

airspace area into compliance with FAA Order 7400.2E, Procedures for handling Airspace Matters. The information published, however, did not correct a previous error in the volume of Class E airspace necessary at Red Oak, IA and did not bring the airspace area into compliance with the order. This action rectifies the oversight and does bring the Red Oak, IA Class E airspace into compliance with FAA Order 7400.2E.

■ Accordingly, pursuant to the authority delegated to me, the Red Oak, IA Class E airspace, as published in the **Federal Register** on Friday, May 23, 2003, (68 FR 28123), [FR Doc. 03-13045] is corrected as follows:

#### § 71.1 [Corrected]

■ On page 28124, Column 3, second paragraph, sixth and ninth lines after heading "ACE IA E5 Red Oak, IA," change "6-mile radius" to read "6.4-mile radius."

Issued in Kansas City, MO, on July 1, 2003.

**Herman J. Lyons, Jr.,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 03-17761 Filed 7-14-03; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 171

[Docket No. FAA-2003-15079; Airspace  
Docket No. 03-ACE-47]

#### Modification of Class E Airspace; Sac City, IA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments; correction.

**SUMMARY:** This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Friday, May 23, 2003, (68 FR 28127) [FR Doc. 03-13039]. It corrects an error in the dimension and legal description of the Sac City, IA Class E airspace area.

**DATES:** This direct final rule is effective on 0901 UTC, September 4, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE-520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329-2525.

#### SUPPLEMENTARY INFORMATION:

#### History

**Federal Register** Document 03-13039, published on Friday, May 23, 2003, (68

FR 28127) modified Class E airspace and Sac City, IA. The modification was to correct discrepancies in the Sac City Municipal Airport, IA airport reference point and the location of the Sac City nondirectional radio beacon, both used in the legal description of the Sac City, IA Class E airspace area. These corrections were to bring the airspace area into compliance with FAA Order 7400.2E, Procedures for handling Airspace Matters. The information published, however, did not correct a previous error in the volume of Class E airspace necessary at Sac City, IA and did not bring the airspace area into compliance with the order. This action rectifies the oversight and does bring the Sac City, IA Class E airspace into compliance with FAA Order 7400.2E.

■ Accordingly, pursuant to the authority delegated to me, the Sac City, IA Class E airspace, as published in the **Federal Register** on Friday, May 23, 2003, (68 FR 28127), [FR Doc. 03-13039] is corrected as follows:

#### § 71.1 [Corrected]

■ On page 28127, Column 1, sixth paragraph, sixth and ninth lines after heading "ACE IA E5 Sac City, IA," change "6-mile radius" to read "6.4-mile radius."

Issued in Kansas City, MO, on July 1, 2003.

**Herman J. Lyons, Jr.,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 03-17760 Filed 7-14-03; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF JUSTICE

### Parole Commission

#### 28 CFR Part 2

#### Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

**AGENCY:** United States Parole Commission, Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The U.S. Parole Commission is amending interim rules on the supervision of District of Columbia offenders who are serving terms of supervised release imposed by the Superior Court of the District of Columbia. This publication sets out all of the Commission's rules on D.C. supervised release cases, first promulgated as interim rules in November, 2000, and includes rules promulgated in January, 2003 on

revocation procedures for supervised releasees, and new provisions regarding the conditions of supervision and the appeal of supervised release revocation decisions.

With the promulgation of these amended interim rules for D.C. supervised releasees, the Commission is also making revisions to several rules for federal offenders and D.C. parolees in order to maintain consistent procedures and reduce duplicative rules. The rule describing the administrative appeal procedure for federal offenders is revised to include certain requirements regarding the formatting of the appeal. The Commission is also revising the rules describing the conditions of supervision for federal and D.C. parolees in an effort to reduce duplicative rules and make the conditions easier to read and understand. These amendments are also promulgated as interim rules.

The interim rules also contain a number of amendments to the citations to the District of Columbia Code made necessary as a result of a recodification of D.C. criminal laws.

**DATES:** Effective Date: August 14, 2003. Comments must be received by November 12, 2003.

#### FOR FURTHER INFORMATION CONTACT:

Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd, Chevy Chase, Maryland 20815, telephone (301) 492-5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

**SUPPLEMENTARY INFORMATION:** In the National Capital Revitalization and Self-Government Improvement Act of 1997, Pub.L. 105-33, Congress assigned to the U.S. Parole Commission the task of carrying out supervised release terms imposed for D.C. felony offenders by the Superior Court of the District of Columbia. D.C. Code 24-133(c)(2). The Commission was given the same authority over D.C. supervised releasees as is exercised by U.S. District Courts over federal supervised releasees under 18 U.S.C. 3583, except that any extension of a term of supervised release imposed by the Superior Court must be ordered by the Superior Court, not the Commission. Further, the Revitalization Act specifies that the procedures to be followed by the Commission in exercising its authority over D.C. supervised releasees are the procedures applicable to federal parolees under the Parole Commission and Reorganization Act of 1976, as set forth in Chapter 311 of Title 18, United States Code.

In November, 2000, the Commission published interim rules governing its

functions for D.C. supervised releasees and requested comments on the rules. 65 FR 70466-78 (Nov. 24, 2000). Given the expected similarity between the parolee population and those D.C. offenders to be placed on supervised release, for the most part the interim rules simply carried over rules developed for parolees based on the Commission's long experience with this offender population. Of course, the Commission was required to promulgate rules that implemented any laws that were unique to supervised releasees, in particular the restrictions on the sanctions that may be imposed on offenders whose supervised release terms were revoked. See 28 CFR 2.218-2.219.

The Commission did make several policy choices in its interim rules for supervised release revocation decisions and is continuing these policies in the amended interim rules. The Commission will continue to use the parole guidelines at § 2.21 as the appropriate standard for determining the length of a prison term for a supervised release violator when the Commission has revoked supervised release. The Commission has employed these guidelines to make parole decisions for D.C. parole violators because the regulations of the former D.C. Board of Parole provided no policy guidance on parole decisions. 63 FR 39175 (July 21, 1998). The guidelines at § 2.21 represent the Commission's policy judgments as to the appropriate balancing of factors such as accountability for the violation behavior, incapacitation, and deterrence in determining prison term sanctions for criminal violations and other misconduct on supervision.

In comparing the guideline ranges of § 2.21 against the maximum prison terms allowed as a part of a supervised release revocation decision under D.C. Code 24-403.01(b)(7) (incorporated in § 2.219 of the rules), it is apparent that the minimum of the § 2.21 range will frequently exceed the maximum permissible term of imprisonment for a violator who commits a serious crime while under supervision. The amended interim rule addresses this issue by providing that, when the maximum authorized term of imprisonment under § 2.219 is less than the minimum of the § 2.21 guideline range, the "guideline range" is the maximum authorized term of imprisonment, not the range found in § 2.21. This instruction is analogous to the directions found in the U.S. Sentencing Guidelines, § 5G.1.1(a) and § 7B1.4(b)(1). For the large number of release violators who commit

crimes, the § 2.21 guidelines will ensure decision-making consistency in prison term determinations. The Commission's statistics regarding decision-making under the § 2.21 guidelines for D.C. parole violators since August, 2000 to the present show that 80% of the cases received offense severity ratings of Category Three or less, with 60% receiving a rating of Category One. In 63% of the cases, the violator received a prison term of 24 months or less for the violation. Since the Commission anticipates that D.C. supervised releasees, as a group, will be substantially similar to D.C. offenders on parole, there is no reason to believe that these statistics will be markedly different for D.C. supervised releasees.

The Commission is also maintaining the general policy to impose, whenever possible, the maximum permissible term of supervised release for an offender as a consequence of the revocation of an earlier supervised release term. 28 CFR 2.218(e). This policy is based on the Commission's judgment that, for most cases, a supervised release violator has, by virtue of committing violations serious enough to justify revocation, thereby evidenced the need for further supervision to the limits provided by law.

The amended interim rules also clarify the Commission's interpretation of a law governing the running of a supervised release term, how the Commission will handle actions regarding multiple terms of supervised release, and the sequence of revocation proceedings for an offender serving concurrent terms of parole and supervised release. The statutory interpretation concerns D.C. Code 24-403.01(b)(5), which provides that a term of supervised release does not run during any period of 30 days or more in which the offender is imprisoned in connection with a conviction for a federal, state, or local crime. The rule at § 2.201 interprets this law to preclude the running of a supervised release term while the offender is serving a term of imprisonment resulting from a probation, parole, or supervised release revocation on another sentence. The offender's imprisonment as a release violator is clearly "in connection with a conviction" because the conviction on which the offender was granted probation, parole, or supervised release is the ultimate source of authority for revoking the release and imprisoning the offender. The rule at § 2.201 also incorporates the provision at D.C. Code 24-403.01(b)(5) that a term of supervised release runs concurrently with other terms of supervision in the

community, including a supervised release term imposed for another offense.

With regard to the Commission's policies concerning an offender serving multiple terms of supervised release, the amended interim rule retains the provision that the longest term imposed determines the duration of the Commission's jurisdiction over such an offender, and the policy that the multiple terms will be considered as aggregated. A decision to terminate the offender from supervision or to revoke supervised release shall have the effect of terminating or revoking all terms of supervised release being served by the offender at the time of the Commission's order. In imposing the sanctions that result from revocation, the Commission shall treat the offender as if the Commission had revoked a single term of supervised release. The reason for using this aggregation approach for imposing revocation sanctions is largely one of administrative efficiency. Making separate calculations of terms of imprisonment and subsequent supervised release for the revocation of multiple supervised release terms, and then reducing these multiple calculations to an understandable revocation decision would be an extremely difficult task. The amended interim rule also clarifies that in calculating the original maximum authorized term of supervised release and the maximum authorized term of imprisonment at the first revocation, the Commission shall use as its guide the sentence for the offense that is punishable by the longest prison term authorized by the D.C. Code. The Commission believes this interpretation of the statutory scheme best accords with legislative intent because the sanctions authorized by statutory law for supervised release revocation are dictated by the maximum statutory penalty for the crime that led to the original sentence. See D.C. Code 24-403.01(b)(7). Finally, with regard to the offender who is subject to revocation of parole and supervised release terms, the rule at § 2.211(g) clarifies that the Commission has the discretion to revoke both parole and supervised release at a combined hearing or at separate hearings, and may postpone the sanction for revocation of one term until the offender satisfies the prison term imposed as a revocation sanction regarding the other term. If the Commission chooses to conduct separate hearings, the first revocation hearing will resolve any contested violations so that the subsequent hearing may be conducted on the same

violation behavior as an institutional hearing without the need to require the attendance of adverse or necessary witnesses.

Since the publication of the interim rules in November, 2000, the Commission promulgated rule changes to the Commission's procedures for revoking paroles granted to D.C. offenders in order to implement a consent decree resolving class action litigation in the U.S. District Court for the District of Columbia. *See* 68 FR 3389-92 (Jan. 24, 2003). Though supervised releasees were not members of the plaintiff class in the litigation, the Commission extended the revised procedures to supervised releasees because the new rules represented the most efficient revocation system and the best means of protecting the public safety. *Id.* at 3389. These revocation procedures are included in the amended interim rules.

Recently the Commission published as proposed rules with request for comment revisions of three regulations describing the conditions of supervision for federal parolees, D.C. parolees, and D.C. supervised releasees. 68 FR 16743-46 (Apr. 7, 2003). These proposed rules consolidated similar provisions for the three groups of offenders, using the rule governing conditions of supervised release as the rule for the full statement of applicable conditions, and then placing cross-references to this rule in the provisions for federal parolees and D.C. parolees. *Id.* at 16744. The Commission is now adopting these rules on the release conditions as interim rules with changes that are mostly editorial in nature.

