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INTRODUCTION

This manual contains the Commission's rules (28 C.F.R. 2.1-2.67) as well as the notes, procedures, and appendices that clarify and supplement these rules. If there appears to be a direct conflict between any of the procedures and a rule, the rule shall control. The notes, procedures, and appendices in this manual are intended only for the guidance of Parole Commission personnel and those agencies which must coordinate their work with the Commission. The notes, procedures, and appendices do not confer legal rights and are not intended for reliance by private persons.

In some instances, it is necessary to implement procedural changes immediately. This will be accomplished by issuance of a "*Rules and Procedures Memo*" signed by the Chairman (to be subsequently ratified by the Commission). These memos are numbered in sequence according to the year issued.

§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to any Federal prisoner eligible for parole pursuant to this part and includes any Federal prisoner whose parole has been revoked and who is not otherwise ineligible for parole.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 O, subpart V.

Notes and Procedures

2.1-01. *Calendar Days*. The term "days" refers to "calendar" days.

§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.

Notes and Procedures

2.2-01. Territorial Prisoners.

(a) *U.S. Territories.* Prisoners sentenced for territorial offenses in the Virgin Islands, Puerto Rico, Guam, American Samoa, and the Trust territories of the Pacific Islands come under the jurisdiction of territorial parole authorities, not the U.S. Parole Commission, even if they are confined within the United States. Prisoners sentenced for territorial offenses in all other territories come under the jurisdiction of the U.S. Parole Commission.

(b) *U.S. Code violations within Territories.* Prisoners sentenced for U.S. code violations in all territories come under the jurisdiction of the U.S. Parole Commission.

(c) *Panama Canal Zone.* Prisoners sentenced under former territorial Canal Zone law to sentences of incarceration of over one year are sent to Federal Prisons in the United States and come under the parole jurisdiction of the U.S. Parole Commission unless they have chosen to be transferred to the custody of the Republic of Panama.

2.2-02. District of Columbia Prisoners.

Under 24 D.C. Code 206, the U.S. Parole Commission has jurisdiction over all eligible District of Columbia prisoners (those serving sentences of 181 days or more, including parole violators) confined in federal institutions. The date of parole eligibility for a D.C. Code prisoner is governed by D.C. law and not federal statute. For an adult D.C. Code prisoner, if parole is revoked all "street time" must be forfeited. In all other respects, U.S.

Parole Commission regulations control.

(a) Under D.C. Code 24-209, the Commission is required to follow D.C. law and regulations pertaining to early discharge from active supervision. Although a D.C. Code parolee may be released from active supervision, the sentence cannot be terminated. If the parolee commits a new crime, the release order can be rescinded and a warrant issued. The Commission should not refer to the early termination guidelines at 28 C.F.R. 2.43; however, the statistical research results upon which 28 C.F.R. 2.43 is based may inform the Commissioner's decision in these cases.

2.2-03. Military Prisoners (10 U.S.C. 858; Uniform Code of Mil. Just., Art. 58).

(a) Prisoners sentenced by military courts-martial and then transferred to a federal institution come under the exclusive jurisdiction of the United States Parole Commission for parole purposes. Military authorities retain jurisdiction for clemency purposes and may reduce the maximum term to be served. Clemency may be granted either while confined or while in the community on parole or mandatory release.

(b) A prisoner paroled and revoked by military authorities, who is subsequently transferred to a federal institution, is eligible for a hearing at the time of the next visit by the United States Parole Commission. The Commission accepts the military parole revocation as final, but conducts a hearing to determine reparole suitability. Such prisoner must file a parole application prior to such hearing.

(c) A military prisoner mandatorily released from a Bureau of Prisons facility will not be subject to supervision by the Parole Commission. This is consistent with the Bureau of Prisons policy to treat military prisoners released from federal facilities in a similar manner as those released from a military facility.

2.2-04. Non-Parolable Sentences.

Offenders sentenced under any of the following sections are not eligible for parole:

(a) 18 U.S.C. 924(c) [use of a firearm during a federal crime of violence (if the firearm use occurred on or after October 12, 1984) or drug trafficking crime (if the firearm use occurred on or after November 15, 1986)] and 18 U.S.C. 924(e) [possession of a firearm by an offender with at least three prior convictions for a violent offense or serious drug offense (if the possession occurred on or after October 27, 1986)];

(b) 18 U.S.C. 929 [use of restricted ammunition/armor-piercing bullets in a crime of violence (if the use occurred on or after October 12, 1984), or in a drug trafficking offense (if the use occurred on or after November 15, 1986)];

(c) 18 U.S.C. Appendix 1202(a) (if the offense was committed on or after October 12, 1984 and the offender has three prior convictions for certain offenses); section was repealed effective November 15, 1986 and these offenses committed on or after that date will now be charged under §924(e);

(d) 21 U.S.C. 841 (b)(1)(A), (B) and in some cases (C) (drug trafficking offenses involving Schedule I and Schedule II drugs) (only if the offense was committed on or

after October 27, 1986);

(e) 21 U.S.C. 848 (continuing criminal enterprise involving drugs); and

(f) 21 U.S.C. 960(b)(1), (2) and in some cases (3) (drug importation and exportation offenses involving Schedule I and Schedule II drugs) (only if the offense was committed on or after October 27, 1986).

Note: An offender may have an aggregate sentence composed of both parolable and non-parolable component sentences and may, therefore, become eligible for parole on part of the aggregate sentence. If the non-parolable component sentence is served first (as usually will be the case), the parole eligibility date on the aggregate sentence will be after completion of the non-parolable component sentence (less good time) plus the minimum, if any, of the parolable sentence. As this date will depend on the amount of good time earned and, thus, may not be known precisely at the time of the initial hearing, the following wording may be used on any parole order on the aggregate sentence: "presumptive parole upon completion of [] months, provided you have reached your parole eligibility date on the aggregate sentence."

2.2-05. Treaty Cases.

A prisoner returned to the United States under prisoner transfer treaties who committed his offense abroad prior to November 1, 1987, is treated as if sentenced under 18 U.S.C. 4205(b)(2) for all parole purposes. Exception: In Mexican and Canadian treaty cases, the "street time" forfeiture provisions upon parole revocation are the same as those applicable to Youth Corrections Act cases. If the prisoner committed his offense abroad on or after November 1, 1987, such prisoner is not eligible for parole and a release date is set pursuant to 28 C.F.R. 2.62.

§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).

Notes and Procedures

2.3-01. Certificate of Release Readiness.

This certificate is signed by the local Drug Abuse Program Manager through authority delegated by the Medical Director of the Bureau of Prisons and the Surgeon General.

§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).

§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.

§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, 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.

Notes and Procedures

2.6-01. Disciplinary Infractions.

An effective or presumptive parole date may be granted by the Commission only after a thorough review of circumstances underlying any disciplinary infraction(s) and where the Commission is satisfied that the date it sets will require a period of imprisonment sufficient to outweigh the seriousness of the prisoner's misconduct. Any presumptive or effective date is contingent upon the absence of further misconduct. A parole date shall not be made contingent upon restoration of good time by the Bureau of Prisons.

§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).

Notes and Procedures

2.7-01. Release from Imprisonment.

The Bureau of Prisons handles disposition of all committed fines. The Commission shall render a decision irrespective of the status of the committed fine. However, if parole is granted, the order must read: "Parole effective [], provided that a committed fine is paid or otherwise disposed of according to law before release." Provide at least sixty days lead time to allow the Bureau to process such cases.

§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.

(c) Whenever the hearing examiner(s) or designated official determine that a prisoner is incompetent and postpone the previously scheduled hearing, they shall forward the record of the preliminary hearing with their findings to the Regional Commissioner for review. If the Regional Commissioner concurs with their findings, he shall order the temporarily postponed hearing to be postponed indefinitely until such time as it is determined that the prisoner has recovered sufficiently to understand the nature of and participate in the proceedings, and in the case of a parolee may order such parolee transferred to a Bureau of Prisons facility for further examination. In any such case, the Regional Commissioner shall require a progress report on the mental health of the prisoner at least every six months. When the Regional Commissioner determines that the prisoner has recovered sufficiently, he shall reschedule the hearing for the earliest feasible date.

(d) If the Regional Commissioner disagrees with the findings of the hearing examiner(s) or designated official as to the mental competency of the prisoner, he shall take such action as he deems appropriate.

*Notes and Procedures**2.8-01. Appearances Required.*

All parole applicants and alleged parole violators, even where there is a question of mental or emotional disturbance (including those certified as incompetent), will appear before the Commission when normally scheduled. An exception occurs in those cases where the prisoner is so disturbed that to force an appearance would be disruptive. In those instances, a statement by a member of the institutional staff should be prepared for the file with the concurrence of a medical officer in lieu of a personal appearance.

§2.9 STUDY PRIOR TO SENTENCING.

When an adult Federal offender has been committed to an institution by the sentencing court for observation and study prior to sentencing, under the provisions of 18 U.S.C. 4205(c), the report to the sentencing court is prepared and submitted directly by the Bureau of Prisons.

§2.10 DATE SERVICE OF SENTENCE COMMENCES.

(a) Service of a sentence of imprisonment commences to run on the date on which the person is received at the penitentiary, reformatory, or jail for service of the sentence: *Provided, however,* That any such person shall be allowed credit toward the service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed.

(b) The imposition of a sentence of imprisonment for civil contempt shall interrupt the running of any sentence of imprisonment being served at the time the sentence of civil contempt is imposed, and the sentence or sentences so interrupted shall not commence to run again until the sentence of civil contempt is lifted.

(c) Service of the sentence of a committed youth offender or a person committed under the Narcotic Addict Rehabilitation Act commences to run from the date of conviction and is interrupted only when such prisoner or parolee (1) is on court-ordered bail; (2) is in escape status; (3) has absconded from parole supervision; or (4) comes within the provisions of paragraph (b) of this section.

§2.11 APPLICATION FOR PAROLE; NOTICE OF HEARING.

(a) A federal prisoner (including a committed youth offender or prisoner sentenced under the Narcotic Addict Rehabilitation Act) desiring to apply for parole shall execute an application form as prescribed by the Commission. Such forms shall be available at each federal institution and shall be provided to each prisoner who is eligible for an initial parole hearing pursuant to §2.12. Prisoners committed under the Federal Juvenile Delinquency Act shall be considered for parole without application and may not waive parole consideration. A prisoner who receives an initial hearing need not apply for subsequent hearings.

(b) A prisoner may knowingly and intelligently waive any parole consideration on a form provided for that purpose. If a prisoner waives parole consideration, he may later apply for parole and may be heard during the next visit of the Commission to the institution at which he is confined, provided that he has applied at least 60 days prior to the first day of the month in which such visit of the Commission occurs.

(c) A prisoner who declines either to apply for or waive parole consideration is deemed to have waived parole consideration.

(d) At least sixty days prior to the initial hearing (and prior to any hearing conducted pursuant to §2.14), the prisoner shall be provided with written notice of the time and place of the hearing and of his right to review the documents to be considered by the Commission, as provided by §2.55. A prisoner may waive such notice, except that if such notice is not waived, the case shall be continued to the time of the next regularly scheduled proceeding of the Commission at the institution in which the prisoner is confined.

Notes and Procedures

2.11-01. Waiver of a Hearing or Parole Grant.

(a)(1) A prisoner who wishes to waive any hearing or parole grant [except as noted in 2.11-01(b)] shall sign a parole waiver on the appropriate form. The original of this form (witnessed by an institutional staff member) shall be forwarded to the Commission for placement in the prisoner's parole file and a copy shall be retained in the prisoner's institutional file. In the case of a waiver of a parole grant, the previous order shall be marked "*canceled by waiver dated []*." A new application is required if the prisoner later wishes to reapply for parole.

(2) In the case of a prisoner who waives a presumptive, mandatory or effective parole date and later reapplies for parole, a record review shall be conducted. Absent disciplinary infractions or new adverse information, the previous parole date may be reinstated, or if such date has passed, a parole effective date established without a hearing. Otherwise, a new hearing shall be scheduled.

(b) Exception: Hearings for juvenile delinquents, revocation hearings, and hearings pursuant to §2.28(b-f) cannot be waived. Rescission hearings, or statutory interim hearings where there has been a DHO disciplinary infraction since the last hearing, may be canceled only by waiver of the actual parole grant.

2.11-02. Refusal to Make Application/Recalcitrant Prisoners.

(a) Where a prisoner declines either to apply for or waive parole consideration, institution staff should prepare a signed, dated memorandum to the prisoner's file noting that the prisoner has been advised of (1) his right to apply for parole consideration and (2) that failure to apply for parole is deemed as a waiver of parole consideration; and that the prisoner has declined to file a parole application or waiver. No action is taken by the Commission unless the prisoner subsequently applies for parole.

(b) When a prisoner refuses to enter the hearing room, physical force should not be used to ensure his appearance. Instead, an official of the institution should make a written statement that the prisoner was properly advised of his right to a hearing, but refused to make such appearance. The hearing examiner, in such cases, should consider that he has waived parole and enter a memo for the file to that effect.

2.11-03. Prisoner Out of the Institution.

A prisoner entitled to a hearing who is unavoidably out of the institution during the examiner(s) visit is normally passed over until the next docket. Such instances occur when a prisoner has been delivered to a court on the basis of a writ, when he has been placed in a civilian hospital or other similar facility, or when he has escaped. A brief memo to the file is prepared. However, when a prisoner has been removed from an institution [on a court writ of ad testificandum] for a reason such as testimony or prosecution in court or [for] hospitalization, is past his parole eligibility date, and return by the next docket is not anticipated, the examiner is to notify the Commission Office by memo. The Commission should, whenever feasible [absent reasons to the contrary], schedule a hearing at the place of confinement as if the prisoner were a federal boarder (2.16-01). For procedures in revocation cases where the alleged violator is unavailable, see 2.49-01(c) and 2.49-02(a).

§2.12 INITIAL HEARINGS: SETTING PRESUMPTIVE RELEASE DATES.

(a) An initial hearing shall be conducted within 120 days of a prisoner's arrival at a federal institution or as soon thereafter as practicable; except that in the case of a prisoner with a minimum term of parole ineligibility of ten years or more, the initial hearing shall be conducted nine months prior to the completion of such a minimum term, or as soon thereafter as practicable.

(b) Following initial hearing, the Commission shall (1) set a presumptive release date (either by parole or by mandatory release) within fifteen years of the hearing; (2) set an effective date of parole; or (3) continue the prisoner to a fifteen year reconsideration hearing pursuant to §2.14(c).

(c) Notwithstanding the above paragraph, a prisoner may not be paroled earlier than the completion of any judicially set minimum term of imprisonment or other period of parole ineligibility fixed by law.

(d) A presumptive parole date shall be contingent upon an affirmative finding by the Commission that the prisoner has a continued record of good conduct and a suitable release plan and shall be subject to the provisions of §§2.14 and 2.28. In the case of a prisoner sentenced under the Narcotic Addict Rehabilitation Act, 18 U.S.C. 4254, a presumptive parole date shall also be contingent upon certification by the Surgeon General pursuant to §2.3 of these rules. Consideration of disciplinary infractions in cases with presumptive parole dates may be deferred until the commencement of the next in-person hearing or the prerelease record review required by §2.14(b). While prisoners are encouraged to earn the restoration of forfeited or withheld good time, the Commission will consider the prisoner's overall institutional record in determining whether the conditions of a presumptive parole date have been satisfied.

