

§ 2.1

SOURCE: 42 FR 39809, Aug. 5, 1977, unless otherwise noted.

§ 2.1 Definitions.

As used in this part:

(a) The term *Commission* refers to the U.S. Parole Commission.

(b) The term *Commissioner* refers to members of the U.S. Parole Commission.

(c) The term *National Appeals Board* refers to the three-member Commission sitting as a body to decide appeals taken from decisions of a Regional Commissioner, who participates as a member of the National Appeals Board. The Vice Chairman shall be Chairman of the National Appeals Board.

(d) The term *National Commissioners* refers to the Chairman of the Commission and to the Commissioner who is not serving as the Regional Commissioner in respect to a particular case.

(e) The term *Regional Commissioner* refers to Commissioners who are assigned to make initial decisions, pursuant to the authority delegated by these rules, in respect to prisoners and parolees in regions defined by the Commission.

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to any Federal prisoner eligible for parole pursuant to this part and includes any Federal prisoner whose parole has been revoked and who is not otherwise ineligible for parole.

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

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

(i) All other terms used in this part shall be deemed to have the same meaning as identical or comparable terms as used in chapter 311 of part IV of title 18 of the U.S. Code or 28 CFR chapter I, part 0, subpart V.

[42 FR 39809, Aug. 5, 1977, as amended at 43 FR 22707, May 26, 1978; Order No. 960-81, 46 FR 52354, Oct. 27, 1981; 60 FR 51350, Oct. 2, 1995; 61 FR 55743, Oct. 29, 1996]

28 CFR Ch. I (7-1-98 Edition)

§ 2.2 Eligibility for parole; adult sentences.

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

(b) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. 4205(b)(1) (or pursuant to former 18 U.S.C. 4208(a)(1)) may be released on parole in the discretion of the Commission after completion of the court-designated minimum term, which may be less than but not more than one-third of the maximum sentence imposed.

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

(d) If the Court has imposed a maximum term or terms of more than one year pursuant to 18 U.S.C. 924(a) or 26 U.S.C. 5871 [violation of Federal gun control laws], a Federal prisoner serving such term or terms may be released in the discretion of the Commission as if sentenced pursuant to 18 U.S.C. 4205(b)(2). However, if the prisoner's offense was committed on or after October 12, 1984, and the Court imposes a term or terms under 26 U.S.C. 5871, the prisoner is eligible for parole only after service of one-third of such term or terms, pursuant to 18 U.S.C. 4205(a).

(e) A Federal prisoner serving a maximum term or terms of one year or less is not eligible for parole consideration by the Commission.

[42 FR 41408, Aug. 17, 1977, as amended at 50 FR 36423, Sept. 6, 1985; 53 FR 46870, Nov. 21, 1988]

§ 2.3 Same: Narcotic Addict Rehabilitation Act.

A Federal prisoner committed under the Narcotic Addict Rehabilitation Act

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

[48 FR 22918, May 23, 1983]

§ 2.4 Same: Youth offenders and juvenile delinquents.

Committed youth offenders and juvenile delinquents may be released on parole at any time in the discretion of the Commission.

(18 U.S.C. 5017(a) and 5041)

[45 FR 44925, July 2, 1980]

§ 2.5 Sentence aggregation.

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

[45 FR 44925, July 2, 1980]

§ 2.6 Withheld and forfeited good time.

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

[43 FR 38822, Aug. 31, 1978]

§ 2.7 Committed fines and restitution orders.

(a) *Committed fines.* In any case in which a prisoner shall have had a fine imposed upon him by the committing

court for which he is to stand committed until it is paid or until he is otherwise discharged according to law, such prisoner shall not be released on parole or mandatory release until payment of the fine, or until the fine commitment order is discharged according to law under the regulations of the Bureau of Prisons. Discharge from the commitment obligation of any committed fine does not discharge the prisoner's obligation to pay the fine as a debt due the United States.

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

[48 FR 44527, Sept. 29, 1983, as amended at 50 FR 36422, Sept. 6, 1985]

§ 2.8 Mental competency proceedings.

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

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