(c) The other party fails to maintain legal and regulatory authorities capable of implementing the provisions of this part.

§ 26.76 Confidentiality.

(a) Each party agrees to maintain, to the extent required under its laws, the confidentiality of information exchanged under this part.

(b) In particular, neither party shall disclose to the public, nor permit a conformity assessment body (CAB) to disclose to the public, information exchanged under this part that constitutes trade secrets, confidential commercial or financial information, or information that relates to an ongoing investigation.

(c) A party or a CAB may, upon exchanging information with the other party or with a CAB of the other party, designate the portions of the information that it considers to be exempt from disclosure.

(d) Each party shall take all precautions reasonably necessary to protect information exchanged under this part from unauthorized disclosure.

§ 26.77 Fees.

Each party shall endeavor to ensure that fees imposed for services under this part shall be commensurate with the services provided. Each party shall ensure that, for the sectors and conformity assessment procedures covered under this part, it shall charge no fees with respect to conformity assessment services provided by the other party.

§ 26.78 Agreements with other countries.

Except where there is written agreement between the parties, obligations contained in mutual recognition agreements concluded by either party with a party not a party to this part (a third party) shall have no force and effect with regard to the other party in terms of acceptance of the results of conformity assessment procedures in the third party.

§ 26.79 Territorial application.

This part shall apply, on the one hand, to the territories in which the Treaty establishing the European Community (EC) is applied, and under the conditions laid down in that Treaty and, on the other hand, to the territory of the United States.

§ 26.80 Entry into force, amendment and termination.

(a) The ''Agreement on Mutual Recognition Between the United States of America and the European Community,'' from which this part is derived, including its sectoral annexes on telecommunications equipment, electromagnetic compatibility, electrical safety, recreational craft, pharmaceutical GMP inspections, and medical devices shall enter into force on the first day of the second month following the date on which the parties have exchanged letters confirming the completion of their respective procedures for the entry into force of that agreement.

(b) That agreement including any sectoral annex may, through the Joint Committee, be amended in writing by the parties to that agreement. Those parties may add a sectoral annex upon the exchange of letters. Such annex shall enter into force 30 days following the date on which those parties have exchanged letters confirming the completion of their respective procedures for the entry into force of the sectoral annex.

(c) Either party to that agreement may terminate that agreement in its entirety or any individual sectoral annex thereof by giving the other party to that agreement 6 months notice in writing. In the case of termination of one or more sectoral annexes, the parties to that agreement will seek to achieve by consensus to amend that agreement, with a view to preserving the remaining Sectoral Annexes, in accordance with the procedures in this section. Failing such consensus, that agreement shall terminate at the end of 6 months.

(d) Following termination of that agreement in its entirety or any individual sectoral annex thereof, a party to that agreement shall continue to accept the results of conformity assessment procedures performed by conformity assessment bodies under that agreement prior to termination, unless a regulatory authority in the party decides otherwise based on health, safety and environmental considerations or failure to satisfy other requirements within the scope of the applicable sectoral annex.

§ 26.81 Final provisions.

(a) The sectoral annexes referred to in § 26.80(a), as well as any new sectoral annexes added pursuant to § 26.80(b), shall form an integral part of the ''Agreement on Mutual Recognition Between the United States of America and the European Community,'' from which this part is derived.

(b) For a given product or sector, the provisions contained in subparts A and B of this part shall apply in the first place, and the provisions of subpart C of this part in addition to those provisions. In the case of any inconsistency between the provisions of subpart A or B of this part and subpart C of this part, subpart A or B shall prevail, to the extent of that inconsistency.

(c) The agreement from which this part is derived shall not affect the rights and obligations of the parties under any other international agreement.

(d) In the case of subpart B of this part, the parties shall review the status of such subpart at the end of 3 years from entry into force of subpart B.

Dated: April 6, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–9486 Filed 4–9–98; 8:45 am]

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DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code

AGENCY: United States Parole Commission, Justice.

ACTION: Proposed rule.

SUMMARY: The U.S. Parole Commission is proposing to incorporate into the Code of Federal Regulations, in amended and supplemented form, the regulations of the District of Columbia that govern the paroling authority that will be assumed by the U.S. Parole Commission on August 5, 1998. The paroling authority of the District of Columbia Board of Parole will be transferred to the U.S. Parole Commission under the National Capital Revitalization and Self-Government Improvement Act of 1997, which permits the Commission to amend and supplement the District's parole regulations pursuant to federal rulemaking procedures.

DATES: Comments must be received by June 9, 1998.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: Under Section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Pub. L. 105–33) the U.S. Parole Commission is required, not later than August 5, 1998,

to assume the jurisdiction and authority of the Board of Parole of the District of Columbia to grant and deny parole, and to impose conditions upon an order of parole, in the case of any imprisoned felon who is eligible for parole or reparole under the District of Columbia Code. The Act requires the Parole Commission to exercise this authority pursuant to the parole laws and regulations of the District of Columbia, but also gives the Parole Commission exclusive authority to amend or supplement any regulation interpreting or implementing the parole laws of the District of Columbia with respect to felons, provided that the Commission adheres to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.

After an extensive review of the relevant regulations of the Board of Parole of the District of Columbia, currently set forth in the District of Columbia Code of Municipal Regulations, the Commission has decided to republish them, with appropriate revisions, in the Code of Federal Regulations. The Commission has decided not to leave these regulations in the D.C. Code of Municipal Regulations because the Revitalization Act makes parole for D.C. Code felons a federal function, and rules promulgated by federal agencies pursuant to the Administrative Procedure Act are required to be published in the **Federal Register** and the Code of Federal Regulations. Notice of the proposed transfer of these rules will also be published in the District Register.

A complete set of parole regulations for District of Columbia prisoners will therefore be incorporated into the Code of Federal Regulations in addition to the existing regulations that govern all other criminal offenders who fall under the Commission's jurisdiction. The regulations that govern the remaining functions of the Board of Parole of the District of Columbia will continue to be set forth in the D.C. Code of Municipal Regulations until the Board is abolished on or before August 5, 2000. Before the transfer of that additional jurisdiction to the U.S. Parole Commission, those regulations will also be reviewed for incorporation into the Code of Federal Regulations.

The proposed revisions to the D.C. parole regulations that are being published at this time fall into three categories.

First, the Board of Parole's procedural regulations have been amended and supplemented to clarify the procedures that the Commission proposes to follow in considering District of Columbia prisoners for parole. The parole hearing and decision making process will remain essentially the same as that of the D.C. Board of Parole, but in many instances conformity with existing federal procedures will promote both increased fairness and administrative efficiency in the discharge of this new function.

Second, revisions are proposed to reflect recently-enacted District of Columbia laws, such as the Medical and Geriatric Parole Act, which have not yet been reflected in comprehensive implementing regulations.