*Notes and Procedures**2.12-01. Reports from Probation Officers.*

Before a hearing may be conducted there must be available to the examiner(s) a copy of a pre-sentence report or a post-sentence report. A scheduled hearing shall be continued if neither is available to the examiner(s). In such case, the examiner(s) shall notify the Commission's Office to take whatever action necessary to secure the required report.

2.12-02. *Permissible Actions.*

Following initial hearing, the examiner(s) may recommend: an "effective date" of parole [within nine months from the date of the hearing]; a presumptive parole date [more than nine months from the date of initial hearing but no later than fifteen years]; a fifteen year reconsideration hearing [at fifteen years from the month of the present hearing]; or continue to expiration [if the statutory release date is within fifteen years of the month of the hearing]. Prisoners will be scheduled, in addition, for statutory interim hearings automatically as required by law.

2.12-03. *Parole on the Record.*

(a) Where it appears upon pre-hearing review (1) that parole upon completion of the minimum sentence (at parole eligibility date) or within nine months of the pre-hearing review decision is clearly warranted, (2) that such release date occurs within or above the applicable guideline range, and (3) that an in-person hearing does not appear necessary for further examination of the case, a hearing panel may recommend that parole based upon the record be granted. When such recommendation is made by a hearing panel and the Regional Commissioner concurs, a standard Notice of Action will be issued with the addition of the wording in paragraph (b) or (c). If the Regional Commissioner does not concur, the panel recommendation is voided and the case will be scheduled for hearing under standard procedure.

(b) Where parole is granted upon completion of the minimum sentence, add to each Notice of Action following the "reasons" section: "*Note: The Commission has decided to grant you a parole date upon completion of your minimum sentence on the basis of a review of your record. As the Commission is precluded by law from releasing you at an earlier time, this release date is NOT APPEALABLE.*"

(c) Where parole is granted within nine months of the date of the pre-hearing review and the parole eligibility date will have already passed, add to each Notice of Action following the "reasons" section: "*Note: Under 18 U.S.C. 4208(a), the Commission has decided to grant you an effective parole date on the basis of a review of your record without a personal hearing.*"

2.12-04. *Mixed Parolable and Non-Parolable Sentences.*

An initial hearing will be held within 120 days of a prisoner's arrival at a federal institution or as soon thereafter as practicable in the case of a prisoner with a non-parolable sentence that precedes a parole-eligible sentence, unless the parole eligible date on the parolable sentence plus the mandatory release date on the non-parolable sentence establishes a period of parole ineligibility of ten years or more. If the period of parole ineligibility is ten years or more, an initial hearing will be held nine months prior to the parole eligibility date or as soon thereafter as practicable.

§2.13 INITIAL HEARING; PROCEDURE.

(a) An initial hearing shall be conducted by a single hearing examiner unless the Regional Commissioner orders that the hearing be conducted by a panel of two examiners. The examiner shall discuss with the prisoner his offense severity rating and salient factor score as described in §2.20, his institutional conduct and, in addition, any other matter the examiner may deem relevant.

(b) A prisoner may be represented at a hearing by a person of his or her choice. The function of the prisoner's representative shall be to offer a statement at the conclusion of the interview of the prisoner by the examiner, and to provide such additional information as the examiner shall request. Interested parties who oppose parole may select a representative to appear and offer a statement. The hearing examiner shall limit or exclude any irrelevant or repetitious statement.

(c) At the conclusion of the hearing, the examiner shall discuss the decision to be recommended by the examiner and the reasons therefor, except in the extraordinary circumstance of a complex issue that requires further deliberation before a recommendation can be made. Written notice of the official decision, or the decision to refer under §2.17 or §2.24, shall be mailed or transmitted to the prisoner within 21 days of the date of the hearing, except in emergencies. Whenever the Commission initially establishes a release date (or modifies the release date thereafter), the prisoner shall also receive in writing the reasons therefore.

(d) In accordance with 18 U.S.C. 4206, the reasons for establishment of a release date shall include a guidelines evaluation statement containing the prisoner's offense severity rating and salient factor score (including the points credited on each item of such score) as described in §2.20, as well as the specific factors and information relied upon for any decision outside the range indicated by the guidelines.

(e) No interviews with the Commission, or any representative thereof, shall be granted to a prisoner unless his name is docketed for a hearing in accordance with Commission procedures. Hearings shall not be open to the public.

(f) A full and complete record of every hearing shall be retained by the Commission. Upon a request, pursuant to §2.56, the Commission shall make available to any eligible prisoner such record as the Commission has retained of the hearing.

Notes and Procedures

2.13-01. Examiner Functioning.

Examiners conduct hearings at the institution of confinement according to a printed schedule. The appropriate Case Manager is also in attendance. A recording device is used to record the interview.

The hearing summary is dictated following each hearing. Except where the case is

"continued to the Commission's Office" for some unusual reason, the summary includes a recommendation relative to parole, revocation, or continuance. At the conclusion of the hearing, the prisoner (and his representative) is informed of the examiner recommendation (and the fact that his recommendation is subject to review by the Regional Commissioner). If there is a split recommendation (when two examiners are present), the prisoner is told the alternative recommendations (examiners need not be identified by recommendation). In original jurisdiction cases, the prisoner is told the alternative recommendation.

2.13-02. *Representation.*

(a) Representation is normally limited to one person. However, it is within the hearing examiner's discretion, where appropriate, to permit additional representatives to appear. Any continuance due to the absence of a prisoner's representative shall be at the discretion of the hearing examiner and shall be granted only for good cause. A brief memo to the file is prepared.

(b) At local or institutional revocation hearings, a person other than an attorney (Member of the Bar) shall be limited to the role of a witness or representative except that where permissible by state law, a law student may function in the role of an attorney provided (i) the inmate knowingly and intelligently consents; and (ii) the law student is under the direct supervision of a member of the bar (who is physically present). However, representation by both law student and supervisor shall not be permitted. An attorney or other representative at any other hearing shall be limited only to the role of representative as previously defined.

(c) The prisoner and his representative will normally be entitled to be present during the entire hearing except during deliberations of the decision-makers, or where institutional security would be jeopardized and/or personal safety of adverse witnesses might be involved. If the prisoner is removed at the request of the hearing examiner, the reasons for such exclusion from the hearing must be well documented into the record. A prisoner's representative will also be allowed to be present when the examiner informs the prisoner of the recommendation and reasons regardless of the type of hearing.

(d) In cases where (1) the witness will be unavailable, (2) wishes to give testimony containing matters exempt under the statute, or (3) the testimony of the witness would be adverse in nature and the witness does not wish, for proper grounds, to give the testimony in the presence of the prisoner, the prisoner may be removed from the hearing, or in the alternative the witness may offer a written statement to be used by the hearing examiner during his deliberations. If at all possible, this written statement should be submitted by the witness well in advance of the hearing.

(e) If the written statement so offered contains exempt material, and the witness represents a government agency, it is the duty of that witness to determine what material is exempt and to summarize that material for the benefit of the prisoner. If the witness is a private person, the Commission will perform that task in advance of the hearing. Where the material is submitted directly to the hearing examiner, the summary will be given to the prisoner along with his Notice of Action.

(f) Pursuant to 28 C.F.R. 2.55(a)(3), upon the prisoner's request, a representative shall be given access to the presentence investigation report reasonably in advance of an initial

hearing, interim hearing, or a fifteen-year reconsideration hearing, pursuant and subject to the regulations of the Bureau of Prisons. Disclosure shall not be permitted with respect to confidential material withheld by the sentencing court under Rule 32(c)(3)(A). Bureau of Prisons personnel are responsible for implementing the above procedure. Note: This procedure does not apply to rescission or revocation hearings.

(g) *Reporter or Recording Device.* Reporter or recording devices brought in by the prisoner or his attorney/representative are not permissible.

2.13-03. *Computation of guidelines.*

The guidelines evaluation worksheet will be completed at all initial hearings.

2.13-04. *Provisions of Reasons.*

Reasons following the appropriate guideline format will be typed on all Notices of Action denying a parole date or granting a presumptive or effective parole date. However, repetition of the reasons already given is not required (a) when an effective date is granted as a result of a pre-release review of a previous presumptive date order and the date of release has not been changed; and (b) on any other Notice of Action where no change in the previous decision is made.

2.13-05. *Summary Formats.*

Use the hearing formats as indicated in Appendix 1. In preparing correspondence, hearing summaries, reports and other documentation, use professional language which describes the subject and explains the Commission's position clearly, simply, and accurately. It should be kept in mind that much of what is written is disclosable to the prisoner or releasee and may come before the Courts, the Congress, or the public. Language which may be interpreted as discriminatory, prejudicial, or insensitively descriptive discredits the Commission and the writer, and its use violates the Commission policy.

2.13-06. *Standardized Wording on Orders.*

Use the standardized wording in Appendix 2. It is conceivable that there may be an action not covered by this wording. In such instances, wording should be developed to fit the action desired.

2.13-07. *Co-defendants.*

Co-defendants and their parole status including sentence and guideline data, any reasons for departure from the guidelines, and months served will be listed, when available, in initial and reconsideration summaries.

2.13-08. *Conditions of Parole.*

Special conditions (including drug aftercare) should be recommended, where appropriate, by the hearing examiner at the time the presumptive date (whether by parole or mandatory release) is determined (normally at the initial hearing). Where appropriate,

special conditions may be added or modified at any time prior to the prisoner's release.

2.13-09. Additions to Docket.

Where, by reason of transfer, a prisoner has missed his initial hearing, subsequent hearing, or revocation hearing, the prisoner may be added to the docket at the request of the Warden and with the approval of the hearing examiner. No other interviews for cases not on the docket will be conducted without written approval from the Regional Commissioner.

2.13-10. Visitors at Hearings.

(a) *In General.* As a general principle, Parole Commission hearings are not open to the public. However, where good cause exists, visitors may be permitted to attend provided their presence will not interfere with the orderly course of the proceedings. The hearing examiner determines who will be admitted to the hearing room. If he cannot make the final decision in accordance with subsection (b), he will communicate with the authorized official.

(b) *Criteria.* The Commission has found it appropriate to allow the following classes of visitors (other individuals must be considered by the hearing examiner on a case by case basis). Persons having a direct interest in a case shall be considered under procedures dealing with representatives.

(1) U.S. Parole Commission, Bureau of Prisons, or U.S. Probation Service employees; and Federal Judges or Magistrates.

(2) Federal or State Legislators; State Judges; State Parole or Probation personnel.

(3) Newspaper or Magazine Correspondents (permission must be granted by the Regional Commissioner).

(4) Researchers (prior permission must be granted by the Chairman).

(5) Students in fields related to criminal justice.

(c) *Restrictions.*

(1) Visitors are not to participate in hearing proceedings. Examiners will not discuss cases with visitors in any instance until after a recommendation has been made and the summary dictated.

(2) Visitors will not be permitted to use recording devices.

(3) Examiners may request visitors to leave the hearing room when it is affecting the progress of the hearing. Examiners should also remove visitors from the room prior to hearing cases which, in their judgment, involve matters unusually sensitive as far as the prisoner is concerned.

(4) Visitors should not be permitted to enter or leave the hearing room during the proceedings (for sake of the dignity and orderliness of the proceedings).

(5) Except for visitors listed under subsection (b)(1), permission must be granted in writing by the prisoner (at a revocation hearing the attorney must also be in agreement) for visitors to be present at hearings. It must be explicitly and forcefully made clear to the prisoner that he has a right not to have visitors present, and that such action will not affect the Commission action on his case in any way. Examiners should be careful that a prisoner does not feel coerced to allow such visitors to be present.

(6) Visitors should not be present at hearings on original jurisdiction cases, or cases which in the judgment of the examiner will be referred to the Regional Commissioner as original jurisdiction cases.

(7) No visitor shall remain in the hearing room during deliberations or dictation unless specifically authorized by the hearing examiner.

2.13-11. *Interested Parties Opposing Parole.*

(a) A victim/witness (verified by the Bureau of Prisons Victim/Witness Coordinator) or a criminal justice official (e.g., U.S. Attorney, FBI or DEA Agent) may attend a specific parole hearing to oppose parole without special permission. Any other person wishing to attend a hearing to oppose parole must obtain permission from the Regional Commissioner in advance of the hearing. Requests for such permission must be in writing. Interested persons opposing parole are encouraged to submit written comments in lieu of a personal appearance. Where a personal appearance is made, any persons opposing parole will be requested to select one person as a spokesperson. However, it is in the hearing examiner's discretion, where appropriate, to permit additional persons to be present. A continuance due to the absence of an interested party opposing parole shall be in the discretion of the hearing examiner and shall be granted only for good cause. A brief memo to the file is to be prepared.

(b) An interested party opposing parole shall be provided an opportunity to make a statement at the appropriate time determined by the hearing examiner. The prisoner may be excluded at the request of such person for good cause, or when it appears to the hearing examiner that institutional security or the personal safety of such person might be involved. The reason for any such exclusion must be documented in the record and any testimony out of the prisoner's presence must be promptly summarized for the prisoner with an opportunity for response.

(c) Upon request, any victim/witness (verified through the Bureau of Prisons Victim/Witness Coordinator) or criminal justice system official may be notified of the Commission's official decision in accordance with 2.24-13. The hearing examiner shall attach the appropriate label (a blue label) to the case material to point out the request for notification. The hearing examiner may inform an interested party opposing parole of his recommended decision following the hearing, but the applicable reasons (e.g., guideline indicants) are to be provided only as part of the written notification under 2.24-13.

(d) Upon request, a subpoenaed witness shall be notified of the Commission's decision in his case in accordance with 2.24-13. The hearing examiner will note in the summary

whether the witness chose to request that the Parole Commission notify him/her of the results of the hearing. If so, the Hearing Examiner will return all completed "Victim/Witness Notification Request" form to the Commission for processing.

(e) The Hearing Examiner shall present the Commission's "Victim/Witness Questionnaire" to any witness subpoenaed to the hearing, including any witness representing law enforcement, and request that the witness complete the questionnaire and return it to the Commission in the stamped, self-addressed envelope provided.

2.13-12. *Continuances.*

If a hearing is continued, a tape of the discussion with the prisoner leading to the continuance is made. The hearing examiner, at the request of the prisoner, may grant a continuance to the next docket for good cause (for revocation hearings, see 2.50-05). A second continuance may be granted by the examiner only for compelling reasons. A form, available at the institution, shall be executed requesting the continuance. Note: A request for a third or additional continuance must be in writing to the Regional Commissioner and must be received at least ten days prior to the scheduled hearing docket. When a continuance is granted, a memo of the reasons for the continuance is prepared and a Commission order is completed.

§2.14 SUBSEQUENT PROCEEDINGS.

(a) Interim proceedings. The purpose of an interim hearing required by 18 U.S.C. 4208(h) shall be to consider any significant developments or changes in the prisoner's status that may have occurred subsequent to the initial hearing.

(1) Notwithstanding a previously ordered presumptive release date or fifteen-year reconsideration hearing, interim hearings shall be conducted by an examiner pursuant to the procedures of §2.13(b), (c), (e), and (f) at the following intervals from the date of the last hearing:

(i) In the case of a prisoner with a maximum term or terms of less than seven years, every eighteen months (until released);

(ii) In the case of a prisoner with a maximum term or terms of seven years or more, every twenty-four months (until released).

(iii) Provided, that in the case of a prisoner with an unsatisfied minimum term, the first interim hearing shall be scheduled under subparagraph (i) or (ii) above, or on the docket of hearings that is nine months prior to the month of parole eligibility, whichever is later.