One amendment to the proposed rules adds a general condition that, upon receiving a direction from the supervision officer, the releasee must notify a person, normally an employer, of a risk of harm that may be evidenced by the releasee's criminal record or personal history, and permit the officer to confirm that the releasee gave the required notice. This condition also authorizes the supervision officer to provide notice of possible risk to the third party if the notification is authorized by the Commission's rules. The Commission already authorizes disclosure of risk of harm to persons in the rule at § 2.37(a) and companion rules for D.C. parolees and supervised releasees. The standard conditions of supervised release recommended for federal offenders includes a similar condition. U.S. Sentencing Guidelines, § 5D1.3(c)(13). When the supervision officer determines that a disclosure of risk of harm is appropriate, this additional condition is another step

toward ensuring that the releasee is adequately supervised in the community, and that the recipient of the notice is sufficiently informed of the releasee's background so as not to place the releasee in a position that may increase the risk of future criminal behavior by the releasee, or to take suitable precautions in dealing with the releasee. Another amendment to the proposed rules restores a current reporting instruction for an offender who is delayed by an emergency in making his initial visit to the supervision office. The instruction from the current rule—that the offender report to the nearest U.S. Probation Office if he cannot timely report to his designated supervision office—is retained to be consistent with written directions that are given to the offender by the Bureau of Prisons upon the offender's discharge from the institution. Finally, another amendment implements statutory provisions on mandatory revocation of a supervised release term if the Commission finds that the releasee has committed certain violations (*e.g.*, possession of a firearm or repeated positive test results for drug use). *See* 18 U.S.C. 3583(g).

The amended interim rules also add an appeal procedure for supervised release revocation decisions at § 2.220. Up to now, the Commission has not included an appeal procedure for any of the decisions it makes for D.C. offenders. In past publications of procedural rules for D.C. offenders, the Commission has acknowledged concerns that D.C. offenders have not been given the opportunity to file administrative appeals regarding parole release and parole revocation decisions. *See* 65 FR 45886 (July 26, 2000). The Commission has explained that it does not have the staff resources to review appeals submitted by D.C. offenders, and that the additional review that is afforded by the appeal procedure is effectively obtained by having two Commissioners vote at the initial stage of decision-making.

However, the Commission has decided that there are several reasons to establish an administrative appeal procedure limited to supervised release revocation decisions. First, though the Commission has considerable experience in executing the similar function of parole revocation, the statutes governing supervised release revocation decisions impose complex and unfamiliar limits when the Commission revokes supervised release and then must determine the length of a term of imprisonment and a subsequent term of supervised release. An appeal procedure for supervised

release revocations is an additional administrative safeguard in the agency's effort to ensure error-free decision-making in carrying out this new function. Second, the number of supervised release revocations is still small and providing an administrative appeal procedure will not impose, at least at this time, a significant burden on the Commissioners and staff reviewing the appeals.

By a cross-reference, the new rule at § 2.220 carries over from the regulation at § 2.26, the deadlines for filing and deciding the appeal, the limit on exhibits that may be appended to the appeal, the grounds for appeal, and the voting requirements. The Commission is including in § 2.26 a new procedural requirement on the formatting of the appeal, and incorporates this requirement in § 2.220 by the cross-reference to § 2.26. The new procedural requirement is that the appellant briefly summarize at the beginning of his appeal all of the grounds for appeal, and then provide a concise statement of facts and reasons in support of each ground identified. The appellant may provide any additional information in an addendum to the appeal. Appeals that do not conform to this procedural requirement may be returned in the agency's discretion. The purpose of this requirement is to enhance the Commission's ability to readily identify meritorious claims, and focus its effort in the most productive manner, for the benefit of the agency and the appellant. The Commission is preparing a revised appeal form that incorporates the new format requirements and will distribute the revised form to federal correctional facilities and those organizations that have frequently filed administrative appeals with the Commission in the past.

The Commission would emphasize that the degree of review given to each appeal lies within the agency's discretion and depends on its evaluation of the strength of the appellant's claims as stated in the appeal. Because the purpose of the appeal is to correct error rather than decide each case *de novo*, some appeals will result in a summary denial, while others will deserve an in-depth review on the merits.

Because the Commission is providing this appeal procedure, the Commission is amending the voting requirements stated at § 2.218(g) for making the initial decisions on supervised release revocation. The amendment allows these decisions to be made on the vote of one Commissioner, except that two Commissioner votes are needed for any decision disagreeing with the panel

recommendation. Because appeals are almost always decided by a Commissioner other than the Commissioner who initially made the decision under review, if an offender chooses to exercise the option of filing an appeal, the appeal procedure will permit the offender to obtain review of the revocation decision by a second Commissioner. The opportunity for review of the case by a second Commissioner is an adequate substitute for the present voting requirement that two Commissioners concur for supervised release revocation decisions.

This appeal procedure for supervised release revocation decisions is in the nature of a pilot project, as when the Commission inaugurated its paroling policy guidelines for federal offenders. See *Battle v. Norton*, 365 F.Supp. 925 (D.Conn. 1973). In this era of budget constraints, the Commission will have to periodically reevaluate its ability to maintain this additional procedure, including the availability of sufficient staff and Commissioners to handle the appeals and the trends in federal and D.C. caseloads. If the balance of competing factors weighs against the continuation of the appeal procedure, the Commission will have to consider options that may range from enforcing explicit limitations on the grounds for appeals to termination of the appeal procedure.

#### Summary of Public Comment

In response to the Commission's November, 2000 publication of the interim rules for supervised release cases, the Commission received no public comment. Though the Commission could proceed to promulgate final rules on the exercise of its duties for D.C. supervised releasees, the Commission has decided to publish amended interim rules at this time and extend the opportunity for the submission of public comment. Now that more D.C. offenders are serving terms of supervised release and the Commission is taking an increasing number of actions regarding these offenders, there may be more interest in providing comment on the Commission's policies.

With regard to proposed rules published in April, 2003 on the consolidation and revision of release conditions, the Commission received one comment from a private company. This company, which specializes in the development and implementation of global positioning systems (GPS) for criminal justice applications, recommended that the Commission specify in its condition requiring home detention with electronic monitoring

that the releasee be required to wear a GPS tracking or other electronic signaling device. The Commission has generally allowed the supervision agencies (the U.S. Probation Service and the D.C. Court Services and Offender Supervision Agency) to decide on the appropriate methods and technologies employed to monitor a releasee's compliance with release conditions, whether the monitoring is done through drug tests, mental health evaluations, or electronic tracking devices. The supervision agency, not the Commission, contracts for and pays for the use of the specific method or technology. Therefore, no change is made in the amended interim rule regarding the description of the special condition on home confinement/ electronic monitoring.

The Commission is including the rules on the release conditions in the publication of amended interim rules because the agency wants to publish a comprehensive statement of the supervised release rules, of which the rule on conditions of supervised release is a significant part, and promulgating this discrete rule and the companion provisions for federal and D.C. parolees as final rules would be confusing to the public, in the Commission's judgment. Therefore, the Commission is extending the opportunity for public comment regarding the consolidation and revision of rules on release conditions.

#### Implementation

These interim rules will be applied to all cases as of the effective date of the rules. Appeals of supervised release revocation decisions will be permitted for any revocation decision made on or after the effective date of the rules. The procedural rules on the format of appeals are effective for any appeal dated on or after the effective date of the rules, but these rules will not be strictly enforced until a new appeal form is available to prisoners, releasees, and their representatives.

#### Regulatory Assessment Requirements

The U.S. Parole Commission has determined that this interim rule does not constitute a significant rule within the meaning of Executive Order 12866. The interim rule 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), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(c) of the Congressional Review Act.

#### List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

#### The Interim Rule

■ Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR Part 2.

#### PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR Part 2 continues to read as follows:

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

■ 2. Amend § 2.26 by revising paragraph (a) to read as follows:

#### § 2.26 Appeal to National Appeals Board.

(a)(1) A prisoner or parolee may submit to the National Appeals Board a written appeal of any decision to grant (other than a decision to grant parole on the date of parole eligibility), rescind, deny, or revoke parole, except that any appeal of a Commission decision pursuant to § 2.17 shall be submitted as a petition for reconsideration under § 2.27.

(2) The appeal must be filed on a form provided for that purpose within 30 days from the date of entry of the decision that is the subject of the appeal. The appeal must include an opening paragraph that briefly summarizes the grounds for the appeal. The appellant shall then list each ground separately and concisely explain the reasons supporting each ground. Appeals that do not conform to the above requirements may be returned at the Commission's discretion, in which case the appellant shall have 30 days from the date the appeal is returned to submit an appeal that complies with the above requirements. The appellant may provide any additional information for the Commission to consider in an addendum to the appeal. Exhibits may be attached to an appeal, but the appellant should not attach exhibits that are copies of documents already in the possession of the Commission. Any exhibits that are copies of documents already in the Commission's files will not be retained by the Commission.

\* \* \* \* \*

■ 3. Revise § 2.40 to read as follows:

#### § 2.40 Conditions of release.

(a) *General conditions of release.* (1) The conditions set forth in § 2.204(a)(3)–(6) apply for the reasons set forth in § 2.204(a)(1). These conditions are printed on the certificate of release issued to each releasee.

(2)(i) The refusal of a prisoner who has been granted a parole date to sign

the certificate of release (or any other document necessary to fulfill a condition of release) constitutes withdrawal of that prisoner's application for parole as of the date of refusal. To be considered for parole again, that prisoner must reapply for parole consideration.

(ii) A prisoner who is released to supervision through good-time deduction who refuses to sign the certificate of release is nevertheless bound by the conditions set forth in that certificate.

(b) *Special conditions of release.* (1) The Commission may impose a condition other than one of the general conditions of release if the Commission determines that such condition is necessary to protect the public from further crimes by the releasee and to provide adequate supervision of the releasee. Examples of special conditions of release that the Commission frequently imposes are found at § 2.204(b)(2).

(2) If the Commission requires the releasee's participation in a drug-treatment program, the releasee must submit to a drug test before release and to at least two other drug tests, as determined by the supervision officer. A decision not to impose this special condition, because available information indicates a low risk of future substance abuse by the releasee, shall constitute good cause for suspension of the drug testing requirements of 18 U.S.C. 4209(a). A grant of parole or reparole is contingent upon the prisoner passing all pre-release drug tests administered by the Bureau of Prisons.

(c) *Changing conditions of release.* The provisions of § 2.204(c) apply.

(d) *Appeal.* A releasee may appeal under § 2.26 an order to impose or modify a release condition not later than 30 days after the date the condition is imposed or modified.

(e) *Application of release conditions to absconder.* The provisions of § 2.204(d) apply.

(f) *Revocation for possession of a controlled substance.* If the Commission finds after a revocation hearing that a releasee, released after December 31, 1988, has possessed a controlled substance, the Commission shall revoke parole or mandatory release. If such a releasee fails a drug test, the Commission shall consider appropriate alternatives to revocation. The Commission shall not revoke parole on the basis of a single, unconfirmed positive drug test, if the releasee challenges the test result and there is no other violation found by the Commission to justify revocation.

(g) *Supervision officer guidance.* The provisions of § 2.204(f) apply.

(h) *Definitions.* For purposes of this section—

(1) The terms *supervision officer*, *domestic violence crime*, *approved offender-rehabilitation program* and *firearm*, as used in § 2.204, have the meanings given those terms by § 2.204(g);

(2) The term *releasee*, as used in this section and in § 2.204 means a person convicted of a federal offense who has been released on parole or released through good-time deduction; and

(3) The term *certificate of release*, as used in this section and § 2.204, means the certificate of parole or mandatory release delivered to the prisoner under § 2.29.

■ 4. Revise § 2.85 to read as follows:

**§ 2.85 Conditions of release.**

(a) *General conditions of release.* (1) The conditions set forth in § 2.204(a)(3)-(6) apply for the reasons set forth in § 2.204(a)(1). These conditions are printed on the certificate of release issued to each releasee.

(2)(i) The refusal of a prisoner who has been granted a parole date to sign the certificate of release (or any other document necessary to fulfill a condition of release) constitutes withdrawal of that prisoner's application for parole as of the date of refusal. To be considered for parole again, the prisoner must reapply for parole consideration.

(ii) A prisoner who is released to supervision through good-time deduction who refuses to sign the certificate of release is nevertheless bound by the conditions set forth in that certificate.

(b) *Special conditions of release.* The Commission may impose a condition other than one of the general conditions of release if the Commission determines that such condition is necessary to protect the public from further crimes by the releasee and provide adequate supervision of the releasee. Examples of special conditions of release that the Commission frequently imposes are found at § 2.204(b)(2).

(c) *Changing conditions of release.* The provisions of § 2.204(c) apply.

(d) *Application of release conditions to absconder.* The provisions of § 2.204(d) apply.

(e) *Supervision officer guidance.* The provisions of § 2.204(f) apply.