Third, the Commission is proposing to supplement the existing parole guidelines of the Board of Parole by adopting an improved point score system to replace the scoring system that was removed from the Board's regulations by D.C. Law 10–255 (May 16, 1995). The point score system used by the D.C. Board of Parole has resulted in a high rate of upward departures from the guidelines based upon factors that should be included in the guidelines to promote a more structured exercise of discretion. These factors most often involve aspects of the prisoner's current offense or criminal history that indicate a high level of risk to the public safety. The proposal set forth below retains the basic framework of the D.C. Parole Board's guidelines, but incorporates certain offender characteristics that would otherwise be expected to result in decisions outside the guidelines pursuant to 28 DCMR 204.22.

In this regard, the Parole Commission has undertaken a research study to identify those factors related to current offense and criminal history that are most closely correlated with violent recidivism. The research will be based on a statistical sampling of the current D.C. offender population, as well as on comparative federal and State samples. The Commission is also making a careful review of the decision making patterns of the D.C. Board of Parole itself, in order to determine the extent to which the Board's guideline departures reflect the factors and correlations under study.

It is the Commission's intent that the guideline system it ultimately adopts for D.C. Code offenders will be informed by statistical research that justifies the predictions upon which parole decisions must necessarily be made. The proposed guideline table that is published for public comment at this time incorporates factors that have been traditionally relied upon by both the D.C. Board of Parole and the U.S. Parole Commission (when making parole decisions for federally-housed D.C. Code prisoners under D.C. Code 24–209) for decisions both above and below the guidelines. In light of the research results, some factors may be given more or less weight than presently proposed, and others may be dropped from the score in favor of factors that appear to have greater predictive strength. Although the ''type of risk'' factors that relate to a prisoner's potential for violent recidivism are given significantly increased weight in the proposed new scoring system, increased weight is also given to institutional performance. Positive achievement in prison programs, as well as negative institutional behavior, will continue to produce appropriate adjustments to the ''total point score'' each time a prisoner who has been denied parole appears for a reconsideration hearing.

Proposed Implementation

The Commission proposes that the regulations set forth below be made effective as interim rules on August 5, 1998, with a further period for public comment. The Commission proposes to re-evaluate the rules in the light of further public comment and operational experience before adopting final rules.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this proposed rule is not a significant rule within the meaning of Executive Order 12866, and the proposed rule has, accordingly, not been reviewed by the Office of Management and Budget. The proposed rule, if adopted, will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

The Proposed Amendment

Accordingly, the U.S. Parole Commission proposes the following amendment to 28 CFR Part 2.

PART 2—[AMENDED]

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

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

2. By adding three new subparts as follows:

Subpart A—United States Code Prisoners and Parolees

3. Sections 2.1 through 2.66 (Excepting 2.62) will be designated as

Subpart A with the heading of Subpart A added as set forth above.

Subpart B—Transfer Treaty Prisoners and Parolees

4. Section 2.62 will be designated as Subpart B consisting of §§ 2.67 through 2.69 with the heading of Subpart B added as set forth above.

5. Subpart C will be added consisting of §§ 2.70 through 2.89 to read as follows:

Note: Each proposed section to be included under proposed Subpart C is followed by a comment explaining any difference from the corresponding rule of the D.C. Board of Parole.

Subpart C—District of Columbia Code Prisoners and Parolees

Sec.
2.70 Authority and functions of the U.S. Parole Commission with respect to District of Columbia Code offenders.
2.71 Application for parole.
2.72 Hearing procedure.
2.73 Parole suitability criteria.
2.74 Decision of the Commission.
2.75 Reconsideration proceedings.
2.76 Reduction in minimum sentence.
2.77 Medical parole.
2.78 Geriatric parole.
2.79 Good time forfeiture.
2.80 Procedures for granting parole: Guidelines for D.C. Code offenders.
2.81 Efffective date of parole.
2.82 Release planning.
2.83 Release to other jurisdictions.
2.84 Conditions of release.
2.85 Release on parole.
2.86 Mandatory release.
2.87 Confidentiality of parole records.
2.88 Miscellaneous provisions.
2.89 Prior orders of the Board of Parole.

Subpart C—District of Columbia Code Prisoners and Parolees

§ 2.70 Authority and functions of the U.S. Parole Commission with respect to District of Columbia Code offenders.

(a) The U.S. Parole Commission shall exercise authority over District of Columbia Code offenders pursuant to section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. 105–33, D.C. Code § 24–209. The rules in this Subpart shall govern the operation of the U.S. Parole Commission with respect to D.C. Code offenders and are the pertinent parole rules of the District of Columbia as amended and supplemented pursuant to section 11231(a)(1) of the Act.

(b) The Commission shall have sole authority to grant parole, and to establish the conditions of release, for all District of Columbia Code prisoners serving sentences of more than 180 days for felony offenses who are not otherwise ineligible for parole by statute [D.C. Code § 24–208] and committed youth offenders [D.C. Code § 24–804(a)], including offenders who have been returned to prison upon the revocation of parole or mandatory release, wherever confined.

(c) The Commission shall have authority to recommend to the Superior Court of the District of Columbia a reduction in the minimum sentence of a District of Columbia Code prisoner, if the Commission deems such recommendation to be appropriate [D.C. Code § 24–201(c)].

(d) The Commission shall have authority to grant a parole to a prisoner who is found to be geriatric, permanently incapacitated, or terminally ill, notwithstanding the minimum term imposed by the sentencing court [D.C. Code §§ 24–263 through 267].

(e) In the case of an offender committed for observation and study under the Youth Rehabilitation Act, the Commission shall have the responsibility to report to the committing court within sixty (60) days its findings and a recommendation [D.C. Code § 24–803(e)].

(f) The Board of Parole of the District of Columbia shall continue to have sole jurisdiction over District of Columbia Code offenders who have been released to parole or mandatory release supervision, including the authority to return such offenders to prison upon an order of revocation. The jurisdiction and authority of the Board over such offenders shall be transferred to the U.S. Parole Commission by August 5, 2000.

Comment: This section sets forth the authority assigned to the Parole Commission under the D.C. Revitalization Act and carries forth the provisions of 28 DCMR § 100 with two exceptions. First, 28 DCMR § 100.10 was not retained as the statutory authority upon which it was based has been repealed. Second, 28 DCMR § 100.11 was not retained as it is redundant with subsection (b) (derived from 28 DCMR § 100.2), which sets forth the Commission's authority regarding committed youth offenders in a broader form. This proposed rule also reflects a 1993 amendment to the D.C. Code regarding geriatric and medical cases, and updates the references in 28 DCMR § 100 regarding the Youth Corrections Act to take into account the Youth Rehabilitation Act Amendment of 1985.

§ 2.71 Application for parole.

(a) A prisoner (including a committed youth offender) desiring to apply for parole shall execute an application form as prescribed by the Commission. Such forms shall be available at each institution and shall be provided to a prisoner who is eligible for parole consideration. A prisoner who receives an initial hearing need not apply for subsequent hearings.

