

55923

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

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

Paroling, Recommitting, and Supervising Federal Prisoners

AGENCY: United States Parole Commission.

ACTION: Final Rule.

SUMMARY: This amendment provides that all Federal prisoners sentenced to prison terms of more than one year will be afforded initial parole hearings within 120 days of their arrival at a Federal institution, with the sole exception that a prisoner whose sentence includes a minimum term of ten years or more will not be given an initial hearing until just prior to completion of his minimum term. The amendment also requires the Commission to set a "presumptive date of release" if release appears to be warranted for a date not more than ten years from the date of the hearing. The amendment is designed to provide more certainty in the service of prison terms, while maintaining the Commission's flexibility to review each case periodically for new developments.

EFFECTIVE DATE: Each prisoner sentenced on or after March 5, 1979, will receive an early initial hearing under the amended rule. Prisoners sentenced prior to the effective date will continue to be eligible for their initial hearings under the terms of the existing rules structure. However, any prisoner receiving a parole hearing of any kind on or after March 5, 1979, will be considered for a presumptive release date under the terms of the amended rule set forth below.

FOR FURTHER INFORMATION CONTACT:

Michael A. Stover, Office of the General Counsel, U.S. Parole Commission, 320 First Street, Northwest, Washington, D.C. 20537; phone (202) 724-3092.

SUPPLEMENTARY INFORMATION: Notice of proposed rulemaking was published at 43 FR 41411-41412 (Monday, September 18, 1978) and a deadline for public comment was set for November 15, 1978. In response to its invitation for public comment, the Commission received 21 letters from inmates, one letter from a Bureau of Prisons staff psychologist, one letter from an inmate's spouse, and one

letter from a volunteer visitor at a federal penitentiary.

BACKGROUND

This amended rule is an expansion of the Commission's present policy of affording early initial parole hearings for the majority of federal prisoners and of setting presumptive dates of release up to four years in advance. (While a judicially-imposed minimum term is not a bar to an early hearing under this policy, neither the existing nor the amended rule would permit the actual release of a prisoner prior to completion of a minimum term.)

The principal benefit envisaged by this policy is that of providing a working measure of certainty for prisoners as to the date the Commission intends to release them, contingent upon the Commission making an affirmative finding that the prisoner has "substantially observed the rules of the institution or institutions to which he has been confined" (18 U.S.C. 4206), and has offered a suitable plan for community release.

After establishing a presumptive release date at the outset of the sentence, the Commission conducts periodic in-person review hearings to determine whether the release date should be advanced or deferred. However, it is the Commission's policy to alter an established release date only if there are clearly exceptional circumstances. Thus, the Commission maintains flexibility where it is needed, while avoiding any prolongation of needless uncertainty. (It should be noted that in exceptionally serious cases where a release date cannot be set, the initial guideline assessment is not changed when the prisoner is given a full reconsideration hearing. This will remain the Commission's policy.)

The prevailing theme in the public comment was that the proposal is a beneficial measure, but that it is unfair of the Commission not to extend the early hearing provision to prisoners presently incarcerated.

THE MERITS OF THE PROPOSAL

In commentary on the merits of the proposal, one inmate observed that the setting of a presumptive date early in the term would remove

... the very heavy weight of doubt and uncertainty. A long period of psychological stress is an additional burden upon a convicted man.

Dr. Warren J. Welsh of the Federal Correctional Institution, Lexington, Kentucky, informed the Commission that the new rules

... will serve to alleviate much of the emotional pressure under which inmates presently serve their sentences.

One very perceptive inmate stated:

In prison the most amazing thing I see is how quick we the inmates forget why we are here. We justify our crimes through excuses, we seek sympathy from anyone and everyone, we build our lives around false hopes and dreams that can't be. Our sentencing structure and parole laws contribute to this in a small way. We need exact minimum and maximum times * * *

Not all prisoners agreed with this point of view. Several letters criticized the Commission's "clearly exceptional" standard for advancing a presumptive date and gave their opinion that the interim hearings would be meaningless formalities. One letter complained that the system will be counter-productive, since there will be little an inmate can do to earn his way out.