(f) *Definitions.* For purposes of this section—

(1) The terms *supervision officer*, *domestic violence crime*, *approved offender-rehabilitation program* and *firearm*, as used in § 2.204, have the

meanings given those terms by § 2.204(g);

(2) The term *releasee*, as used in this section and in § 2.204, means a person convicted of an offense under the District of Columbia Code who has been released on parole or released through good-time deduction; and

(3) The term *certificate of release*, as used in this section and in § 2.204, means the certificate of parole or mandatory release delivered to the releasee under § 2.86.

■ 5. Revise Subpart D to read as follows:

**Subpart D—District of Columbia Supervised Releasees**

Sec.

2.200 Authority, jurisdiction, and functions of the U.S. Parole Commission with respect to offenders serving terms of supervised release imposed by the Superior Court of the District of Columbia.

2.201 Period of supervised release.

2.202 Prerelease procedures.

2.203 Certificate of supervised release.

2.204 Conditions of supervised release.

2.205 Confidentiality of supervised release records.

2.206 Travel approval and transfers of supervision.

2.207 Supervision reports to Commission.

2.208 Termination of a term of supervised release.

2.209 Order of termination.

2.210 Extension of term.

2.211 Summons to appear or warrant for retaking releasee.

2.212 Execution of warrant and service of summons.

2.213 Warrant placed as detainer and dispositional review.

2.214 Probable cause hearing and determination.

2.215 Place of revocation hearing.

2.216 Revocation hearing procedure.

2.217 Issuance of subpoena for appearance of witnesses or production of documents.

2.218 Revocation decisions.

2.219 Maximum terms of imprisonment and supervised release.

2.220 Appeal.

**Subpart D—District of Columbia Supervised Releasees**

**§ 2.200 Authority, jurisdiction, and functions of the U.S. Parole Commission with respect to offenders serving terms of supervised release imposed by the Superior Court of the District of Columbia.**

(a) The U.S. Parole Commission has jurisdiction, pursuant to D.C. Code 24–133(c)(2), over all offenders serving terms of supervised release imposed by the Superior Court of the District of Columbia under the Sentencing Reform Emergency Amendment Act of 2000.

(b) The U.S. Parole Commission shall have and exercise the same authority with respect to a term of supervised release as is vested in the United States

district courts by 18 U.S.C. 3583(d) through (i), except that:

(1) The procedures followed by the Commission in exercising that authority shall be those set forth with respect to offenders on federal parole at 18 U.S.C. 4209 through 4215 (Chapter 311 of 18 United States Code); and

(2) An extension of a term of supervised release under subsection (e)(2) of 18 U.S.C. 3583 may only be ordered by the Superior Court upon motion from the Commission.

(c) Within the District of Columbia, supervision of offenders on terms of supervised release under the Commission's jurisdiction is carried out by the Community Supervision Officers of the Court Services and Offender Supervision Agency (CSOSA), pursuant to D.C. Code 24-133(c)(2). Outside the District of Columbia, supervision is carried out by United States Probation Officers pursuant to 18 U.S.C. 3655. For the purpose of this subpart, any reference to a "supervision officer" shall include both a Community Supervision Officer of CSOSA and a United States Probation Officer in the case of a releasee who is under supervision outside the District of Columbia.

#### **§ 2.201 Period of supervised release.**

(a) A period of supervised release that is subject to the Commission's jurisdiction begins to run on the day the offender is released from prison and continues to the expiration of the full term imposed by the Superior Court, unless early termination is granted by the Commission.

(b) A term of supervised release shall run concurrently with any federal, state, or local term of probation, parole or supervised release for another offense, but does not run while the offender is imprisoned in connection with a conviction for a federal, state, or local crime (including a term of imprisonment resulting from a probation, parole, or supervised release revocation) unless the period of imprisonment is less than 30 days. Such interruption of the term of supervised release is required by D.C. Code 24-403.01(b)(5), and is not dependent upon the issuance of a warrant or an order of revocation by the Commission.

(c) (1) For an offender serving multiple terms of supervised release imposed by the Superior Court, the duration of the Commission's jurisdiction over the offender shall be governed by the longest term imposed.

(2) If the Commission terminates such an offender from supervision on the longest term imposed, this order shall have the effect of terminating the offender from all terms of supervised

release that the offender is serving at the time of the order.

(3) If the Commission issues a warrant or summons for such an offender, or revokes supervised release for such an offender, the Commission's action shall have the effect of commencing revocation proceedings on, or revoking, all terms that the offender is serving at the time of the action. In revoking supervised release the Commission shall impose a term of imprisonment and a further term of supervised release as if the Commission were revoking a single term of supervised release. For the purpose of calculating the maximum authorized term of imprisonment at first revocation and the original maximum authorized term of supervised release, the Commission shall use the unexpired supervised release term imposed for the offense punishable by the longest maximum term of imprisonment.

(4) If such an offender is released to a further term of supervised release after serving a prison term resulting from a supervised release revocation, the Commission shall consider the offender to be serving only the single term of supervised release ordered after revocation.

#### **§ 2.202 Prerelease procedures.**

(a) At least three months, but not more than six months, prior to the release of a prisoner who has been sentenced to a term or terms of supervised release by the Superior Court, the responsible prison officials shall have the prisoner's release plan forwarded to CSOSA (or to the appropriate U.S. Probation Office) for investigation. If the supervision officer believes that any special condition of supervised release should be imposed prior to the release of the prisoner, the officer shall forward a request for such condition to the Commission. The Commission may, upon such request or of its own accord, impose any special condition in addition to the standard conditions specified in § 2.204, which shall take effect on the day the prisoner is released.

(b) Upon the release of the prisoner, the responsible prison officials shall instruct the prisoner, in writing, to report to the assigned supervision office within 72 hours, and shall inform the prisoner that failure to report on time shall constitute a violation of supervised release. If the prisoner is released to the custody of other authorities, the prisoner shall be instructed to report to the supervision office within 72 hours after his release from the physical custody of such authorities. If the prisoner is unable to report to the supervision office within 72 hours of

release because of an emergency, the prisoner shall be instructed to report to the nearest U.S. Probation Office and obey the instructions given by the duty officer.

#### **§ 2.203 Certificate of supervised release.**

When an offender who has been released from prison to serve a term of supervised release reports to the supervision officer for the first time, the supervision officer shall deliver to the releasee a certificate listing the conditions of supervised release imposed by the Commission and shall explain the conditions to the releasee.

#### **§ 2.204 Conditions of supervised release.**

(a)(1) *General conditions of release and notice by certificate of release.* The conditions set forth in paragraphs (a)(3)-(6) of this section apply to every releasee and are necessary to protect the public from further crimes by the releasee and to provide adequate supervision of the releasee. The certificate of release issued to each releasee by the Commission notifies the releasee of these conditions.

(2) *Effect of refusal to sign certificate of release.* A releasee who refuses to sign the certificate of release is nonetheless bound by the conditions set forth in that certificate.

(3) *Reporting arrival.* The releasee shall go directly to the district named in the certificate, appear in person at the supervision office, and report the releasee's residence address to the supervision officer. If the releasee is unable to appear in person at that office within 72 hours of release because of an emergency, the releasee shall report to the nearest U.S. Probation Office and obey the instructions given by the duty officer. A releasee who is initially released to the physical custody of another authority shall follow the procedures described in this paragraph upon release from the custody of the other authority.

(4) *Providing information to and cooperating with the supervision officer.*

(i) The releasee shall, between the first and third day of each month, make a written report to the supervision officer on a form provided for that purpose. The releasee shall also report to the supervision officer at such times and in such a manner as that officer directs and shall provide such information as the supervision officer requests. All information that a releasee provides to the supervision officer shall be complete and truthful.

(ii) The releasee shall notify the supervision officer within two days of an arrest or questioning by a law-

enforcement officer, a change in place of residence, or a change in employment.

(iii) The releasee shall permit the supervision officer to visit the releasee's residence and workplace.

(iv) The releasee shall permit the supervision officer to confiscate any material that the supervision officer believes may constitute contraband and that is in plain view in the releasee's possession, including in the releasee's residence, workplace, or vehicle.

(v) The releasee shall submit to a drug or alcohol test whenever ordered to do so by the supervision officer.

(5) *Prohibited conduct.* (i) The releasee shall not violate any law and shall not associate with a person who is violating any law.

(ii) The releasee shall not possess a firearm, other dangerous weapon, or ammunition.

(iii) The releasee shall not drink alcoholic beverages to excess and shall not illegally buy, possess, use, or administer a controlled substance. The releasee shall not frequent a place where a controlled substance is illegally sold, dispensed, used, or given away.

(iv) The releasee shall not leave the geographic limits set by the certificate of release without written permission from the supervision officer.

(v) The releasee shall not associate with a person who has a criminal record without permission from the supervision officer.

(vi) The releasee shall not enter into an agreement to act as an informer or special agent for a law-enforcement agency without the prior approval of the Commission.

(6) *Additional conditions.* (i) The releasee shall make a diligent effort to work regularly, unless excused by the supervision officer, and to support any legal dependent. The releasee shall participate in an employment readiness program if so directed by the supervision officer.

(ii) The releasee shall make a diligent effort to satisfy any fine, restitution order, court costs or assessment, or court-ordered child support or alimony payment to which the releasee is subject. The releasee shall provide financial information relevant to the payment of such a financial obligation that is requested by the supervision officer. If unable to pay such a financial obligation in one sum, the releasee shall cooperate with the supervision officer to establish an installment-payment schedule.

(iii) If the term of supervision results from a conviction for a domestic violence crime, and such conviction is the releasee's first conviction for such a crime, the releasee shall, as directed by

the supervision officer, attend an approved offender-rehabilitation program if such a program is readily available within a 50-mile radius of the releasee's residence.

(iv) The releasee shall comply with any applicable sex-offender reporting and registration law.

(v) The releasee shall provide a DNA sample, as directed by the supervision officer, if collection of such sample is authorized by the DNA Analysis Backlog Elimination Act of 2000.

(vi) If the releasee is supervised by the District of Columbia Court Services and Offender Supervision Agency, the releasee shall submit to the sanctions imposed by the supervision officer within the limits established by an approved schedule of graduated sanctions if the supervision officer finds that the releasee has tested positive for illegal drugs or has committed a noncriminal violation of the conditions of release. Notwithstanding the imposition of a graduated sanction, if the Commission believes the releasee is a risk to the public safety, or is not complying in good faith with the sanction imposed, the Commission may commence revocation proceedings on the alleged violation(s) upon which the graduated sanction was based.

(vii) As directed by the supervision officer, the releasee shall notify a person of a risk of harm that may be determined from a review of the releasee's criminal record or personal history and characteristics. In addition, the supervision officer is authorized to make such notifications as are permitted by the Commission's rules, and to confirm the releasee's compliance with any notification directive. (b)(1) *Special conditions of release.* The Commission may impose a condition other than a condition set forth in paragraphs (a)(3)–(6) of this section if the Commission determines that such condition is necessary to protect the public from further crimes by the releasee and provide adequate supervision of the releasee.

(2) The following are examples of special conditions frequently imposed by the Commission—

(i) That the releasee reside in or participate in the program of a community corrections center, or both, for all or part of the period of supervision;

(ii) That the releasee participate in a drug-or alcohol-treatment program, and abstain from all use of alcohol and other intoxicants;

(iii) That, as an alternative to incarceration, the releasee remain at home during nonworking hours and have compliance with this condition

monitored by telephone or electronic signaling devices; and

(iv) That the releasee permit a supervision officer to conduct a search of the releasee's person, or of any building, vehicle, or other area under the control of the releasee, at such time as that supervision officer shall decide, and to seize contraband found thereon or therein.

(3) If the Commission requires the releasee's participation in a drug-treatment program, the releasee must submit to a drug test within 15 days of release and to at least two other drug tests, as determined by the supervision officer. A decision not to impose this special condition, because available information indicates a low risk of future substance abuse by the releasee, shall constitute good cause for suspension of the drug testing requirements of 18 U.S.C. 3583(d).

(c) *Changing conditions of release.* (1) The Commission may at any time modify or add to the conditions of release if the Commission determines that such modification or addition is necessary to protect the public from further crimes by the releasee and provide adequate supervision of the releasee.

(2)(i) Except as provided in paragraph (c)(2)(ii) of this section, before the Commission orders a change of condition, the releasee shall be notified of the proposed modification or addition and, unless waived, shall have 10 days from receipt of such notification to comment on the proposed modification or addition. Following that 10-day period, the Commission shall have 21 days, exclusive of holidays, to determine whether to order such modification or addition to the conditions of release.