(b) To the extent practicable, the initial hearing for an eligible prisoner who has applied for parole shall be held at least 180 days prior to the prisoner's date of eligibility for parole.

(c) A prisoner may knowingly and intelligently waive any parole consideration on a form provided for that purpose. A prisoner who declines either to apply for or waive parole consideration shall be deemed to have waived parole consideration.

(d) A prisoner who waives parole consideration may later apply for parole and be heard during the next visit of the Commission to the institution at which the prisoner is confined, provided that the prisoner has applied for parole at least 60 days prior to the first day of the month in which such visit of the Commission occurs. In no event, however, shall such prisoner be heard at an earlier date than that set forth in paragraph (b) of this section.

Comment: This rule carries forth the provisions of 28 DCMR § 102 with two modifications. First, youth offenders will have to complete a standard parole application form. Second, the rule provides that initial hearings are to be scheduled, where practicable, at least 180 days before the prisoner's eligibility date. Current D.C. Parole Board practice generally provides initial hearings about 60 days prior to the prisoner's eligibility date.

§ 2.72 Hearing procedure.

(a) Each eligible prisoner who has applied for parole shall appear in person for a hearing before an examiner of the Commission. The examiner shall review with the prisoner the guidelines at § 2.80, and shall discuss with the prisoner such information as the examiner deems relevant, including the prisoner's offense behavior, criminal history, institutional record, health status, release plans, and community support.

(b) Hearings may be held in District of Columbia facilities (including District of Columbia contract facilities) and federal facilities (including federal contract facilities).

(c) A prisoner appearing for a parole hearing in a District of Columbia facility shall not be accompanied by counsel, any relative or friend, or any other person (except a staff member of that facility). A prisoner appearing for a parole hearing in a federal facility may have a representative pursuant to § 2.13(b).

(d) A victim of a crime of violence, as defined in D.C. Code § 23–103a(a)(3), or a representative from the immediate family of the victim if the victim has died, shall have the right to be present at the parole hearings of each offender who committed the crime, and to offer a statement as to whether or not parole should be granted, including information and reasons in support of such statement. Such statement may be submitted at the hearing or provided separately. A victim or representative may also request permission to appear at the offices of the Commission for a hearing conducted by an examiner (or other staff member), in lieu of appearing at a parole hearing. Whenever new and significant information is provided, the prisoner will be given the opportunity to respond. The prisoner may be excluded from the hearing room during the appearance of a victim or representative. In such case, the prisoner will be given a summary of the information presented.

(e) A tape recording shall be made of the parole hearing. The tape recording of a parole hearing shall be available to the prisoner or his attorney upon written request to the Commission. See § 2.56(e).

(f) Attorneys, family members, relatives, friends, or other interested persons desiring to submit information pertinent to any case may do so by forwarding letters or memoranda to the offices of the Commission prior to a scheduled hearing. Such persons may also request permission to appear at the offices of the Commission to speak to a Commission staff member, provided such request is received at least 30 days but no more than 90 days prior to the scheduled hearing. The purpose of this office visit will be to supplement the Commission's record with pertinent factual information concerning the prisoner, which shall be placed in the record for consideration at the hearing.

(g) An office visit at a time other than that set forth in paragraph (f) of this section may be authorized only if the Commission finds good cause based upon a written request setting forth the nature of the information to be discussed. See § 2.22. Notwithstanding the above restriction on office visits, written information concerning a prisoner may be submitted to the offices of the Commission at any time.

Comment: This rule carries forth the provisions of 28 DCMR § 103 with the following changes. First, it adds a requirement that the examiner discuss with the prisoner the basis for the prisoner's guideline calculation. This requirement to discuss the pertinent case file information with the prisoner will ensure that the prisoner is informed of the information being considered by the Commission, and given an opportunity to respond. Second, although the rule retains the D.C. prohibition of representatives at parole hearings in District of Columbia facilities, it allows a prisoner to have a representative at a parole hearing in a federal facility, consistent with the procedure for federal prisoners. Third, although 28 DCMR § 103 permits a prisoner's supporters to visit the Board to discuss a case at any time, the proposed rule requires a prisoner's supporter to request an office visit at least 30 days but no more than 90 days before the parole hearing so that their input can be included in the record that the examiner will consider at the hearing. Under the proposed rule, office visits at other times would be permitted only on a showing of good cause. Fourth, the rights of victims as set forth in a 1989 amendment to D.C. law are spelled out. Victims of violent crimes are given the right to appear at the parole hearing, or to request a ''headquarters'' hearing if they have relevant testimony to present. Fifth, the rule follows federal law at 18 U.S.C. 4208(f) in allowing the prisoner to obtain a copy of the tape recording of his parole hearing.

§ 2.73 Parole suitability criteria.

(a) In accordance with D.C. Code § 24–204(a), the Commission shall be authorized to release a prisoner on parole in its discretion after he or she has served the minimum term of the sentence imposed, or after he or she has served one-third of the term or terms for which he or she was sentenced, as the case may be, if the following criteria are met:

(1) The prisoner has substantially observed the rules of the institution;

(2) There is reasonable probability that the prisoner will live and remain at liberty without violating the law; and

(3) In the opinion of the Commission, the prisoner's release is not incompatible with the welfare of society.

(b) It is the policy of the Commission with respect to District of Columbia Code offenders that the minimum term imposed by the sentencing court satisfies the need for punishment in respect to the crime of which the prisoner has been convicted, and that the responsibility of the Commission is to account for the degree and the seriousness of the risk that the release of the prisoner would entail. This responsibility is carried out by reference to the Salient Factor Score and the Point Assignment Grid at § 2.80.

Comment: This rule carries forth the statutory criteria for parole contained in 28 DCMR § 200. In addition, it explains that the parole function for D.C. Code offenders rests on a premise different from that of the federal parole guidelines. For D.C. Code offenders, the proposed guidelines in § 2.80 of these rules treat the minimum term of imprisonment imposed by the court as the measure of basic accountability for the offense of conviction. The function of parole consideration is to determine whether the prisoner would be ''a responsible citizen if he is returned to the community'' and whether ''release on parole is consistent with the public safety.'' See *White* v. *Hyman*, 647 A.2d 1175 (D.C. App. 1994). Hence, this provision sets forth the Commission's intention to maintain the fundamental structure of the D.C. Parole Board's decision-making guidelines, while making scoring changes that carry out its purposes more effectively through an improved measure of the seriousness of the risk each parole applicant poses to the public.

§ 2.74 Decision of the Commission.

(a) Following each initial or subsequent hearing, the Commission shall render a decision granting or denying parole, and shall provide the prisoner with a Notice of Action that includes an explanation of the reasons for the decision. The decision shall ordinarily be issued within 21 days of the hearing, excluding holidays.

