party. A few examples may help to clarify this routine use:

Example 1: Parolee W is seeking a job as a janitor at an apartment building. The building houses a number of apartments occupied by single women. Parolee W has a prior record listing two convictions for rape and aggravated assault. In this case, disclosure of the prospective employer should be made.

Example 2: Parolee X is seeking employment as a bookkeeper at a local bank. Parolee X just completed serving a three year term for embezzling $120,000 from a savings and loan association. In this case, disclosure of the circumstances of Parolee X's embezzlement should be made to the bank personnel officer.

Example 3: Parolee Y is attempting to purchase a house in a new residential development. The agent for the real estate company in charge of selling the properties calls the probation office for information on Parolee Y,

after receiving information that Parolee Y has a prior record. Parolee Y has suffered one conviction for possession of $1,000 worth of forged money orders and was arrested once for possession of less than an ounce of marijuana. From these facts, it does not appear Parolee Y poses any significant risk of harm to the public. Therefore, disclosure of the of the parolee's background should not be made.

These examples are not all-inclusive, but they help to indicate the points with which probation officers and staff should be concerned in this disclosure situation. It should be noted that the disclosure may be required even without a request from member of the public for the information. The Regional Commissioner may delegate the duty to approve disclosure of file information under this routine use to the Administrative Hearing Examiner or Case Analysts. Requests for disclosure, as well as subsequent approvals, may be handled telephonically as long as the request and approval is carefully noted for the record. The information disseminated to the third party should also be accounted for in the inmate/supervision file by the probation officer or staff member. If a question arises as to the propriety of approval for a request for disclosure under this regulation, the probation officer or staff member should feel free to call the Office of General Counsel for assistance.

2. Congressional Correspondence/Privacy Act

Please review the Commission's Procedures Manual at Section 2.22.

3. Subpoenas from Federal, State and Local Courts

When a federal probation officer or Commission staff member receives a subpoena from a federal, state, or local court for the production of file material or the oral disclosure of information on a prisoner or parolee, he or she should consult the Gen eral Counsel's Office as soon as possible for appropriate instruction. Disclosure of such information is regulated by the Department of Justice rules found at 28 C.F.R. Section 16.21-16.29.

Before information can be divulged, the Chairman of the Commission must consent to the dissemination. The procedure need not be followed where an agent of the Department of Justice, e.g., Assistant U.S. Attorney, is subpoening the information since the disclosure is essentially "in-house" and covered as a routine use under the Privacy Act. In the event that permission is not granted, persons to whom such subpoenas are directed should be advised to contact the local United States Attorney's Office to secure its assistance in defending that position.

4. Requests from Law Enforcement Authorities

The Privacy Act specifically allows for the unconsented disclosure of file material (including xerox copies) concerning a prisoner or parolee to any federal, state, or local government agency for a criminal or civil law enforcement activity if the head of the agency (or a person who can act for the agency head) makes a written request to the Commission specifying the material desired and the law enforcement activity for which the records are sought. 5 U.S.C. Section 552a(b)(7). Routine use (g) extends this exception for foreign law enforcement agencies. Thus, agencies as different as a state bureau of investigation, a county sheriff's office, a metropolitan police department, the Internal Revenue Service, a state department of insurance, the local liquor control board or the Royal Canadian Mounted Police may all present valid requests for information under this section.

On occasion, a request which on its face may fall within this exception should still not be complied with unless good cause is shown for the disclosure. For example, a domestic relations agency may seek the file information to compel a parolee to pay child support, which would be a law enforcement activity, especially since continued non-payment may result in criminal prosecution. In this case, disclosure would be appropriate. Yet, if the same agency seeks the information to resolve a child custody dispute, the case probably does not involve law enforcement, but civil litigation regarding the rights of the parents over the child. Routine use (3) would be applicable instead. If in doubt about the proprietary of disclosure in any case, staff should not make such decisions without the assistance or advice of the General Counsel's Office.

Finally, Commission staff should require the requester to be specific about the type of information sought and the purpose of the request. Requests from governmental agents who apparently have supervisory authority, such as "chief of homicide division", rather than the actual head of the agency, i.e., chief of police, may be responded to without further correspondence on the issue of proper authorization. Staff should divulge only that information on which reasonably satisfies the request of the law enforcement agency. Any disclosure made to the law enforcement authority must be documented for the file in order to comply with the accountability requirements of the Privacy Act.

5. Public Sector Information Disclosure to Members of the Press

Information deemed to be the "public sector" can be disclosed to third parties without the consent of the file subject, unless a "protection" case where minimal or no disclosure is made. However, such disclosure should normally be made only to persons who demonstrate a need to know the information or who occupy a special position with respect to the subject of the file. Such persons include, but are not limited to, members of the press, the prisoner/parolee's family, law enforcement officers, and prospective employers. Public sector information encompasses the following data: (1) sentence data on the Bureau's Sentence Computation Record (BP-5); (2) date(s) of parole hearing(s); and (3) the decision(s) rendered by the Commission after agency proceedings including dates of continuances and presumptive parole dates.

Reasons for parole denial or revocation are not considered public sector information. If the requester desires to know information beyond this limited dissemination, the disclosure must fit a Privacy Act exception, a routine use or be specifically consented to by the inmate or person on supervision.

Press inquiries or those from other media on prisoners who are considered under the Commission's original jurisdiction voting procedure, 28 C.F.R. Section 2.17 and Section 2.27, will generally be handled by the Department of Justice, Office of Public Information. This office can also be utilized as a resource for Commission staff when they encounter a particular problem with a news reporter's request for information on a prisoner or parolee, regardless of whether or not the file subject is an original jurisdiction case. It is recommended that the Office of Public Information be consulted and the disclosure be made or its refusal be communicated to the media through that office in any but the most routine situations.

APPENDIX 5-D - DISCLOSURE OF DOCUMENTS PRIOR TO LOCAL REVOCATION HEARINGS

When a decision has been made to find probable cause in a parole violation case, and a local revocation hearing has been ordered, the post release analyst will attach to the letter of probable cause [see Appendix 3] a packet containing one copy each of the documents which the examiner panel will consider at the revocation hearing.