(ii) The 10-day notice requirement of paragraph (c)(2)(i) of this section does not apply to a change of condition that results from a revocation hearing for the releasee, a determination that the modification or addition must be ordered immediately to prevent harm to the releasee or to the public, or a request from the releasee.

(d) *Application of release conditions to absconder.* A releasee who absconds from supervision prevents the term of supervision from expiring and the running of the term is tolled during the time that the releasee is an absconder. A releasee who absconds from supervision remains bound by the conditions of release, even after the date that the term of supervision originally was scheduled to expire. The Commission may revoke the term of supervision based on a violation of a release condition committed by such a

releasee before the expiration of the term of supervision, as extended by the period of absconding.

(e) *Revocation for certain violations of release conditions.* If the Commission finds after a revocation hearing that a releasee has possessed a controlled substance, refused to comply with drug testing, possessed a firearm, or tested positive for illegal controlled substances more than three times over the course of one year, the Commission shall revoke the term of supervision and impose a term of imprisonment as provided at § 2.218. If the releasee fails a drug test, the Commission shall consider appropriate alternatives to revocation.

(f) *Supervision officer guidance.* The Commission expects a releasee to understand the conditions of release according to the plain meaning of those conditions and to seek the guidance of the supervision officer before engaging in conduct that may violate a condition of release. The supervision officer may instruct a releasee to refrain from particular conduct, or take specific steps to avoid violating a condition of release, or to correct an existing violation of a condition of release. The releasee's failure to obey a directive from the supervision officer to report on compliance with such instructions may be considered as a violation of the condition described at paragraph (a)(4)(i) of this section.

(g) *Definitions.* As used in this section, the term—

(1) *Releasee* means a person who has been sentenced to a term of supervised release by the Superior Court of the District of Columbia;

(2) *Supervision officer* means a Community Supervision Officer of the District of Columbia Court Services and Offender Supervision Agency or United States Probation Officer;

(3) *Domestic violence crime* has the meaning given that term by 18 U.S.C. 3561, except that the term "court of the United States" as used in that definition shall be deemed to include the District of Columbia Superior Court;

(4) *Approved offender-rehabilitation program* means a program that has been approved by the District of Columbia Court Services and Offender Supervision Agency (or the United States Probation Office) in consultation with a State Coalition Against Domestic Violence or other appropriate experts;

(5) *Certificate of release* means the certificate of supervised release delivered to the releasee under § 2.203; and

(6) *Firearm* has the meaning given by 18 U.S.C. 921.

#### § 2.205 Confidentiality of supervised release records.

(a) Consistent with the Privacy Act of 1974 (5 U.S.C. 552a(b)), the contents of supervised release records shall be confidential and shall not be disclosed outside the Commission and CSOSA (or the U.S. Probation Office) except as provided in paragraphs (b) and (c) of this section.

(b) Information pertaining to a releasee may be disclosed to the general public, without the consent of the releasee, as authorized by § 2.37.

(c) Information other than as described in § 2.37 may be disclosed without the consent of the releasee only pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a(b)) and the implementing rules of the Commission or CSOSA, as applicable.

#### § 2.206 Travel approval and transfers of supervision.

(a) A releasee's supervision officer may approve travel outside the district of supervision without approval of the Commission in the following situations:

(1) Trips not to exceed thirty days for family emergencies, vacations, and similar personal reasons;

(2) Trips, not to exceed thirty days, to investigate reasonably certain employment possibilities; and

(3) Recurring travel across a district boundary, not to exceed fifty miles outside the district, for purpose of employment, shopping, or recreation.

(b) Specific advance approval by the Commission is required for all foreign travel, employment requiring recurring travel more than fifty miles outside the district, and vacation travel outside the district of supervision exceeding thirty days. A request for such permission shall be in writing and must demonstrate a substantial need for such travel.

(c) A special condition imposed by the Commission prohibiting certain travel shall apply instead of any general rules relating to travel as set forth in paragraph (a) of this section.

(d) The district of supervision for a releasee under the supervision of CSOSA shall be the District of Columbia, except that for the purpose of travel permission under this section, the district of supervision shall include the D.C. metropolitan area as defined in the certificate of supervised release.

(e) A supervised releasee who is under the jurisdiction of the Commission, and who is released or transferred to a district outside the District of Columbia, shall be supervised by a U.S. Probation Officer pursuant to 18 U.S.C. 3655.

(f) A supervised releasee may be transferred to a new district of

supervision with the permission of the supervision offices of both the transferring and receiving district, provided such transfer is not contrary to instructions from the Commission.

#### § 2.207 Supervision reports to Commission.

A regular supervision report shall be submitted to the Commission by the supervision officer after the completion of 12 months of continuous community supervision and annually thereafter. The supervision officer shall submit such additional reports and information concerning both the releasee, and the enforcement of the conditions of supervised release, as the Commission may direct. All reports shall be submitted according to the format established by the Commission.

#### § 2.208 Termination of a term of supervised release.

(a) The Commission, in its discretion, may terminate a term of supervised release and discharge the releasee from further supervision at any time after the expiration of one year of supervised release, if the Commission is satisfied that such action is warranted by the conduct of the releasee and the interest of justice.

(b) Two years after release on supervision, and at least annually thereafter, the Commission shall review the status of each releasee to determine the need for continued supervision. In calculating such two-year period there shall not be included any period of release prior to the most recent release, nor any period served in confinement on any other sentence. A review shall also be conducted whenever termination of supervision is specially recommended by the releasee's supervision officer. If the term of supervised release imposed by the court is two years or less, termination of supervision shall be considered only if specially recommended by the releasee's supervision officer.

(c) In determining whether to grant early termination of supervision, the Commission shall calculate for the releasee a Salient Factor Score under § 2.20, and shall apply the following early termination guidelines, provided that case-specific factors do not indicate a need for continued supervision:

(1) For a releasee classified in the very good risk category and whose current offense did not involve violence, termination of supervision may be ordered after two continuous years of incident-free supervision in the community.

(2) For a releasee classified in the very good risk category and whose current

offense involved violence other than high level violence, termination of supervision may be ordered after three continuous years of incident-free supervision in the community.

(3) For a releasee classified in the very good risk category and whose current offense involved high level violence (without death of victim resulting), termination of supervision may be ordered after four continuous years of incident-free supervision in the community.

(4) For a releasee classified in other than the very good risk category, whose current offense did not involve violence, and whose prior record includes not more than one episode of felony violence, termination of supervision may be ordered after three continuous years of incident-free supervision in the community.

(5) For a releasee classified in other than the very good risk category whose current offense involved violence other than high level violence, or whose current offense did not involve violence but the releasee's prior record includes two or more episodes of felony violence, termination of supervision may be ordered after four continuous years of incident-free supervision in the community.

(6) For releasees in the following categories, release from supervision prior to five years may be ordered only upon a case-specific finding that, by reason of age, infirmity, or other compelling factors, the releasee is unlikely to be a threat to the public safety:

(i) A releasee in other than the very good risk category whose current offense involved high level violence;

(ii) A releasee whose current offense involved high level violence with death of victim resulting; and

(iii) A releasee who is a sex offender serving a term of supervised release that exceeds five years.

(7) The terms *violence* and *high level violence* are defined in § 2.80. The term incident-free supervision means that the releasee has had no reported violations, and has not been the subject of any arrest or law enforcement investigation that raises a reasonable doubt as to whether the releasee has been able to refrain from law violations while under supervision.

(d) Except in the case of a releasee covered by paragraph (c)(6) of this section, a decision to terminate supervision below the guidelines may be made if it appears that the releasee is a better risk than indicated by the salient factor score (if classified in other than the very good risk category), or is a less serious risk to the public safety

than indicated by a violent current offense or prior record. However, termination of supervision prior to the completion of two years of incident-free supervision will not be granted in any case unless case-specific factors clearly indicate that continued supervision would be counterproductive to the releasee's rehabilitation.

(e) A releasee with a pending criminal charge who is otherwise eligible for an early termination from supervision shall not be discharged from supervision until the disposition of such charge is known.

(f) Decisions on the early termination of a term of supervised release for an offender sentenced under the YRA shall be made under the provisions of this section. If the Commission terminates the term of supervised release before the expiration of the term, the youth offender's conviction is automatically set aside and the Commission shall issue a certificate setting aside the conviction. See D.C. Code 24-906(c). (d). The set-aside certificate shall be issued in lieu of the certificate of discharge described in § 2.209.

#### § 2.209 Order of termination.

When the Commission orders the termination of a term of supervised release, it shall issue a certificate to the releasee granting the releasee a full discharge from his term of supervised release. The termination and discharge shall take effect only upon the actual delivery of the certificate of discharge to the releasee by the supervision officer, and may be rescinded for good cause at any time prior to such delivery.

#### § 2.210 Extension of term.

(a) At any time during service of a term of supervised release, the Commission may submit to the Superior Court a motion to extend the term of supervised release to the maximum term authorized by law, if less than the maximum authorized term was originally imposed. If the Superior Court grants the Commission's motion prior to the expiration of the term originally imposed, the extension ordered by the court shall take effect upon issuance of the order.

(b) The Commission may submit the motion for an extension of a term of supervised release if the Commission finds that the rehabilitation of the releasee or the protection of the public from further crimes by the releasee is likely to require a longer period of supervision than the court originally contemplated. The Commission's grounds for making such a finding shall be stated in the motion filed with the court.

(c) The provisions of this section shall not apply to the Commission's determination of an appropriate period of further supervised release following revocation of a term of supervised release.

#### § 2.211 Summons to appear or warrant for retaking releasee.

(a) If a releasee is alleged to have violated the conditions of his release, and satisfactory evidence thereof is presented, a Commissioner may:

(1) Issue a summons requiring the releasee to appear for a probable cause hearing or local revocation hearing; or

(2) Issue a warrant for the apprehension and return of the releasee to custody.

(b) A summons or warrant under paragraph (a) of this section may be issued or withdrawn only by a Commissioner.

(c) Any summons or warrant under this section shall be issued as soon as practicable after the alleged violation is reported to the Commission, except when delay is deemed necessary. Issuance of a summons or warrant may be withheld until the frequency or seriousness of the violations, in the opinion of a Commissioner, requires such issuance. In the case of any releasee who is charged with a criminal offense and who is awaiting disposition of such charge, issuance of a summons or warrant may be:

(1) Temporarily withheld;

(2) Issued by the Commission and held in abeyance;

(3) Issued by the Commission and a detainer lodged with the custodial authority; or

(4) Issued for the retaking of the releasee.

(d) A summons or warrant may be issued only within the maximum term or terms of the period of supervised release being served by the releasee, except as provided for an absconder from supervision in § 2.204(i). A summons or warrant shall be considered issued when signed and either:

(1) Placed in the mail; or

(2) Sent by electronic transmission to the appropriate law enforcement authority.

(e) The issuance of a warrant under this section operates to bar the expiration of the term of supervised release. Such warrant maintains the Commission's jurisdiction to retake the releasee either before or after the normal expiration date of the term, and for such time as may be reasonably necessary for the Commission to reach a final decision as to revocation of the term of supervised release.

(f) A summons or warrant issued pursuant to this section shall be

accompanied by a warrant application (or other notice) stating:

(1) The charges against the releasee;  
 (2) The specific reports and other documents upon which the Commission intends to rely in determining whether a violation of supervised release has occurred and whether to revoke supervised release;

(3) Notice of the Commission's intent, if the releasee is arrested within the District of Columbia, to hold a probable cause hearing within five days of the releasee's arrest;

(4) A statement of the purpose of the probable cause hearing;

(5) The days of the week on which the Commission regularly holds its dockets of probable cause hearings at the Central Detention Facility;

(6) The releasee's procedural rights in the revocation process; and

(7) The possible actions that the Commission may take.

(g) In the case of an offender who is serving concurrent terms of parole and supervised release under the Commission's jurisdiction, the Commission may take any action permitted by this section on the basis of one or more of the terms (*e.g.*, the Commission may issue warrants on both terms, and order that the first warrant should be executed, and that the second warrant should be placed as a detainer and executed only when the offender is released from the prison term that begins with the execution of the first warrant). The Commission may conduct separate revocation hearings, or consider all parole and supervised release violation charges in one combined hearing and make dispositions on the parole and supervised release terms. If the Commission conducts separate revocation hearings and revokes parole or supervised release at the first hearing, the Commission may conduct the subsequent hearing on the same violation behavior as an institutional hearing.