(b) Whenever a decision is rendered within the applicable guideline established by these rules, it will be deemed a sufficient explanation of the Commission's decision for the Notice of Action to specify how the guideline was calculated. If the decision is a departure from the guidelines, the Notice of Action shall include the reasons for such departure.

(c) Relevant issues of fact shall be resolved by the Commission in accordance with § 2.19(c).

Comment: This is a new rule. It requires the issuance of a statement of reasons for parole denial, a procedure not included in current District of Columbia Parole Board procedures. Federal practice under 18 U.S.C. 4206 is the model for this procedural reform, as well as for the 21-day time period for issuing the decision.

§ 2.75 Reconsideration proceedings.

(a) If the Commission denies parole, it may establish an appropriate reconsideration date in accordance with the provisions of § 2.80; or if the prisoner's mandatory release date will occur before the reconsideration date

deemed appropriate by the Commission pursuant to § 2.80, the Commission may order that the prisoner be released by the expiration of his sentence, less good time. Any reconsideration date shall be calculated from the date of the last hearing.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Commission shall not set a reconsideration date in excess of five years from the date of the prisoner's last hearing, nor shall the Commission continue a prisoner to the expiration of his or her sentence, if more than five years remains from the date of the last hearing until the prisoner's scheduled mandatory release.

(c) The scheduling of a reconsideration date does not imply that parole will be granted at the next hearing.

(d) Prior to the parole reconsideration date, the Commission shall review the prisoner's record, including any institutional progress report. Based on its review of the record, the Commission may.

(1) Grant parole without conducting an in-person hearing, or

(2) Order an in-person hearing.

(e) Notwithstanding a previously established reconsideration date, the Commission may also reopen any case for a special reconsideration hearing, as provided in § 2.28, upon the receipt of new and significant information concerning the prisoner.

(f) Upon entering an order revoking parole, the Board of Parole of the District of Columbia shall order a reconsideration date pursuant to its regulations. However, the Commission shall have sole authority to grant or deny reparole to an offender who has been returned to prison upon an order revoking parole.

Comment: This rule carries forth the provisions of 28 DCMR § 104; except that the policy of setting continuances for cases by reference to the length of the prisoner's sentence is replaced by reference to the new time ranges for rehearings that are set forth in § 2.80. This change is intended both to reflect actual practice by the D.C. Board and to ensure that continuances are selected by reference to each prisoner's individual point score. In addition, the proposed rule prohibits the scheduling of a reconsideration hearing more than five (5) years from the date of the last hearing. At present, the D.C. Parole Board may order a reconsideration hearing exceeding this limit if it departs from its guidelines. Finally, the proposed rule authorizes special reconsideration hearings for new and significant information, and spells out the continuing authority of the D.C. Parole Board to revoke parole and set rehearing dates.

§ 2.76 Reduction in minimum sentence.

(a) A prisoner who has served three (3) or more years of the minimum term of his or her sentence may request the Commission to file an application with the sentencing court for a reduction in the minimum term pursuant to D.C. Code § 24–201c. The prisoner's request to the Commission shall be in writing and shall state the reasons that the prisoner believes such request should be granted.

(b) Approval of a prisoner's request under this section shall require the concurrence of a majority of the Commissioners.

(c) If the Commission approves a prisoner's request under this section, an application for a reduction in the prisoner's minimum term shall be forwarded to the U.S. Attorney for the District of Columbia for filing with the sentencing court. If the U.S. Attorney objects to the Commission's recommendation, the U.S. Attorney shall provide the government's objections in writing for consideration by the Commission. If after consideration of the material submitted, the Commission declines to reconsider its previous decision, the U.S. Attorney will file the application with the sentencing court.

(d) If a prisoner's request under this section is denied by the Commission, there shall be a waiting period of two (2) years before the Commission will again consider the prisoner's request, absent exceptional circumstances.

Comment: This rule carries forth the provisions of 28 DCMR § 201 regarding applications for a reduction of minimum term. In addition, it sets forth the arrangement the Commission has with the U.S. Attorney's Office regarding the presentation of applications for a reduction in a minimum term to the Superior Court.

§ 2.77 Medical parole.

(a) Upon receipt of a report from the institution in which the prisoner is confined certifying that the prisoner is terminally ill, or is permanently and irreversibly incapacitated by a physical or medical condition that is not terminal, the Commission shall determine whether or not to release the prisoner on medical parole. Such release may be ordered by the Commission, regardless of whether the prisoner's minimum sentence has been served. The Commission shall ordinarily make its determination within fifteen days of the receipt of the report.

(b) A prisoner may be granted a medical parole on the basis of terminal illness only if:

(1) The institution medical staff has provided the Commission with a prediction that there is a high probability of death within six months due to an incurable illness or disease; and

(2) The Commission finds that:

(i) The prisoner will not be a danger to himself or others, and

(ii) Release on parole will not be incompatible with the welfare of society.

(c) A prisoner may be granted a medical parole on the basis of permanent and irreversible incapacitation only if the Commission finds that:

(1) The prisoner's condition is such as to render the prisoner incapable of committing new crimes; and

(2) The prisoner will not be a danger to himself or others; and

(3) Release on parole will not be incompatible with the welfare of society.

(d) The seriousness of the prisoner's crime shall be considered in determining whether or not a medical parole should be granted prior to completion of a prisoner's minimum sentence.

(e) The Commission's determination with respect to the grant or denial of medical parole shall be final, except that the institution may, in its discretion, request the Commission to reconsider its decision on the basis of changed circumstances.

(f) Notwithstanding any other provision of this section—

(1) A prisoner who has been convicted of first degree murder or who has been sentenced for a crime committed while armed under D.C. Code § 22–2903, § 22–3202, or § 22–3204(b), shall not be eligible for medical parole. (D.C. Code § 24–267); and

(2) A prisoner shall not be eligible for medical parole on the basis of a physical or medical condition that existed at the time the prisoner was sentenced (D.C. Code § 24–262).

Comment: This is a new rule that sets forth criteria and procedures for implementing the medical parole provisions at D.C. Code §§ 24–261–64, 267.

§ 2.78 Geriatric parole.

(a) Upon receipt of a report from the institution in which the prisoner is confined that a prisoner who is at least 65 years of age has a chronic infirmity, illness, or disease related to aging, the

Commission shall determine whether or not to release the prisoner on medical parole. Such release may be ordered by the Commission, regardless of whether the prisoner's minimum sentence has been served.

(b) A prisoner may be granted a geriatric parole only if the Commission finds that:

(1) There is a low risk that the prisoner will commit new crimes; and

(2) The prisoner's release would not be incompatible with the welfare of society.

(c) The seriousness of the prisoner's crime, and the age at which it was committed, shall be considered in determining whether or not a geriatric parole should be granted prior to completion of a prisoner's minimum sentence.

(d) A prisoner, or a prisoner's representative, may apply for a geriatric parole by submitting an application to the institution medical staff, who shall forward the application accompanied by a medical report and any recommendations within 30 days. The Commission shall render a decision within 30 days of receiving the application and report.