These copies are to be delivered to the alleged violator along with the letter of probable cause. A notation will be added to the bottom of the probable cause letter in these cases as follows: "enclosure -- documents supporting probable cause finding." A cover sheet will be attached to the packet briefly listing each document included; a copy of that cover sheet will be retained in the file.

If any of the material in the packet appears to be sensitive and confidential, the post release analyst will give the packet to the Privacy Act Specialist for review.

The Privacy Act Specialist will determine whether any of the documents meets the three Privacy Act/Disclosure exemptions. If an exemption should be applied then the sensitive document (or portions thereof) is removed from the packet. If that is done, the following notation will be added to the cover sheet: "Information exempt from full disclosure has been removed from this packet. At your revocation hearing, you will be apprised of the nature of this evidence."

Privacy Act Specialists should be certain that the exemptions apply and non-disclosure is justifiable, since unjustified non-disclosure can cause revocation decisions to be overturned. Material in arrest reports recounting the observations of the arresting officer should be disclosed.

Where a document produced by a federal agency is marked "FOI Exempt", or such document or one produced by a state or local agency contains restrictive language which would prevent its inclusion in the revocation package, Privacy Act Specialists should do the following:

1. In the case of a federal agency, if there is nothing in the content of the document that clearly meets one or more of the standard exemptions at 28 C.F.R. §2.56 (the Privacy Act exemptions), then the originating agency must be contacted and informed that unless the Commission is permitted to disclose the document, the revocation effort is likely to be unsuccessful. If the agency is able to submit a written justification for not disclosing all or some part of the document, then dis closure can be withheld. If there is any refusal to cooperate in this regard by any federal agency whose document is critical in our revocation process please notify the legal office.

2. In the case of a state or local agency, if the content does not fit the standard exemptions or is not obviously sensitive, that agency should also be contacted and informed that unless permission is granted for disclosure, or non-disclosure justified in writing, the Commission's inability to make disclosure is likely to frustrate our revocation effort and return the offender to the community. Again, a refusal of reasonable cooperation in this regard should be brought to the attention of the legal office.

SUBSEQUENT PRIVACY ACT REQUESTS

If a Privacy Act request is filed for documents pertaining to an upcoming revocation hearing, such a request can be answered by a letter stating that disclosure has previously been made to the alleged violator, and enclosing a copy of the coversheet.

SUPPLEMENTAL CHARGES

Disclosure as outlined above will be made whenever the parolee is notified that new charges have been added after the probable cause finding has been made.

APPENDIX 6 - PAROLE/MANDATORY RELEASE SUPERVISION GUIDELINES

OBJECTIVE: The primary objectives of parole supervision are: (1) To protect society from further criminal activities by the parolee; and (2) To assist the parolee in becoming a law-abiding, self-sustaining, responsible member of society.

To achieve these objectives the probation officer (1) counsels with the parolee and renders specific services to help him resolve his problems and needs; (2) utilizes and coordinates the resources and facilities of the community; (3) attempts to instill a public understanding of the meaning of parole and encourages the community's participation in the parole program; and (4) assess systematically the results of his efforts.

Preliminary Pre-Release Planning - Pre-release planning - the cooperative effort of the institution, the Parole Commission, the probation office, and the community is the basis for case analysis, evaluation, and determination of a suitable parole plan to assure adequate protection to the community and to meet the problems, needs and concerns of the parolee. In specific cases the Commission may require special conditions of supervision. The institution will send a parole plan to the probation officer for investigation, evaluation, and recommendation (including any recommendation for modification). The plan will cover the essential elements set forth below, as appropriate.

Release Plan - -

1. Residence (Specify plan and indicate attitude of prisoner toward those he will be living with or near; where known, specify attitude of family or friends involved in residence plan).
2. Education (specify plans regarding continuing education as it relates to release employment, future employability, and vocational interests or activities).
3. Employment (specify immediate employment plans and capability regarding same and state relationship to vocational training or industrial training, where indicated, specify assistance planned or needed to obtain employment).
4. Community services (specify, as appropriate, participation in community service programs, i.e., family counseling, AA; psychiatric/psychological counseling, anti-narcotic testing, etc.).
5. Attitude (caseworker's evaluation of inmate's attitude toward parole/ mandatory release conditions).
6. Avocational/leisure interests and activities (specify interests and plans, and as related to past experience).
7. Special condition(s) (recommend any special condition(s) for Commission approval).

Initial Interview - - Prior to the initial interview, the probation officer should review the case file and re-acquaint himself with the parole plan. The initial interview should be held at the earliest possible time following release to explain the supervision plan to the parolee and to offer him guidance and instruction.

Types of Contacts -- The types of supervision contacts are the following:

1. Personal contact. A personal contact is a face-to-face contact between the probation officer and the parolee. The contact should serve to establish constructive relationship with the releasee, assist and evaluate current activities, discover and counsel regarding current problems.

2. Collateral contact. A collateral contact is a telephone or personal contact about the parolee with a person other than the parolee, for example, a family member, friend, adviser, or employer. These contacts may be with family members, friends, employer, community services personnel, community treatment center staff, law enforcement officers, etc. These contacts should serve to obtain information regarding the parolee's present attitude, activities and problems.

3. Group contact. This is a contact with the parolee as a member of a regularly scheduled counseling or discussion group. The contact should serve to utilize peer influence and to observe the individual's response, as well as to evaluate current attitudes and prospective behavior.

4. Monthly supervision report. Prompt review of information in the monthly supervision report (Form 8) is an essential part of supervision. Information contained in the monthly supervision report may serve to assist the probation officer in determining supervision requirements.

CLASSIFICATION OF CASES: The Salient Factor Score is to be used in classifying parole and mandatory release cases initially received for supervision. Using the risk score, the probation officer determines a level of supervision by referring to the table below. In some cases there are circumstances where the probation officer may need to increase the level of supervision. The supervision level should not be less than the prediction device indicates during the initial 6 months of supervision.