(2) Following an interim hearing, the Commission may:

(i) Order no change in the previous decision;

(ii) Advance a presumptive release date, or the date of a fifteen-year reconsideration hearing. However, it shall be the policy of the Commission that, once set, a presumptive release date or the date of a fifteen-year reconsideration

hearing shall be advanced only: (1) for superior program achievement under the provisions of §2.60; or (2) for other clearly exceptional circumstances.

(iii) Retard or rescind a presumptive parole date for reason of disciplinary infractions. In a case in which disciplinary infractions have occurred, the interim hearing shall be conducted in accordance with the procedures of §2.34(c) through (f). (Prior to each interim hearing, prisoners shall be notified on the progress report furnished by the Bureau of Prisons that any finding of misconduct by the Disciplinary Hearing Officer since the previous hearing will be considered for possible action under this paragraph);

(iv) If a presumptive date falls within nine months after the date of an interim hearing, the Commission may treat the interim hearing as a pre-release review in lieu of the record review required by paragraph (b) of this section.

(b) Pre-Release reviews. The purpose of a pre-release review shall be to determine whether the conditions of a presumptive release date by parole have been satisfied.

(1) At least sixty days prior to a presumptive parole date, the case shall be reviewed on the record, including a current institutional progress report.

(2) Following review, the Regional Commissioner may:

(i) Approve the parole date;

(ii) Advance or retard the parole date for purpose of release planning as provided by §2.28(e);

(iii) Retard the parole date or commence rescission proceedings as provided by §2.34;

(iv) Advance the parole date for superior program achievement under the provisions of §2.60.

(3) A prerelease review pursuant to this section shall not be required if an in-person hearing has been held within nine months of the parole date.

(4) Where: (i) There has been no finding of misconduct by the Disciplinary Hearing Officer nor any allegation of criminal conduct since the last hearing; and (ii) No other modification of the release date appears warranted, the Executive Hearing Examiner may act for the Regional Commissioner under paragraph (b)(2) of this section to approve conversion of the presumptive parole date to an effective date of parole.

(c) Fifteen-year reconsideration hearings. A fifteen-year reconsideration hearing shall be a full reassessment of the case pursuant to the procedures at §2.13.

(1) A fifteen-year reconsideration hearing shall be ordered following initial hearing in any case in which a release date is not set.

(2) Following a fifteen-year reconsideration hearing, the Commission may take any one of the actions authorized by §2.12(b).

Notes and Procedures

2.14-01. Statutory Interim Hearing.

(a) Statutory interim hearings are scheduled each 18th or 24th month (or the preceding month when the examiner(s) does not visit the institution during the specified month) after the month of any previous hearing, as required by law. There is one exception. If the prisoner has an unsatisfied minimum term, the first statutory interim hearing will be scheduled for 18 or 24 months (as applicable), or nine months prior to the prisoner's parole eligibility date, whichever is later.

(b) Where a statutory interim hearing is scheduled for a time subsequent to a presumptive date record review, the statutory interim hearing shall be canceled if the record review results in an effective parole date. [For example, a prisoner is scheduled for a presumptive date after 21 months (with a statutory interim hearing at 18 months). During the 12th month, a presumptive date record review is conducted, and the effective parole date is approved. The statutory interim hearing is not to be conducted.] If the prisoner has already been docketed for a statutory interim hearing, the institution shall delete his name from the docket upon receipt of the notice of the approved effective date. [See 18 U.S.C. 4208(a)].

(c) Following a Statutory Interim Hearing, the examiner may recommend:

(1) No change in the presumptive parole date (if the presumptive date is within nine months, the examiner may recommend that it be changed to an "effective" date);

(2) Advancement of a presumptive parole date (or change from a "Continue to Expiration" or "Fifteen-Year Reconsideration Hearing" to a presumptive or "effective" date) but only for documented exceptional circumstances, or superior program achievement pursuant to 28 C.F.R. 2.60;

(3) Retardation of a presumptive parole date, or the change of a presumptive parole date to a "Continue to Expiration" or "Fifteen-Year Reconsideration Hearing," on the basis of disciplinary infractions [in cases with disciplinary infractions the interim hearing will be conducted as a rescission hearing].

2.14-02. Statutory Interim Hearings for Mixed Parolable and Non-Parolable Sentences.

Statutory interim hearings will be scheduled every 18 or 24 months, depending upon the length of the parole eligible sentence(s). However, if the prisoner has not reached his parole eligibility date (due either to the non parolable sentence or the minimum term on the parolable sentence), the first statutory interim hearing will be held after 18 or 24 months (as applicable), or on the docket of hearings that is nine months prior to his parole eligibility date, whichever is later.

2.14-03. Pre-Release Record Review.

Pre-release record reviews generally are conducted nine months prior to the presumptive parole date. Following a pre-release record review (a record review which may be conducted by an examiner or analyst), the Regional Commissioner may:

- (1) Approve the release date [order an "effective" date];
- (2) Approve an effective parole, but advance or retard the release date for release programming, or advance the release date for superior program achievement pursuant to 28 C.F.R. 2.60;
- (3) Approve an effective parole, but retard the release date for not more than 90 days without a hearing on account of disciplinary infractions; or
- (4) Schedule a rescission hearing.

2.14-03. Delegation to Correct Certain Omissions.

A Regional Commissioner may delegate to an examiner or analyst the authority to add any special conditions that have been omitted from the previous Notice of Action but clearly were ordered by the Commissioner. A note will be entered into the file to reflect this action.

§2.15 PETITION FOR CONSIDERATION OF PAROLE PRIOR TO DATE SET AT HEARING.

When a prisoner has served the minimum term of imprisonment required by law, the Bureau of Prisons may petition the responsible Regional Commissioner for reopening the case under §2.28(a) and consideration for parole prior to the date set by the Commission at the initial or review hearing. The petition must show cause why it should be granted, i.e., an emergency, hardship, or the existence of other extraordinary circumstances that would warrant consideration of early parole.

§2.16 PAROLE OF PRISONER IN STATE, LOCAL, OR TERRITORIAL INSTITUTION.

(a) Any person who is serving a sentence of imprisonment for any offense against the United States, but who is confined therefor in a state reformatory or other state or territorial institution, shall be eligible for parole by the Commission on the same terms and conditions, by the same authority, and subject to recommittal for the violation of such parole, as though he were confined in a Federal penitentiary, reformatory, or other correctional institution.

(b) Federal prisoners serving concurrent state and Federal sentences in state, local, or territorial institutions shall be furnished upon request parole application forms. Upon receipt of the application and any supplementary classification material submitted by the institution, parole consideration shall be made by an examiner panel on the record only. If such prisoner is released from his state sentence prior

to a Federal grant of parole, he shall be given a personal hearing as soon as feasible after receipt at a Federal institution.

(c) Prisoners who are serving Federal sentences exclusively but who are being boarded in state, local, or territorial institutions may be provided hearings at such facilities or may be transferred by the Bureau of Prisons to Federal Institutions for hearings by a hearing examiner of the Commission.

Notes and Procedures

2.16-01. Federal Boarders.

Federal Boarders in a state facility are entitled to an initial or subsequent hearing by an examiner at the state facility in which they are confined unless they waive this right or are transported to a federal facility. Normally, prisoners are heard at state or local facilities, but there may arise situations in which transfer to a federal facility is appropriate. Hearing procedures shall be the same as if such prisoner were confined at a federal institution. Federal Boarders should receive "timely" notice so that a representative may be obtained. A copy of the appeal form is to be transmitted with the Notice of Action. Procedural matters, including the furnishing of forms, are the responsibility of the Bureau of Prisons. By special arrangement, however, the Commission might agree to assume some of these responsibilities.

2.16-02. Court Designated Parole.

Where the maximum sentence is at least six months but not more than one year, the Court may designate a parole date [18 U.S.C. 4205(f)]. Upon release, the parolee is subject to the conditions of parole and revocation for violation of such conditions by the Commission. When the court has designated parole in such cases and the prisoner is in a non-federal institution, the Commission must issue the "Court designated Parole Certificate."

2.16-03. Federal Prisoners Serving Concurrent State and Federal Sentences in Non-Federal Institutions.

(a) A prisoner who is serving concurrent state and federal sentences in a state institution shall be considered for parole by an examiner panel on the record only. This procedure is to be used for initial, interim, and rescission considerations. The timing of initial consideration is determined by the standards of 28 C.F.R. 2.12.

(b) Upon notification that the prisoner has commenced service of the concurrent federal term, the Commission should forward a request for a progress report from the state institution in which the prisoner is incarcerated along with the parole application packet. For those prisoners with a minimum term of parole ineligibility of ten years or more, this packet should be sent to the institution at least 120 days prior to the month in which the prisoner's eligibility date falls. The Commission will ensure that both a sentence computation record and a pre or post sentence report are available or obtained prior to parole consideration. The authorization to disclose this report or a summary thereof must be obtained from institutional authorities for the Commission to consider this

information. Each progress report must be stamped when received by the Commission. Disclosure of parole file material and the state progress report should be afforded to a concurrent state and federal prisoner pursuant to 28 C.F.R. 2.55.

(c) The prisoner will not be informed of the examiner panel's recommendation until it has been finalized. Only the final Commission action will be forwarded via the standard Notice of Action. A copy of the appeal form is forwarded with the Notice of Action.

(d) Original jurisdiction cases: If a case is designated as original jurisdiction by the Regional Commissioner, notice of the referral and designation will be sent to the prisoner, along with the basis for the designation. Original jurisdiction procedures are applicable to such prisoners as in any other case.

2.16-04. Former State Prisoners.

Federal prisoners serving concurrent state and federal terms in a state or local institution may be transferred to a federal institution to complete their federal sentence. If they have not previously been considered for parole, they are heard in the usual manner. If they have been considered by the Commission while in the "state" institution on the record without a personal hearing, a special hearing shall be conducted as soon as feasible upon their arrival at a federal institution. The purpose of this hearing shall be solely to determine whether there is any new information sufficiently significant to affect the previous decision rendered.

§2.17 ORIGINAL JURISDICTION CASES.

(a) Following any hearing conducted pursuant to these rules, a Regional Commissioner may designate certain cases for decision by a majority of the Commission, as original jurisdiction cases. In such instances, he shall forward the case with his vote, and any additional comments he may deem germane, to the National Commissioners for decision. Decisions shall be based upon the concurrence of two votes with the Regional Commissioner and National Commissioners each having one vote.

(b) The following criteria will be used in designating cases as original jurisdiction cases:

(1) Prisoners who have committed serious crimes against the security of the Nation, e.g., espionage or aggravated subversive activity.

(2) Prisoners whose offense behavior (i) involved an unusual degree of sophistication or planning or (ii) was part of a large scale criminal conspiracy or a continuing criminal enterprise.

(3) Prisoners who have received national or unusual attention because of the nature of the crime, arrest, trial, or prisoner status, or because of the community status of the offender or his victim.

(4) Long-term sentences. Prisoners sentenced to a maximum term of forty-five years (or more) or prisoners serving life sentences.

(c)(1) Any case designated for the original jurisdiction of the Commission shall remain an original jurisdiction case unless designation is removed pursuant to this subsection.

(2) A case found to be inappropriately designated for the Commission's original jurisdiction, or to no longer warrant such designation, may be removed from original jurisdiction under the procedures specified in paragraph (a) of this section following a regularly scheduled hearing or the reopening of the case pursuant to §2.28. Removal from original jurisdiction may also occur by majority vote of the Commission considering an appeal pursuant to §2.27. Where the circumstances warrant, a case may be redesignated as original jurisdiction pursuant to the provisions of paragraphs (a) and (b) of this section.

Notes and Procedures

2.17-01. Referral.

A hearing examiner shall refer any case falling within the criteria for original jurisdiction cases to the Regional Commissioner. The applicant should be told by the examiner that his case is being referred for possible original jurisdiction consideration and the reasons therefor. The examiner should also render a recommendation on the merits of the case. Advising the prisoner of the possible original jurisdiction designation and the reasons therefore is normal practice but is not a due process requirement.

2.17-02. Review.

(a) The Commissioner may designate the case as original jurisdiction and submit the case with his recommendation to the National Commissioners. In such case, a Notice of Action shall be sent to the prisoner including the basis for his original jurisdiction (e.g., National or Unusual Attention; Unusual Sophistication or Planning). If an original jurisdiction designation is based upon the criteria of 28 C.F.R. 2.17(b)(2), then the Intelligence Unit, Department of Justice, Washington, D.C., should be notified of the pending parole consideration via teletype message, using the form provided in Appendix 4, if this has not already been done at pre-hearing review.

(b) Designation of a case meeting the criteria under §2.17 as original jurisdiction by a Regional Commissioner is presumptive not mandatory. A Regional Commissioner may decline to designate the case as original jurisdiction (with a memo to the file) and (1) let the panel recommendation stand, or (2) take other action under 28 C.F.R. 2.24.

(c) Where a report from the Justice Department or other government law-enforcement agency is considered essential and such report has not been received, the Regional Commissioner may reschedule the case for the next docket for consideration of additional information. In such case, follow-up will be made with the appropriate agency to insure an expedited report.

2.17-03. Referral to National Commissioners.

The Regional Commissioner referring a case for original jurisdiction shall use two orders (see Appendix 2). The reasons for designation specified in 28 C.F.R. 2.17 shall be particularized to the individual case and an analysis of the case and the reasons for decision shall be set forth (see Appendix 4).

2.17-04. Processing by National Commissioners.

Upon receipt of an original jurisdiction case, the National Commissioners, where feasible, shall process the case within 21 days. Cases not requiring a meeting of the National Commissioners shall be voted on sequentially.

2.17-05. Declassification.

Where a case has been previously designated as original jurisdiction and the Regional Commissioner believes it no longer warrants such classification, he may refer the case to the National Commissioners for declassification. The Regional Commissioner shall also vote on the substantive case decision. The National Commissioners shall first vote on declassification. If declassified, the case shall be treated as a non-original jurisdiction case and returned for processing, unless the Regional Commissioner's proposed decision requires action under 2.24(a). If not declassified, the case shall be processed under original jurisdiction procedures.

2.17-06. Rescission. See 2.34-05.

2.17-07. Revocation.

Where a case previously has been designated original jurisdiction or is being designated at this time, all orders (including any forfeiture of street time) will be forwarded with the Regional Commissioner's vote, reasons and rationale to the National Commissioners. Thereafter, the orders will be processed in the same manner as any other original jurisdiction decision.

§2.18 GRANTING OF PAROLE.

The granting of parole to an eligible prisoner rests in the discretion of the United States Parole Commission. As prerequisites to a grant of parole, the Commission must determine that the prisoner has substantially observed the rules of the institution or institutions in which he has been confined; and upon consideration of the nature and circumstances of the offense and the history and characteristics of the prisoner, must determine that release would not depreciate the seriousness of his offense or promote disrespect for the law, and that release would not jeopardize the public welfare (i.e., that there is a reasonable probability that, if released, the prisoner would live and remain at liberty without violating the law or the conditions of his parole).

§2.19 INFORMATION CONSIDERED.