(e) In determining whether or not to grant a geriatric parole, the Commission shall consider the following factors:

(1) Age of the prisoner;

(2) Severity of illness, disease, or infirmities;

(3) Comprehensive health evaluation;

(4) Institutional behavior;

(5) Level of risk for violence;

(6) Criminal history; and

(7) Alternatives to maintaining geriatric long-term prisoners in traditional prison settings. (D.C. Code § 24–265(c)(1)–(7).)

(f) The Commission's determination with respect to the grant or denial of a geriatric parole shall be final, except that the institution may, in its discretion, request the Commission to reconsider its decision on the basis of changed circumstances.

(g) Notwithstanding any other provision of this section—

(1) A prisoner who has been convicted of first degree murder or who has been sentenced for a crime committed while armed under D.C. Code § 22–2903, § 22–3202, or § 22–3204(b);, shall not be eligible for geriatric parole. (D.C. Code § 24–267); and

(2) A prisoner shall not be eligible for geriatric parole on the basis of a physical or medical condition that existed at the time the prisoner was sentenced (D.C. Code § 24–262).

Comment: This is a new rule that sets forth criteria and procedures for implementing the geriatric parole provisions at D.C. Code §§ 24–261, 263–64, 267.

§ 2.79 Good time forfeiture.

Although a forfeiture of good time will not bar a prisoner from receiving a parole hearing, D.C. Code § 24–204 permits the Commission to parole only those prisoners who have substantially observed the rules of the institution. Consequently, the Commission will consider a grant of parole for a prisoner with forfeited good time only after a thorough review of the circumstances underlying the disciplinary infraction(s) and if the Commission is satisfied that the parole date set has required a period of imprisonment sufficient to outweigh the seriousness of the prisoner's misconduct.

Comment: This rule carries forth the provisions of 28 DCMR § 205 in a somewhat modified form to conform to the procedure set forth at § 2.6 of these rules. A minor substantive change is that the Commission will consider the underlying circumstances of the misconduct in setting a date for review hearing rather than set a parole date that is contingent on the restoration of forfeited good time by institutional officials.

§ 2.80 Procedures for granting parole: Guidelines for D.C. Code Offenders

(a) In determining whether an eligible offender should be paroled, the Commission shall apply the guidelines set forth in this section. The guidelines assign numerical values to the pre- and post-incarceration factors described in paragraphs (b), (c), (d), and (e) of this section pursuant to the Point Assignment Table set forth in paragraph (f) of this section. Decisions outside the guidelines may be made, where warranted, pursuant to paragraph (m) of this section.

(b) Salient Factor Score: The offender's Salient Factor Score shall be determined by reference to the Salient Factor Scoring Manual in § 2.20. The Salient Factor Score is used to assist the Commission in assessing the probability that the offender will live and remain at liberty without violating the law.

(c) Violence and Drug Distribution Factors: The Commission shall assess the following factors as an aid in determining the risk of serious violation conduct (*i.e.*, the seriousness of the violation conduct if the offender does recidivate):

(1) Whether the current offense involved crime(s) of violence;

(2) Whether the current offense involved the death of a victim;

(3) Whether the offender was previously convicted of crime(s) of violence;

(4) Whether the current offense involved the possession of a firearm;

(5) Whether the current offense is drug distribution.

(d) The Commission shall assess whether the offender has been found guilty of committing disciplinary infractions while under confinement for the current offense.

(e) The Commission shall assess whether the offender has demonstrated sustained or superior achievement in the area of prison programs, industries, or work assignments while under confinement for the current offense. This factor is considered in determining whether the offender will have a lower likelihood of recidivism than indicated by the other factors considered.

(f) Point Assignment Table: Add the applicable points from Categories I–III to determine the base point score. Then add or subtract the points from Categories IV and V to determine the total point score.

POINT ASSIGNMENT TABLE

Category I: Risk of recidivism	(Salient factor score)
10–8 (Very Good Risk)	+0
7–6 (Good Risk)	+1
5–4 (Fair Risk)	+2
3–0 (Poor Risk)	+3
Category II: Current or prior violence	(Type of risk)
Note: Use the greatest applicable subcategory. If no subcategory is applicable, score=0.	
A. High level violence in the current offense, and high level violence in at least one prior offense	+6
B. High level violence in multiple current offenses	+5

POINT ASSIGNMENT TABLE—Continued

Category I: Risk of recidivism	(Salient factor score)
C. High level violence in the current offense, and other violence in at least two prior offenses	+5
D. High level violence in single current offense	+4
E. Other violence in current offense, and high level violence in at least one prior offense	+2
F. Other violence in current offense, and other violence in at least two prior offenses	+2
G. Other violence in current offense	+1
Category III: Death of victim, firearm possession, or drug distribution	(Type of risk)
Note: Use the greatest applicable subcategory. If no subcategory is applicable, score =0.	
A. Current offense was high level or other violence with death of victim resulting	+2
B. Possession of firearm in current offense if current offense is not scored as high level violence	+1
C. Drug distribution in current offense if current offense is not scored as high level or other violence	+1
Base Point Score (Total of Categories I–III):	
IV. Negative Institutional Behavior	
Note: Use the greatest applicable subcategory. If no subcategory is applicable, score =0.	
A. Negative institutional behavior involving: (1) assault upon a correctional staff member, (2) possession of a deadly weapon, (3) setting a fire, or (4) introduction of drugs for purposes of distribution	+2
B. Other negative institutional behavior	+1
V. Program Achievement	
Note: Use the greatest applicable subcategory. If no subcategory is applicable, score =0.	
A. Acceptable institutional behavior with no program achievement	0
B. Acceptable institutional behavior with ordinary program achievement	−1
C. Acceptable institutional behavior with superior program achievement	−2
Total Point Score (Total of Categories I–V):	

(g) Definitions and Instructions for Application of Point Assignment Score.

(1) *Salient factor score* means the salient factor score set forth at § 2.20.

(2) *High level violence* means any of the following offenses—

(i) Murder:

(ii) Voluntary manslaughter;

(iii) Aggravated assault, mayhem, or malicious disfigurement;

(iv) Arson of a building;

(v) Forcible rape or forcible sodomy (first degree sexual abuse);

(vi) Kidnapping or hostage taking;

(vii) First degree burglary while armed (burglary of a dwelling when a victim is present and an offender is armed);

(viii) Assault with a deadly weapon upon a law enforcement officer;

(ix) Extortion or obstruction of justice through violence or threats of violence;

(x) Any offense involving sexual abuse of a person less than sixteen years of age;

(xi) Any felony resulting in ''serious bodily injury.'' (See Definition No. 3.)

(3) *Serious bodily injury* means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(4) *Other violence* means any of the following felony offenses that does not qualify as ''high level violence''—

(i) Robbery;

(ii) Residential burglary;

(iii) Any felony arson;

(iv) Any felony assault;

(v) Any felony offense involving a threat, or risk, of bodily harm;

(vi) Any felony offense involving sexual abuse or sexual contact.