SFS Risk Category	Supervision Level	Minimum Personal Contacts	Maximum Personal Contacts	Collateral Contacts
Poor-Fair-Good	High Activity	1 per month	no maximum	Unlimited
Very Good	Low Activity	1 per quarter	3 per quarter	Unlimited

Supervision Levels There are two levels of supervision - high activity and low activity. The purpose and value of differentially designating cases to one of these two levels is to free the probation officer to direct systematically his skills and energies to those persons in greatest need of services and monitoring.

High Activity Supervision - High activity supervision cases, as reflected in their histories, have usually experienced difficulty in establishing and maintaining personal stability. Accordingly, the high activity supervision level is where probation officers are to direct the greater proportion of their efforts. There is no upper limit on the number of times a given person may be

seen in a month's time. All persons in this supervision level, however, must be seen at least once a month. The intent, frequency, and location of personal and collateral contacts should be shaped by the supervision plan.

Low Activity Supervision - Low activity supervision cases, as reflected in their histories, have usually experienced relatively greater success in establishing personal stability. Although occasionally it will be necessary for the probation officer to respond to crisis situations, sustained contact will seldom be necessary. Probation officers are to manage these cases through the use of referred services and collateral contacts. The probation officers should not encourage more than one personal contact per quarter and three personal contacts per quarter should be the exception rather than the rule.
Overrides. Although the Salient Factor Score ordinarily serves to determine the initial super vision level, particular circumstances may be present in low activity cases which justify raising the supervision level to high activity. Override of the supervision level established by the predictive device score will be made only with the approval of a supervisor. There are three possible conditions which justify an override. They are:

I. Aggravated Offense/Offender Circumstances

A. Violence [Present offense or prior record involving violence; or use of weapons in the commission of crime].

B. Notoriety of Offense/Offender [Violation of trust by high ranking public official; Value of crime greater than $100,000; or Crimes endangering national security].

C. Continuing Criminal Conspiracy [Wholesale drug distributor; Member of organized crime; or Major corporate offender].

II. Special Conditions

A. Parole Commission ordered special supervision (Special supervision may be ordered by the Parole Commission for the first 6 months of supervision. In such cases the expected personal minimum contact rate between the probation officer and offender would be at least two personal contacts per month).

B. Drug aftercare program ordered

III. Exceptional Case Circumstances. Exceptional case circumstances are significant social problems characterized by aggravated personal distress which, if left unresolved, would likely subject the community or offender to harm. It is important for the probation officer to recognize that cases initially classified as low risk experience very low violation rates. Therefore, overrides based on exceptional case circumstances will be rare. Although events such as loss of job or separation from a spouse may be distressing to some, an override should be considered only if a person is overwhelmed by these events and unable to cope with such problems. Exceptional circumstances also include a first time youthful offender who exhibits multiple areas of extreme instability which require more than three personal contacts a quarter to carry out the supervision plan.

SUPERVISION PLAN

Based upon prerelease planning, the approved parole plan, and the initial interview, the probation officer will develop an initial supervision plan outlining the relevant problems of the individual, set objectives to be reached

in the case, and describe the methods to be employed in attaining the objectives. Justification for any override of the predictive device will be included as part of the supervision plan.

The offender's response to supervision is to be evaluated semi-annually. This case review should describe the degree of progress achieved in meeting previous established objectives, new problems arising in the case, and the supervision plan to meet the current situation.

During the case review a change in the supervision level may be considered. Research indicates that the risk of failure determined by the predictive device is constant for the first 2 years of supervision. Movement to the level of "high activity" may be justified only by a documented pattern of supervision problems. Reduction to "low activity" should be based only on documented experience over time with the offender demonstrating stability at home, on the job, and in the community. All changes in the level of supervision must be approved by a supervisor.

Supervisory Review -- The supervisor plays a key role in assuring that the classification system is understood, correctly administered, and that supervision plans and case reviews are properly completed in a timely fashion. Supervisory review is a quality control function assuring that the statutory responsibilities of supervising offenders are diligently pursued. It is the responsibility of the supervisor to assure the following: all case materials have been reviewed in developing the supervision plan; initial overrides of the supervision level meet the established criteria; problems and objec tives are clearly stated in the supervision plan and relevant to the case history and risk the offender represents to the community; methods of intervention reflect the focus and direction of the supervision plan; personal contacts between the probation officer and offender are appropriate to the supervision level and supervision plan; and changes in the supervision levels are based on sufficient information.

Evaluation of Parole Supervision Plan - - At least annually, a review of this over-all parole supervision plan will be made, jointly, by the Chief of Probation and the Parole Commission. Such review should consider the extent to which the plan has been carried out; results obtained; suggestions for revision; adequacy of budgetary resources; and future plan of operation.

Field Supervision Evaluation - - Periodically the chief probation officer or the supervisor may find it helpful to accompany the probation officer for observation of personal and collateral contacts in the field.

Reporting of Parole Violations - - Parole violations must be reported to the Parole Commission as outlined in 2.42-01.

APPENDIX 7 - INFORMERS: GUIDELINES FOR USE OF INTELLIGENCE SERVICES OF PAROLEES AND MANDATORY RELEASEES UNDER THE JURISDICTION OF THE UNITED STATES PAROLE COMMISSION

A. Introduction. Persons released on parole or on mandatory release remain in the custody of the Attorney General for service of the remaining periods of their sentences under the jurisdiction of the U.S. Parole Commission. Because of the high risk of recidivism associated with exposure to a criminal environment, the Commission has adopted a policy that no parolee or mandatory releasee shall serve as an informer to any police or other investigative agency or any criminal prosecution agency or officer while under supervision of the

U.S. Parole Commission unless prior approval of the Commissioner for the region where the parolee resides has been obtained. Approval will be given only in the exceptional case where such assistance would likely result in the conviction of a major criminal operator or where the security of the nation would be involved. These guidelines are adopted to establish procedures that will guide the various Federal investigation and prosecution agencies in requesting that the United States Parole Commission authorize the use of the services of a Federal parolee or mandatory releasee as an informer or "special agent."