(a) In making a parole/reparole determination the Commission shall consider, if available and relevant:

- (1) Reports and recommendations which the staff of the facility in which such prisoner is confined may make;**
 - (2) Official reports of the prisoner's prior criminal record, including a report or record of earlier probation and parole experiences;**
 - (3) Presentence investigation reports;**
 - (4) Recommendations regarding the prisoner's parole made at the time of sentencing by the sentencing judge and prosecuting attorney;**
 - (5) Reports of physical, mental, or psychiatric examination of the offender; and**
 - (6) A statement, which may be presented orally or otherwise, by any victim of the offense for which the prisoner is imprisoned about the financial, social, psychological, and emotional harm done to, or loss suffered by such victim.**
- (b)(1) There shall also be taken into consideration such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available (18 U.S.C. 4207). The Commission encourages the submission of relevant information concerning an eligible prisoner by interested persons.**
- (2) To permit adequate review of information concerning the prisoner, materials submitted to the Commission should be received by the Commission no later than the first day of the month preceding the month of the scheduled hearing docket.**
- (3) If material of more than six (6), double-spaced, letter-sized pages is first submitted at the time of the hearing (or preliminary interview) and the hearing examiner (or person conducting the hearing or preliminary interview) concludes that it is not feasible to read all the material at that time, the person submitting the material will be permitted to summarize it briefly at the hearing (or preliminary interview). All of the material submitted will become part of the record to be considered by the Commission in its review of the proceedings.**
- (4) The Commission will normally consider only verbal and written evidence at hearings. Recorded audio and visual material will be reviewed at hearings only if there is no adequate substitute to permit a finding under paragraph (c) of this section. Otherwise, recorded audio and visual material should be submitted prior to the hearing for review and summarization, pursuant to paragraph (b)(2) of this section.**
- (c) The Commission may take into account any substantial information available to it in establishing the prisoner's offense severity rating, salient factor score, and any aggravating or mitigating circumstances, provided the prisoner is apprised of the information and afforded an opportunity to respond. If the prisoner disputes the accuracy of the information presented, the Commission shall resolve such dispute by the preponderance of the evidence standard; that is, the Commission shall rely upon such information only to the extent that it represents the explanation of the facts that best accords with reason and probability. If the Commission is given**

evidence of criminal behavior that has been the subject of an acquittal in a federal, state, or local court, the Commission may consider that evidence if:

- (1) the Commission finds that it cannot adequately determine the prisoner's suitability for release on parole, or to remain on parole, unless the evidence is taken into account;**
- (2) the Commission is satisfied that the record before it is adequate notwithstanding the acquittal;**
- (3) the prisoner has been given the opportunity to respond to the evidence before the Commission; and**
- (4) the evidence before the Commission meets the preponderance standard.**

In any other case, the Commission shall defer to the trial jury. Offense behavior in Category Five or above shall presumptively support a finding under paragraph (c) (1) of this section.

(d) Recommendations and information from sentencing judges, defense attorneys, prosecutors, and other interested parties are welcomed by the Commission. In evaluating a recommendation concerning parole, the Commission must consider the degree to which such recommendation provides the Commission with specific facts and reasoning relevant to the statutory criteria for parole (18 U.S.C. 4206) and the application of the Commission's guidelines (including reasons for departure therefrom). Thus, to be most helpful, a recommendation should state its underlying factual basis and reasoning. However, no recommendation (including a prosecutorial recommendation pursuant to a plea agreement) may be considered as binding upon the Commission's discretionary authority to grant or deny parole.

Notes and Procedures

2.19-01. Prohibition Against Use of Illegal Wiretap Evidence.

Under 18 U.S.C. 2515, courts and other government authorities, including the Commission, are prohibited from using any illegal wiretap evidence for any purpose. Therefore, no information acquired from an illegal wiretap shall be used by the Commission for determining offense severity, salient factor score, or for any other purpose in parole release, revocation, reparole, rescission, or any other decision.

2.19-02. Not Guilty Verdicts After Trial.

(a) If a prisoner is convicted after trial of a lesser included offense and acquitted on a more serious offense (e.g., conviction for carnal knowledge after trial for rape; conviction for voluntary manslaughter after trial for murder), only the conviction offense is to be considered unless the case meets the criteria listed in 28 C.F.R. 2.19(c).

(b) If a prisoner is convicted by trial of an offense, such as conspiracy, attempt, aiding or abetting, or accessory after the fact, where the severity rating is, by rule, determined by

reference to the underlying offense (e.g., 28 C.F.R. 2.20 specifies that conspiracy is to be rated in the same category as the underlying offense), acquittal on the underlying offense does not bar use of the conviction offense (e.g., conviction for conspiracy to murder is graded as Category Eight even if the prisoner is acquitted of the charge of murder). However, the acquittal should be carefully considered in assessing the offender's role and level of culpability in the offense.

2.19-03. Evidence Not Considered at Criminal Trial.

Under 28 C.F.R. 2.19(c), the Commission may consider evidence that was excluded or not considered at a criminal trial because of procedural violations (e.g., information concerning the seizure of drugs suppressed for failure to obtain a proper search warrant, or a confession suppressed for failure to properly give the Miranda warning). Particular care should be exercised in considering the reliability of such information since the reasons for its exclusion may raise significant doubts about its reliability (e.g., coercion in the case of a confession). The Commission may also consider reliable information developed after trial (e.g., a subsequent admission of guilt).

2.19-04. Reliance on Offense Descriptions in Presentence Reports.

(a) It is not uncommon for a prisoner to present a description of his or her offense behavior which is significantly different from the prosecution version of the offense in the presentence report. Commission regulations (in conformance with the Parole Commission and Reorganization Act of 1976) require the Commission to consider any reasonably available information concerning the prisoner, including information submitted by the prisoner, and require the Commission (not the sentencing court) to resolve conflicting versions of the facts by the preponderance of evidence standard. To say that the description of the offense in the presentence report will be deemed to be controlling unless first modified by the court is contrary to the Commission's duty to make its own independent factual findings. To be sure, the presentence report traditionally, and appropriately, has been given a great deal of weight by the Commission in making fact findings. But determining the weight to be given to any particular source of information is a function to be performed on a case-by-case basis. Several criteria for assessing the reliability of information are listed at 2.20-04. The Commission may not under its statute and regulations treat the presentence report as an unassailable source of factual information. It is to be noted that it may be futile for a prisoner to return to court seeking a modification of his presentence report. Some courts have refused to entertain post-sentencing requests for modification of the presentence report, holding that it is up to the Commission to make its own factual determinations in the parole decision making process.

(b) Therefore, information submitted to the Commission which conflicts with the presentence report, or any other government report, must be weighed by the Commission along with the report. The Commission is then to resolve the conflicting versions of the facts by the preponderance of evidence standard; that is, decide which version of the facts best accords with reason and probability. Judging the credibility of the source of the information naturally is part of the fact finding process. The prisoner, of course, may have an interest in having the facts distorted to show him to be less culpable than he really is. On the other hand, the presentence report writer, who must depend on investigative reports, may have misinterpreted the investigative reports or confused the facts of a complicated case. These possibilities must be weighed in each individual case.

(c) Where the hearing examiner concludes that the description of the offense reported in the presentence report or Form 792 is to be believed, the examiner should, when informing the prisoner of the recommendation, explain that the finding is based upon the information before the examiner. The examiner may then tell the prisoner that if the prisoner obtains further significant information, such as a correction from the sentencing court or probation officer, he may send it to the Commission for consideration of a reopening of the case.

2.19-05. Information for Decision-Making.

(a) If the presentence report is not clear as to the data needed to establish the correct guidelines, the U.S. Probation Office that prepared the report should be contacted. Where it is determined that additional information concerning the offense behavior is needed, Form USA-792 may be requested (see Sample Letter at Appendix 4(C)). Modifications to that sample letter may be made where warranted (e.g., where a report has previously been provided and additional information is required). Note also that, in drug offenses, the DEA regional office where the prosecution occurred may be a useful source of information.

(b) Establishing the correct guidelines and making objective and fair decisions are dependent upon having adequate information. Careful attention, particularly at the pre-hearing stage, will enable the securing of additional information where appropriate, and enhance the quality and fairness of the Commission's work.

§2.20 PAROLING POLICY GUIDELINES; STATEMENT OF GENERAL POLICY.

(a) To establish a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decision-making without removing individual case consideration, the U.S. Parole Commission has adopted guidelines for parole release consideration.

(b) These guidelines indicate the customary range of time to be served before release for various combinations of offense (severity) and offender (parole prognosis) characteristics. The time ranges specified by the guidelines are established specifically for cases with good institutional adjustment and program progress.

(c) These time ranges are merely guidelines. Where the circumstances warrant, decisions outside of the guidelines (either above or below) may be rendered.

(d) The guidelines contain instructions for the rating of certain offense behaviors. However, especially mitigating or aggravating circumstances in a particular case may justify a decision or a severity rating different from that listed.

(e) An evaluation sheet containing a "salient factor score" serves as an aid in determining the parole prognosis (potential risk of parole violation). However, where circumstances warrant, clinical evaluation of risk may override this predictive aid.

(f) Guidelines for reparole consideration are set forth at §2.21.

(g) The Commission shall review the guidelines, including the salient factor score, periodically and may revise or modify them at any time as deemed appropriate.

(h) If an offender was less than 18 years of age at the time of the current offense, such youthfulness shall, in itself, be considered as a mitigating factor.

(i) For criminal behavior committed while in confinement see §2.36 (Rescission Guidelines).

(j)(1) In probation revocation cases, the original federal offense behavior and any new criminal conduct on probation (federal or otherwise) is considered in assessing offense severity. The original federal conviction is also counted in the salient factor score as a prior conviction. Credit is given towards the guidelines for any time spent in confinement on any offense considered in assessing offense severity.

(2) Exception: Where probation has been revoked on a complex sentence [i.e., a committed sentence of more than six months on one count or more of an indictment or information followed by a probation term on the other count(s) of an indictment or information], the case shall be considered for guideline purposes under §2.21 as if parole rather than probation had been revoked.

GUIDELINES FOR DECISION-MAKING

**[Guidelines for Decision-Making, Customary Total Time
to be Served before Release (including jail time)]**

OFFENSE OFFENDER CHARACTERISTICS: Parole Prognosis

CHARACTERISTICS: (Salient Factor Score 1995)

Severity of Offense Very Good Good Fair Poor

Behavior (10-8) (7-6) (5-4) (3-0)

Guideline Range

Category One <=4 <=8 8-12 12-16

months months months months

Guideline Range**Category Two <=6 <=10 12-16 16-22****months months months months**

Guideline Range**Category Three <=10 12-16 18-24 24-32****months months months months**

Guideline Range**Category Four 12-18 20-26 26-34 34-44****months months months months**

Guideline Range**Category Five 24-36 36-48 48-60 60-72****months months months months**

Guideline Range**Category Six 40-52 52-64 64-78 78-100****months months months months**

Guideline Range**Category Seven 52-80 64-92 78-110 100-148****months months months months**

Guideline Range**Category Eight* 100+ 120+ 150+ 180+****months months months months**

***Note: For Category Eight, no upper limits are specified due to the extreme variability of the cases within this category. For decisions exceeding the lower limit of the applicable guideline category BY MORE THAN 48 MONTHS, the Commission will specify the pertinent case factors upon which it relied in reaching its decision, which**

may include the absence of any factors mitigating the offense. This procedure is intended to ensure that the prisoner understands that individualized consideration has been given to the facts of the case, and not to suggest that a grant of parole is to be presumed for any class of Category Eight offenders. However, a murder committed to silence a victim or witness, a contract murder, a murder by torture, the murder of a law enforcement officer to carry out an offense, or a murder carried out to further the aims of an on-going criminal operation, shall not justify a parole at any point in the prisoner's sentence unless there are compelling circumstances in mitigation (e.g., a youthful offender who participated in a murder planned and executed by his parent). Such aggravated crimes are considered, by definition, at the extreme high end of Category Eight offenses. For these cases, the expiration of the sentence is deemed to be a decision at the maximum limit of the guideline range. (The fact that an offense does not fall under the definition contained in this rule does not mean that the Commission is obliged to grant a parole.)

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CHAPTER ONE - OFFENSES OF GENERAL APPLICABILITY

101 Conspiracy

Grade conspiracy in the same category as the underlying offense.

102 Attempt

Grade attempt in the same category as the offense attempted.

103 Aiding and Abetting

Grade aiding and abetting in the same category as the underlying offense. [[*Notes and Procedures*. Aiding and Abetting is sometimes referred to as Accessory Before the Fact]].

104 Accessory After the Fact*

Grade accessory after the fact as two categories below the underlying offense, but not less than Category One.

105 Solicitation to Commit a Crime of Violence

Grade solicitation to commit a crime of violence in the same category as the underlying offense if the crime solicited would be graded as Category Eight. In all other cases, grade solicitation to commit a crime of violence one category below the underlying offense, but not less than Category One.

--- NOTE TO CHAPTER ONE

The reasons for a conspiracy or attempt not being completed may, where the circumstances warrant, be considered as a mitigating factor (e.g., where there is voluntary withdrawal by the offender prior to completion of the offense). *[[Notes and Procedures. In grading un consummated conspiracy offenses, care must be taken to distinguish the specific and imminent elements of the offense (which are to be considered) from those which are speculative and remote.]]*

CHAPTER TWO - OFFENSES INVOLVING THE PERSON

SUBCHAPTER A - HOMICIDE OFFENSES

201 Murder

Murder*, or a forcible felony* resulting in the death of a person other than a participating offender, shall be graded as Category Eight. *[[Notes and Procedures. (1) Grade a forcible felony resulting in the death of a person other than a participating offender as Category Eight even if the death was not intentional. Example 201-1: During a robbery, an offender's weapon discharges accidentally, resulting in the death of a bank teller. (2) Grade conduct as "attempted murder" only where it is established from the circumstances that both (a) death was the intended object; and (b) had death resulted, the offense would have been graded as Category Eight. Example 201-2: An offender places a bomb aboard an aircraft, but the bomb fails to explode. Example 201-3: During a robbery, an offender places a loaded revolver to the head of a victim and pulls the trigger, but the weapon misfires. Grade each of the above examples as "attempted murder." (3) An attempt to kill which, if successful, would have been classified as "voluntary manslaughter" (Category Seven), is to be graded as "assault with serious bodily injury the result intended".]]*

202 Voluntary Manslaughter*

Category Seven.

[[Notes and Procedures. Example 202-1: An offender stabs and kills a person during a drunken quarrel in a tavern.]]

203 Involuntary Manslaughter*

Category Four.

[[Notes and Procedures. This offense is frequently referred to as "grossly negligent or reckless homicide." Example 203-1: While driving under the influence of alcohol, an offender loses control of a vehicle and kills a pedestrian.]]

SUBCHAPTER B - ASSAULT OFFENSES

211 Assault During Commission of Another Offense

(a) If serious bodily injury* results or if "serious bodily injury is the result intended"*, grade as Category Seven; *[[Notes and Procedures. Example 211(a)-1: An offender, while fleeing from a robbery, fires a weapon from a distance at a pursuing police officer. The firing of the weapon at the officer in this circumstance is sufficient to find that "serious bodily injury" was the result intended.]]*

(b) If bodily injury* results, or a weapon is fired by any offender, grade as Category Six; *[[Notes and Procedures. Example 211(b)-1: During a residential burglary, an offender is confronted by the victim; the offender strikes the victim with his fist and breaks the victim's jaw. Example 211(b)-2: During a bank robbery, an offender fires a weapon at the ceiling to intimidate the victims. No one is injured]].*

(c) Otherwise, grade as Category Five. *[[Notes and Procedures. Example 211(c)-1: An offender forcibly escapes by assaulting a correctional officer. Note: If bodily injury to the correctional officer results, or if a dangerous weapon is used to accomplish the assault, grade as Offense 212(d). Example 211(c)-2: An offender assaults a victim while attempting to commit a sexual act (other than forcible rape or sodomy).]]*

212 Assault

(a) If serious bodily injury* results or if "serious bodily injury is the result intended"*, grade as Category Seven; *[[Notes and Procedures. Example 212(a)-1: During an argument, an offender strikes the victim over the head with a bottle causing injuries sufficient to place the victim on the "critical" list. Example 212(a)-2: An offender throws a vial of acid at the face of a victim.]]*

(b) If bodily injury* results or a dangerous weapon is used by any offender, grade as Category Five; *[[Notes and Procedures. The phrase "a dangerous weapon is used" refers to conduct in which an offender's use of a dangerous weapon puts the victim in imminent danger of bodily injury (e.g., an offender strikes at a victim with an iron bar) or threatens the victim with death or serious bodily injury (e.g., an offender points a firearm at the victim's head). Conduct that does not fit the above parameters (e.g., an offender displays a baseball bat during a domestic dispute but does not attempt to strike the victim with the bat) is graded as Offense 212(c).]]*

(c) Otherwise, grade as Category Two.