(5) Attempts, conspiracies, and solicitations shall be scored by reference to the substantive offense that was the object of the attempt, conspiracy, or solicitation; except that Category IIIA shall apply only if death actually resulted.

(6) *Current offense* means any criminal behavior that is either:

(i) Reflected in the offense of conviction, or

(ii) Is not reflected in the offense of conviction but is found by the Commission to be related to the offense of conviction (*i.e.*, part of the same course of conduct as the offense of conviction).

(7) *Multiple current offenses* means two or more incidents of criminal behavior committed at different times, or the killing, serious wounding or sexual assault of more than one victim whether at the same or different times.

(8) Category IIIA applies if the death of a victim is:

(i) Caused by the offender, or

(ii) Caused by an accomplice and the killing was both foreseeable and in furtherance of a joint criminal venture.

(9) Category IIIB applies whenever a firearm is possessed during, or used to commit, any offense that is not scored under Category II A, B, C, or D. Category IIIB also applies when the current offense is felony unlawful possession of a firearm and there is no other current offense.

(10) In some cases, negative institutional behavior that involves high level violence will result in a higher score if scored as an additional current offense under Category II, than if scored under Category IVA. In such cases, treat the conduct as an additional current offense under Category II rather than as a disciplinary infraction under Category IVA. For example, the murder of another inmate will generally result in a higher score if treated as an additional current offense under Category II. If negative institutional behavior is treated as an additional current offense, points may still be assessed under Category IV A or B for other disciplinary infractions.

(11) *Superior Program Achievement* means program achievement that is beyond the level that the prisoner might ordinarily be expected to accomplish, and that is deemed to have a significant impact on the offender's likelihood of recidivism. (The Commission may, in its discretion, grant more than a 2 point deduction in the most clearly exceptional cases.)

(h) Guidelines for Decisions at Initial Hearing—Adult Offenders: In considering whether to parole an adult offender at an initial hearing, the Commission shall determine the offender's total point score and then consult the following guidelines for the appropriate action:

Total points	Guideline recommendation
(1) IF POINTS=0	Parole at initial hearing with low level of supervision required.
(2) IF POINTS=1	Parole at initial hearing with high level of supervision required.
(3) IF POINTS=2	Parole at initial hearing with highest level of supervision required.
(4) IF POINTS=3+ ...	Deny parole at initial hearing and schedule rehearing in accordance with § 2.75(c) and the time ranges set forth in paragraph (j) of this section.

(i) Guidelines for Decisions at Initial Hearing—Youth Offenders. In considering whether to parole a youth offender at an initial hearing, the Commission shall determine the youth offender's total point score and then consult the following guidelines for the appropriate action:

Total points	Guideline recommendation
(1) IF POINTS=0–2 ..	Parole at initial hearing with conditions established to address treatment needs;
(2) IF POINTS=3+ ...	Deny parole at initial hearing and schedule a rehearing based on estimated time to achieve program objectives or by reference to the time ranges in paragraph (j) of this section, whichever is less.

(j) Guidelines for Time to Rehearing. (1) If parole is denied, the time to the subsequent hearing shall be determined by the following guidelines:

Base point score (categories I through IV)	Months to rehearing
0–4	12–18
4	12–18
5	18–24
6	18–24
7	20–26
8	20–26
9	24–30
10	28–34
11	32–38

(2) The time to a rehearing shall in every case be determined by the prisoner's base point score, and not by the total point score at the current hearing.

(k) Guidelines for Decisions at Subsequent Hearing—Adult Offenders. In determining whether to parole an adult offender at a subsequent hearing, the Commission shall take the total point score from the initial hearing or last rehearing, as the case may be, and adjust that score according to the institutional record of the candidate since the last hearing. The following guidelines are applicable:

Total points	Guideline recommendation
(1) IF POINTS=0–3 ..	Parole with highest level of supervision required.
(2) IF POINTS=4+ ...	Deny parole at initial hearing and schedule rehearing in accordance with § 2.75(c) and the time ranges set forth in paragraph (j) of this section.

(l) Guideline for Decisions at Subsequent Hearing—Youth Offenders. In determining whether to parole a youth offender appearing at a subsequent hearing, the Commission shall take the total point score from the initial hearing or last rehearing, as the case may be, and adjust that score according to the institutional record of the candidate since the last hearing. The following guidelines are applicable:

Total points	Guideline recommendation
(1) IF POINTS=0–3 ..	Parole with highest level of supervision required.
(2) IF POINTS=4+ ...	Deny parole and schedule a rehearing based on estimated time to achieve program objectives or by reference to the time ranges in paragraph (j) of this section, whichever is less.

(m) Decisions Outside the Guidelines.

(1) The Commission may, in unusual circumstances, waive the Salient Factor Score and the pre- and post-incarceration factors set forth in this section to grant or deny parole to a parole candidate notwithstanding the guidelines, or to schedule a reconsideration hearing at a time different from that indicated in paragraph (j) of this section. Unusual circumstances are case-specific factors that are not fully taken into account in the guidelines, and that are relevant to the grant or denial of parole. In such cases, the Commission shall specify in the Notice of Action the specific factors that it relied on in departing from the applicable guideline or guideline range.

(2) Factors that may warrant a decision above the guidelines include, but are not limited to, the following:

(i) *Poorer Parole Risk Than Indicated By Salient Factor Score:* The offender is a poorer parole risk than indicated by the salient factor score because of—

(A) Repeated failure under parole supervision;

(B) Lengthy history of criminally related substance (drug or alcohol) abuse; or

(C) Unusually extensive prior record of felony offenses.

(ii) *More Serious Parole Risk:* The offender is a more serious parole risk than indicated by the total point score because of—

(A) Extensive record of high level violence beyond that taken into account in the guidelines;

(B) Current offense aggravated by extraordinary criminal sophistication or leadership role;

(C) Unusual cruelty or extremely vulnerable victim;

(D) Unusual degree of violence attempted or committed in relation to type of current offense; or

(E) Unusual magnitude of offense in terms of money, drugs, weapons, or other commodities involved.

(3) Factors that may warrant a decision below the guideline include, but are not limited to, the following:

(i) Better Parole Risk Than Indicated by Salient Factor Score. The offender is a better parole risk than indicated by the salient factor score because of (applicable only to offenders who are not already in the very good risk category)—

(A) A prior criminal record resulting exclusively from minor offenses;

(B) A substantial crime-free period in the community for which credit is not already given on the Salient Factor Score;

(C) A change in the availability of community resources leading to a better parole prognosis;

(ii) *Other Factors:*

(A) Substantial cooperation with the government that has not been otherwise rewarded;

(B) Substantial period in custody on other sentence(s) or additional committed sentences.

(C) Poor medical prognosis.