If I don't get a reward, why behave or participate?

However, a number of other inmates felt that the very quality of definiteness in a presumptive release date permits a more productive attitude. The fact that the date is contingent upon good conduct makes it, in one inmate's words:

an incentive to strive for.

This is precisely the attitude that the Commission intends its policies to foster. Moreover, the Commission's "clearly exceptional" standard is intended to focus concern on genuinely significant changes or developments in the case that could not have been taken into account when the presumptive date was initially established. As stated in the Conference Report accompanying the Parole Commission's enabling statute:

It is the intent of the Conferees that all of the items which bear upon the parole decision are considered at the initial determination proceeding, but that the subsequent proceedings required by this section (18 U.S.C. 4208) focus upon those items which have changed, or which may have changed, in the intervening time. (2 U.S. Code Cong. & Admin. News 363 (1976).)

Prisoners and their representatives should also bear in mind that institutional performance can be considered deserving of some response only when it is in fact "clearly exceptional", since a record of substantial good conduct is the minimum expected of each prisoner. (Note that the guideline ranges are established specifically for cases with good institutional adjustment and program progress". 28 CFR 2.20(b)).

The element of increased certainty was seen to have a number of other advantages. As one prisoner observed:

There are, of course, many advantages for the prisoner who knows for certain that he will be released at a certain time. One of the advantages is being able to start planning for the future—employment, school, re-establishing family ties, relocating—and

BEST AVAILABLE COPY

FEDERAL REGISTER, VOL. 44, NO. 11—TUESDAY, JANUARY 16, 1979

NCJRS

MAR 30 1979

ACQUISITIONS

55923

simply being in a position of telling one's family when he will be getting out.

Finally, the critical concern for many prisoners (and perhaps the most important concern in terms of their eventual reintegration into normal society) appeared to be the continuation of marital ties that having a firm date encourages.

THE ISSUE OF RETROACTIVITY

The Commission understands the concerns of those prisoners who will not be made eligible for an early hearing under this rule. However, the Commission does not presently have the resources to: (1) Conduct its normally scheduled hearings; (2) conduct the additional initial hearings required by this amended rule for those newly-sentenced prisoners who would otherwise not have to be heard until completion of their minimum terms; and (3) in addition grant early hearings at the same time to all presently incarcerated inmates who would not be heard until completion of their minimum terms.

The Commission does intend, however, during the coming year, to provide initial hearings to remaining prisoners, as the workload permits. The procedure for adding these cases to the dockets will be as follows.

Each institution will be asked to submit a list of names and register numbers of all prisoners who, as of October 1, 1979, will not have received an initial hearing but who would be eligible for an initial hearing if the revised rules were made fully retroactive.

The list will be sent to the appropriate regional office. Upon receipt of the list, the regional office will notify each institution to add a specified number of cases to each docket (depending upon workload), beginning with those prisoners closest to their parole eligibility dates. This procedure will remain in effect until full retroactivity is achieved.

Prisoners previously continued to four-year reconsideration hearings will be considered under the new procedures at their first statutory interim hearing.

TEXT OF THE REVISIONS

Accordingly, pursuant to the provisions of 18 U.S.C. 4203(a)(1) and 4204(a)(6), 28 CFR Chapter I, Part 2, is revised as set forth below:

1. Paragraphs (a), (b) and (c) of § 2.12 are consolidated into paragraphs (a) and (b) and revised to read as set forth below. Paragraph (c) is deleted.

§ 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 30 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 ten years of the hearing; (2) set an effective date of parole; or (3) continue the prisoner to a ten-year reconsideration hearing pursuant to § 2.14(c).

(c) [Deleted]

2. Paragraph (d) of § 2.12 becomes (c); and paragraph (e) of § 2.12 becomes (d).

3. Paragraphs (a) and (c) of § 2.14 are revised to read as follows:

§ 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 ten-year reconsideration hearing, interim hearings shall be conducted by an examiner panel pursuant to the procedures of § 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 7 years, every 18 months (until released);

(ii) In the case of a prisoner with a maximum term or terms of 7 years or more, every 24 months (until released). However, in the case of 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 ten-year reconsideration hearing. However, it shall be the policy of the Commission that once set, a presumptive release date or the date of a ten-year reconsideration hearing shall not be advanced except under clearly exceptional circumstances;

(c) *Ten-year reconsideration hearings.* A ten-year reconsideration hearing shall be a full reassessment of the case pursuant to the procedures of § 2.13.

