2. Section 522.2477 is amended in the first sentence of paragraph (b) by removing ''(d)(3)'' and by adding in its place ''(d)(3)(i)(A), (d)(3)(ii), and (d)(3)(iii)''; in the second sentence of paragraph (b) by removing ''(d)(3)'' and by adding in its place ''(d)(3)(i)(A), (d)(3)(i)(B), (d)(3)(ii), and (d)(3)(iii)''; and by revising paragraph (d)(3)(i) to read as follows:

§ 522.2477 Trenbolone acetate and estradiol.

* * * * *

(d) * * *

(3) * * *

(i) *Amount.* (A) 40 mg trenbolone acetate and 8 mg estradiol (one implant consisting of 2 pellets, each pellet containing 20 mg trenbolone acetate and 4 mg estradiol) per implant dose.

(B) 40 mg trenbolone acetate and 8 mg estradiol (one implant consisting of 3 pellets, each of 2 pellets containing 20 mg trenbolone acetate and 4 mg estradiol, and 1 pellet containing 29 mg tylosin tartrate) per implant dose.

* * * * *

Dated: October 11, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–30049 Filed 11–24–00; 8:45 am]

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DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

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

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is revising the guidelines that govern its decisions to grant and deny parole in the case of prisoners serving sentences for felony crimes under the District of Columbia Code. The revised guidelines convert the rehearing ranges into a single range indicating the total prison time that may be served by the inmate, and authorizes the setting of presumptive release dates up to 36 months from the date of the parole hearing. However, the Point Assignment Table remains the basis upon which the guidelines are determined. The Commission is adopting this rule change to improve understanding by inmates and the public as to the impact that the guidelines will have in individual cases, and to facilitate successful release planning in advance of parole.

EFFECTIVE DATE: January 2, 2001.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but public inquiries concerning individual cases cannot be answered.

SUPPLEMENTARY INFORMATION: The Commission has voted to revise 28 CFR 2.80 so as to make the guidelines for D.C. Code offenders more understandable to inmates and the public, fairer and easier to administer. The revised rule will (1) enhance the ability of inmates and the public, including victims of crime, to understand the guidelines and their impact in individual cases by allowing each inmate's Base Point Score to determine an overall guideline range showing the total time the inmate is expected to serve before release on parole; (2) provide more information to inmates as to their actual expected release dates by authorizing presumptive release dates up to 36 months from the date of the most recent parole hearing (contingent upon good conduct and development of an adequate release plan); (3) facilitate release planning by setting such presumptive release dates; (4) eliminate anomalies in the current system that disadvantage inmates whose rehearings are delayed through no fault of their own or who are encouraged by staff to waive parole reconsideration until they complete institutional programs; and (5) reduce the maximum allowable time between parole consideration hearings from five years to three years (except for an offense in which death results and the offender is more than three years below his or her applicable guideline range). Moreover, the revised rule contains a presumptive credit for ''ordinary program achievement,'' which currently must be determined on a case-by-case basis, in the guideline range itself. Hence, inmates will now receive the benefit of having their ''ordinary program achievement'' points credited in advance.

Public comment was received on this rule in response to the proposals published at 65 FR 26789 (May 8, 2000). In general, the comment was favorable as to the establishing of presumptive release dates and the general limitation of continuances to 36 months. However, there were complaints that the proposed rule was difficult to understand and apply. Confusion was, in all likelihood, caused by the Commission having published alternative options of the proposal for public comment. The Commission believes that the version adopted herein (Option 2, modified by increasing the credit for superior program achievement from 25 percent to 33⅓ percent) is straightforward and will be readily understood by prisoners and their representatives.

Summary of the Final Rule

The revised version of § 2.80 eliminates the Total Point Score from the Point Assignment Table (*i.e.,* the system of adding or subtracting points for post-incarceration factors), and eliminates the system of determining at each hearing (based on the Total Point Score) whether the inmate qualifies for parole at that time. It substitutes the following decisionmaking procedure.

