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of a hearing conducted by a panel of examiners) for another vote. If concurring votes do not result from such a referral, the case shall be referred to any available hearing examiner until a panel recommendation is obtained.

(d) A recommendation of a hearing examiner panel shall become an effective Commission decision only upon the Regional Commissioner's approval, and docketing at the regional office.

[44 FR 3408, Jan. 16, 1979, as amended at 45 FR 84052, Dec. 12, 1980; 59 FR 45625, Sept. 2, 1994; 60 FR 51349, Oct. 2, 1995]

§ 2.24 Review of panel recommendation by the Regional Commissioner.

(a) A Regional Commissioner may review the recommendation of any examiner panel and refer this recommendation, prior to written notification to the prisoner, with his recommendation and vote to the National Commissioners for consideration and any action deemed appropriate. Written notice of this referral action shall be mailed or transmitted to the prisoner within twenty-one days of the date of the hearing. The Regional Commissioner and each National Commissioner shall have one vote and decisions shall be based upon the concurrence of two votes. Action shall be taken by the National Commissioners within thirty days of the date of referral action by the Regional Commissioner, except in emergencies.

(b) Notwithstanding the provisions of paragraph (a) of this section, a Regional Commissioner may:

(1) On his own motion, modify or reverse the recommendation of a hearing examiner panel that is outside the guidelines to bring the decision closer to (or to) the nearer limit of the appropriate guideline range; or

(2) On his own motion, modify the recommendation of a hearing examiner panel to bring the decision to a date not to exceed six months from the date recommended by the examiner panel;

(3) Return the case to the institution for a rehearing, provided that a notice of action is sent to the prisoner specifying the purpose of the rehearing;

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(4) Designate the case for the original jurisdiction of the Commission pursuant to § 2.17.

[42 FR 39809, Aug. 5, 1977, as amended at 45 FR 84053, Dec. 22, 1980; 46 FR 35639, July 10, 1981]

§ 2.25 [Reserved]

§ 2.26 Appeal to National Appeals Board.

(a) 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 pursuant to § 2.27. This appeal must be filed on a form provided for that purpose within thirty days from the date of entry of such decision. No exhibits are to be attached to an administrative appeal unless the documents therein contain new information and materials not already in the possession of the Commission. Any submitted exhibits which are copies of material already in the Commission's files will not be retained by the Commission.

(b)(1) The National Appeals Board may: Affirm the decision of a Regional Commissioner on the vote of a single Commissioner other than the Commissioner who issued the decision from which the appeal is taken; or modify or reverse the decision of a Regional Commissioner, or order a new hearing, upon the concurrence of two Commissioners. The Commissioner first reviewing the case may in his discretion circulate the case for review and vote by the other Commissioners notwithstanding his own vote to affirm the Regional Commissioner's decision. In such event, the case shall be decided by the concurrence of two out of three votes.

(2) All Commissioners serve as members of the National Appeals Board, and it shall in no case be an objection to a decision of the Board that the Commissioner who issued the decision from which an appeal is taken participated as a voting member on appeal.

(c) The National Appeals Board shall act within sixty days of receipt of the appellant's papers, to affirm, modify, or reverse the decision. Decisions of

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the National Appeals Board shall be final.

(d) If no appeal is filed within thirty days of the date of entry of the original decision, such decision shall stand as the final decision of the Commission.

(e) Appeals under this section may be based upon the following grounds:

(1) That the guidelines were incorrectly applied as to any or all of the following:

- (i) Severity rating;
- (ii) Salient factor score;
- (iii) Time in custody;

(2) That a decision outside the guidelines was not supported by the reasons or facts as stated;

(3) That especially mitigating circumstances (for example, facts relating to the severity of the offense or the prisoner's probability of success on parole) justify a different decision;

(4) That a decision was based on erroneous information, and the actual facts justify a different decision;

(5) That the Commission did not follow correct procedure in deciding the case, and a different decision would have resulted if the error had not occurred;

(6) There was significant information in existence but not known at the time of the hearing;

(7) There are compelling reasons why a more lenient decision should be rendered on grounds of compassion.

(f) Upon the written request of the Attorney General seeking review of a decision of a Regional Commissioner, which is received within 30 days of such decision, the National Appeals Board shall reaffirm, modify, or reverse the Regional Commissioner's decision within 60 days of receipt of the Attorney General's request. The National Appeals Board shall inform the Attorney General and the prisoner to whom the decision applies in writing of its decision and the reasons therefor. In the event the Attorney General submits new and significant information that has not previously been disclosed to the prisoner prior to a hearing under these rules, the National Appeals Board shall act within 60 days to reaffirm, modify or reverse the Regional Commissioner's decision, but shall also remand the case for a new hearing if its decision is adverse to the prisoner. The

prisoner shall have disclosure of the new information, and the opportunity to dispute that information under § 2.19(c) of this part. Following the hearing, the case shall be returned to the National Appeals Board, together with a recommendation from the hearing examiner, to render a final Commission decision as to the disposition of the case.

[49 FR 44098, Nov. 2, 1984, as amended at 51 FR 32785, Sept. 16, 1986; 59 FR 40258, Aug. 8, 1994; 61 FR 55743, Oct. 29, 1996]

§ 2.27 Petition for reconsideration of original jurisdiction decisions.

(a) A petition for reconsideration may be filed with the Commission in cases decided under the procedure specified in § 2.17 within thirty days of the date of such decision. A form is provided for this purpose. A petition for reconsideration will be reviewed at the next regularly scheduled meeting of the Commission provided the petition is received thirty days in advance of such meeting. Petitions received by the Commission less than thirty days in advance of a regularly scheduled meeting will be reviewed at the next regularly scheduled meeting. The concurrence of two Commissioners shall be required to modify or reverse the decision for which reconsideration is sought. If such concurrence is not obtained, the previous decision shall stand. A decision under this rule shall be final.

(b) Attorneys, relatives, and other interested parties who wish to submit written information concerning a petition for reconsideration should send such information to the National Appeals Board, United States Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. Petitions and all supporting material are to be submitted thirty days in advance of the meeting at which such petitions will be considered.

(c) If no petition for reconsideration is filed within 30 days of the entry of a decision under § 2.17, that decision shall stand as the final decision of the Commission.

[61 FR 13763, Mar. 28, 1996, as amended at 61 FR 55743, Oct. 29, 1996]