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

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

Dated: January 5, 1979.

CECIL C. McCALL,
Chairman, United States
Parole Commission.

[FR Doc. 79-1345 Filed 1-15-79; 8:45 am]

[4410-01-M]

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

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission.

ACTION: Interim rule.

SUMMARY: This rule requires that whenever, prior to the actual release of a prisoner, the Commission rescinds or retards a previously granted parole date on the basis of a disciplinary violation, the decision as to how long the prisoner should remain in confinement thereafter must be made pursuant to guidelines as set forth in the rule. These guidelines establish a policy that most cases of misconduct will result in a retardation of the release date by no more than 60 days. Rescission of parole will be indicated only for the most serious cases (e.g. multiple or aggravated misconduct or criminal violations). In addition, the Commission's procedural rules for reopening and rescinding parole dates are consolidated and clarified by a number of supplemental amendments.

EFFECTIVE DATE: March 5, 1979.

FOR FURTHER INFORMATION, CONTACT:

Michael A. Stover, Office of the General Counsel, U.S. Parole Commission, 320 First Street, NW, Washington, D.C. 20537, phone (202) 724-1991.

SUPPLEMENTARY INFORMATION: These rule revisions are being made effective as interim rules pending the submission of public comment. At present, the Commission does not have any explicit rules to structure or limit its exercise of discretion in determining how long a prisoner should be held in confinement following a finding of disciplinary violation. These rules are being published as interim rules pending the submission of public

comment in order to ensure that pertinent rules are in effect when the first interim review hearings for prisoners with presumptive parole dates are held pursuant to 18 U.S.C. 4208(h) in March of 1979. The need to resolve a number of administrative and policy issues prevented earlier publication of the rules contained in this document.

Notice of proposed rulemaking and an invitation for public and prisoner comment appear in the Proposed Rules section of this issue of the FEDERAL REGISTER. This comment, as well as the Commission's experience with its March 1979 dockets, will be considered before promulgation of a final rule governing parole rescissions.

Accordingly, pursuant to 5 U.S.C. 553(b)(3)(B), 18 U.S.C. 4203(a)(1) and 4204(a)(6), 28 CFR, Chapter I, Part 2, is amended as set forth below, the amended portions to become effective in the interim pending public comment.

1. Section 2.34 is revised to read as follows:

§ 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 60 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 con-

clusive 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.

(g) The following guidelines shall apply to cases in which the prisoner has been found to have committed institutional misconduct or new criminal activity:

(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 criminal conduct, however, shall normally indicate rescission and application of the guidelines as set forth below.

(2) In cases involving escape without force or threat, the following guidelines indicate the normal range of time to be added to the time in custody required by the presumptive or effective date previously set:

- (i) Non-Secure Facility or Program (absent less than 7 days), 3-6 months;
- (ii) Secure Facility (no force or threat used); or Non-Secure Facility or Program (absent 7 days or more), 6-12 months.

Notes

(A) Time in escape status is not to be credited to service of the time required by the presumptive/effective date.

(B) These guidelines shall also apply to the determination of total time to be served if a new consecutive or concurrent sentence is imposed for the escape.

(C) If other criminal conduct is committed during the escape or duration of time spent in escape status, the time to be served for the escape shall be added to that assessed under subparagraph (3) of this paragraph.

(3) In cases of new criminal conduct other than specified above, the case shall be reassessed against the guidelines at § 2.20 or § 2.21, as applicable, with the new criminal behavior treated as an aggravating factor on the offense severity dimension.

(4) The above are merely guidelines. Where the circumstances warrant, a decision outside the guidelines (above or below) may be rendered, providing 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.

§ 2.20 [Amended]

2. Section 2.20 (Paroling policy guidelines) is amended to delete "Escape" as it is described in the *Low* and *Moderate* severity categories.