B. Selection. Parolees or mandatory releasees may come to the attention of an agency either directly or through the Parole Commission by (a) volunteering their assistance, or (b) because of technical violations of their parole or mandatory release.

1. Seeking of permission for utilization of the services of a parolee or mandatory releasee will only be considered by an agency in the cases of individuals who have known accessibility to priority and high-level targets of the respective agency or to known members of organized crime.

2. When a parolee or mandatory releasee offers to cooperate with an agency, a preliminary interview will be conducted by a representative of that office without commitment or promise to the parolee or mandatory releasee. If upon completion of the interview and subsequent evaluation the agency concerned wishes to utilize the services of the subject, the agency director, regional director or their designee will, prior to making any use of the parolee or mandatory releasee, contact the Regional Parole Commissioner of the region in which the parolee is under supervision. The agency director, regional director, or designee will furnish in writing an overview of the investigative plan, including the proposed utilization of the parolee's or mandatory releasee's services, the agency's operating instructions to him, the agency's proposed administrative controls, and an evaluation of the risk to the subject and plans to combat such risk. Requests for consideration for use of a parolee's or mandatory releasee's services will specify the period of time for which such services are desired.

C. Supervision and Control. If the Parole Commission grants the requested permission, the degree and conditions of the parolee's or mandatory releasee's cooperation will be set forth. Thereafter, the agency Regional Commissioner or SAIC or his deputy will conduct an in-depth briefing of the parolee or mandatory releasee concerning his relationship with the Agency, the intended target and the stipulations and terms of the Regional Commissioner of the Parole Commission concurrence. In most instances the conditions imposed will include the following:

1. The use of the parolee's services in this capacity is to be for a period of 90 days only, and only for the case in question.

2. The Regional Commissioner of the Parole Commission is to be given a report every 30 days by the agency covering the status of the case under investigation and the parolee's activities therein.

3. The parolee is not to participate in any illegal activities during the period in question.

4. Prior approval from the Regional Commissioner of the Parole Commission must be secured before the parolee may be used in any manner which might jeopardize his safety or cause him to violate any of the conditions of his parole.

5. At the end of the 90-day period, the Regional Commissioner of the Parole Commission is to be given a complete report by the agency which is to indicate, in as much detail as possible, the extent of the parolee's cooperation in the specific case under investigation and the status of the investigation at that time.

The Chief Probation Officer for the appropriate District will be informed by the Regional Commissioner of the Parole Commission of its decision and the CUSPO or his representative will be designated as the Commission's representative at the briefing. The Regional Commissioner of the Parole Commission may desire that the agent assigned to the case assume the duties and responsibilities of the advisor who was approved under the principles of the release plan.

During the period of cooperation, the agency will be responsible for testing and assessing the relationship to make certain that the parolee or mandatory releasee is not violating his operational instructions. Violations will be brought to the attention of the Regional Commissioner of the Parole Commission and may result in immediate termination of use of the parolee's or mandatory releasee's services. Additionally, a change in the investigative plan that would require a significant change in operating instructions to the parolee or mandatory releasee will require the approval of the Regional Commissioner of the Parole Commission.

C. Periodic Reports to the Parole Commission. The agency concerned will furnish to the Regional Commissioner of the Parole Commission a comprehensive report at the end of each 30 days on the progress of the operation; the cooperation and effectiveness of the parolee or mandatory releasee; and the amount, if any, of financial remuneration to him. In the event that circumstances develop which indicate an extension of the specified time period would be in the interests of the Government, a written request with appropriate justification will be furnished to the Regional Commissioner of the Parole Commission.

APPENDIX 8 - TEMPORARY/SPECIAL PROCEDURES

A. IMPLEMENTATION AND RETROACTIVITY OF CERTAIN COMMISSION REVISIONS [Cancellation Date - Effective Until Canceled]

(1) Retroactivity of Guideline Revisions

(a) Retroactivity for guideline revisions authorized by the Commission is as follows: The revised severity rating and salient factor score will be recalculated at subsequent hearings (statutory interim hearings) and pre-release record reviews. If either the revised severity rating or salient factor score category is more favorable to the prisoner, the revised severity rating or salient factor score category (whichever is more favorable) will be applied.

(b) At a statutory interim hearing, if either the revised severity rating or revised salient factor score category is more favorable, complete reasons will be provided (whether or not the actual decision is modified). If neither is more favorable, complete reasons need not be given.

Example (A) - Retroactivity does not apply. Neither your recalculated severity rating (old category _____; new category _____) nor your recalculated salient factor score risk category (old category _____; new category _____; old score_____; new score _____ - see attached sheet) is more favorable.

Example (B) - Your guidelines are recalculated as follows. Your offense severity (is recalculated as) (remains as) _____. Your offense behavior involved _____. Your salient factor score risk category (is recalculated as) (remains as) _____. (old score _____; new score _____ - see attached sheet). [Continue with full reasons from parole or reparole guideline worksheet.]

Note: If the previous date is advanced or retarded for other reasons (e.g., superior program achievement or disciplinary infractions) amend the above wording as appropriate.

(c) Pre-release reviews. Advancement of the parole date will be considered, but revised reasons need not be provided to the prisoner.

(d) Termination of Jurisdiction. The probation service will use the salient factor score calculated by the U.S. Parole Commission. The post-release analyst should calculate whether the revised score would place the parolee in the 'very good' category, and if so, apply the revised score.

(2) Retroactive Application of Parsimony At a statutory interim hearing or a pre-release record review, a case may be advanced to correct an unwarranted departure from the principle of parsimony at a previous decision. This may be cited on the Notice of Action as 'retroactive application of parsimony'.

(3) Dispositional Revocation Procedure. The revision to 28 C.F.R. 2.47 (effective 10/1/84) is prospective only and applies to cases given dispositional record reviews on or after 10/1/84. Cases for which dispositional revocation hearings were ordered under previous procedure will be heard as previously ordered.