Under Step 1, a Base Guideline Range is determined from the Base Point Score. There is no change from the Base Point Score used in § 2.80. The time expected for the inmate to qualify for parole (assuming no disciplinary infractions and ordinary program achievement) is simply made explicit.[1] Under Step 2, the Parole Eligibility Date is recorded. Under Step 3, a Disciplinary Guideline Range is determined (if there are any disciplinary infractions) based on the time ranges prescribed at § 2.36. Under Step 4, a Superior Program Achievement Award (if superior program achievement is found) is determined. The Superior Program Achievement Award is based on the number of months of superior program achievement on the inmate's prison record (*i.e.,* program achievement that would have qualified for a two-point deduction under the current system that this rule will replace).

Under Step 5, Base Point Guideline Range, Parole Eligibility Date, Disciplinary Range, and the Superior Program Achievement Award are combined, at the initial hearing, into a

[1] Multiplying (A) the rehearing range in the current D.C. guidelines by (B) [the Base Point Score minus 3 points] (the number of rehearings required before parole assuming no disciplinary infractions and ordinary program achievement) produces the Base Point Range. For example, an inmate with a Base Point Score of 6 with no disciplinary infractions and ordinary program achievement at each hearing would have two rehearing range of 18–24 months each before the guidelines indicated parole. This translates to a guideline range of the Parole Eligibility Date plus 36–48 months. For most cases, the results under the current system lumps together certain dissimilar cases; for example, under the current system, an offender with a case point score of 5 who has outstanding program achievement and no disciplinary infractions will serve the same amount of time as an offender with ordinary program achievement.

Total Guideline Range. This will make clear to the inmate the amount of time he or she may expect to serve with continued good conduct and ordinary program achievement. The impact of superior program achievement as well as disciplinary infractions will also be made clear. Equally importantly, if release within three years is deemed appropriate by the Commission, the inmate can be given a presumptive release date (contingent upon continued good behavior and the development of a satisfactory release plan). Otherwise, the inmate is continued for a rehearing, normally at 36 months, when the granting of a presumptive release date will again be considered. At each rehearing, the Total Guideline Range from the previous hearing is used as the starting point and is modified by adding the amount, if any, from Step 3 (based on conduct since the last hearing) and subtracting the amount, if any, from Step 4 (based on conduct since the last hearing). The result is the Total Guideline Range to be used at the rehearing.

In the Commission's opinion, presumptive release dates allow inmates to plan for their release, and have proved a strong incentive for continued good conduct. Additionally, with presumptive release dates, the final review nine months before release (to ensure that the inmate has continued good conduct and to consider any additional outstanding program achievement) can be conducted on the record rather by personal hearing. This is administratively more efficient and reduces the possibility of delay in scheduling the final hearing (such as delays caused by the transfer of inmates between facilities) that may adversely impact the actual release date. Only if serious institutional misconduct is found at this record review would an in-person rehearing be ordered by the Commission.

Implementation

This revision of 28 CFR 2.80 will be applied prospectively to all D.C. Code adult prisoners who receive their initial hearings on or after December 4, 2000. It will also be applied retroactively at the next scheduled rehearing (*e.g.,* to permit the setting of a presumptive release date) to all D.C. Code adult prisoners previously heard under § 2.80 who have received no positive or negative points for disciplinary infractions or for superior program achievement at any hearing. The current version of § 2.80 will appear in an appendix to § 2.80 and will continue to be applicable to all prisoners previously heard under § 2.80 who received points for disciplinary infractions or superior program achievement at any previous hearing, all prisoners sentenced under the Youth Rehabilitation Act, and all prisoners given initial hearings prior to August 5, 1998.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that this final rule does not constitute a significant rule within the meaning of Executive Order 12866. The final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to section 804(3)(C) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Amendments

Accordingly, the U.S. Parole Commission is adopting the following amendments to 28 CFR part 2.