3. Section 2.28 is revised to consolidate in one rule each of the various mechanisms presently available to the Commission for reopening a previously decided case and revising its previous decision:

§ 2.28 Reopening of Cases

(a) *Favorable information.* Notwithstanding the appeal procedures of § 2.25 and § 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 § 2.25. Original jurisdiction cases may be reopened upon the motion of the appropriate Regional Commissioner under the procedures of § 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 § 2.14 (in the case of a prisoner with a presumptive date) and § 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 any presumptive or effective release date previously established.

(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 § 2.52(c)(2) for a spe-

cial 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 information adverse to a prisoner that is not covered by paragraphs (a-e) of this section, the Regional Commissioner may refer the case to the National Commissioners with his recommendation and vote to retard parole and schedule the case for a special reconsideration hearing. The decision to reopen the case shall be based on the concurrence of three out of five votes, and the hearing shall be conducted in accordance with the procedures set out in §§ 2.12 and 2.13. The entry of a new order following such hearing shall void the previously established release date.

4. Section 2.14 is amended as set forth below to clarify the procedures that will be followed in considering disciplinary infractions at interim review hearings for prisoners with presumptive parole dates. The sections of the rule that are not reprinted below remain unchanged. Paragraphs (a)(3)(iii), (a)(3)(iv), (b)(1), (b)(2)(ii) are revised to read as follows:

§ 2.14 Subsequent proceedings.

(a) *Interim proceedings.*

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

(iii) Retard or rescind a presumptive parole date for reason of disciplinary infractions. In a case in which disciplinary infractions have occurred, the interim hearing shall be conducted in accordance with the procedures of § 2.34(c)-(g). (Prior to each interim hearing, prisoners shall be notified on the progress report furnished by the Bureau of Prisons 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 pre-re-

lease review in lieu of the record review required by paragraph (b) of this section.

(b) *Pre-release reviews.*

(1) At least 60 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:

(ii) Approve and advance or retard a parole date for purpose of release planning as provided in § 2.28(e).

5. *Conforming amendments.* The following sections are revised as set forth below:

§ 2.12 [Amended]

A. Section 2.12(e) is amended to read as follows:

(e) 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 §§ 2.14 and 2.28. In the case of a prisoner sentenced under the Narcotic Addict Rehabilitation Act, 18 U.S.C. 4254, a presumptive parole date shall also be contingent upon certification by the Surgeon General pursuant to § 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 pre-release record review required by § 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.

§ 2.15 [Amended]

B. Section 2.15 is amended to change the reference to § 2.28 to § 2.28(a).

§ 2.29 [Amended]

C. Section 2.29(c) is deleted, because its substance is contained in the new § 2.28(e). The present § 2.29(d) is therefore redesignated as § 2.29(c).

§ 2.30 [Revised]

D. Section 2.30 is revised to read as follows:

All paroles are ordered on the assumption that information from the prisoner has not been fraudulently given or withheld from the Commission. If evidence comes to the attention of the Commission that a prisoner willfully concealed or misrepresented information deemed significant, the Regional Commissioner may reopen

the case pursuant to § 2.28(f) for a hearing to determine whether such parole should be voided. Such action may be taken whether or not the prisoner has actually been released on parole. If such prisoner has been released on parole, the Commission or a member thereof may issue a summons or warrant for such prisoner.

Dated: January 10, 1979.

CECIL C. MCCALL,
Chairman,

United States Parole Commission.

[FR Doc. 79-1346 Filed 1-15-79; 8:45 am]

[4410-01-M]

PART 2—PAROLE, RELEASE, SUPERVISION AND RECOMMITMENT OF PRISONERS; YOUTH OFFENDERS AND JUVENILE DELINQUENTS

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: This document makes a number of changes in the Commission's rules that govern delegation of authority to conduct hearings to hearing examiners and panels of hearing examiners. The present changes reflect certain provisions of the Commission's enabling statute and legislative history that permit delegation of such authority to a single hearing officer in the case of local revocation hearings.

EFFECTIVE DATE: March 5, 1979.