Comment: This section carries forth the provisions of DCMR § 204 in modified form. This revision of the D.C. Board's guideline system retains its fundamental three-part structure (the salient factor score, the total point score, and the grant/denial policy). The guideline system continues to serve as a measurement of both the degree and seriousness of the risk to the public safety presented in each case. The policy of permitting parole to be granted at initial hearings for those who merit 0–2 points on the ''total point score,'' and permitting parole to be granted at rehearings for those who merit 0–3 points, is also retained. However, the relevant factors listed in the point score as indicating ''seriousness of the risk'' have been revised substantially along with the number of points assigned to each relevant factor. The purpose of the revisions is to produce a score that differentiates better as to the probability of violent or otherwise extremely serious offenses (e.g., murder, rape, assault with serious bodily injury). Thus, the revised score includes more factors which appear to indicate an increased probability that recidivism (if it occurs) will be of an extremely serious nature. At the same time, the possible points for superior program achievement in prison also are increased.

The primary intent is to capture within the guidelines the many decisions that are now outside the guidelines because of the D.C. Board's well-founded concerns about the ''seriousness of the risk.'' The Parole Commission itself has found it necessary to depart from the D.C. parole guidelines based on the same concerns. See *Duckett* v. *U.S. Parole Commission,* 795 F. Supp. 133 (M.D. Pa. 1992) (current offenses involved multiple separate crimes of violence not reflected by the point score).

The total point score thus revised permits (in the typical worst-case scenario) a violent repeat offender to receive as many as 11 points. However, point scores only go to this level if there are extraordinary aggravating factors produced by the offender's own repeated return to the most serious possible violent criminal behaviors. If the offender's past record is less serious, the total point score will be correspondingly lower and will permit parole based on good behavior over a sufficient period of time in prison. What constitutes a ''sufficient period of time in prison'' is determined by the need to incapacitate the offender according to the risk level he or she presents, as reflected in the Guidelines for Time to Rehearing at § 2.80(j).

§ 2.81 Effective date of parole.

(a) A parole release date may be granted up to nine months from the date of the hearing in order to permit placement in a halfway house or to allow for release planning. Otherwise, a grant of parole shall ordinarily be effective not more than six months from the date of the hearing.

(b) Except in the case of a medical or geriatric parole, a parole that is granted prior to the completion of the prisoner's minimum term shall not become effective until the prisoner becomes eligible for release on parole.

Comment: This rule carries forth the provisions of 28 DCMR § 202.2, but follows federal practice by permitting an effective date of parole up to 9 months in advance. The D.C. Parole Board rule does not specify any time period. The proposed rule also provides that parole dates will be set no more than 6 months in advance if placement in a halfway house is not required. This policy will leave the Commission with the flexibility to ensure adequate release planning before any prisoner is released on parole. Difficulties in determining the adequacy of release plans, and in the availability of necessary halfway house resources, are presently serious issues that can impede the releases of many D.C. Code prisoners.

§ 2.82 Release planning.

(a) All grants of parole shall be conditioned on the development of a suitable release plan and the approval of that plan by the Commission. A release certificate shall not be issued until a release plan has been approved by the Commission.

(b) After investigation by field staff, the proposed release plan shall be submitted to the Commission by the Department of Corrections or Bureau of Prisons, depending upon the institution in which the prisoner is confined.

(c) If parole has been granted, but the prisoner has not submitted a proposed release plan, the appropriate institution staff shall assist the prisoner in formulating a release plan for investigation.

(d) The Commission may retard a parole date for purposes of release planning for up to 120 days without a hearing. If efforts to formulate and verify an acceptable parole plan prove futile by the expiration of such period, the Commission shall be promptly notified in a detailed report. If the Commission does not order the prisoner to be released, the Commission shall suspend the grant of parole and conduct a reconsideration hearing on the next available docket. Following such reconsideration hearing, the Commission may deny parole if it finds that the release of the prisoner without a suitable plan would fail to meet the criteria set forth in § 2.73. However, if the prisoner subsequently presents an acceptable release plan, the Commission may reopen the case and issue a new grant of parole.

(e) The following shall be considered in the formulation of a suitable release plan: (1) Evidence that the parolee will have an acceptable residence.

(2) Evidence that the parole will be legitimately employed immediately upon release; provided, that in special circumstances, the requirement for immediate employment upon release may be waived by the Commission.

(3) Evidence that the necessary aftercare will be available for parolees who are ill, or who have any other demonstrable problems for which special care is necessary, such as hospital facilities or other domiciliary care; and

(4) Evidence of availability of, and acceptance in, a community program in those cases where parole has been granted conditioned upon acceptance or participation in a specific community program.

Comment: This rule carries forth the provisions of 28 DCMR § 208 regarding release planning. Express authority is added for the Commission to rescind a grant of parole if failure to produce an acceptable release plan persuades the Commission that the release of the prisoner would lead to rapid failure in the community.

§ 2.83 Release to other jurisdictions.

The Commission, in its discretion, may parole any individual from a facility of the District of Columbia, to live and remain in a jurisdiction other than the District of Columbia, if the authorities of that state accept the prisoner for supervision, and suitable release plans have been developed and approved by the Commission. If an individual is paroled from a federal facility to a jurisdiction other than the District of Columbia, supervision shall be provided by the local U.S. Probation Office at the request of the Commission.

Comment: This rule carries forth that part of 28 DCMR § 209 that concerns release to other jurisdictions.

§ 2.84 Conditions of release.

(a) Parole is granted subject to the conditions imposed by the Commission as set forth in the Certificate of Parole. These conditions shall include, but not be limited to, the following. The parolee must:

(1) Obey all laws;

(2) Report immediately upon release to his or her assigned parole office for instructions;

(3) Remain within the geographic limits fixed in the parole certificate unless official approval is obtained;

(4) Refrain from visiting illegal establishments;

(5) Refrain from possessing, selling, purchasing, manufacturing or distributing any controlled substance, or related paraphernalia;

(6) Refrain from using any controlled substance or drug paraphernalia unless such usage is pursuant to a lawful order of a practitioner and the parolee promptly notifies the Commission and his or her parole officer of same;

(7) Be screened for the presence of controlled substances by appropriate tests as may be required by the Board of Parole or the Parole Officer;

(8) Refrain from owning, possessing, using, selling, or having under his or her control any firearm or other deadly weapon;

(9) Find and maintain legitimate employment, and support legal dependents;

(10) Keep the parole officer informed at all times relative to residence and work;

(11) Refrain from entering into any agreement to act as an informer or special agent for any law enforcement agency; and

(12) Cooperate with the officials responsible for his or her supervision and carry out all instructions of his or her parole officer and such special conditions as may have been imposed.

(b) The Commission may add to, modify, or delete any condition of parole at any time prior to the release of the offender.

Comment: This rule carries forth the provisions of 28 DCMR § 207 pertaining to the conditions of parole.

