

## Department of Justice

## § 2.35

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 corrections 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) A hearing before a Discipline Hearing Officer 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 hearing examiner may require. However, the 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 If the parole grant is rescinded, the Commission shall furnish to the prisoner a written statement of its findings and the evidence relied upon.

[44 FR 3406, Jan. 16, 1979, as amended at 45 FR 59871, Sept. 11, 1980; 47 FR 2313, Jan. 15, 1982; 54 FR 15173, Apr. 17, 1989; 68 FR 41530, July 14, 2003]

### § 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) It is the Commission's interpretation of the statutory scheme for parole and good time that the only function of good time credits is to determine the point in a prisoner's sentence when, in the absence of parole, the prisoner is to be conditionally released on supervision, as described in subsection (a). Once an offender is conditionally released from imprisonment, either by parole or mandatory release, the good time earned during that period of imprisonment is of no further effect either to shorten the period of supervision or to shorten the period of imprisonment which the offender may be required to serve for violation of parole or mandatory release.

(c) 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.

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(d) If the Commission orders a military prisoner who is under the Commission's jurisdiction for an offense committed after August 15, 2001 continued to the expiration of his sentence (or otherwise does not grant parole), the Commission shall place such prisoner on mandatory supervision after release if the Commission determines that such supervision is appropriate to provide an orderly transition to civilian life for the prisoner and to protect the community into which such prisoner is released. The Commission shall presume that mandatory supervision is appropriate for all such prisoners unless case-specific factors indicate that supervision is inappropriate. A prisoner who is placed on mandatory supervision shall be deemed to be released as if on parole, and shall be subject to the conditions of release at § 2.40 until the expiration of the maximum term for which he was sentenced, unless the prisoner's sentence is terminated early by the appropriate military clemency board.

[42 FR 39809, Aug. 5, 1977, as amended at 50 FR 46283, Nov. 7, 1985; 67 FR 67792, Nov. 7, 2002; 68 FR 16720, Apr. 7, 2003]

**§ 2.36 Rescission guidelines.**

(a) The following guidelines shall apply to the sanctioning of disciplinary infractions or new criminal conduct committed by a prisoner during any period of confinement that is credited to his current sentence (whether before or after sentence is imposed), but prior to his release on parole; and by a parole violator during any period of confinement prior to or following the revocation of his parole (except when such period of confinement has resulted from initial parole to a detainer). 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 alcohol abuse) normally can be adequately sanctioned by postponing a presumptive or effective date by 0-60 days per instance of misconduct, or by 0-8 months in the case of use or simple possession of illicit drugs or refusal to provide a urine sample. 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 corrections center). The time required pursuant to the guidelines set forth in paragraphs (a)(2) (i) and (ii) of this section 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—8-16 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 corrections center)].

(ii) *Other new criminal behavior in a prison facility.*

Severity rating in the new criminal behavior (from § 2.20)	Guideline range
Category One .....	<=8 months.
Category Two .....	<<=10 months.
Category Three .....	12-16 months.
Category Four .....	20-26 months.
Category Five .....	36-48 months.
Category Six .....	52-64 months.
Category Seven .....	64-92 months.