FOR FURTHER INFORMATION, CONTACT:

Michael A Stover, Office of the General Counsel, U.S. Parole Commission, 320 First Street, Northwest, Washington, D.C. 20534, phone, (202) 724-3092.

SUPPLEMENTARY INFORMATION: Specific reference is made to 18 U.S.C. 4203(c) (2) and (3), as well as 2 U.S. CODE CONG. & ADMIN. NEWS at page 355 (1976).

These amendments will clarify the Commission's present practice of delegating authority, pursuant to the above-cited references, to a single hearing examiner to conduct local revocation hearings, with another hearing examiner reviewing the case on the record and joining his vote to that of the examiner conducting the hearing to produce a panel recommendation.

Accordingly, pursuant to 18 U.S.C. 4203(a)(1) and 4204(a)(6), Title 28, Code of Federal Regulations, is amended as set forth below:

1. Section 2.23 is revised to read as follows:

§ 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) In the event of a divided recommendation by a panel, the regional Administrative Hearing Examiner shall vote. 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 upon review and docketing at the Regional Office, unless action is initiated by the Regional Commissioner pursuant to § 2.24.

2. Section 2.49(e) is revised as follows:

§ 2.49 Place of revocation hearing.

(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 taken. 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.

§ 2.50 [Amended]

3. Section 2.50 is amended as follows:

Paragraph (a) is deleted and the remaining subsections are redesignated as follows:

(b) Becomes (a); and the term "parolee" is substituted for "prisoner".

(c) Becomes (b).

(d) Becomes (c).

(e) Becomes (d).

(f) Becomes (e).

In addition, a new paragraph (f) is added to contain the last sentence of former paragraph (a):

(f) A revocation decision may be appealed under the provisions of § 2.25 and § 2.26, or § 2.27 as applicable.

Dated: January 5, 1979.

CECIL C. McCALL,
Chairman, United States
Parole Commission.

[FR Doc. 79-1343 Filed 1-15-79; 8:45 am]

[4410-01-M]

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

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: This document contains miscellaneous amendments to the Commission's rules that correct a number of editorial and typographical errors. No substantive changes to the meaning of any of the rules are effected by these amendments.

EFFECTIVE DATE: March 5, 1979.

FOR FURTHER INFORMATION CONTACT:

Michael A. Stover, Office of the General Counsel, U.S. Parole Commission, 320 First Street, Northwest, Washington, D.C. 20537; Phone (202) 724-1991.

SUPPLEMENTARY INFORMATION: On a recent nation-wide staff training session, a number of drafting problems and typographical errors were uncovered in the Commission's rules. The following amendments are being made in the interest of clarity.

Accordingly, pursuant to 18 U.S.C. 4203(a)(1) and 4204(a)(6), Title 28, Code of Federal Regulations, is amended as set forth below:

1. TABLE OF CONTENTS

Five section headings are amended both in the Table of Contents and in the body of the rules to read as follows:

Sec.

2.41 Travel approval.

2.43 Early termination.

2.48 Revocation: Preliminary interview.

2.52 Revocation decisions.

2.54 Reviews pursuant to 18 U.S.C. 4215(c).

§ 2.2 [Amended]

2. In § 2.2 *Eligibility for Parole: Adult Sentences*, paragraph (b) is amended to change the first reference to 18 U.S.C. 4205(a)(1) to read 18 U.S.C. 4205(b)(1).

§ 2.7 [Amended]

3. In § 2.7 *Committed Fines*, in paragraph (b), the last sentence is revised to read:

(b) * * * If the chief executive officer of the institution or U.S. Magistrate shall find that retention by the prisoner of any part of his assets is reasonably necessary for his support or that of his family, the prisoner upon taking the prescribed oath concerning his assets, shall be discharged from the commitment obligation of the committed fine sentence upon payment on account of his fine of that portion of his assets in excess of the amount found to be reasonably necessary for his support or that of his family.

The above changes "or that portion" to "of that portion" and deletes an unnecessary "of".