§ 2.85 Release on parole.

(a) Where a parole release date has been set, actual release on parole on that date shall be conditioned upon the individual maintaining a good institutional conduct record and the approval of a satisfactory release plan.

(b) The Commission may reconsider any grant of parole prior to the prisoner's actual release on parole, and may advance or postpone the effective release date, or rescind and deny a parole previously granted.

(c) After a prisoner has been granted parole, the institution shall notify the Commission of any serious breach of institutional rules committed by the prisoner prior to the date of actual release. In such case, the prisoner shall not be released until the institution has been advised that no change has been made in the Commission's order granting parole.

(d) A grant of parole becomes operative upon the authorized delivery of a certificate of parole to the prisoner, and the signing of that certificate by the prisoner, who thereafter becomes a parolee subject to the jurisdiction of the Board of Parole of the District of Columbia.

Comment: This carries forth the provisions of 28 DCMR § 207 regarding release on parole. In addition, it specifies exactly when a parole becomes operative, based on 28 CFR 2.29(a).

§ 2.86 Mandatory release.

(a) When a prisoner has been denied parole at the initial hearing and all subsequent considerations; or parole consideration is expressly precluded by statute, the prisoner shall be released at the expiration of his or her imposed sentence less the time deducted for any good time allowances provided by statute.

(b) Any prisoner having served his or her term or terms less deduction for good time shall, upon release, be deemed to be released on parole until the expiration of the maximum term or terms for which he or she was sentenced, less one hundred eighty (180) days.

(c) Each prisoner released in accordance with this section shall be under the jurisdiction of the Board of Parole of the District of Columbia and subject to parole supervision, upon the authorized delivery of a certificate of mandatory release.

Comment: This rule carries forth the provisions of 28 DCMR § 212.

§ 2.87 Confidentiality of parole records.

(a) Consistent with the Privacy Act of 1974 (5 U.S.C. 552(b)), the contents of parole records shall be confidential and shall not be disclosed outside the Commission except as provided below.

(b) Information that is subject to release to the general public without the consent of the prisoner shall be limited to the information specified in § 2.37(c).

(c) Information other than as described in paragraph (b) of this section may be disclosed without the consent of the prisoner only pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552(b)). See § 2.56.

Comment: This carries forth the operative provisions of 28 DCMR § 101. It maintains the confidentiality of D.C. Board parole files while conforming the regulations to federal parole practice under the Privacy Act of 1974.

§ 2.88 Miscellaneous provisions.

Except to the extent otherwise provided by law, the following sections in subpart A of this part are also applicable to District of Columbia Code offenders:

2.5 (Sentence aggregation)
2.7 (Committed fines and restitution orders)
2.8 (Mental competency procedures)
2.10 (Date service of sentence commences)
2.16 (Parole of prisoner in State, local, or territorial institution)
2.19 (Information considered)
2.22 (Communication with Commission)
2.23 (Delegation to hearing examiners)
2.32 (Parole to local or immigration detainers)

Comment: This rule sets forth the provisions from Part A of these rules that, except to the extent otherwise provided by law, shall also apply to District of Columbia Code prisoners.

§ 2.89 Prior orders of the board of parole.

Any order entered by the Board of Parole of the District of Columbia, in a case within the proper jurisdiction of the Board, shall be accorded the status of an order of the Parole Commission unless duly reconsidered and changed by the Commission.

Comment: This is a new rule that is necessary to clarify the status of prior orders of the D.C. Board (parole grants, denials, revocations, etc.) as of August 5, 1998. It maintains the Commission's longstanding practice of respecting all prior D.C. Board orders when a D.C. Code offender enters federal jurisdiction.

Dated: April 3, 1998.

Michael J. Gaines,

Chairman, Parole Commission.

[FR Doc. 98–9330 Filed 4–9–98; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 62, 70, and 71

RIN 1219–AA53

Health Standards for Occupational Noise Exposure

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Supplemental proposed rule; extension of comment period and close of record.

SUMMARY: MSHA is extending the post-hearing comment period and close of record regarding the Agency's supplemental proposed rule for occupational noise exposure, which was published in the **Federal Register** on December 31, 1997.

DATES: Comments must be received on or before April 24, 1998.

ADDRESSES: Comments on this supplemental proposed rule must be clearly identified as such and may be transmitted by electronic mail to comments@msha.gov; by fax to MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or by mail to MSHA, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any format questions.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director; MSHA, Office of Standards, Regulations, and Variances; 703–235–1910.

SUPPLEMENTARY INFORMATION: On December 31, 1997, MSHA published in the **Federal Register** (62 FR 68468) a proposed rule which would supplement MSHA's proposed rule for occupational noise exposure in coal and metal and nonmetal mines, published December 17, 1996 (61 FR 66348). The supplemental proposal would require mine operators to provide affected miners and miners' representatives with an opportunity to observe operator monitoring required under § 62.120(f) of MSHA's proposed rule for occupational noise exposure. It also would require mine operators to inform miners and miners' representatives of the dates and times of planned operator noise monitoring so that miners and miners' representatives would have an opportunity to exercise the right to observe monitoring.

The comment period closed on February 17, 1998. MSHA held a public hearing on March 10, 1998, in Washington, DC. To allow for the submission of post-hearing comments the record was scheduled to close on April 9, 1998. Due to requests from the mining community, the Agency is extending the post-hearing comment period and close of record to April 24, 1998. MSHA believes that this extension will provide sufficient time for all interested parties to review and comment on the proposal, and on the written comments and testimony that the Agency has received thus far. All interested members of the mining public are encouraged to submit comments prior to April 24, 1998.

Dated: April 7, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 98–9597 Filed 4–8–98; 9:53 am]

BILLING CODE 4510–43–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–98–015]

RIN 2115–AE47

Drawbridge Operation Regulations; Grassy Sound Channel, Middle Township, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations that govern the operation of the drawbridge across Grassy Sound Channel, mile 1.0, in Middle Township, New Jersey, by requiring two-hours advance notice for bridge openings from October 1 to May 14, and from 8 p.m. to 6 a.m. each day from May 15 to September 30. The bridge would be unattended during these time periods and requests for openings would require calling (609) 368–4591. This proposed rule is intended to help lessen the high cost of manning the drawbridge 24 hours a day while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before June 9, 1998.

ADDRESSES: Comments may be mailed to Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be hand-delivered to the same address between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222. Comments will become a part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05–98–015), the specific section of this rule to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (Aowb), Fifth Coast Guard District, at the address listed under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Ocean Drive drawbridge across the Grassy Sound Channel, mile 1.0, in Middle Township is currently required to open on signal year-round. The Cape May County Bridge Commission, through the Cape May County Department of Public Works, has requested permission to cease having the bridge attended 24-hours per day year-round. This proposed rule is intended to decrease the number of hours the bridge is attended in order to help lessen the high cost of perpetually manning the drawbridge while still