#### **§ 2.212 Execution of warrant and service of summons.**

(a) Any officer of any Federal or District of Columbia correctional institution, any Federal Officer authorized to serve criminal process, or any officer or designated civilian employee of the Metropolitan Police Department of the District of Columbia, to whom a warrant is delivered, shall execute such warrant by taking the releasee and returning him to the custody of the Attorney General.

(b) Upon the arrest of the releasee, the officer executing the warrant shall deliver to the releasee a copy of the

warrant application (or other notice provided by the Commission) containing the information described in § 2.211(f).

(c) If execution of the warrant is delayed pending disposition of local charges, for further investigation, or for some other purpose, the releasee is to be continued under supervision by the supervision officer until the normal expiration of the sentence, or until the warrant is executed, whichever first occurs. Monthly supervision reports are to be submitted, and the releasee must continue to abide by all the conditions of release.

(d) If any other warrant for the arrest of the releasee has been executed or is outstanding at the time the Commission's warrant is executed, the arresting officer may, within 72 hours of executing the Commission's warrant, release the arrestee to such other warrant and lodge the Commission's warrant as a detainer, voiding the execution thereof, provided such action is consistent with the instructions of the Commission. In other cases, the arrestee may be released from an executed warrant whenever the Commission finds such action necessary to serve the ends of justice.

(e) A summons to appear at a probable cause hearing or revocation hearing shall be served upon the releasee in person by delivering to the releasee a copy of the summons and the application therefor. Service shall be made by any Federal or District of Columbia officer authorized to serve criminal process and certification of such service shall be returned to the Commission.

(f) Official notification of the issuance of a Commission warrant shall authorize any law enforcement officer within the United States to hold the releasee in custody until the warrant can be executed in accordance with paragraph (a) of this section.

#### **§ 2.213 Warrant placed as detainer and dispositional review.**

(a) When a releasee is a prisoner in the custody of other law enforcement authorities, or is serving a new sentence of imprisonment imposed for a crime (or for a violation of some other form of community supervision) committed while on supervised release, a violation warrant may be lodged against him as a detainer.

(b) The Commission shall review the detainer upon the request of the prisoner pursuant to the procedure set forth in § 2.47(a)(2). Following such review, the Commission may:

(1) Withdraw the detainer and order reinstatement of the prisoner to supervision upon release from custody;

(2) Order a dispositional revocation hearing to be conducted at the institution in which the prisoner is confined; or

(3) Let the detainer stand until the new sentence is completed. Following the execution of the Commission's warrant, and the transfer of the prisoner to an appropriate federal facility, an institutional revocation hearing shall be conducted.

(c) Dispositional revocation hearings pursuant to this section shall be conducted in accordance with the provisions at § 2.216 governing institutional revocation hearings. A hearing conducted at a state or local facility may be conducted either by a hearing examiner or by any federal, state, or local official designated by a Commissioner. Following a revocation hearing conducted pursuant to this section, the Commission may take any action authorized by §§ 2.218 and 2.219.

(d) The date the violation term commences is the date the Commission's warrant is executed. A releasee's violation term (*i.e.*, the term of imprisonment and/or further term of supervised release that the Commission may require the releasee to serve after revocation) shall start to run only upon the offender's release from the confinement portion of the intervening sentence.

(e) An offender whose supervised release is revoked shall be given credit for all time in confinement resulting from any new offense or violation that is considered by the Commission as a basis for revocation, but solely for the purpose of satisfying the time ranges in the reparole guidelines at § 2.21. The computation of the offender's sentence, and the forfeiture of time on supervised release, are not affected by such guideline credit.

#### **§ 2.214 Probable cause hearing and determination.**

(a) *Hearing.* A supervised releasee who is retaken and held in custody in the District of Columbia on a warrant issued by the Commission, and who has not been convicted of a new crime, shall be given a probable cause hearing by an examiner of the Commission no later than five days from the date of such retaking. A releasee who is retaken and held in custody outside the District of Columbia, but within the Washington D.C. metropolitan area, and who has not been convicted of a new crime, shall be given a probable cause hearing by an examiner of the Commission within five days of the releasee's arrival at a facility

where probable cause hearings are conducted. The purpose of a probable cause hearing is to determine whether there is probable cause to believe that the releasee has violated the conditions of supervised release as charged, and if so, whether a local or institutional revocation hearing should be conducted. If the examiner finds probable cause, the examiner shall schedule a final revocation hearing to be held within 65 days of the releasee's arrest.

(b) *Notice and opportunity to postpone hearing.* Prior to the commencement of each docket of probable cause hearings in the District of Columbia, a list of the releasees who are scheduled for probable cause hearings, together with a copy of the warrant application for each releasee, shall be sent to the D.C. Public Defender Service. At or before the probable cause hearing, the releasee (or the releasee's attorney) may submit a written request that the hearing be postponed for any period up to thirty days, and the Commission shall ordinarily grant such requests. Prior to the commencement of the probable cause hearing, the examiner shall advise the releasee that the releasee may accept representation by the attorney from the D.C. Public Defender Service who is assigned to that docket, waive the assistance of an attorney at the probable cause hearing, or have the probable cause hearing postponed in order to obtain another attorney and/or witnesses on his behalf. In addition, the releasee may request the Commission to require the attendance of adverse witnesses (*i.e.*, witnesses who have given information upon which revocation may be based) at a postponed probable cause hearing. Such adverse witnesses may be required to attend either a postponed probable cause hearing, or a combined postponed probable cause and local revocation hearing, provided the releasee meets the requirements of § 2.215(a) for a local revocation hearing. The releasee shall also be given notice of the time and place of any postponed probable cause hearing.

(c) *Review of the charges.* At the beginning of the probable cause hearing, the examiner shall ascertain that the notice required by § 2.212(b) has been given to the releasee. The examiner shall then review the violation charges with the releasee and shall apprise the releasee of the evidence that has been submitted in support of the charges. The examiner shall ascertain whether the releasee admits or denies each charge listed on the warrant application (or other notice of charges), and shall offer the releasee an opportunity to rebut or

explain the allegations contained in the evidence giving rise to each charge. The examiner shall also receive the statements of any witnesses and documentary evidence that may be presented by the releasee. At a postponed probable cause hearing, the examiner shall also permit the releasee to confront and cross-examine any adverse witnesses in attendance, unless good cause is found for not allowing confrontation. Whenever a probable cause hearing is postponed to secure the appearance of adverse witnesses (or counsel in the case of a probable cause hearing conducted outside the District of Columbia), the Commission will ordinarily order a combined probable cause and local revocation hearing as provided in paragraph (i) of this section.

(d) *Probable cause determination.* At the conclusion of the probable cause hearing, the examiner shall determine whether probable cause exists to believe that the releasee has violated the conditions of release as charged, and shall so inform the releasee. The examiner shall then take either of the following actions:

(1) If the examiner determines that no probable cause exists for any violation charge, the examiner shall order that the releasee be released from the custody of the warrant and either reinstated to supervision, or discharged from supervision if the term of supervised release has expired.

(2) If the hearing examiner determines that probable cause exists on any violation charge, and the releasee has requested (and is eligible for) a local revocation hearing in the District of Columbia as provided by § 2.215(a), the examiner shall schedule a local revocation hearing for a date that is within 65 days of the releasee's arrest. After the probable cause hearing, the releasee (or the releasee's attorney) may submit a written request for a postponement. Such postponements will normally be granted if the request is received no later than fifteen days before the date of the revocation hearing. A request for a postponement that is received by the Commission less than fifteen days before the scheduled date of the revocation hearing will be granted only for a compelling reason. The releasee (or the releasee's attorney) may also request, in writing, a hearing date that is earlier than the date scheduled by the examiner, and the Commission will accommodate such request if practicable.

(e) *Institutional revocation hearing.* If the releasee is not eligible for a local revocation hearing as provided by § 2.215(a), or has requested to be transferred to an institution for his

revocation hearing, the Commission will request the Bureau of Prisons to designate the releasee to an appropriate institution, and an institutional revocation hearing shall be scheduled for a date that is within 90 days of the releasee's retaking.

(f) *Digest of the probable cause hearing.* At the conclusion of the probable cause hearing, the examiner shall prepare a digest summarizing the evidence presented at the hearing, the responses of the releasee, and the examiner's findings as to probable cause.

(g) *Release notwithstanding probable cause.* Notwithstanding a finding of probable cause, the Commission may order the releasee's reinstatement to supervision or release pending further proceedings, if it determines that:

(1) Continuation of revocation proceedings is not warranted despite the finding of probable cause; or

(2) Incarceration pending further revocation proceedings is not warranted by the frequency or seriousness of the alleged violation(s), and the releasee is neither likely to fail to appear for further proceedings, nor is a danger to himself or others.

(h) *Conviction as probable cause.* Conviction of any crime committed subsequent to the commencement of a term of supervised release shall constitute probable cause for the purposes of this section, and no probable cause hearing shall be conducted unless a hearing is needed to consider additional violation charges that may be determinative of the Commission's decision whether to revoke supervised release.

(i) *Combined probable cause and local revocation hearing.* A postponed probable cause hearing may be conducted as a combined probable cause and local revocation hearing, provided such hearing is conducted within 65 days of the releasee's arrest and the releasee has been notified that the postponed probable cause hearing will constitute the final revocation hearing. The Commission's policy is to conduct a combined probable cause and local revocation hearing whenever adverse witnesses are required to appear and give testimony with respect to contested charges.

(j) *Late received charges.* If the Commission is notified of an additional charge after probable cause has been found to proceed with a revocation hearing, the Commission may:

(1) Remand the case for a supplemental probable cause hearing to determine if the new charge is contested by the releasee and if witnesses must be presented at the revocation hearing;

(2) Notify the releasee that the additional charge will be considered at the revocation hearing without conducting a supplemental probable cause hearing; or

(3) Determine that the new charge shall not be considered at the revocation hearing.

#### **§ 2.215 Place of revocation hearing.**

(a) If the releasee requests a local revocation hearing, the releasee shall be given a revocation hearing reasonably near the place of the alleged violation(s) or arrest, with the opportunity to contest the violation charges, if the following conditions are met:

(1) The releasee has not been convicted of a crime committed while under supervision; and

(2) The releasee denies all violation charges.

(b) The releasee shall also be given a local revocation hearing if the releasee admits (or has been convicted of) one or more charged violations, but denies at least one unadjudicated charge that may be determinative of the Commission's decision regarding revocation or the length of any new term of imprisonment, and the releasee requests the presence of one or more adverse witnesses regarding that contested charge. If the appearance of such witnesses at the hearing is precluded by the Commission for good cause, a local revocation hearing shall not be ordered.

(c) If there are two or more contested charges, a local revocation hearing may be conducted near the place of the violation chiefly relied upon by the Commission as a basis for the issuance of the warrant or summons.

(d)(1) A releasee shall be given an institutional revocation hearing upon the releasee's return or recommitment to an institution if the releasee:

(i) Voluntarily waives the right to a local revocation hearing; or

(ii) Admits (or has been convicted of) one or more charged violations without contesting any unadjudicated charge that may be determinative of the Commission's decision regarding revocation and/or imposition of a new term of imprisonment.

(2) An institutional revocation hearing may also be conducted in the District of Columbia jail or prison facility in which the releasee is being held. On his own motion, a Commissioner may designate any case described in paragraph (d)(1) of this section for a local revocation hearing. The difference in procedures between a "local revocation hearing" and an "institutional revocation hearing" is set forth in § 2.216(b).

(e) Unless the Commission orders release notwithstanding a probable

cause finding under § 2.214(g), a releasee who is retaken on a warrant issued by the Commission shall remain in custody until a decision is made on the revocation of the term of supervised release. A releasee who has been given a revocation hearing pursuant to the issuance of a summons shall remain on supervision pending the decision of the Commission, unless the Commission has ordered otherwise.

(f) A local revocation hearing shall be held not later than 65 days from the retaking of the releasee on a supervised release violation warrant. An institutional revocation hearing shall be held within 90 days of the retaking of the releasee on a supervised release violation warrant. If the releasee requests and receives any postponement, or consents to any postponement, or by his actions otherwise precludes the prompt completion of revocation proceedings in his case, the above-stated time limits shall be correspondingly extended.

(g) A local revocation hearing may be conducted by a hearing examiner or by any federal, state, or local official who is designated by a Commissioner to be the presiding hearing officer. An institutional revocation hearing may be conducted by a hearing examiner.