4. Section 2.8 *Mental competency proceedings*, is revised to read as follows:

§ 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 the 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 an participate in the proceedings, and in the case of a parolee may order such parolee transferred to a Bureau of Prisons 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 6 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 official as to the mental competency of the prisoner, he shall take such action as he deems appropriate.

§ 2.27 [Amended]

5. In § 2.27 *Appeal of original jurisdiction cases* paragraph (a) is revised to clarify the consequence of a tie vote by the Commissioners:

(a) Cases decided under the procedure specified in § 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 five 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.

§ 2.32 [Amended]

6. In § 2.32 *Parole to local or immigration detainees* paragraph (a)(2) is revised to read as follows:

(a) ***
(2) "Parole to the actual physical custody of the detaining authorities or an approved plan." In this event, release is to be effected regardless of whether the detaining officials take the prisoner into custody, providing

there is an acceptable plan for community supervision.

Paragraph (b) is revised to delete the words "or not" as redundant:

(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.

7. Section 2.38 *Community Supervision by United States Probation Officers* is revised to clarify the reference to mandatory releasees as persons released "as if on parole" pursuant to 18 U.S.C. 4164:

§ 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.

§ 2.42 [Amended]

8. In § 2.42 *Probation Officer's Reports to Commission*, is amended to delete the words "or mandatory releasee" as unnecessary, since the Commission has defined at § 2.1(g) that when it uses the term "parolee", it refers to both parolees and "mandatory releasees".

§ 2.43 [Amended]

9. In § 2.43 *Early termination* subparagraphs (2) and (3) of paragraph (a) are revised to read as follows:

(a) ***
(2) Two years after release on supervision, and at least annually thereafter, the Commission shall review the status of the 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 such release, nor any period served in confinement on any other sentence.

(3) 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.

§ 2.46 [Amended]

10. In § 2.46 *Execution of warrant and service of summons* paragraph (a) is amended to substitute "parolee" for "prisoner".

§ 2.47 [Amended]

11. In § 2.47 *Warrant placed as a detainer and dispositional review* subparagraph (3) of paragraph (b) is revised to read as follows:

(b) ***
(3) Order a revocation hearing to be conducted at the institution in which the parolee is confined by a hearing examiner or an official designated by the Regional Commissioner.

§ 2.48 [Amended]

12. In § 2.48 *Revocation; preliminary interview* is amended to substitute the term "parolee" wherever the term "prisoner" now appears (paragraphs (b), (c) and (g)).

In addition, paragraph (f) is revised to read as follows (by substituting "by a parolee" for the phrase "on parole or mandatory release"):

(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 purpose of this section and no preliminary interview shall be conducted unless otherwise ordered by the Regional Commissioner.

§ 2.49 [Amended]

13. Section 2.49 *Place of revocation hearing* is amended to substitute the term "parolee" wherever the term "prisoner" now appears (paragraphs (a), (c), and (d)).

In addition, paragraph (c) is revised to read as follows:

(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.

Finally, the reference in paragraph (d) to § 2.48(d)(2) is corrected to read "§ 2.48(e)(2)".

§ 2.52 [Amended]

14. In § 2.52 *Revocation decisions*, the third sentence of paragraph (c)(2) is revised to read as follows (deleting the parenthetical phrase "in which the Commission makes an independ-

ent finding of violation of conditions of parole" as redundant):

(c) ***

(2) *** 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.

§ 2.56 [Amended]

15. In § 2.56 *Special parole terms*, paragraph (a) is revised to read as follows:

(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 re-

leased without supervision, commences upon such release.

In paragraph (c) the term "parolee" is substituted for the term "releasee" in the two instances it occurs, and the phrase "he will" becomes "he may". In addition, the phrase "of his basic supervision period" is deleted.

In paragraph (d) "the prisoner" becomes "a prisoner" and the term "inmate" becomes "prisoner".

The first sentence of paragraph (e) is revised to read as follows:

(e) If regular parole or mandatory release supervision is terminated under § 2.43, the Special Parole Term commences to run at that point in time.

Dated: January 5, 1979.

CECIL C. McCALL,
Chairman, United States
Parole Commission.

[FR Doc. 79-1344 Filed 1-12-79; 8:45 am]

END