(4) Fifteen-Year Reconsideration Procedure. Cases previously scheduled for ten-year reconsideration hearings will be given reconsideration hearings at the time of the next scheduled statutory interim hearing. Following such hearing, a presumptive release date may be set up to fifteen years from such hearing or a fifteen-year reconsideration hearing may be ordered.

B. SPECIAL PROCEDURE FOR PRELIMINARY INTERVIEWS: WESTERN DISTRICT OF WASHINGTON CASES [Cancellation Date: Effective Until Canceled]

In order to comply with a decision by the United States District Court for the Western District of Washington, U.S. Probation Officers who conduct preliminary interviews in that district make the actual finding rather than a recommended finding whether or not there is probable cause to believe that the parolee violated a condition of his parole. If the Probation Officer finds no probable cause, he is to contact the Regional Office by telephone immediately, so that the Regional Commissioner may, if appropriate, reverse that finding before the parolee is released.

In all other respects, preliminary interviews in this district are conducted in accordance with standard procedures, including the use of the summary report of the preliminary interview and the Commission's probable cause letter.

C. SPECIAL PROCEDURE FOR RESCISSION CONSIDERATIONS: SECOND CIRCUIT CASES[Cancellation Date: Effective Until Canceled]

The following procedures are presently being used to comply with a decision involving parole rescission in the Second Judicial Circuit (New York, Vermont, and Connecticut). Drayton v. McCall, 584 F.2d 1208 (1978).

(1) Outside of Connecticut. This section applies to all (effective parole date) rescission hearings conducted in the States of New York and Vermont.

(a) The scope of the rescission hearing is a de novo determination whether the parole grantee violated institutional rules or committed a new crime and, if so, whether parole should be rescinded as a sanction. Findings of a rule violation by an Institutional Disciplinary Committee may be considered as evidence of the charged disciplinary infraction, but such findings are not taken by the Commission as conclusive of the matter. The parole grantee is given an opportunity to show that the IDC erred in its findings or that his conduct does not justify the rescission of the parole already granted. A new criminal conviction, however, is accepted as a conclusive determination of guilt.

(b) A statement giving notice of procedural rights (Attachment 1) is attached to the prisoner's copy of the Notice of Action reopening the case for a rescission hearing.

(c) Disclosure of documents is provided under the same procedures as for rescission hearings outside the Second Circuit.

(d) The prisoner is given the opportunity for confrontation and cross-examination of adverse witnesses. Requests for adverse witnesses should be received in the Regional Office within twenty days of the date of the Notice of Action reopening the case for a rescission hearing. Such requests are referred to a case analyst, who will recommend to the Commissioner whether to grant or deny them. In making that determination, reference should be made to the standards for deciding whether adverse witnesses are warranted at local revocation hearings. Such witnesses should be persons who have provided information supporting the charges. Ordinarily, such witnesses should be present at the hearing unless the Commission finds good cause for their non appearance. Good cause may include irrelevancy, repetitiousness, or undue hazard to institutional security (the Bureau of Prisons should be contacted for information relating to this possible determination). In addition, the fact that a possible adverse witness is a great distance from the place of the hearing may be good cause for non-appearance. In these cases, alternative means of presenting the information at the hearing should be used (e.g., affidavits, letters, etc.).

If an adverse witness is not produced at the hearing, the reason should be stated in the hearing summary. If time permits, a case analyst should send the prisoner a letter before the hearing stating whether the request for witnesses is granted or denied and, if denied, the reasons therefor.

NOTE: The fact that a request for adverse witnesses is untimely is not reason in itself to deny the request. If the untimely request is otherwise proper and time does not permit arrangements to be made for the witnesses to attend the hearing, the examiner panel should continue the hearing to the next docket unless the prisoner waives his right to confrontation and cross-examination of the witnesses.

(e) The prisoner may be represented by an attorney or another representative. The attorney may be hired by the prisoner; or, if the prisoner is financially unable to retain counsel, he may apply for a court-appointed attorney on Form CJA-22 (available from the case manager). The role of an attorney or other representative at these hearings is the same as in a parole revocation hearing.

(f) The following forms used for revocation hearings are used for these rescission hearings, with the word "revocation" replaced by the word "rescission": revocation checklist, attorney witness election form, Form CJA-22. Additionally, the section of the revocation hearing checklist relating to receipt of a copy of the warrant application should instead read that the prisoner has received a copy of the Notice of Action listing the charges.

(2) Connecticut. Because of an injunction issued in Green v. McCall, Civil No. N-78-23 (February 9, 1978), the procedures described above are applied in rescission hearings in Connecticut with the following variations:

(a) The procedures apply to rescission of presumptive as well as effective parole dates.

(b) Instead of the notice of procedural rights given in New York and Vermont, prisoners in Connecticut are sent a special form letter relating to the Green case. (Attachment 2).

ATTACHMENT 1

The purpose of the rescission hearing is to decide whether a deferral of your parole date is warranted based upon the charges listed on the attached Notice of Action. At your hearing, you may present documentary evidence and you may call voluntary witnesses on your behalf. If you wish to contest the charges stated on the Notice of Action, you may request the presence of those persons who have given information upon which the charges are based. Such requests must be sent directly to the Commission within twenty days of the date of the notice. These witnesses will be provided unless good cause is found for their non-appearance. You may request your case manager to permit you to review all disclosable documents that will be considered by the Commission.

You may be represented by an attorney or other representative of your choice. If you are unable to pay for counsel, an attorney may be provided by the U.S. District Court if you complete and promptly return a Form CJA-22 to your case manager.

ATTACHMENT 2

U. S. Department of Justice United States Parole Commission

The Parole Commission has been required by court order dated February 9, 1978, by Judge Daly to send you a copy of a letter annexed to the record in the case of Green vs. McCall. This letter sets forth your rights as per the court's order at your forthcoming parole rescission hearing. The following is a copy of this letter:

Two individuals who had been incarcerated at the Federal Correctional Institution at Danbury, Connecticut, have brought a class action in federal district court on behalf of all federal inmates incarcerated in the District of Connecticut who have had or who will have parole rescission hearings. A major issue in the lawsuit is what rights must be given inmates at rescission hearings.