(d) Exception:

(1) If the victim was known to be a "protected person"* or law enforcement, judicial, or correctional official, grade conduct under (a) as Category Seven, (b) as Category Six, and (c) as Category Three. *[[Notes and Procedures. Grade an assault on a criminal justice official during an arrest under this section only if it involves force sufficient to create a likelihood of bodily injury (e.g., striking or kicking the officer).]]*

(2) If an assault is committed while resisting an arrest or detention initiated by a law enforcement officer or civilian acting under color of law, grade conduct under (a) as Category Seven, (b) as Category Six, and (c) as Category Three.

213 Firing a Weapon at a Structure Where Occupant(s) are Physically Present

Grade according to the underlying offense if one can be established, but not less than Category Five.

SUBCHAPTER C - KIDNAPING AND RELATED OFFENSES**221 Kidnaping**

- (a) If the purpose of the kidnaping is for ransom or terrorism, grade as Category Eight.
- (b) If a person is held hostage in a known place for purposes of extortion (e.g., forcing a bank manager to drive to a bank to retrieve money by holding a family member hostage at home), grade as Category Seven;
- (c) If a victim is used as a shield or hostage in a confrontation with law enforcement authorities, grade as Category Seven;
- (d) Otherwise, grade as Category Seven.
- (e) Exception: If not for ransom or terrorism, and no bodily injury to victim, and limited duration (e.g., abducting the driver of a truck during a hijacking and releasing him unharmed within an hour), grade as Category Six.

222 Demand for Ransom

- (a) If a kidnaping has, in fact, occurred, but it is established that the offender was not acting in concert with the kidnapper(s), grade as Category Seven;
- (b) If no kidnapping has occurred, grade as "extortion".

SUBCHAPTER D - SEXUAL OFFENSES**231 Rape or Forcible Sodomy**

- (a) Category Seven.
- (b) Exception: If a prior consensual sexual relationship is present between victim and offender, grade as Category Six.

232 Carnal Knowledge* or Sodomy Involving Minors

- (a) Grade as Category Four, except as provided below.
- (b) If the relationship is clearly consensual and the victim is at least fourteen years old, and the age difference between the victim and offender is less than four years,

grade as Category One.

(c) If the victim is less than twelve years old, grade as Category Seven.

(d) If the offender is an adult who has abused a position of trust (e.g., teacher, counselor, or physician), or the offense involved multiple instances of predatory sexual behavior, grade as Category Seven. Sexual behavior is deemed predatory when the offender repeatedly uses any trick or other device to attract, lure, or bribe victims into the initial contact that results in the offense.

233 Other Unlawful Sexual Conduct With Minors

(a) Category Four.

(b) Exception: If the victim is less than twelve years old grade as Category Six.

SUBCHAPTER E - OFFENSES INVOLVING AIRCRAFT

241 Aircraft Piracy

Category Eight.

242 Interference with a Flight Crew

(a) If the conduct or attempted conduct has potential for creating a significant safety risk to an aircraft or passengers, grade as Category Seven;

(b) Otherwise, grade as Category Two.

SUBCHAPTER F - COMMUNICATION OF THREATS

251 Communicating a Threat [to kill, assault, or kidnap]

(a) **Category Four**; *[[Notes and Procedures. (1) Communicating a threat includes any threat (written or oral) against the President and successors to the presidency (18 U.S.C. 871); any threat sent through the mail (18 U.S.C. 876); and any threat transmitted in interstate commerce (18 U.S.C. 875). Interstate commerce includes all telephone communications. (2) Separate threats to different victims are treated as multiple separate offenses.]]*

(b) Notes:

(1) Any overt act committed for the purposes of carrying out a threat in this subchapter may be considered as an aggravating factor.

(2) If for purposes of extortion or obstruction of justice, grade according to Chapter Three, Subchapter C, or Chapter Six, Subchapter B, as applicable.

CHAPTER THREE - OFFENSES INVOLVING PROPERTY

SUBCHAPTER A - ARSON AND OTHER PROPERTY DESTRUCTION OFFENSES

301 Property Destruction by Fire or Explosives

(a) If the conduct results in serious bodily injury* or if "serious bodily injury is the result intended"*, grade as Category Seven;

(b) If the conduct (i) involves any place where persons are present or likely to be present; or (ii) involves a residence, building, or other structure; or (iii) results in bodily injury*, grade as Category Six;

(c) Otherwise, grade as "property destruction other than listed above" but not less than Category Five. *[[Notes and Procedures. (1) The term "structure" is not subject to precise definition, but comparability in size to a building may be used for guidance. Thus, an automobile, a small boat, or a small detached shed would not be considered a structure. On the other hand, a ship or an oil storage complex would be considered a structure under this provision. (2) Reminder: Grade multiple separate arsons under the multiple separate offense procedure.]]*

302 Wrecking a Train

Category Seven.

303 Property Destruction Other Than Listed Above

(a) If the conduct results in bodily injury* or serious bodily injury*, or if "serious bodily injury is the result intended"*, grade as if "assault during commission of another offense";

(b) If damage of more than \$5,000,000 is caused, grade as Category Seven;

(c) If damage of more than \$1,000,000 but not more than \$5,000,000 is caused, grade as Category Six;

(d) If damage of more than \$200,000 but not more than \$1,000,000 is caused, grade as Category Five;

(e) If damage of at least \$40,000 but not more than \$200,000 is caused, grade as Category Four;

(f) If damage of at least \$2,000 but less than \$40,000 is caused, grade as Category Three;

(g) If damage of less than \$2,000 is caused, grade as Category One.

(h) Exception: If a significant interruption of a government or public utility

function is caused, grade as not less than Category Three.

SUBCHAPTER B - CRIMINAL ENTRY OFFENSES

311 Burglary or Unlawful Entry

(a) If the conduct involves an armory or similar facility (e.g., a facility where automatic weapons or war materials are stored) for the purpose of theft or destruction of weapons or war materials, grade as Category Six;

(b) If the conduct involves an inhabited dwelling (whether or not a victim is present), or any premises with a hostile confrontation with a victim, grade as Category Five;

(c) If the conduct involves use of explosives or safecracking, grade as Category Five; *[[Notes and Procedures. The term "safecracking" is intended to include conduct that is appropriately termed "skilled" or "sophisticated" (e.g., "drilling" a safe on the premises or using an instrument to detect the combination of the safe).]]*

(d) Otherwise, grade as "theft" offense, but not less than Category Two.

(e) Exception: If the grade of the applicable "theft" offense exceeds the grade under this subchapter, grade as a "theft" offense. *[[Notes and Procedures. The term "burglary/unlawful entry" refers to conduct involving a structure or other enclosed premises. Breaking and entering/ unlawful entry of an automobile is graded as a theft offense (Offense 331).]]*

SUBCHAPTER C - ROBBERY, EXTORTION, AND BLACKMAIL

321 Robbery

(a) Category Five.

(b) Exceptions:

(1) If the grade of the applicable "theft" offense exceeds the grade for robbery, grade as a "theft" offense.

(2) If any offender forces a victim to accompany any offender to a different location, or if a victim is forcibly detained by being tied, bound, or locked up, grade as Category Six. *[[Notes and Procedures. The term "different location" refers to removal from the premises (e.g., forcing a victim of a bank robbery to accompany an offender outside the bank).]]*

(3) Pickpocketing (stealth-no force or fear), see Subchapter D.

(c) Note: Grade purse snatching (fear or force) as robbery.

322 Extortion

(a) If by threat of physical injury to person or property, or extortionate extension of credit* (loansharking), grade as Category Five;

(b) If by use of official governmental position, grade according to Chapter Six, Subchapter C;

(c) If neither (a) nor (b) is applicable, grade under Chapter Eleven, Subchapter F;

(d) Exceptions:

(1) If the grade of the applicable "theft" offense exceeds the grade under this subchapter, grade as a "theft" offense;

(2) If a victim is physically held hostage for purposes of extortion, grade according to Chapter Two, Subchapter C.

323 Blackmail [threat to injure reputation or accuse of crime]

Grade as a "theft" offense according to the value of the property demanded, but not less than Category Three. Actual damage to reputation may be considered as an aggravating factor.

SUBCHAPTER D - THEFT AND RELATED OFFENSES

331 Theft, Forgery, Fraud, Trafficking in Stolen Property*, Interstate Transportation of Stolen Property, Receiving Stolen Property, Embezzlement, and Related Offenses

(a) If the value of the property* is more than \$5,000,000, grade as Category Seven;

(b) If the value of the property* is more than \$1,000,000 but not more than \$5,000,000, grade as Category Six;

(c) If the value of the property* is more than \$200,000 but not more than \$1,000,000, grade as Category Five;

(d) If the value of the property* is at least \$40,000 but not more than \$200,000, grade as Category Four;

(e) If the value of the property* is at least \$2,000 but less than \$40,000, grade as Category Three;

(f) If the value of the property* is less than \$2,000, grade as Category One.

(g) (Exceptions:

(1) Offenses involving stolen checks, credit cards, money orders or mail, forgery, fraud, interstate transportation of stolen or forged securities, trafficking in stolen property*, or embezzlement shall be graded as not less than Category Two;

(2) Theft of an automobile shall be graded as no less than Category Three. Note: where the vehicle was recovered within 72 hours with no significant damage and the circumstances indicate that the only purpose of the theft was temporary use (e.g., joyriding), such circumstances may be considered as a mitigating factor; [[Notes and Procedures. Theft of truck incidental to theft of cargo. When the theft of the truck is clearly incidental to the theft of the cargo (e.g., the truck is recovered abandoned within 72 hours without significant damage) the value of the truck shall be added to the value of the cargo but such circumstances may be considered as a mitigating factor.]]

(3) Grade obtaining drugs for own use by a fraudulent or fraudulently obtained prescription as Category Two.

(4) Grade manufacture, sale, and fraudulent use of credit cards as follows:

(i) Grade the manufacture, distribution or possession of counterfeit or altered credit cards as not less than Category Four.

(ii) Grade the distribution or possession of multiple stolen credit cards as not less than Category Three.

(iii) Grade the distribution or possession of a single stolen credit card as not less than Category Two.

(h) Notes:

(1) In "theft" offenses, the total amount of the theft committed or attempted by the offender, or others acting in concert with the offender, is to be used. [[Notes and Procedures. Example 331(h)-1: Seven persons in concert commit a theft of \$70,000; each receives \$10,000. Grade according to the total amount (\$70,000). Example 331(h)-2: An offender fraudulently sells stock worth \$20,000 for \$90,000. Grade according to the loss (\$70,000).]]

(2) Grade fraudulent sale of drugs (e.g., sale of sugar as heroin) as "fraud".

332 Pickpocketing [stealth-no force or fear]

Grade as a "theft" offense, but not less than Category Three.

333 Fraudulent Loan Applications

Grade as a "fraud" offense according to the amount of the loan. [[Notes and Procedures. Example 333-1: An offender falsifies collateral of \$250,000 to obtain a \$50,000 loan. Grade according to the value of the loan (\$50,000).]]

334 Preparation or Possession of Fraudulent Documents

(a) If for purposes of committing another offense, grade according to the offense intended;

(b) Otherwise, grade as Category Two.

335 Criminal Copyright Offenses

(a) If very large scale (e.g., more than 100,000 sound recordings or more than 10,000 audio visual works), grade as Category Five;

(b) If large scale (e.g., 20,000-100,000 sound recordings or 2,000-10,000 audio visual works), grade as Category Four;

(c) If medium scale (e.g., 2,000-19,999 sound recordings or 200-1,999 audio visual works), grade as Category Three;

(d) If small scale (e.g., less than 2,000 sound recordings or less than 200 audio visual works), grade as Category Two.

SUBCHAPTER E - COUNTERFEITING AND RELATED OFFENSES**341 Passing or Possession of Counterfeit Currency or Other Medium of Exchange***

(a) If the face value of the currency or other medium of exchange is more than \$5,000,000, grade as Category Six;

(b) If the face value of the currency or other medium of exchange is more than \$1,000,000 but less than \$5,000,000, grade as Category Six;

(c) If the face value of the currency or other medium of exchange is more than \$200,000 but not more than \$1,000,000, grade as Category Five;

(d) If the face value of the currency or other medium of exchange is at least \$40,000 but not more than \$200,000, grade as Category Four;

(e) If the face value of the currency or other medium of exchange is at least \$2,000 but less than \$40,000, grade as Category Three;

(f) If the face value of the currency or other medium of exchange is less than \$2,000, grade as Category Two.

342 Manufacture of Counterfeit Currency or Other Medium of Exchange* or Possession of Instruments for Manufacture

Grade manufacture or possession of instruments for manufacture (e.g., a printing press or plates) according to the quantity printed (see passing or possession), but not less than Category Five. The term "manufacture" refers to the capacity to print

or generate multiple copies; it does not apply to pasting together parts of different notes. *[[Notes and Procedures. The term "manufacturing" does not include the copying of currency not intended to pass visual inspection (e.g., reproducing a dollar bill on a copying machine for insertion in a bill/coin changing machine).]]*

SUBCHAPTER F - BANKRUPTCY OFFENSES

351 Fraud in Bankruptcy or Concealing Property

Grade as a "fraud" offense.

SUBCHAPTER G - VIOLATION OF SECURITIES OR INVESTMENT REGULATIONS AND ANTITRUST OFFENSES

361 Violation of Securities or Investment Regulations

(a) If for purposes of fraud, grade according to the underlying offense;

(b) Otherwise, grade as Category Two. *[[Notes and Procedures. If "insider trading", grade as Offense 363.]]*

362 Antitrust Offenses

(a) If estimated economic impact is more than one million dollars, grade as Category Four;

(b) If the estimated economic impact is more than \$100,000 but not more than one million dollars, grade as Category Three;

(c) Otherwise, grade as Category Two.

(d) Note: The term "economic impact" refers to the estimated loss to any victims (e.g., loss to consumers from a price fixing offense).

363 Insider Trading

(a) If the estimated economic impact is more than \$5,000,000, grade as Category Seven;

(b) If the estimated economic impact is more than \$1,000,000 but not more than \$5,000,000, grade as Category Six;

(c) If the estimated economic impact is at least \$200,000 but not more than \$1,000,000, grade as Category Five;

(d) If the estimated economic impact is at least \$40,000 but less than \$200,000, grade as Category Four;

(e) If the estimated economic impact is at least \$2,000, but less than \$40,000, grade

as Category Three;

(f) If the estimated economic impact is less than \$2,000, grade as Category Two.

(g) **Note:** The term "economic impact" includes the damage sustained by the victim whose information was unlawfully used, plus any other illicit profit resulting from the offense.