#### **§ 2.216 Revocation hearing procedure.**

(a) The purpose of the revocation hearing shall be to determine whether the releasee has violated the conditions of the term of supervised release, and, if so, whether the term should be revoked or the releasee restored to supervised release.

(b) At a local revocation hearing, the alleged violator may present voluntary witnesses and documentary evidence. The alleged violator may also request the Commission to compel the attendance of any adverse witnesses for cross-examination, and any other relevant witnesses who have not volunteered to attend. At an institutional revocation hearing, the alleged violator may present voluntary witnesses and documentary evidence, but may not request the Commission to secure the attendance of any adverse or favorable witness. At any hearing, the presiding hearing officer may limit or exclude any irrelevant or repetitious statement or documentary evidence, and may prohibit the releasee from contesting matters already adjudicated against him in other forums.

(c) At a local revocation hearing, the Commission shall, on the request of the alleged violator, require the attendance of any adverse witnesses who have given statements upon which revocation may be based, subject to a finding of

good cause as described in paragraph (d) of this section. The adverse witnesses who are present shall be made available for questioning and cross-examination in the presence of the alleged violator. The Commission may also require the attendance of adverse witnesses on its own motion.

(d) The Commission may excuse any requested adverse witness from appearing at the hearing (or from appearing in the presence of the alleged violator) if the Commission finds good cause for so doing. A finding of good cause for the non-appearance of a requested adverse witness may be based, for example, on a significant possibility of harm to the witness, or the witness not being reasonably available when the Commission has documentary evidence that is an adequate substitute for live testimony.

(e) All evidence upon which a finding of violation may be based shall be disclosed to the alleged violator before the revocation hearing. Such evidence shall include the community supervision officer's letter summarizing the releasee's adjustment to supervision and requesting the warrant, all other documents describing the charged violation or violations, and any additional evidence upon which the Commission intends to rely in determining whether the charged violation or violations, if sustained, would warrant revocation of supervised release. If the releasee is represented by an attorney, the attorney shall be provided, prior to the revocation hearing, with a copy of the releasee's presentence investigation report, if such report is available to the Commission. If disclosure of any information would reveal the identity of a confidential informant or result in harm to any person, that information may be withheld from disclosure, in which case a summary of the withheld information shall be disclosed to the releasee prior to the revocation hearing.

(f) An alleged violator may be represented by an attorney at either a local or an institutional revocation hearing. In lieu of an attorney, an alleged violator may be represented at any revocation hearing by a person of his choice. However, the role of such non-attorney representative shall be limited to offering a statement on the alleged violator's behalf. Only licensed attorneys shall be permitted to question witnesses, make objections, and otherwise provide legal representation for supervised releasees, except in the case of law students appearing before the Commission as part of a court-approved clinical practice program. Such law students must be under the

personal direction of a lawyer or law professor who is physically present at the hearing, and the examiner shall ascertain that the releasee consents to the procedure.

(g) At a local revocation hearing, the Commission shall secure the presence of the releasee's community supervision officer, or a substitute community supervision officer who shall bring the releasee's supervision file if the releasee's community supervision officer is not available. At the request of the hearing examiner, such officer shall provide testimony at the hearing concerning the releasee's adjustment to supervision.

(h) After the revocation hearing, the hearing examiner shall prepare a summary of the hearing that includes a description of the evidence against the releasee and the evidence submitted by the releasee in defense or mitigation of the charges, a summary of the arguments against revocation presented by the releasee, and the examiner's recommended decision. The hearing examiner's summary, together with the releasee's file (including any documentary evidence and letters submitted on behalf of the releasee), shall be given to another examiner for review. When two hearing examiners concur in a recommended disposition, that recommendation, together with the releasee's file and the hearing examiner's summary of the hearing, shall be submitted to the Commission for decision.

**§ 2.217 Issuance of subpoena for appearance of witnesses or production of documents.**

(a)(1) If any adverse witness (*i.e.*, a person who has given information upon which revocation may be based) refuses, upon request by the Commission, to appear at a probable cause hearing or local revocation hearing, a Commissioner may issue a subpoena for the appearance of such witness.

(2) In addition, a Commissioner may, upon a showing by the releasee that a witness whose testimony is necessary to the proper disposition of his case will not appear voluntarily at a local revocation hearing or provide an adequate written statement of his testimony, issue a subpoena for the appearance of such witness at the revocation hearing.

(3) A subpoena may also be issued at the discretion of a Commissioner if an adverse witness is judged unlikely to appear as requested, or if the subpoena is deemed necessary for the orderly processing of the case.

(b) A subpoena may require the production of documents as well as, or

in lieu of, a personal appearance. The subpoena shall specify the time and the place at which the person named therein is commanded to appear, and shall specify any documents required to be produced.

(c) A subpoena may be served by any Federal or District of Columbia officer authorized to serve criminal process. The subpoena may be served at any place within the judicial district in which the place specified in the subpoena is located, or any place where the witness may be found. Service of a subpoena upon a person named therein shall be made by delivering a copy of the subpoena to such a person.

(d) If a person refuses to obey such subpoena, the Commission may petition a court of the United States for the judicial district in which the revocation proceeding is being conducted, or in which such person may be found, to require such person to appear, testify, or produce evidence. If the court issues an order requiring such person to appear before the Commission, failure to obey such an order is punishable as contempt, as provided in 18 U.S.C. 4214(a)(2).

**§ 2.218 Revocation decisions.**

(a) Whenever a releasee is summoned or retaken by the Commission, and the Commission finds by a preponderance of the evidence that the releasee has violated one or more conditions of supervised release, the Commission may take any of the following actions:

(1) Restore the releasee to supervision, and where appropriate:

(i) Reprimand the releasee;

(ii) Modify the releasee's conditions of release;

(iii) Refer the releasee to a residential community corrections center for all or part of the remainder of the term of supervised release; or

(2) Revoke the term of supervised release.

(b) If supervised release is revoked, the Commission shall determine whether the releasee shall be returned to prison to serve a new term of imprisonment, and the length of that term, or whether a new term of imprisonment shall be imposed but limited to time served. If the Commission imposes a new term of imprisonment that is less than the applicable maximum term of imprisonment authorized by law, the Commission shall also determine whether to impose a further term of supervised release to commence after the new term of imprisonment has been served. If the new term of imprisonment is limited to time served, any further term of supervised release shall

commence upon the issuance of the Commission's order. Notwithstanding the above, if a releasee is serving another term of imprisonment of 30 days or more in connection with a conviction for a federal, state, or local crime (including a term of imprisonment resulting from a probation, parole, or supervised release revocation), a further term of supervised release imposed by the Commission under this paragraph shall not commence until that term of imprisonment has been served.

(c) A releasee whose term of supervised release is revoked by the Commission shall receive no credit for time spent on supervised release, including any time spent in confinement on other sentences (or in a halfway house as a condition of supervised release) prior to the execution of the Commission's warrant.

(d) The Commission's decision regarding the imposition of a term of imprisonment following revocation of supervised release, and any further term of supervised release, shall be made pursuant to the limitations set forth in § 2.219. Within those limitations, the appropriate length of any term of imprisonment shall be determined by reference to the guidelines at § 2.21. If the term of imprisonment authorized under § 2.219 is less than the minimum of the appropriate guideline range determined under § 2.21, the term authorized under § 2.219 shall be the guideline range.

(e) Whenever the Commission imposes a term of imprisonment upon revocation of supervised release that is less than the authorized maximum term of imprisonment, it shall be the Commission's general policy to impose a further term of supervised release that is the maximum term of supervised release permitted by § 2.219. If the Commission imposes a new term of imprisonment that is equal to the maximum term of imprisonment authorized by law (or in the case of a subsequent revocation, that uses up the remainder of the maximum term of imprisonment authorized by law), the Commission may not impose a further term of supervised release.

(f) Where deemed appropriate, the Commission may depart from the guidelines at § 2.21 (with respect to the imposition of a new term of imprisonment) in order to permit the imposition of a further term of supervised release.

(g) Decisions under this section shall be made upon the vote of one Commissioner, except that a decision to override an examiner panel recommendation shall require the

concurrency of two Commissioners. The final decision following a local revocation hearing shall be issued within 86 days of the retaking of the releasee on a supervised release violation warrant. The final decision following an institutional revocation hearing shall be issued within 21 days of the hearing, excluding weekends and holidays.

**§ 2.219 Maximum terms of imprisonment and supervised release.**

(a) *Imprisonment; first revocation.* When a term of supervised release is revoked, the maximum authorized term of imprisonment that the Commission may require the offender to serve, in accordance with D.C. Code 24–403.01(b)(7), is determined by reference to the maximum authorized term of imprisonment for the offense of conviction. The maximum authorized term of imprisonment at the first revocation shall be:

- (1) Five years, if the maximum term of imprisonment authorized for the offense is life, or if the offense is statutorily designated as a Class A felony;
- (2) Three years, if the maximum term of imprisonment authorized for the offense is 25 years or more, but less than life, and the offense is not statutorily designated as a Class A felony;

(3) Two years, if the maximum term of imprisonment authorized for the offense is 5 years or more, but less than 25 years; or

(4) One year, if the maximum term of imprisonment authorized for the offense is less than 5 years.

(b) *Further term of supervised release; first revocation.* (1) When a term of supervised release is revoked, and the Commission imposes less than the maximum term of imprisonment permitted by paragraph (a) of this section, the Commission may also impose a further term of supervised release after imprisonment. A term of imprisonment is “less than the maximum authorized term of imprisonment” if the term is one day or more shorter than the maximum authorized term of imprisonment.

(2) The maximum authorized length of such further term of supervised release shall be the original maximum term of supervised release that the sentencing court was authorized to impose for the offense of conviction, less the term of imprisonment imposed by the Commission upon revocation of supervised release. The original maximum authorized term of supervised release is as follows:

- (i) Five years if the maximum term of imprisonment authorized for the offense is 25 years or more;

(ii) Three years if the maximum term of imprisonment authorized for the offense is more than one year but less than 25 years; and

(iii) Life if the person is required to register for life, and 10 years in any other case, if the offender has been sentenced for an offense for which registration is required by the Sex Offender Registration Act of 1999.

(3) For example, if the maximum authorized term of imprisonment at the first revocation is three years and the original maximum authorized term of supervised release is five years, the Commission may impose a three-year term of imprisonment with no supervised release to follow, or any term of imprisonment of less than three years with a further term of supervised release of five years minus the term of imprisonment actually imposed (such as a one-year term of imprisonment followed by a four-year term of supervised release, or a two-year term of imprisonment followed by a three-year term of supervised release).

(c) *Reference table.* The following table may be used in most cases as a reference to determine both the maximum authorized term of imprisonment at the first revocation and the original maximum authorized term of supervised release:

D.C. Code reference for conviction offense (former code reference in brackets)	Offense description	Original maximum authorized term of supervised release	Maximum authorized term of imprisonment at the first revocation
<i>Title 22</i>			
22–301 [22–401] .....	Arson .....	3 years .....	2 years.
22–302 [22–402] .....	Arson: own property .....	3 years .....	2 years.
22–303 [22–403] .....	Destruction of property over \$200 .....	3 years .....	2 years.
22–401 [22–501] .....	Assault: with intent to kill/rob/poison, to commit sex abuse (1st or 2nd degree) or child sex abuse.	3 years (10 years if SOR).	2 years.
22–401, 4502 [22–501, 3202].	Assault: with intent to kill etc. while armed * .....	5 years (10 years if SOR).	5 years.
22–402 [22–502] .....	Assault: with a dangerous weapon .....	3 years .....	2 years.
22–403 [22–503] .....	Assault: with intent to commit an offense other than those in § 22–401.	3 years .....	2 years.
22–404(d) [22–504] .....	Stalking—2nd+ offense .....	3 years .....	1 year.
22–404.01, 4502 [22–504.1, 3202].	Assault; aggravated while armed * .....	5 years .....	5 years.
22–404.01(b) [22–504.1] .....	Assault: aggravated .....	3 years .....	2 years.
22–404.01(c) [22–504.1] .....	Assault: attempted aggravated .....	3 years .....	2 years.
22–405(a) [22–505] .....	Assault: on a police officer .....	3 years .....	2 years.
22–405(b) [22–505] .....	Assault: on a police officer while armed .....	3 years .....	2 years.
22–406 [22–506] .....	Mayhem/malicious disfigurement .....	3 years .....	2 years.
22–406, 4502 [22–506, 3202].	Mayhem/malicious disfigurement armed * .....	5 years .....	5 years.
22–501 [22–601] .....	Bigamy .....	3 years .....	2 years.
22–601 [22–3427] .....	Breaking and entering machines .....	3 years .....	1 year.
22–704(a) .....	Corrupt influence .....	3 years .....	2 years.
22–712(c) .....	Bribery: public servant .....	3 years .....	2 years.
22–713(c) .....	Bribery: witness .....	3 years .....	2 years.
22–722(b) .....	Obstructing justice * .....	5 years .....	5 years.
22–723(b) .....	Evidence tampering .....	3 years .....	1 year.
22–801(a) [22–1801] .....	Burglary 1st degree .....	5 years .....	3 years
22–801(b) [22–1801] .....	Burglary 2nd degree .....	3 years .....	2 years.
22–801, 4502 [22–1801, 3202].	Burglary: armed * .....	5 years .....	5 years
22–902(b)(2) [22–752] .....	Counterfeiting (see statute for offense circumstances) .....	3 years .....	1 year.