By order of the Honorable T.F.G. Daly, Federal District Judge, the United States Parole Commission cannot hold parole rescission hearings for any member of the plaintiff class until he has had the opportunity to confer with counsel. Further, at that hearing, a member of the class will have an

opportunity to present documentary evidence and witnesses. A class member may also be entitled to the assistance of counsel.

If you are an inmate serving a federal sentence within the District of Connecticut and have been given a parole grant, but at some time prior to your release, your parole grant has been retarded so that the United States Parole Commission may reconsider that grant, you are automatically a member of the plaintiff class. Therefore, you are eligible to have the rights described above e and you will benefit from any final favorable judgment or be bound by any final unfavorable judgment in this action unless you take the steps set forth below to exclude yourself from this class. Any inmate who does exclude himself will be entitled, as a matter of law, to raise in a separate lawsuit the issue of what rights should be given at parole rescission hearings. However, as a practical matter, the judgment in the class action will probably dictate the outcome in similar suits.

If you wish to exclude yourself from the class action described above, you must give notice of your decision addressed to:

(1) United States Parole Commission, Northeast Regional Office, Customs House, 2nd & Chestnut - 7th Floor, Philadelphia, Pennsylvania 19105;
(2) Judith Resnik, Esquire, Attorney for the Plaintiff Case, 127 Wall Street, New Haven, Connecticut 06520.

If you exclude yourself from the plaintiff class, the Parole Commission may be permitted to hold a rescission hearing for you without giving you the protections described above and may hold that hearing sooner than it is allowed to hold hearings for members of the plaintiff class.

If you wish to remain a member of the plaintiff class, you need not do any thing. However, if you have any questions concerning this case, you may write to plaintiff's attorney, Judith Resnik, at the above address.

Sincerely,

Henry J. Sadowski
Regional Counsel

cc: (1) Judith Resnik, Esquire, 127 Wall Street, New Haven, CT. 06520; (Enclosure);
(2) Case Manager, Federal Correctional Institution, Danbury, CT. 06810.

D. SPECIAL PROCEDURES FOR THE PAROLE AND EARLY DISCHARGE FROM SUPERVISION OF YCA OFFENDERS IN WATTS v. HADDEN [Cancellation Date: Effective Until Canceled]

Introduction and Background - The plan for release decision-making and determinations on the early discharge from supervision of YCA offenders who are members of the class of petitioners in Watts v. Hadden is the result of a class action lawsuit brought in the U.S. District Court for the District of Colorado in 1978. The district court and later the Tenth Circuit Court of Appeals both ruled that the Parole Commission had violated the Youth Corrections Act, as amended in 1976, by: (1) not considering institutional program participation as a significant factor in release decisions for YCA offenders and (2) routinely denying YCA parolees early termination from supervision under the guidelines of 28 C.F.R. §2.43 until they had served at least two years of clean supervision. The Justice Department denied the Commission's request to appeal these orders

to the Supreme Court. Therefore, the Commission is now compelled to correct the errors outlined by the district and appellate courts and comply with their orders. This plan has been approved for implementation by the district court. The court will receive progress reports on how the plan will be effected and will monitor the execution of the plan by the Commission and the Bureau of Prisons.

THESE SPECIAL PROCEDURES PERTAIN ONLY TO YOUTH OFFENDERS WHO ARE MEMBERS OF THE CLASS OF PETITIONERS IN WATTS v. HADDEN -- those YCA offenders incarcerated at FCI, Englewood or supervised in the District of Colorado at any time since May 20, 1980. The Commission intends to defend similar lawsuits in other jurisdictions; thus this plan is not being implemented nationwide.

THIS PLAN DOES NOT REPRESENT A VOLUNTARY CHANGE IN PAROLING POLICY by the Parole Commission. It was designed only to satisfy the requirements of judicial orders.

COMPLETION OF THE YOUTH OFFENDER'S PROGRAM PLAN DEVELOPED BY THE BUREAU WILL BE USED TO MODIFY THE OFFENDER'S RISK PROGNOSIS. The Commission may employ its paroling guidelines at 28 C.F.R. §2.20 and consider offense severity and risk of recidivism in release decisions for the class members. The plan is intended to make seriousness of the offense, risk, and program participation all significant factors in YCA parole decisions.

THE PLAN IS PREMISED ON THE LEGAL ASSUMPTION THAT THE YOUTH OFFENDER WILL HAVE MADE HIMSELF THE EQUIVALENT OF A VERY GOOD RISK BY HIS COMPLETION OF THE PROGRAM PLAN. Available empirical evidence does not support this legal assumption.

Section 1 Development of Program Plan, Initial Hearing, and Setting Alternate Release Date

(a) In the classification process, the unit team will meet with the youth offender and develop with him a program plan to address his needs and correct the antisocial tendencies evidenced by his criminal behavior. In the program plan, the unit team will identify each treatment goal and the programs designed to meet these goals. The program plan will be flexible and may be altered after periodic reviews by the unit team. Any significant changes in the progam plan (e.g., extended psychiatric treatment or additional therapy for drug addiction) will be submitted to the Parole Commission through the unit team's progress reports.

(b) Initial hearings will be conducted at the same time and in the same format as they are at the present time. The panel will also talk with the offender and his case manager (or other member of the unit team), about the program plan and the importance of good conduct and program participation in setting the offender's release date. Where the panel believes the offender's participation in a particular program is necessary before the Commission would grant him an alternate release date (described below), the panel will so inform institutional staff and the youth offender. The guidelines, as applied in this plan, will indicate the suggested range of months to be served for a youth offender who avoids serious infractions of the institutional rules, but does not complete the specified program plan. Thus, the offender's satisfactory completion of his program plan will be a separate factor that will be considered in the parole determination.