CHAPTER FOUR - OFFENSES INVOLVING IMMIGRATION, NATURALIZATION, AND PASSPORTS

401 Unlawfully Entering the United States as an Alien

Category One.

402 Transportation of Unlawful Alien(s)

(a) If the transportation of unlawful alien(s) involves detention and demand for payment, grade as Category Five;

(b) Otherwise, grade as Category Three.

403 Offenses Involving Passports

(a) If making an unlawful passport for distribution to another, possession with intent to distribute, or distribution of an unlawful passport, grade as Category Three;

(b) If fraudulently acquiring or improperly using a passport, grade as Category Two.

404 Offenses Involving Naturalization or Citizenship Papers

(a) If forging or falsifying naturalization or citizenship papers for distribution to another, possession with intent to distribute, or distribution, grade as Category Three;

(b) If acquiring fraudulent naturalization or citizenship papers for own use or improper use of such papers, grade as Category Two;

(c) If failure to surrender canceled naturalization or citizenship certificate(s), grade as Category One.

CHAPTER FIVE - OFFENSES INVOLVING REVENUE

SUBCHAPTER A - INTERNAL REVENUE OFFENSES

501 Tax Evasion [income tax or other taxes]

(a) If the amount of tax evaded or evasion attempted is more than \$5,000,000, grade as Category Seven;

(b) If the amount of tax evaded or evasion attempted is more than \$1,000,000 but not more than \$5,000,000, grade as Category Six;

(c) If the amount of tax evaded or evasion attempted is at least \$200,000 but not more than \$1,000,000, grade as Category Five;

(d) If the amount of tax evaded or evasion attempted is at least \$40,000 but not more than \$200,000, grade as Category Four;

(e) If the amount of tax evaded or evasion attempted is at least \$2,000 but less than \$40,000, grade as Category Three.

(f) If the amount of tax evaded or evasion attempted is less than \$2,000, grade as Category One.

(g) Notes:

(1) Grade according to the amount of tax evaded or evasion attempted, not the gross amount of income. [[Notes and Procedures. Example 501(g)(1)-1: An offender fails to report income of \$30,000, thus avoiding \$10,000 in taxes; the severity rating is determined by the tax avoided (i.e., \$10,000). This amount does not include interest or penalties.]]

(2) Tax evasion refers to failure to pay applicable taxes. Grade a false claim for a tax refund (where tax has not been withheld) as a "fraud" offense.

502 Operation of an Unregistered Still

Grade as a "tax evasion" offense.

SUBCHAPTER B - CUSTOMS OFFENSES**511 Smuggling Goods into the United States**

(a) If the conduct is for the purpose of tax evasion, grade as a "tax evasion" offense.

(b) If the article is prohibited from entry to the country absolutely (e.g., illicit drugs or weapons), use the grading applicable to possession with intent to distribute of such articles, or the grading applicable to tax evasion, whichever is higher, but not less than Category Two;

(c) If the conduct involves breaking seals, or altering or defacing customs marks, or concealing invoices, grade according to (a) or (b), as applicable, but not less than

Category Two.

512 Smuggling Goods into Foreign Countries in Violation of Foreign Law (re: 18 U.S.C. 546)

Category Two.

SUBCHAPTER C - CONTRABAND CIGARETTES

521 Trafficking in Contraband Cigarettes (re: 18 U.S.C. 2342)

Grade as a tax evasion offense.

CHAPTER SIX - OFFENSES INVOLVING GOVERNMENTAL PROCESS

SUBCHAPTER A - IMPERSONATION OF OFFICIALS

601 Impersonation of Official

(a) If for purposes of commission of another offense, grade according to the offense attempted, but not less than Category Two;

(b) Otherwise, grade as Category Two.

SUBCHAPTER B - OBSTRUCTING JUSTICE

611 Perjury

(a) If the perjured testimony concerns a criminal offense, grade as "accessory after the fact", but not less than Category Three;

(b) Otherwise, grade as Category Three.

(c) Suborning perjury, grade as perjury.

612 Unlawful False Statements Not Under Oath

Category One.

613 Tampering With Evidence or Witness, Victim, Informant, or Juror

(a) If concerning a criminal offense, grade as "accessory after the fact", but not less than Category Three;

(b) Otherwise, grade as Category Three.

(c) Exception: Intimidation by threat of physical harm, grade as not less than

Category Five.**614 Misprision of a Felony***

Grade as if "accessory after the fact" but not higher than Category Three.

615 Harboring a Fugitive

Grade as if "accessory after the fact" to the offense for which the fugitive is wanted, but not higher than Category Three. *[[Notes and Procedures. In the case of a fugitive who is an escapee, the "offense for which the fugitive is wanted" is considered to be the escape or the offense for which the fugitive was being held, whichever is graded higher.]]*

616 Escape

If in connection with another offense for which a severity rating can be assessed, grade the underlying offense and apply the rescission guidelines to determine an additional penalty. Otherwise, grade as Category Three. *[[Notes and Procedures. If the underlying offense behavior cannot be established in accord with Commission regulations (e.g., where the information is insufficient to establish that the offender committed the underlying offense), grade as Category Three, unless Offense 211(c) or 212(d) is applicable.]]*

617 Failure to Appear*

(a) In Felony Proceedings. If in connection with an offense for which a severity rating can be assessed, add to the guidelines otherwise appropriate the following: (i) ≤6 months if voluntary return within 6 days, or (ii) 6-12 months in any other case. Otherwise, grade as Category Three. *[[Notes and Procedures. Grade as Category Three only if the underlying offense behavior cannot be established in accord with Commission regulations (e.g., where the information is insufficient to establish that the offender committed the underlying offense).]]*

(b) In Misdemeanor Proceedings. Grade as Category One. *[[Notes and Procedures. In the case of a failure to appear on a misdemeanor charge, grade the failure to appear and the underlying charge (if it can be established under Commission regulations) as multiple separate offenses. Example 617(b)-1: A parolee fails to appear on a misdemeanor charge involving theft of \$400. Since the proceeding is a misdemeanor proceeding, the failure to appear is graded as Category One. If the parolee is also convicted of the theft, or if the Commission makes an independent finding of the theft, apply the multiple separate offense procedure.]]*

(c) Note: For purposes of this subsection, a misdemeanor is defined as an offense for which the maximum penalty authorized by law (not necessarily the penalty actually imposed) does not exceed one year.

618 Contempt of Court

(a) Criminal Contempt (re: 18 U.S.C. 402). Where imposed in connection with a

prisoner serving a sentence for another offense, add ≤6 months to the guidelines otherwise appropriate.

(b) **Exception:** If a criminal sentence is imposed under 18 U.S.C. 401 for refusal to testify concerning a criminal offense, grade such conduct as if "accessory after the fact".

(c) Civil Contempt. See 28 C.F.R. 2.10.

SUBCHAPTER C - OFFICIAL CORRUPTION

621 Bribery or Extortion [use of official position - no physical threat]

(a) Grade as a "theft offense" according to the value of the bribe demanded or received, or the favor received by the bribe-giver (whichever is greater), but not less than Category Three. The "favor received" is the gross value of the property, contract, obligation, interest, or payment intended to be awarded to the bribe-giver in return for the bribe. Grade the bribe-taker in the same manner. *[[Notes and Procedures. Example 621-1: A federal employee accepts a \$10,000 bribe to approve a fraudulent claim of \$80,000. The applicable value to be used in grading this offense is \$80,000.]]*

(b) If the above conduct involves a pattern of corruption (e.g., multiple instances), grade as not less than Category Four.

(c) If the purpose of the conduct is the obstruction of justice, grade as if "perjury".

(d) **Notes:**

(1) The grading in this subchapter applies to each party to a bribe.

(2) The extent to which the criminal conduct involves a breach of public trust, causing injury beyond that describable by monetary gain, may be considered as an aggravating factor.

622 Other Unlawful Use of Governmental Position

Category Two.

631 Voting Fraud

Category Four.

CHAPTER SEVEN - OFFENSES INVOLVING INDIVIDUAL RIGHTS

SUBCHAPTER A - OFFENSES INVOLVING CIVIL RIGHTS

701 Conspiracy Against Rights of Citizens (re: 18 U.S.C. 241)

(a) If death results, grade as Category Eight;

(b) Otherwise, grade as if "assault".

702 Deprivation of Rights Under Color of Law (re: 18 U.S.C. 242)

(a) If death results, grade as Category Eight;

(b) Otherwise, grade as if "assault".

703 Federally Protected Activity (re: 18 U.S.C. 245)

(a) If death results, grade as Category Eight;

(b) Otherwise, grade as if "assault".

704 Intimidation of Persons in Real Estate Transactions Based on Racial Discrimination (re: 42 U.S.C. 3631)

(a) If death results, grade as Category Eight;

(b) Otherwise, grade as if "assault".

705 Transportation of Strikebreakers (re: 18 U.S.C. 1231)

Category Two.

SUBCHAPTER B - OFFENSES INVOLVING PRIVACY**711 Interception and Disclosure of Wire or Oral Communications (re: 18 U.S.C. 2511)**

Category Two.

712 Manufacture, Distribution, Possession, and Advertising of Wire or Oral Communication Intercepting Devices (re: 18 U.S.C. 2512)

(a) Category Three.

(b) Exception: If simple possession, grade as Category Two.

713 Unauthorized Opening of Mail

Category Two.

CHAPTER EIGHT - OFFENSES INVOLVING EXPLOSIVES AND WEAPONS

SUBCHAPTER A - EXPLOSIVES OFFENSES AND OTHER DANGEROUS ARTICLES

801 Unlawful Possession or Distribution of Explosives; or Use of Explosives During a Felony

Grade according to offense intended, but not less than Category Five.

802 Mailing Explosives or Other Injurious Articles with Intent to Commit a Crime

Grade according to offense intended, but not less than Category Five.

SUBCHAPTER B - FIREARMS/AMMUNITION

811 Possession by Prohibited Person (e.g., ex-felon)

(a) If single weapon (rifle, shotgun, handgun), or ammunition of the same caliber, or ammunition of a single caliber (without weapon), grade as Category Three;

(b) If multiple weapons (rifles, shotguns, handguns), or ammunition of different calibers, or single weapon and ammunition of a different caliber, grade as Category Four. *[[Notes and Procedures. Aliens illegally in the United States are also prohibited by federal law from possession of firearms.]]*

812 Unlawful Possession or Manufacture of Sawed-off Shotgun*, Machine Gun, Silencer, or Assassination Kit*

(a) If silencer or assassination kit*, grade as Category Six;

(b) If sawed-off shotgun* or machine gun, grade as Category Five. *[[Notes and Procedures. (1) Consider unlawful possession of a weapon combined with other offenses under the multiple separate offense procedure of Chapter Thirteen. (2) Possession/manufacture of a sawed-off rifle is graded as Category Three.]]*

813 Unlawful Distribution of Weapons or Possession with Intent to Distribute

(a) If silencer(s) or assassination kit(s)*, grade as Category Six;

(b) If sawed-off shotgun(s)* or machine gun(s), grade as Category Five;

(c) If multiple weapons (rifles, shotguns, or handguns), or ammunition of different calibers, or single weapon and ammunition of a different caliber, grade as Category Four;

(d) If single weapon (rifle, shotgun, handgun) with or without ammunition of the

same caliber, or ammunition of a single caliber without a weapon, grade as Category Three.

CHAPTER NINE - OFFENSES INVOLVING ILLICIT DRUGS

SUBCHAPTER A - HEROIN AND OPIATE* OFFENSES

901 Distribution or Possession with Intent to Distribute

- (a) If extremely large scale (e.g., involving 3 kilograms or more of 100% pure heroin, or equivalent amount), grade as Category Eight [except as noted in (c) below];**
- (b) If very large scale (e.g., involving 1 kilogram but less than 3 kilograms of 100% pure heroin, or equivalent amount), grade as Category Seven [except as noted in (c) below];**
- (c) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) or (b) as Category Six;**
- (d) If large scale (e.g., involving 50-999 grams of 100% pure heroin, or equivalent amount), grade as Category Six [except as noted in (e) below];**
- (e) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (d) as Category Five.**
- (f) If medium scale (e.g., involving 5-49 grams of 100% pure heroin, or equivalent amount), grade as Category Five;**
- (g) If small scale (e.g., involving less than 5 grams of 100% pure heroin, or equivalent amount), grade as Category Four.**

902 Simple Possession

Category One.

[[Notes and Procedures. (1) The following list contains drugs classified as opiates/synthetic opiate substances (21 C.F.R. 1308):

Acetorphine Etonitazene Normorphine

Acetyldihydrocodeine Etorphine Norpipanone

Acetylmethadol Etorphine hydrochloride Opium

Allylprodine Etoxadine Raw Opium

Alphacetylmethadol Fentanyl Opium Extracts

Alphameprodine Furethidine Opium Fluid Extracts
Alphamethadol Heroin Powdered Opium
Alpha-methylfentanyl Hydrocodone Granulated Opium
Propionanilide Hydromorphenol Tincture of Opium
Alphaprodine Hydromorphone Oxycodone
Anileridine Hydroxypethidine Oxymorphone
Benzethidine Isomethadone Pethidine
Benzylmorphine Ketobemidone (meperidine)
Betacetylmethadol Levomethorpan Pethidine-Intermediate-Betameprodine
Levomoramide 4-cyano-1-methyl-4-
Betamethadol Levophenacymorphan phenylpiperidine
Betaprodine Levorphanol Pethidine-Intermediate-B,
Bezitramide Metazocine ethyl-4-phenylpiperidine-4-
Clonitazene Methadone carboxylate
Codeine Methadone-Intermediate, Pethidine-Intermediate-C, 1-
Codeine Methylbromide 4-cyano-2-dimethylamino- methyl-4-phenylpiperidine-
Codeine-N-Oxide 4, 4-diphenyl butane 4-carboxylic acid
Cyprenorphine Methyldesorphine Phenadoxone
Desomorphine Methyldihydromorphine Phenampromide
Dextromoramide Metopon Phenazocine
Dextropropoxyphene Morpheridine Phenomorphan
(Bulk non-dosage form) Morphine Phenoperidine
Diampromide Morphine Methylbromide Pholcodine
Diethylthiambutene Morphine Methylsulfonate Piminodine

Difenoxin Morphine-N-Oxide Piritramide

Dihydrocodeine Moramide Proheptazine

Dihydromorphine Moramide-Intermediate, Properidine

Dimenoxadol 2-methyl-3 morpholino-1, Propiram

Dimepheptanol 1-diphenylpropane- Racemethorphan

Dimethylthiambutene carboxylic acid Racemoramide

Dioxaphetyl butyrate Myrophine Racemorphan

Diphenoxylate Nicocodeine Sufentanil

Dipipanone Nicomorphine Thebacon

Drotebanol Noracymethadol Thebaine

Ethylmethylthiambutene Norlevorphanol Tilidine

Ethylmorphine Normethadone Trimeperidine

3-Methylfentanyl 1-Methyl-4-phenyl-4- 1-(2-Phenylethyl)-4-phenyl-4-propionoxypiperidine(MPP) acetyloxypiperidine(PEPAP)

(2) Certain drugs such as Talwin have opiate characteristics but are not counted as opiates/synthetic opiate substances in determining the offense severity.

(3) In accordance with 21 C.F.R. 1308, dextropropoxyphene will be counted as an opiate in determining the offense severity only when it is found in bulk form (not when found in capsule form prepared under the brand name of Darvon).