D.C. Code reference for conviction offense (former code reference in brackets)	Offense description	Original maximum authorized term of supervised release	Maximum authorized term of imprisonment at the first revocation
22-902(b)(3) [22-752] .....	Counterfeiting (see statute for offense circumstances) .....	3 years .....	2 years.
22-1101(a), (c)(1) [22-901]	Cruelty to children 1st degree .....	3 years .....	2 years.
22-1101(b), (c)(2) [22-901]	Cruelty to children 2nd degree .....	3 years .....	2 years.
22-1322(d) [22-1122] .....	Inciting riot (with injury) .....	3 years .....	2 years.
22-1403 [22-1303] .....	False personation .....	3 years .....	2 years.
22-1404 [22-1304] .....	Impersonating a public official .....	3 years .....	1 year.
22-1510 [22-1410] .....	Bad checks \$100 or more .....	3 years .....	1 year.
22-1701 [22-1501] .....	Illegal lottery .....	3 years .....	1 year.
22-1704 [22-1504] .....	Gaming .....	3 years .....	2 years.
22-1710, 1711 [22-1510, 1511].	Bucketing: 2nd+ offense .....	3 years .....	2 years.
22-1713(a) [22-1513] .....	Corrupt influence: Athletics .....	3 years .....	2 years.
22-1803 [22-103] .....	Attempted crime of violence .....	3 years .....	2 years.
22-1804 [22-104] .....	Second conviction <i>One prior conviction</i> If the underlying offense is punishable by life imprisonment .....	5 years .....	5 years.
	If the underlying offense is punishable by 16 <sup>2</sup> / <sub>3</sub> years or more .....	5 years .....	3 years.
	If the underlying offense is punishable by 3 <sup>1</sup> / <sub>3</sub> years or more but less than 16 <sup>2</sup> / <sub>3</sub> years .....	3 years .....	2 years.
	If underlying offense is punishable by less than 3 <sup>1</sup> / <sub>3</sub> years ... <i>Two or more prior convictions</i> If the underlying offense is punishable by life imprisonment .....	5 years .....	5 years.
	If the underlying offense is punishable by 8 <sup>1</sup> / <sub>3</sub> years or more .....	5 years .....	3 years.
	If the underlying offense is punishable by 1 <sup>2</sup> / <sub>3</sub> years or more but less than 8 <sup>1</sup> / <sub>3</sub> years .....	3 years .....	2 years.
	If underlying offense is punishable by less than 1 <sup>2</sup> / <sub>3</sub> years ...	3 years .....	1 year.
22-1804a(a)(1) [22-104a] ..	Three strikes for felonies * .....	5 years .....	5 years.
22-1804a(a)(2) [22-104a] ..	Three strikes for violent felonies * .....	5 years .....	5 years.
22-1805 [22-105] .....	Aiding or abetting .....	same as for the offense aided or abetted.	same as for the offense aided or abetted.
22-1805a(a) [22-105a] .....	Conspiracy .....	3 years .....	2 years.
	If underlying offense is punishable by less than 5 years .....	3 years .....	1 year.
22-1806 [22-106] .....	Accessory after the fact If the underlying offense is punishable by 10 years or more .....	3 years .....	2 years.
	If the underlying offense is punishable by more than 2 years but less than 10 years .....	3 years .....	1 year.
22-1807 [22-107] .....	Offenses not covered by D.C. Code .....	3 years .....	2 years.
22-1810 [22-2307] .....	Threats (felony) .....	3 years .....	2 years.
22-1901 .....	Incest .....	3 years (10 years if SOR).	2 years.
22-2001 [22-2101] .....	Kidnapping * .....	5 years .....	5 years.
22-2201, 4502 [22-2101, 3202].	Kidnapping: armed * .....	5 years .....	5 years.
22-2101, 2104 [22-2401, 2404].	Murder 1st degree * .....	5 years .....	5 years.
22-2101, 2104, 4502 [22-2401, 2404, 3202].	Murder 1st degree while armed * .....	5 years .....	5 years.
22-2102, 2104 [22-2402, 2404].	Murder 1st degree: obstruction of railway * .....	5 years .....	5 years.
22-2103, 2104 [22-2403, 2404].	Murder 2nd degree * .....	5 years .....	5 years.
22-2103, 2104, 4502 [22-2403, 2404, 3202].	Murder 2nd degree while armed * .....	5 years .....	5 years.
22-2105 [22-2405] .....	Manslaughter .....	5 years .....	3 years.
22-2105, 4502 [22-2405, 3202].	Manslaughter: armed * .....	5 years .....	5 years.
22-2201(e) [22-2001] .....	Obscenity: 2nd+ offense .....	3 years (10 years if SOR).	1 year.
22-2402(b) [22-2511] .....	Perjury .....	3 years .....	2 years.
22-2403 [22-2512] .....	Subornation of perjury .....	3 years .....	2 years.
22-2404(b) [22-2413] .....	False swearing .....	3 years .....	1 year.
22-2501 [22-3601] .....	Possessing implements of crime 2nd+ offense .....	3 years .....	2 years.
22-2601(b) .....	Escape .....	3 years .....	2 years.
22-2603 .....	Introducing contraband into prison .....	3 years .....	2 years.
22-2704 .....	Child prostitution: abducting or harboring .....	3 years (10 years if SOR).	2 years.
22-2705 to 2712 .....	Prostitution: arranging and related offenses .....	3 years (10 years if child victim and SOR).	2 years.
22-2801 [22-2901] .....	Robbery .....	3 years .....	2 years.

D.C. Code reference for conviction offense (former code reference in brackets)	Offense description	Original maximum authorized term of supervised release	Maximum authorized term of imprisonment at the first revocation
22-2801, 4502 [22-2901, 3202].	Robbery: armed * .....	5 years .....	5 years.
22-2802 [22-2902] .....	Robbery: attempted .....	3 years .....	1 year.
22-2802, 4502 [22-2902, 3202].	Robbery: attempted while armed * .....	5 years .....	5 years.
22-2803(a) [22-2903] .....	Carjacking .....	3 years .....	2 years.
22-2803(b) [22-2903] .....	Carjacking: armed * .....	5 years .....	5 years.
22-3002 [22-4102] .....	Sex abuse 1st degree * .....	5 years (life if SOR) ...	5 years.
22-3002, 4502 [22-4102, 3202].	Sex abuse 1st degree while armed * .....	5 years (life if SOR) ...	5 years.
22-3003 [22-4103] .....	Sex abuse 2nd degree .....	3 years (life if SOR) ...	2 years.
22-3003, 4502 [22-4103, 3202].	Sex abuse 2nd degree while armed * .....	5 years (life if SOR) ...	5 years.
22-3004 [22-4104] .....	Sex abuse 3rd degree .....	3 years (10 years if SOR).	2 years.
22-3005 [22-4105] .....	Sex abuse 4th degree .....	3 years (10 years if SOR).	2 years.
22-3008 [22-4108] .....	Child sex abuse 1st degree * .....	5 years (life if SOR) ...	5 years.
22-3008, 3020 [22-4108, 4120].	Child sex abuse 1st degree with aggravating circumstances * .....	5 years (life if SOR) ...	5 years.
22-3008, 4502 [22-4108, 3202].	Child sex abuse 1st degree while armed * .....	5 years (10 years if SOR).	5 years.
22-3009 [22-4109] .....	Child sex abuse 2nd degree .....	3 years (10 years if SOR).	2 years.
22-3009, 4502 [22-4109, 3202].	Child sex abuse 2nd degree while armed * .....	5 years (10 years if SOR).	5 years.
22-3010 [22-4110] .....	Enticing a child .....	3 years (10 years if SOR).	2 years.
22-3013 [22-4113] .....	Sex abuse ward 1st degree .....	3 years (10 years if SOR).	2 years.
22-3014 [22-4114] .....	Sex abuse ward 2nd degree .....	3 years (10 years if SOR).	2 years.
22-3015 [22-4115] .....	Sex abuse patient 1st degree .....	3 years (10 years if SOR).	2 years.
22-3016 [22-4116] .....	Sex abuse patient 2nd degree .....	3 years (10 years if SOR).	2 years.
22-3018 [22-4118] .....	Sex abuse: attempted 1st degree/child sex abuse 1st degree.	3 years (life if SOR) ...	2 years.
22-3018 [22-4118] .....	Sex abuse: other attempts If offense attempted is punishable by 10 years or more .....	3 years (life if SOR) ...	2 years.
	If the offense attempted is punishable by more than 2 years but less than 10 years.	3 years (life if SOR) ...	1 year.
22-3020 [22-4120] .....	Sex abuse 1st degree/child sex abuse 1st degree, with aggravating circumstances.	5 years (life if SOR) ...	5 years.
22-3020 [22-4120] .....	Sex abuse: other offenses with aggravating circumstances If the underlying offense is punishable by life imprisonment	5 years (10 years if SOR).	5 years.
	If the underlying offense is punishable by 16 <sup>2</sup> / <sub>3</sub> years or more.	5 years (10 years if SOR).	3 years.
	If the underlying offense is punishable by 3 <sup>1</sup> / <sub>3</sub> years or more but less than 16 <sup>2</sup> / <sub>3</sub> years.	3 years (10 years if SOR).	2 years.
	If underlying offense is punishable by less than 3 <sup>1</sup> / <sub>3</sub> years ...	3 years (10 years if SOR).	1 year.
22-3102, 3103 [22-2012, 2013].	Sex performance with minors .....	3 years (10 years if SOR).	2 years.
22-3153 .....	Terrorism—Act of Murder 1st degree .....	5 years .....	5 years.
	Murder of law enforcement officer or public safety employee	5 years .....	5 years.
	Murder 2nd degree .....	5 years .....	5 years.
	Manslaughter .....	5 years .....	5 years.
	Kidnapping .....	5 years .....	5 years.
	Assault with intent to kill .....	5 years .....	3 years.
	Mayhem/malicious disfigurement .....	3 years .....	2 years.
	Arson .....	3 years .....	2 years.
	Malicious destruction of property .....	3 years .....	2 years.
	Attempt/conspiracy to commit first degree murder, murder of law enforcement officer, second degree murder, manslaughter, kidnapping.	5 years .....	3 years.
	Attempt/conspiracy to commit assault with intent to kill .....	3 years .....	2 years.
	Attempt/conspiracy to commit mayhem, malicious disfigurement, arson, malicious destruction of property.	3 years .....	2 years.
	Providing or soliciting material support for act of terrorism ...	3 years .....	2 years.