(c) Following the initial hearing, the Commission will set two release dates:

(1) First, it will be a presumptive release date which will be based on the guidelines assessment and on the assumption that the youth offender will do no more in the institution than obey disciplinary rules.

(2) The Commission will also set an alternate release date (described in Section 2) based on the assumption that the offender will satisfactorily complete his program plan, meeting the treatment goals projected by the unit team. (Sample Notices of Action are attached as Appendix A).

Section 2 Program Completion and its Relationship to the Guidelines

(a) Contingent on certification by the Warden that the youth offender has completed his approved program plan, the Commission will generally assume the offender will have made himself the equivalent of a very good parole risk and will grant him an alternate release date within the guideline range for the "very good" risk category of the same offense severity level.

NOTE: In the case of a youth offender who has exhibited extremely serious or violent criminal behavior, the Commission may be more cautious in assuming that the offender has improved his prognosis by completion of his program plan. It may select an alternate release date in a guideline range for offenders with only a fair or good parole prognosis, or a date at the lower end of the original guideline range. This case will be the exception to the general rule noted above.

(b) For those offenders already in the very good risk category who satisfactorily participate in programs which relate to identified needs, the Commission will normally select an alternate release date at the lower end of the guideline range, or render a decision below the guidelines, using the schedule of permissible reductions at 28 C.F.R. §2.60 as a guide in rewarding constructive use of prison time. (NOTE: A permissible reduction of up to one month is provided under this plan for those offenders whose alternate release date is less than or equal to 14 months from initial confinement).

(c) EXAMPLES [ASSUME THE YOUTH OFFENDER HAS BEEN CONVICTED OF ONE BANK ROBBERY AND HAS AN OFFENSE SEVERITY RATING OF CATEGORY FIVE]:

(1) The youth offender has a salient factor score of 5 and a fair parole prognosis. Under the guidelines the offender would normally be required to serve 32-40 months before release. The Commission sets a normal presumptive release date at 38 months, if the offender shows good conduct but does not satisfactorily complete his program plan. The Commission also sets an alternate release date at 24 months, in the very good risk category of the same offense severity level (20-26 months), which will become his effective parole date if he completes the program plan by that point.

(2) The youth offender has a salient factor score of 5, but the Commission decides he is a worse parole risk than shown by the score since this is his third robbery offense. The Commission sets a normal presumptive release date at 48 months, exceeding the guideline range because he appears to be a worse risk. Balancing the serious risk posed by releasing this offender against his completion of the program plan, the Commission sets an alternate release date at 38 months, in the upper half of the range for the fair risk category. If the offender completes his program plan with excellent program participation, the Commission can set a lower alternate release date at an interim hearing.

(3) The youth offender has a salient factor score of 9 and a very good parole prognosis (20-26 months). The Commission sets a normal presumptive release date at 24 months. The offender is expected to participate in extensive counseling and group therapy to alleviate his addiction to heroin. Assuming successful completion of this plan, the Commission sets an alternate release date at 20 months. If the normal presumptive release date was set at 20 months, the Commission would set the alternate release date at 19 months, using the schedule of reductions at 28 C.F.R. §2.60.

Section 3 Subsequent Hearings and Progress Reports

(a) The Commission will schedule the youth offender for an interim hearing 1-2 months prior to the alternate release date, or 18 months from the date of the initial hearing, whichever comes first. [For youth offenders sentenced to terms of seven years or more under 18 U.S.C. §5010(c), the interim hearing will be set near the alternate release date, or 24 months from the date of the initial hearing, whichever comes first.] The format of the interim hearing will be no different from present practice. After the hearing the Commission may either advance the alternate release date (e.g., to recognize exceptional performance), or make no change in the previous decision. Retarding the alternate release date for failure to complete the program plan is unnecessary since the grant of the alternate date was premised on program completion. Any further interim hearings should be scheduled no later than 18 (or 24) months from the date of the last interim hearing or completion of the program plan, whichever comes first.

(b) A progress report from the unit team must be sent to the Commission's regional office 90 days before each interim hearing. On the basis of the report, the Commission will either set an effective parole date or proceed with the scheduled interim hearing.

(c) A progress report must also be sent to the Commission's regional office as soon as the unit team and Warden certify that the youth offender has completed his program plan. (Of course, such certification may be made in a progress report submitted prior to an interim hearing). In such a report, the Warden shall also make a recommendation as to whether or not the offender should be paroled. In any other report, such a recommendation is committed to the Warden's discretion. In addition to facilitating parole for those offenders who failed to complete their programs by the scheduled alternate release date, as progress report at the program completion date will enable the Commission to:

(1) Retroactively extend this plan to youth offenders previously considered for parole under the normal guidelines system;

(2) Consider additional reductions to those offenders who exhibit superior performance in completing the program plan.

(d) The Commission expects that the above instructions and examples cover those situations where the submission of a progress report will result in the opportunity for an earlier parole. However, the plan allows the unit team to submit a progress report at any time, to cover unusual situations which cannot be anticipated at this initial stage of the plan's implementation.

(e) The unit team will also submit a progress report to the Commission's regional office when a youth offender is nearing his normal presumptive release date (after failing to complete his program plan) so that the Commission can conduct its normal pre-release record review.

Section 4 Sanctioning of Rule Infractions and New Criminal Conduct

(a) The Commission will sanction violations of institutional rules and new criminal conduct in an institution under the same procedures it now uses, adding the time required to be served by the rescission guidelines to both the normal presumptive release date and the alternate release date.

(b) Unsatisfactory program participation will be sanctioned by the automatic retardation of the alternate release date rather than the normal presumptive release date (set by the Commission without reference to program participation). However, the Bureau will consider failure to participate in the program plan to be a disciplinary infraction and will impose its own sanctions for the offender's recalcitrance.

Section 5 Parole Violators

(a) Class members who are returned to custody in a youth institution for parole violation must be considered for reparole under the terms of this plan, whether the parole violation is an administrative infraction or new criminal conduct (including a new state or federal conviction).