(4) Common Brand Names of Opiates (this list is not inclusive):

Amidone (Methadone) Methadose (Methadone)

Demerol (Pethidine) Nisentil (Alphaprodine)

Dilaudid (Hydromorphone) Nucodan (Oxycodone)

Dolophine (Methadone) Numorphan (Oxymorphone)

Dover's Powder (Opium) Palfium (Dextromoramide)

Dromoran (Racemorphan) Paracodin (Dihydrocodeine)

Ethnine (Pholcodine) Paragoric (Opium)

Heptalgin (Phenadoxone) Percodan (Oxycodone)

Hycodan (Hydrocodone) Pethadol (Pethidine)

Leritine (Anileridine) Pholdine (Pholcodine)

Levo-Dromoran (Levorphanol) Pipadone (Dipipanone)

Levorphan (Levorphanol) Prinadol (Phenazocine)

(5) Conversion of Common Opiates to Heroin Equivalent. The following chart may be used to convert common opiates to their heroin equivalent (e.g., 67.4 grams of pure methadone x .3 = 20.22 grams of pure heroin equivalent; 42.6 grams of pure hydromorphone x 2 = 85.2 grams of pure heroin equivalent):

1 gm. alpha-methylfentanyl = 100 gms. heroin

1 gm. alphaprodine = .09 gm. heroin

1 gm. anileridine = .1 gm. heroin

1 gm. codeine = .02 gm. heroin

1 gm. dextromoramide = .4 gm. heroin

1 gm. dextropropoxyphene = .01 gm heroin

1 gm. dihydrocodeine = .05 gm. heroin

1 gm. dipipanone = .12 gm. heroin

1 gm. fentanyl = 30 gms. heroin

1 gm. hydrocodone = 1 gm. heroin

1 gm. hydromorphone = 2 gms. heroin

1 gm. levorphanol = 1 gm. heroin

1 gm. MPPP = .5 gm. heroin

1 gm. methadone = .3 gm. heroin

1 gm. metopon = .86 gm. heroin
1 gm. morphine = .3 gm. heroin
1 gm. opium = .03 gm. heroin
1 gm. oxycodone = .2 gm. heroin
1 gm. oxymorphone = 2 gms. heroin
1 gm. PEPAP = .6 gm. heroin
1 gm. paragoric = .003 gm. heroin
1 gm. pethidine (meperidine) = .03 gm. heroin
1 gm. phenadoxone = .15 gm. heroin
1 gm. racemorphan = .6 gm. heroin
1 gm. 3-methylfentanyl = 125 gms. heroin]]

SUBCHAPTER B - MARIJUANA AND HASHISH OFFENSES

911 Distribution or Possession with Intent to Distribute

(a) If extremely large scale (e.g., involving 20,000 pounds or more of marijuana/6,000 pounds or more of hashish/600 pounds or more of hash oil), grade as Category Six [except as noted in (b) below];

(b) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) as Category Five;

(c) If very large scale (e.g., involving 2,000-19,999 pounds of marijuana/600-5,999 pounds of hashish/60-599 pounds of hash oil), grade as Category Five;

(d) If large scale (e.g., involving 200-1,999 pounds of marijuana/60-599 pounds of hashish/6-59.9 pounds of hash oil), grade as Category Four;

(e) If medium scale (e.g., involving 50-199 pounds of marijuana/15-59.9 pounds of hashish/1.5-5.9 pounds of hash oil), grade as Category Three;

(f) If small scale (e.g., involving 10-49 pounds of marijuana/3-14.9 pounds of hashish/.3-1.4 pounds of hash oil), grade as Category Two;

(g) If very small scale (e.g., involving less than 10 pounds of marijuana/less than 3 pounds of hashish/less than .3 pounds of hash oil), grade as Category One.

912 Simple Possession**Category One.**

[[Notes and Procedures. (1) 1 liter of hash(ish) oil in liquid form = 2.2 lbs. of hash oil in solid form. (2) Marijuana offenses are normally graded by bulk quantity. In determining quantity for guideline purposes, all parts of the marijuana plant as seized and weighed in bulk (e.g., from a shipment of marijuana being imported), or as negotiated for sale if no seizure is made, are counted. Occasionally, it may be necessary to estimate the scale of the offense from acreage under cultivation or from the number of plants seized. In the absence of more specific information, use the following minimum estimates. Grade 1 plant as equivalent to attempted production of 1/4 lb. of useable marijuana. Note: In the United States, marijuana is frequently grown interspersed with other crops to disguise the marijuana. In such cases, estimate 500 marijuana plants (125 lbs.) per acre. Where marijuana is the only crop under cultivation (e.g., in certain foreign locations), estimate 4,000 plants (1000 lbs.) per acre.]]

SUBCHAPTER C - COCAINE OFFENSES**921 Distribution or Possession with Intent to Distribute**

(a) If extremely large scale (e.g., involving 15 kilograms or more of 100% purity, or equivalent amount; or 1.5 kilograms or more of freebased cocaine), grade as Category Eight [except as noted in (c) below];

(b) If very large scale (e.g., involving 5 kilograms but less than 15 kilograms of 100% purity, or equivalent amount; or 500 grams but less than 1.5 kilograms of freebased cocaine), grade as Category Seven [except as noted in (c) below];

(c) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) or (b) as Category Six;

(d) If large scale (e.g., involving more than 1 kilogram but less than 5 kilograms of 100% purity, or equivalent amount; or more than 100 grams but less than 500 grams of freebased cocaine), grade as Category Six [except as noted in (e) below];

(e) Where the Commission finds that the offender had only a peripheral role, grade conduct under (d) as Category Five;

(f) If medium scale (e.g., involving 100 grams-1 kilogram of 100% purity, or equivalent amount; or 10 grams-100 grams of freebased cocaine), grade as Category Five;

(g) If small scale (e.g., involving 5-99 grams of 100% purity, or equivalent amount; or 1 gram-9.9 grams of freebased cocaine), grade as Category Four;

(h) If very small scale (e.g., involving 1.0-4.9 grams of 100% purity, or equivalent

amount; or less than 1 gram of freebased cocaine), grade as Category Three.

(i) If extremely small scale (e.g., involving less than 1 gram of 100% purity, or equivalent amount), grade as Category Two.

922 Simple Possession

Category One.

[[*Notes and Procedures.* (1) Freebased cocaine is often referred to as "crack". (2) Cocaine paste: 1 gram of cocaine paste is equivalent to 0.4 grams of pure cocaine.]]

SUBCHAPTER D - OTHER ILLICIT DRUG OFFENSES*

931 Distribution or Possession with Intent to Distribute

(a) If very large scale (e.g., involving more than 200,000 doses), grade as Category Six [except as noted in (b) below];

(b) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) as Category Five;

(c) If large scale (e.g., involving 20,000-200,000 doses), grade as Category Five;

(d) If medium scale (e.g., involving 1,000-19,999 doses), grade as Category Four;

(e) If small scale (e.g., involving 200-999 doses), grade as Category Three;

(f) If very small scale (e.g., involving less than 200 doses), grade as Category Two.

932 Simple Possession

Category One.

[[*Notes and Procedures.* Dosage Units. A dose of a drug is equivalent to 1 capsule, tablet, cigarette (500 mg.), gelatin square, button, or other common unit of sale. If the drug is in bulk form, a lab report from DEA may have converted the amount to doses. This information should be in the Presentence Report. If this information is not available, the following chart may be used.

HALLUCINOGENS

Anhalamine 300 mg.

Anhalonide 300 mg.

Anhalonine 300 mg.

REMARKS OF THE PRESIDENT
IN HIV-AIDS ADVISORY COUNCIL MEETING

The Cabinet Room

5:45 P.M. EST

MS. THURMAN: Good afternoon, everybody. I want to thank you all for joining us this afternoon. Those of us who are gathered in this room today are partners in a battle that, while we've had significant successes in recent years, has no end in sight. Our victory over AIDS will require incredible resolve, persistence, and steadfast leadership.

This is a struggle which we all know has had all too few national leaders, but has always had the support of this leader. It is my distinct honor to present to you our leader, the President.

THE PRESIDENT: I want to get right to the subject of listening to all of you, but I would like to say that, as all of you know, we had a very good couple of days when we finally made the budget last year -- we've had a lot of good increases, a lot of things that I know you care so much about. But we've got a lot of work to do, especially in prevention and in the vaccine development I think we're going to -- (inaudible) -- pretty soon.

I would prefer, I think, because we've met before and I'm trying to stay familiar with your concerns -- I think we've done a good job of getting the money into the programs this time, but there's a lot more we can do -- (inaudible.) However you organized this -- (Laughter.)

DR. HITT: Okay, we want to start off by having Reverend Mother Altagracia Perez lead us in a short prayer.

REVEREND PEREZ: Thank you. Thank you, Mr. President, for this moment where we can gather our thoughts and especially bring to mind all those who today are in need of courage and strength, so if we could have a moment of silence.

Spirit of life and justice and power, we welcome you in our midst. We've been brought together by a desire to improve the quality of life for all the people that we serve and represent. We're especially conscious at this moment of the men and women, that right now, are in harm's way. Our thoughts are with them and their families, as we await their safe return.

We're also ever-mindful of those who are gathered here

with us and, through us, all those who struggle daily with a virus that has no cure and is hard to live with. They are here with us; the people who called us to this work; those who have gone and who have left us their legacy of courage and perseverance.

We especially gather in a spirit of gratitude for our President. We remember all too well those dark years, when a meeting like this would have never happened. We are grateful for his life and for his leadership, and we pray that you sustain him through the power of your spirit. Give him strength and courage, and stamina, and wisdom, as he continues to lead us through this dark time.

There's still so much that we have to do. Let us especially remember our communities of color and those most vulnerable throughout the world who today, and every day, are living in a state of emergency. May each of us leave this encounter with our vision of what we can do together restored, and our strength renewed, to go forward and face the challenges that await us. In the name of the One who came with hope and brought us light, we pray. Amen.

DR. HITT: Mr. President, on behalf of the Council I want to thank you for meeting with us, especially so close to your recent high profile events regarding the Congressional Black Caucus HIV Initiative for communities of color and World AIDS Day spotlight on international crisis.

Six and a half years ago I was very honored to stand with you on the stage of the Palace Theater in Los Angeles, where you outlined your commitment and genuine care and concern for those living with HIV and a really good vision of how -- (inaudible.) In light of the efforts you made in securing unprecedented funding, for starting the Office of AIDS Research, Office of National AIDS Policy, convening the White House Conference on AIDS, establishing a goal of a vaccine -- which are all landmarks I think you can be very proud of -- I am just as honored to be with you here today.

THE PRESIDENT: Thank you.

DR. HITT: In addition, I want to thank you for the humbling honor of serving this Council of incredibly dedicated and committed individuals as its chair, and to tell you on behalf of all of us how honored we are to serve your administration.

Continuing with our task of offering advice to you, we recently adopted our priorities, which reflect the community realities, especially the urgent need for action in the racial and ethnic communities, and in the youth of our country. This epidemic has been full of changes and challenges and we're really at a crossroads in this epidemic. The media all the time tells us about how people are living longer and this is a chronic, manageable disease and less people are dying overall of AIDS.

What they often fail to mention is that curb-prevention

efforts are not reaching the American public. Three hundred thousand Americans don't even know they're HIV positive. And contrary to your own stated goals, we are not decreasing the numbers of new people infected. And, in fact, in many communities the numbers are increasing.

In addition, thousands of HIV individuals cannot get the early treatment the public health service guidelines tell them that they should get, but, rather, they have to wait until they become disabled from the disease before becoming eligible for treatment.

Out of all our recommendations to date, there are a few items we would like to discuss with you today that need your specific presidential intervention now if we are going to achieve these goals. Before we give you these few suggestions I want to emphasize to you that none of what we're recommending to you today would be possible without the tireless efforts of several people who serve you, this Council and the people living with HIV and AIDS -- especially in the White House and across administration. It's because of them that you've had so many successes -- namely your own NAP Director, Sandy Thurman -- (applause) -- who made real your vision of a White House office that leads the national response to this epidemic, along with the Deputy Director Todd Summers and the Council's Executive Director, Dan Montoya. And we appreciate the efforts very much.

The Rabbi has a few words.

RABBI EDELHEIT: Mr. President, we're honored to be with you today, especially so soon after your recent trip to the Mideast, where you courageously engaged in the making of peace, where you brought the gift of hope to the land of the Bible.

During this week of Hanukkah, on the eve of Ramadan and one week before Christmas, we are all reminded that all these religious holidays promise us light in the darkest time of the year. As your Advisory Council, we want to help you fulfill your vision to bring the light of hope to those living with HIV/AIDS.

HIV/AIDS still darkens the path to that bridge that crosses into the 21st century to which you have prophetically led us. We want to help you illumine the darkness that still covers the path to that bridge. We must warn you that there are some Americans who are in danger of being unable to cross when you lead our nation to that bridge into the 21st century.

How can we be sure that the African American who has no access to clean needles, nor the newest combination of drug therapies will get to the other side? What do we need to do to make sure that the Latino youth who is not eligible for Medicaid will have access to primary care and still be able to work that he, too, can cross the bridge with other Americans?

Here is a gift, Mr. President, from my four children. It is a dreidel -- that's right. I'm impressed. (Laughter.) It is

the traditional spinning top we play -- and the four letters on it, Mr. President, stand for "a great miracle happened there." But, Mr. President, we know that there will be no one great miracle that ends HIV-AIDS. So we are here to help revive your vision of zero rate of transmission and an equitable access of care to all persons battling HIV disease.

We are here with you today, Mr. President, when a terrible political darkness has fallen over this land, because we want you to know that we will do whatever it takes to cross that bridge with you into the 21st century.

DR. HITT: As I said, we fought through a lot of recommendations and tried to come up with some specific new initiatives that we wanted to bring to your attention. And to start that off, I'm going to have Mr. Tom Henderson lead with one of the new initiatives.

MR. HENDERSON: Mr. President, when I stood, with many others during the stirring speeches of Bob Latoy (phonetic) and Elizabeth Glaser at the 1992 Democratic National Convention, I truly believed it would be my last national convention. But because of the remarkable progress we've made under your leadership in fighting this disease, I'm still here today, alive and well.

That's primarily because I'm fortunate enough to be employed and adequately insured and, therefore, able to enjoy the benefits of the new combination drug therapies. For those who must rely on Medicaid, however, for their health care, the story is often much different.

On one hand, we have new public health service standard-of-care guidelines that call for early treatment of HIV prior to disability. But on the other hand, in many cases, accessing Medicaid requires individuals to be already disabled. Instead of being able to enjoy the benefits of living longer and better lives, many are still forced to wait until they're sick and unable to work before they can even begin treatment.

Not only is that inhumane, Mr. President, it's costly as well. Access to quality medical care for those living with HIV who are incarcerated is also a major problem. In most cases, there is no preparation for connecting those individuals to medical care, once they are released back into the community.

In April of 1997, the Vice President asked HCFA to evaluate the possibility of expanding access to Medicaid for poor HIV-positive individuals, prior to becoming disabled. HCFA/HHS has concluded that can't be done in a budget-neutral manner. Now, some would suggest that the only near-term solution is to rely on the demonstration programs called for in the Jeffords/Kennedy legislation. Mr. President, we reject those conclusions. We believe there are two things that can be done now, without legislation, to

solve this problem. First, OMB currently requires finding offset cost savings within Medicaid only to determine budget neutrality. Any savings generated within other federal programs can't be considered to determine budget neutrality.