D.C. Code reference for conviction offense (former code reference in brackets)	Offense description	Original maximum authorized term of supervised release	Maximum authorized term of imprisonment at the first revocation
22-3153, 22-4502 [22-3202].	Committing any of the above acts of terrorism while armed *	5 years	5 years.
22-3154	Manufacture/possession of weapon of mass destruction .....	5 years	5 years.
	Attempt/conspiracy to possess or manufacture weapon of mass destruction.	5 years	3 years.
22-3155	Use, dissemination, or detonation of weapon of mass destruction.	5 years	5 years.
	Attempt/conspiracy to use, disseminate, or detonate weapon of mass destruction.	5 years	3 years.
22-3155, 22-4502 [22-3202].	Manufacture, possession, use or detonation of weapon of mass destruction while armed or attempts to commit such crimes while armed *.	5 years	5 years.
22-3212 [22-3812]	Theft 1st degree	3 years	2 years.
22-3214.03(d)(2) [22-3814.1].	Deceptive labeling	3 years	2 years.
22-3215(d)(1) [22-3815]	Vehicle: Unlawful use of (private)	3 years	2 years.
22-3215(d)(2) [22-3815]	Vehicle: Unlawful use of (rental)	3 years	1 year.
22-3221(a), 3222(a) [22-3821, 3822].	Fraud 1st degree \$250 or more	3 years	2 years.
22-3221(b), 3222(b) [22-3821, 3822].	Fraud 2nd degree \$250 or more	3 years	1 year.
22-3223(d)(1) [22-3823]	Fraud: credit card \$250 or more	3 years	2 years.
22-3225.02, 3225.04(a) [22-3825.2, 3825.4].	Fraud: insurance 1st degree	3 years	2 years.
22-3225.03, 3225.04(b) [22-3825.3, 3825.4].	Fraud: insurance 2nd degree	3 years	2 years.
22-3231(d) [22-3831]	Stolen Property: trafficking in	3 years	2 years.
22-3232(c)(1) [22-3832]	Stolen property: receiving (\$250 or more)	3 years	2 years.
22-3241, 3242 [22-3841, 3842].	Forgery:		
	Legal tender, public record, etc.	3 years	2 years.
	Token, prescription	3 years	2 years.
	Other	3 years	1 year.
22-3251(b) [22-3851]	Extortion	3 years	2 years.
22-3251(b), 3252(b), 4502 [22-3851, 3852, 3202].	Extortion while armed or blackmail with threats of violence *	5 years	5 years.
22-3252(b) [22-3852]	Blackmail	3 years	2 years.
22-3303 [22-3103]	Grave robbing	3 years	1 year.
22-3305 [22-3105]	Destruction of property by explosives	3 years	2 years.
22-3318 [22-3318]	Water pollution (malicious)	3 years	1 year.
22-3319 [22-3119]	Obstructing railways	3 years	2 years.
22-3601 [22-3901]	Senior citizen victim of robbery, attempted robbery, theft, attempted theft, extortion, and fraud.		
	If the underlying offense is punishable by life imprisonment	5 years	5 years.
	If the underlying offense is punishable by 16 <sup>2</sup> / <sub>3</sub> years or more.	5 years	3 years.
	If the underlying offense is punishable by 3 <sup>1</sup> / <sub>3</sub> years or more but less than 16 <sup>2</sup> / <sub>3</sub> years.	3 years	2 years.
	If the underlying offense is punishable by less than 3 <sup>1</sup> / <sub>3</sub> years.	3 years	1 year.
22-3602 [22-3902]	Citizen patrol victim of various violent offenses.		
	If the underlying offense is punishable by life imprisonment	5 years	5 years.
	If the underlying offense is punishable by 16 <sup>2</sup> / <sub>3</sub> years or more.	5 years	3 years.
	If the underlying offense is punishable by 3 <sup>1</sup> / <sub>3</sub> years or more but less than 16 <sup>2</sup> / <sub>3</sub> years.	3 years	2 years.
	If the underlying offense is punishable by less than 3 <sup>1</sup> / <sub>3</sub> years.	3 years	1 year.
22-3703 [22-4003]	Bias-related crime		
	If underlying offense is punishable by life imprisonment	5 years	5 years.
	If underlying offense is punishable by 16 <sup>2</sup> / <sub>3</sub> years	5 years	3 years.
	If underlying offense is punishable by more than or equal to 3 <sup>1</sup> / <sub>3</sub> years but less than 16 <sup>2</sup> / <sub>3</sub> years.	3 years	2 years.
	If underlying offense is punishable by less than 3 <sup>1</sup> / <sub>3</sub> years	3 years	1 year.
22-4015 [24-2235]	Sex offender, failure to register (2nd offense)	3 years	2 years.
22-4502 [22-3202]	Violent crimes: committing or attempting to commit while armed.	5 years	5 years.
22-4502.01 [22-3202.1]	Gun-free zone violations		
	If underlying offense is a violation of 22-4504	3 years	2 years.
	If underlying offense is a violation of 22-4504(b) (possession of firearm while committing crime of violence or dangerous crime).	5 years	3 years.
22-4503 [22-3203]	Pistol: unlawful possession by a felon, etc. 2nd+ offense	3 years	2 years.

D.C. Code reference for conviction offense (former code reference in brackets)	Offense description	Original maximum authorized term of supervised release	Maximum authorized term of imprisonment at the first revocation
22-4504(a)(1)-(2) [22-3204].	Pistol: carrying without a license .....	3 years .....	2 years.
22-4504(b) [22-3204] .....	Firearm: possession while committing crime of violence or dangerous crime.	3 years .....	2 years.
22-4514 [22-3214] .....	Prohibited weapon: possession of 2nd+ offense .....	3 years .....	2 years.
22-4515a [22-3215a] .....	Molotov cocktails—1st or 2nd offense .....	3 years .....	2 years.
	3rd offense .....	5 years .....	5 years.
<i>Title 23</i>			
23-1327(a)(1) .....	Bail Reform Act .....	3 years .....	2 years.
23-1328(a)(1) .....	Committing a felony on release .....	3 years .....	2 years.
<i>Title 48</i>			
48-904.01(a)-(b) [33-541]	Drugs: distribute or possess with intent to distribute If schedule I or II narcotics or abusive drugs (e.g., heroin, cocaine, PCP, methamphetamine).	5 years .....	3 years.
48-904.01, 22-4502 [33-541, 22-3202].	If schedule I or II drugs other than above (e.g., marijuana/hashish), or schedule III drugs. If schedule IV drugs .....	3 years .....	1 year.
48-904.03 [33-543] .....	Drugs: distribute or possess with intent to distribute while armed*.	5 years .....	5 years.
48-904.03a [33-543a] .....	Drugs: acquiring by fraud .....	3 years .....	1 year.
48-904.06 [33-546] .....	Drugs: maintaining place for manufacture or distribution .....	5 years .....	3 years.
	Drugs: distribution to minors		
48-904.07 [33-547] .....	If a schedule I or II narcotic drug (e.g., heroin or cocaine) or PCP.	5 years .....	3 years.
48-904.07a [33-547.1] .....	If schedule I or II drugs other than above (e.g., marijuana, hashish, methamphetamine), or schedule III or IV drugs.	3 years .....	2 years.
	If schedule V drugs .....	3 years .....	1 year.
48-904.08 [33-548] .....	Drugs: enlisting minors to sell .....	3 years .....	2 years.
48-904.08 [33-548] .....	Drugs: distribute or possess with intent to distribute in drug-free zones.		
48-904.08 [33-548] .....	If schedule I or II narcotics or abusive drugs (e.g., heroin, cocaine, methamphetamine, or PCP).	5 years .....	3 years.
48-904.08 [33-548] .....	If schedule I or II drugs other than above (e.g., marijuana, hashish), or schedule III or IV drugs.	3 years .....	2 years.
48-904.08 [33-548] .....	If schedule V drugs .....	3 years .....	1 year.
48-904.08 [33-548] .....	Drugs: 2nd+ offense		
48-904.08 [33-548] .....	If schedule I or II narcotics or abusive drugs (e.g., heroin, cocaine, methamphetamine, or PCP).	5 years .....	3 years.
48-904.08 [33-548] .....	If schedule I or II drugs other than above (e.g., marijuana, hashish), or schedule III or IV drugs.	3 years .....	2 years.
48-904.08 [33-548] .....	If schedule V drugs .....	3 years .....	1 year.
48-904.09 [33-549] .....	Drugs: attempt/conspiracy .....	the same as for the offense that was the object of the attempt or conspiracy.	the same as for the offense that was the object of the attempt or conspiracy.
48-1103(b) [33-603] .....	Drugs: possession of drug paraphernalia with intent to deliver or sell (2nd + offense).	3 years .....	1 year.
48-1103(c) [33-603] .....	Drugs: delivering drug paraphernalia to a minor .....	3 years .....	2 years.
<i>Title 50</i>			
50-2203.01 [40-713] .....	Negligent homicide (vehicular) .....	3 years .....	2 years.
50-2207.01 [40-718] .....	Smoke screens .....	3 years .....	2 years.

**Notes:** (1) An asterisk next to the offense description indicates that the offense is statutorily designated as a Class A felony.

(2) If the defendant must register as a sex offender, the Original Maximum Authorized Term of Supervised Release is the maximum period for which the offender may be required to register as a sex offender under D.C. Code 22-4002(a) and (b) (ten years or life). See D.C. Code 24-403.01(b)(4). Sex offender registration is required for crimes such as first degree sexual abuse, and these crimes are listed in this table with the notation "10 years if SOR" or "life if SOR" as the Original Maximum Authorized Term

of Supervised Release. Sex offender registration, however, may also be required for numerous crimes (such as burglary or murder) if a sexual act or contact was involved or was the offender's purpose. In such cases, the offender's status will be determined by the presence of an order from the sentencing judge certifying that the defendant is a sex offender.

(3) If the defendant committed the offense before 5 p.m., August 11, 2000, the maximum authorized terms of imprisonment and supervised release shall be determined by reference to 18 U.S.C. 3583.

(d) *Imprisonment; successive revocations.* (1) When the Commission revokes a term of supervised release that was imposed by the Commission after a previous revocation of supervised release, the maximum authorized term of imprisonment is the maximum term of imprisonment permitted by paragraph (a) of this section, less the term or terms of imprisonment that were previously imposed by the Commission. In calculating such previously-imposed term or terms of imprisonment, the

Commission shall use the term as imposed without deducting any good time credits that may have been earned by the offender prior to his release from prison. In no case shall the total of successive terms of imprisonment imposed by the Commission exceed the maximum authorized term of imprisonment at the first revocation.

(2) For example, if the maximum authorized term of imprisonment at the first revocation is three years and the original maximum authorized term of supervised release is five years, the Commission at the first revocation may have imposed a one-year term of imprisonment and a further four-year term of supervised release. At the second revocation, the maximum authorized term of imprisonment will be two years, *i.e.*, the maximum authorized term of imprisonment at the first revocation (three years) minus the one-year term of imprisonment that was imposed at the first revocation.

(e) *Further term of supervised release; successive revocations.* (1) When the Commission revokes a term of supervised release that was imposed by the Commission following a previous revocation of supervised release, the Commission may also impose a further term of supervised release. The maximum authorized length of such a term of supervised release shall be the original maximum authorized term of supervised release permitted by paragraph (b) of this section, less the total of the terms of imprisonment imposed by the Commission on the same sentence (including the term of imprisonment imposed in the current revocation).

(2) For example, if the maximum authorized term of imprisonment at the first revocation is three years and the original maximum authorized term of supervised release is five years, the Commission at the first revocation may have imposed a one-year term of imprisonment and a four-year further term of supervised release. If, at a second revocation, the Commission imposes another one-year term of imprisonment, the maximum authorized further term of supervised release will be three years (the original five-year period minus the total of two years of imprisonment).

(f) *Effect of sentencing court imposing less than the original maximum authorized term of supervised release.* If the Commission has revoked supervised release, the maximum authorized period of further supervised release is determined by reference to the original maximum authorized term permitted for the offense of conviction (see paragraph (b) of this section), even if the

sentencing court did not impose the original maximum authorized term permitted for the offense of conviction.

#### **§ 2.220 Appeal.**

A supervised releasee may appeal to the Commission a decision to revoke supervised release, impose a term of imprisonment, or impose a new term of supervised release after revocation. The provisions of § 2.26 on the time limits for filing and deciding the appeal, the grounds for appeal, the format of the appeal, the limits regarding the submission of exhibits, and voting requirements apply to an appeal submitted under this section.

Dated: June 30, 2003.

**Edward F. Reilly, Jr.,**

*Chairman, U.S. Parole Commission.*

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**BILLING CODE 4410-31-P**

## **PENSION BENEFIT GUARANTY CORPORATION**

### **29 CFR Parts 4022 and 4044**

#### **Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in August 2003. Interest assumptions are also published on the PBGC's Web site (<http://www.pbgc.gov>).

**EFFECTIVE DATE:** August 1, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:** The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of

the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during August 2003, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during August 2003, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during August 2003.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 4.40 percent for the first 20 years following the valuation date and 5.25 percent thereafter. These interest assumptions represent an increase (from those in effect for July 2003) of 0.10 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.00 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for July 2003.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that