(b) Class members who are returned to an adult institution for parole violation do not come within the terms of this plan. For those class members who are returned to a youth institution following a local revocation hearing, the Commission will afford them a hearing within 120 days of their arrival at the institution in order to set an alternate release date under the plan.

Section 6 Placement in Community Treatment Centers Under the plan approved by the district court, it is questionable at this time whether the Bureau of Prisons can transfer a class member to a CTC prior to his parole date. Until this issue is resolved, the Commission will continue to follow the present practice of recommending CTC placements, where appropriate, prior to the release date.

Section 7 Early Termination From Supervision

(a) The Commission will continue its present procedure of conducting a review of a YCA parolee's file at the conclusion of each year of supervision (following receipt of the annual progress report -- Form F-3) and six months prior to the expiration of his sentence (after receipt of the terminal report).

(b) The youth offender should not be continued beyond the time periods specified in the early termination guidelines unless case-specific factors indicate further supervision is warranted.

(c) By court order, the Commission cannot routinely follow its guidelines at 28 C.F.R. §2.43 to deny early discharge to a class member who has yet to complete two (or three) years of clean supervision. However, the Commission is not required to ignore the statistical evidence which formed the basis of the guidelines and is described ,in the article by Hoffman and Meierhoefer entitled "Post-Release Experiences of Federal Prisoners: A Six-Year Followup", reprinted in Selected Reprints, Vol. II (January 1980) and summarized in 45 Federal Register 60427-28 (September 12, 1980) (preamble to the publication of early termination from parole guidelines).

(d) The Commission must consider the facts and circumstances of each YCA parolee's case, focusing on the risk he poses to the public and the benefit he may obtain from further supervision. The nature of the offense and parolee's past criminal record may be taken into account only to evaluate the risk that the parolee may still pose to the public. These requirements are essentially no different from the Commission's present practice.

(e) In denying early discharge, the Commission will inform the Probation Office by letter (with a copy to the parolee) of the reasons for continued supervision. The reasons should pertain to the facts and circumstances of the youth parolee's case whenever possible. If there are no case-specific factors which indicate that discharge should be either granted or denied and further supervision appears warranted, the Commission will inform the offender that he is continued on supervision because of its experience with similarly situated offenders.

EXAMPLES:

(1) You are continued on supervision because the Commission has decided, based on its experience with offenders with your risk prognosis and salient factor score, that further supervision is warranted. Although there are positive factors in your case [describe: e.g., steady employment, no arrests, satisfactory participation in drug aftercare], they are insufficient to support termination from supervision at this time.

(2) You are continued on supervision because you have tested positive for heroin and use once in the past six months and have previous history of heroin abuse.

(3) You are continued on supervision because you have a prior record of three assaultive offenses and have failed to maintain steady employment over the past year due to lack of poor work habits.

The court orders do not require the Commission to bear the burden of showing why the parolee is not entitled to early discharge; the parolee has the burden of persuading the Commission that he should be released from supervision. Nonetheless, each statement of reasons should evidence consideration of the individual circumstances of youth offender's case.

(f) The Commission will request Bureau staff at FCI, Englewood to insert a notice (as suggested in Appendix B) in each youth offender's inmate file who is transferred from FCI, Englewood to ensure that all regional offices are eventually informed of the special status of the youth offender's case. The Western Regional Office will attach the special notice to the parole file of each offender paroled from FCI, Englewood. Commission staff should carefully examine the case file of any youth offender which comes before them for early discharge from supervision, in order to determine if the offender is a member of the Watts class.

APPENDIX 8-D(A): SAMPLE OF NOTICES OF ACTION

(1) Notice of Action for Parole Decision [Notice Sent: June 15, 1982]

Order: Presumptive Parole after service of 38 months (May 1, 1985). If you satisfactorily complete your program plan, presumptive parole after service of 24 months (March 1, 1984).

Reasons: Your offense behavior has been rated as Category Five severity since you committed one bank robbery. Your salient factor score is 5. You have been in custody for 3 months. Guidelines established by the Commission for youth cases which consider the above factors indicate service of 32-40 months before release for youth offenders who maintain a record of good conduct. After consideration of all relevant factors, a decision outside the guidelines does not appear warranted at this time.

However, you will be paroled on the alternate release date noted above (or at any time thereafter), once you have satisfactorily completed your program plan.

You are scheduled for an interim hearing in September, 1983.

(2) Notice of Action for Rescission Decision [Notice Sent: October 15, 1983]

Order: Reopen and rescind presumptive parole dates. Presumptive parole after service of 48 months (March 8, 1986). If you satisfactorily complete your program plan, presumptive parole after service of 34 months (January 8, 1985).

Reasons: Your rescission behavior has been classified as escape without force or threat: Your offense behavior involved escape from a secure facility for a period of seven days. Guidelines established by the Commission for a parole rescission indicate a customary range of 6-12 months to be added to your original presumptive release dates plus the time in escape status (7 days). After a review of all relevant factors, a decision outside the guidelines does not appear warranted.

You will be paroled on the alternate release date noted above (or at any time thereafter), once you have satisfactorily completed your program plan.

You are scheduled for an interim hearing in December, 1984.

APPENDIX 8-D(B): NOTICE OF SPECIAL EARLY TERMINATION FROM PAROLE PROVISIONS FOR FYCA COURT CASES

This youth offender is a member of the petitioner class in Watts v. Hadden. Due to the court's orders, the following procedures must be followed in considering him for early termination from supervision.

(1) The Parole Commission must consider the youth offender for termination from supervision upon the expiration of one year from his release.

(2) The early termination guidelines (28 C.F.R. §2.43(e)) should not be considered in a decision to deny early termination from supervision. However, the youth offender should not be continued under supervision past the guidelines, if they indicate release is warranted.

In addition, in accordance with the Commission's instructions in its Procedures Manual, a terminal report from the Probation Office should be submitted to the Commission six months prior to the sentence expiration date, to provide a final opportunity for issuance of the certificate setting aside conviction under 18 U.S.C. §5021.

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