Also, current policy only allows looking at a five-year budget window. We believe those hurdles can be overcome, but only if you make the decision to include a broader look at cost savings, and a longer budget window, and then direct the Secretary of HHS, and the Director of the OMB, to modify current policy to account for any resulting savings.

Second is the issue of drug cost. Mr. President, the time to deal with crucial drug cost issues is while we're also dealing with expanding access to those drugs. The vastly increased market for HIV drugs that would result from early access makes simultaneously negotiating drug cost reductions both reasonable and possible. We believe that asking the Vice President to include such drug cost issues in his ongoing discussions with the pharmaceutical industry could offer substantial potential for progress. Breaking the current gridlock, Mr. President, surrounding these issues will require your personal intervention. With that intervention, however, providing Medicaid access to early intervention therapies can be accomplished.

THE PRESIDENT: Well, I'll see what I can do about that. You know, generally, this whole medical coverage problem is getting worse in America. It reminds me of that joke that the Republicans used to tell on us -- they told me if I voted for Barry Goldwater we'd get involved in Vietnam too much. And I did, and sure enough, it happened. (Laughter.) And they said when they attacked Hillary and me for our health care plan, they said that if people supported it, things would get worse. And sure enough, they did. (Laughter.)

We've had -- these coverage problems have gotten quite profound, and as a consequence, with fewer and fewer people getting medical coverage at work, what you've got is more and more people trying to find a way to get into Medicaid.

One of the things, for example, that I want to look at as a result of this is something we're doing with disabled people who get back into the workplace. I just started an initiative not very long ago to try and have people who have disabilities, including some people with HIV and AIDS when they get better -- if you have disabilities and you go back to work, it used to be automatically you lose your Medicaid. And now more and more people are working in small businesses where they don't have employer-based health insurance or they have small pools and they can't afford to take somebody with a preexisting conditions.

So we're trying to modify the rules so that when people are on disability, then they get off of it and they go back into the

work force, they can keep their Medicaid for some period of time. And I want to go back and see exactly how we did that and what else we can do here.

Tom, I want to make sure what you said. You believe that there are savings in non-Medicaid areas that would come from keeping people off -- giving people the drugs before they get sick in the first place.

MR. HENDERSON: As you know, the process right now is for states to seek waivers. We've been working closely with a number of states who have been working on those waivers for submission at the present time. They believe there are significant savings in SSI and SSDI, in other areas, that would result --

THE PRESIDENT: -- all would be counted.

Q Yes, sir. And current rules don't allow that.

THE PRESIDENT: I've got to go back and look at that. Part of it is the way the law disaggregates money into mandatory and non-mandatory spending. I'll look at it and see if we can do something about that. I know it's very important.

I presume you still -- hello, Bob.

HATTOY: Hello, Mr. President. (Laughter.) Sorry I'm late.

THE PRESIDENT: I'm glad you're here. (Laughter.)

MR. HATTOY: I'm glad you're here. (Laughter and applause.)

THE PRESIDENT: --- notwithstanding what you said, you still think we ought to pass the Kennedy-Jeffords bill. It's a good bill.

MR. HENDERSON: Absolutely. We just think that there are some things that can be done in the near-term, though, within the administration that do not require legislation, that they would move this problem forward.

THE PRESIDENT: I'll do some work on it -- what you said.

MR. ROBINSON: Mr. President, as you said in your opening statement, prevention of new infections is an area where, although we've made some progress, we still have a great deal to do. In fact, this Council, the community at large, and your administration, has struggled with the challenge of preventing new infections.

Today we want to raise two issues related to prevention

with you. First, as you know, this Council supported making federal funding available for needle-exchange programs. Today, we again want to ask you for your support in this area. We've made a request of Secretary Shalala and HHS to provide us -- the Council, the Office of National AIDS Policy, and other federal agencies -- with a summary of the scientific information that supports needle-exchange programs to prevent new infections. We believe that this would be an important first step in fulfilling the administration's commitment to assisting communities that chose to use these life-saving programs.

Second, we want to recommend to you that the White House Office of National AIDS Policy be directed to undertake a bold, national media campaign to promote voluntary HIV testing. Without a cure, preventing new infections is our best strategy. This is especially true for African-Americans and other people of color, where the severe and ongoing health crisis has created a public health emergency.

One reason why stemming the tide of new infections has been so elusive is the fact that so many people don't know that they're infected. As a person who has thrived for the past 17 years, despite the fact that I'm living with HIV, I understand the importance of knowing one's -- status. It has offered me an opportunity to seek treatment for my HIV, and made me more aware of the need of protecting myself and others from infection.

Some members of Congress and others in the community have called for misguided measures, such as mandatory HIV testing, mandatory contact tracing, and mandatory partner notification -- measures that we believe will not be effective. However, like us, they are concerned that too many people living with HIV don't know it and, therefore, risk infecting others.

We believe that this campaign would demonstrate your administration's sound public health approach to this challenge. Modeled on ONDCP's national youth anti-drug media campaign, this voluntary HIV testing campaign would raise awareness about the continuing threat of HIV while lessening the stigma of HIV testing. Working with the CDC, national advertisers and other media concerns, ONAP would develop this campaign as a public/private partnership, which we believe would build on your legacy of an activist government and enhance your efforts to end racial and ethnic health disparities.

Mr. President, we hope you seriously consider undertaking this campaign of voluntary HIV testing, because we believe it is essential to our efforts of preventing infection.

THE PRESIDENT: It sounds like a good idea. I think Sandy is going to come up with a proposal of what we should do, but I think it's a good idea.

MS. THURMAN: We'll work with you and get one done.

THE PRESIDENT: And it offers the promise of sort of

getting by the divisive arguments of the past and actually doing something. I like it.

Q Proactive.

MS. MIRAMONTES: Mr. President, I came here today as a mother with a son living with AIDS, to talk to you about vaccines. But before I speak to you about the vaccine issue, I want you to know that combination therapies, although valuable for many, are also failing some people -- some in this room -- as well as my son. So, therefore, I really want to stress the need for continuing research, both in vaccines and in therapeutics, is as important today as it ever was.

First, I want to thank you for what you have accomplished in moving the agenda on the AIDS vaccine issue and establishing the 10-year goal. But there are several critical issues that only you can address if your goal is to be reached. And I have two examples I want to give you.

The first one, it has been 19 months to the day since your announcement of the vaccine goal, and a director of the vaccine center at NIH has not yet been appointed. We know that even though the center is only about 10 or 15 percent of the funding, this appointment really is important to be made and should be made as soon as possible.

Secondly, a preliminary vaccine meeting was held more than six months ago and, to date, there has been no follow-up meeting. When President Kennedy announced that we were going to put a man on the moon, he appointed a person within the White House to oversee this endeavor. After hearing almost 100 hours of testimony, we recommended a coordinator be placed within your Office of National AIDS Policy, with adequate resources -- and I need to really stress that -- with adequate resources to coordinate the vaccine effort. This is not that we want to tell any one agency what they are to do, but rather to coordinate vaccine activities across all relevant federal agencies. And I think the next piece is especially important: developing true partnerships with the international community and the private industry.

We also recommended that a comprehensive plan be developed and implemented, and this hasn't happened, either. I think we all need to remember that the person most at risk, worldwide, is a young person of color, and that the most effective strategy for stopping this pandemic is an effective vaccine.

So what I'm asking you, Mr. President, if you're willing to use your position to really address these critical issues.

THE PRESIDENT: Well, let me make a couple comments. First of all, I think the vaccine director is about to be appointed -- (inaudible.)

Secondly, I do think that -- the new Director of the

Office of AIDS Research has been doing quite a good job. We got about a 33 percent increase in funds for vaccine research in the last budget, so that's good. And we're going to try to -- I just had a brief meeting, before I came in here, with our folks, talking about how we can expand Sandy's -- this kind of work and kind of ride herd on this thing -- (Applause.) I think that's important. It does make a difference just to have a sort of sustained White House involvement on any kind of project to keep cutting through the resistance.

MR. ROBINSON: Thank you very much.

MS. ARAGAN: Mr. President, the next issue we would like to discuss is the need for your FY 2000 budget to include meaningful and substantial increases in HIV funding. The Council is very grateful to you for your strong and public support for the record increases in funding in FY 1999. At the local level, these increases will really make a difference in the real lives of the people who are struggling to live with this disease, and those who are at risk for infection.

In particular, we want to thank you for the active role that you and your staff played in successful efforts to secure \$156 million for the Congressional Black Caucus Initiative. As you know, that initiative is designed to address the severe and ongoing health crisis affecting African Americans, Latinos and other communities of color in the United States.

But as you know, Mr. President, the emergency conditions that led to the need for the CBC Initiative require a sustained and expanded federal response. As you finalize your FY 2000 budget, we ask that you use this opportunity to build upon the momentum of FY'99. Specifically, we are asking that full funding for the CBC initiative be included in your base budget. As you know, some of it was one-time funded -- and that this funding be expanded in FY 2000. It is also critical that the distribution of these new funds be expedited, to reflect the fact that this is a response to a crisis situation.

As my colleagues have discussed, we are also requesting that you propose a bold funding for a bold national testing awareness media campaign, and that access to HIV treatments be expanded both through the Ryan White CARE Act and through Medicaid.

Finally, Mr. President, we ask that your budget reflect the leadership role the U.S. must play in efforts to address the global pandemic, and my colleague, Mike Isbell, will say a little bit more about that in a minute. This Council certainly understands the political dynamics of the budget process, in which you must consider what the Congress itself will fund in setting your own numbers. But the reality is that your budget really sets the stage for all future deliberations in FY 2000. We really need your initial budget request to include these AIDS funding increases so that congressional action can build upon the strongest base possible. In short, we need you to raise the bar.

Thank you.

MR. ISBELL: Mr. President, six million people become infected with HIV each year around the world, half of them under the age of 25. More than 90 percent of the infections in the world happen in the developing world where there is little or no access to the drugs that have made such a big difference to people in this country.

We were extremely impressed and heartened by your use of World AIDS Day to highlight the need for American leadership in the global fight against HIV. We strongly support the \$10 million program that you announced to address the needs of women and orphans of AIDS. And we would strongly support you making this one-time funding a permanent part of USAID.

Despite this initiative, Mr. President, U.S. funding for global AIDS activities has declined in real dollar terms since 1993. Just last year the administration proposed a 10 percent cut in federal support for funding for infectious disease programs throughout the world. We believe that we cannot turn the tide against HIV throughout the world without the aggressive, bold, energetic leadership of the United States. And we would strongly encourage in your next budget, Mr. President, that you're about to send to the Hill, that you include substantial increases for international AIDS programs at USAID and the CDC.

Just also to close, we'd also strongly support an improved coordination of the many federal programs that happen all across the government that have a role to play in the international AIDS efforts. Secretary Albright has announced, as you know, a plan to draft a U.S. international AIDS strategy, and we would hope that you would look to this as a first step toward making sure that all the federal agencies are reading off the same page and that they're part of the same team -- because it's an urgent problem and it requires an urgency of the entire U.S. government.

THE PRESIDENT: Well, in general, let me say I think the budget should reflect better attention both to prevention at home and to the communities of color. And I've been trying to get more money for the USAID mission and we'll put some more money in there. I think I'd like to make two points.

One is that this budget year will be more difficult than the last one because we got such big increases in everything last time and because of the global economy kind of slowing down, we don't expect the same amount of revenues to come in this time. And we have to fund all the big increases we got last time again. But we'll do the best we can.

The second thing I would like to say is I think that it would be very helpful to have all of you using your, whatever influence you have, with members of Congress in both parties to support more global efforts, because eventually all this is going to

a menace to the United States. So it's not only a moral imperative, it's also very practical over the long run.

One of the things that has kind of bothered me is that in the aftermath of the Cold War we were able for several years to reduce our defense budget, and that was a good thing and everyone --and even the Pentagon wanted to do it. There reduced like by about 300,000 the number of civilian employees. And they plan for further reductions there.

But during that time, we actually needed to make a larger commitment on the diplomatic front or in the non-defense security areas, if you will. And with the exception of the special efforts we made in the former Soviet Union to dismantle and destroy nuclear weapons, basically there's been a wholesale effort to cut back on our diplomatic budget, even though, contrary to popular wisdom, the United States spends a smaller percentage of our income on international affairs than any other major country.

And one of the things that I have seen -- almost no one knows this, but it's true -- one of the things that I have -- now, to be fair, we also spend more on defense and a lot of our defense goes to protect other countries, as you see in the last couple of days. But, still, for the numbers -- are so much more modest, not only for -- if you just look at the USAID program, the health programs, the empowerment of women and children, especially young girls, initiative, the small scale microeconomic development -- all that stuff that doesn't cost much money and it has a huge impact. And especially a lot of the things we can do in public health.

And, interestingly enough, a lot of the preventive activities that we would engage in with regard to AIDS, for example, would go quite well with other things we need to be doing out there with these large populations anyway in a lot of countries that have severe public health problems.

So we've been sitting here meeting in our -- I've been having each of the last three or four days rather long, detailed budget sessions, trying to figure out how to get more blood out of that turnip. And one of the things that I'm trying to do is to figure out how to make the case to the Congress in an effective way that the United States has enormous interest, as well as obligations, in making these kinds of investments beyond our borders.

And I think anything you can do to help that, I would appreciate it. I mean, there is this sort of general awareness in Congress that the world is becoming more interdependent. There's a much more sophisticated understanding of the economics, for example. But it's not just economics. It's the environment, it's the public health, it's all these other things where we are becoming more and more caught up with each other.

Our major military mission in the last six months, before the operation in Iran, has been to send several thousand of

our uniformed personnel to Central America to help them rebuild after Hurricane Mitch. It's not only the right thing to do from a humanitarian point of view, it is in our national interest. Because if those countries don't rebuild they will become highly vulnerable to all the drug traffickers. And if they don't rebuild then all their people will have to come here. And if they can't get here legally will try to come illegally. So there's all these things that we need to begin to see our relationships beyond our borders, as more of an extension of our relationships with one another, rather than as something totally different and apart from our relations with one another.

And, anyway, I don't mean to give you a speech on that; I know you believe that. But the point I want to make is, most people who run for Congress never have to think about these things unless they have a large immigrant population within their district from a particular place. So it doesn't -- this kind of discussion we're having, because you understand the HIV/AIDS issue -- I'm preaching to the choir here. But anything you can do to sort of just sit down and walk through this with congressional delegations, or their chiefs of staff, or whoever the appropriate people are from around the country, I would really appreciate.

Because I think there is a lot of support. For example, you can always get good support in Congress, bipartisan, for a big increase in the Ryan White Act. And now, we've finally got pretty good support in Congress, this whopping increase we had to help people purchase the drugs, the medicines. But it drops off markedly when you try to talk about the connection between what we're doing here at home and beyond our borders. And I really think you could help, because this is one example of a more general challenge the country will have to face -- more every year for the next 20 years. Maybe forever, but certainly for the next 20 years.

DR. HITT: Mr. President, we really have made -- probably hundreds of recommendations in the past few years, I mean -- (Laughter.) We've tried our best to narrow down --

THE PRESIDENT: This is the most energetic -- (Laughter.)

DR. HITT: But we have narrowed down a few specific initiatives we brought to your attention today and the reason is clear, that we've talked to many administration officials and this is where we feel that there's a logjam that you can really help and get involved in, and take it to heart.

THE PRESIDENT: I will.

DR. HITT: And thank you, again, for meeting with us.

THE PRESIDENT: Thank you for the dreidel, the book, the letters. Thank you very much. (Applause.)

END

6:40 P.M. EST