PART 2—[AMENDED]

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

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

2. Section 2.75 is revised to read as follows:

§ 2.75 Reconsideration proceedings.

(a)(1) *Prisoners subject to guidelines at § 2.80.* (i) In the case of a prisoner subject to the guidelines at § 2.80, the Commission may, following an initial or subsequent hearing:

(A) Set an effective parole date within nine months of the date of the hearing;

(B) Set a presumptive parole date at least ten months but not more than three years from the date of the hearing;

(C) Continue the prisoner to the expiration of sentence if the prisoner's mandatory release date is within three years of the date of the hearing; or

(D) Schedule a reconsideration hearing at three years from the month of the hearing.

(ii) Exception: If the prisoner's current offense behavior resulted in the death of a victim and the prisoner is more than three years below the minimum of the applicable guideline range at the time of the hearing, the Commission may, in its discretion, schedule a reconsideration hearing at a later date that does not exceed the minimum of the applicable guideline range and is not more than five years from the month of the last hearing.

(2) *Prisoners subject to guidelines at the appendix to § 2.80.* (i) In the case of a prisoner subject to the guidelines at the appendix to § 2.80, if the Commission denies parole, it shall establish an appropriate reconsideration date in accordance with the provisions of the appendix to § 2.80. If the prisoner's mandatory release date will occur before the reconsideration date deemed appropriate by the Commission pursuant to the appendix to § 2.80, the Commission may order that the prisoner be released by the expiration of his sentence less good time (''continue to expiration'').

(ii) The first reconsideration date shall be calculated from the prisoner's eligibility date, except that in the case of a youth offender or any prisoner who has waived the initial hearing, the first reconsideration date shall be calculated from the date the initial hearing is held. In all cases, any subsequent reconsideration date shall be calculated from the date of the last hearing. In the case of a waiver or substantial delay in holding the initial hearing, the Commission may conduct a combined initial hearing and such rehearings nunc pro tunc as would otherwise have been held during the delay.

(iii) Notwithstanding the provisions of paragraph (a)(2)(i) of this section, the Commission shall not set a reconsideration date in excess of five years from the date of the prisoner's last hearing, nor shall the Commission continue a prisoner to the expiration of his or her sentence, if more than five years remains from the date of the last hearing until the prisoner's scheduled mandatory release.

(b) When a rehearing is scheduled, the prisoner shall be given a rehearing during the month specified by the Commission, or on the docket of hearings immediately preceding that month if no docket of hearings is scheduled for the month specified.

(c) At a reconsideration hearing, the Commission may take any action that it could take at an initial hearing. The scheduling of a reconsideration hearing does not imply that parole will be granted at such hearing.

(d) Prior to a parole reconsideration hearing, the Commission shall review the prisoner's record, including an institutional progress report which shall be submitted 60 days prior to the hearing. Based on its review of the record, the Commission may grant an effective date of parole without

conducting the scheduled in-person hearing.

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

3. Section 2.80 is revised to read as follows:

§ 2.80 Guidelines for D.C. Code offenders.

(a) *Applicability.* This guideline applies to any initial hearing for an adult prisoner conducted on or after December 4, 2000, and any rehearing for an adult prisoner who was given an initial hearing on or after August 5,1998, but before December 4, 2000, and who did not receive any positive points for disciplinary infractions or negative points for superior program achievement at the initial hearing or any rehearing conducted before December 4, 2000. Any other prisoner will continue to have his case decided under the rule previously in effect (as set forth in the appendix to this section).

(b) *Guidelines.* In determining whether an eligible prisoner should be paroled, the Commission shall apply the guidelines set forth in this section. The guidelines assign numerical values to pre-and post-incarceration factors. Decisions outside the guidelines may be made, where warranted, pursuant to paragraph (n) of this section.

(c) *Salient factor score and criminal record.* The prisoner's Salient Factor Score shall be determined by reference to the Salient Factor Scoring Manual in § 2.20. The Salient Factor Score is used to assist the Commission in assessing the probability that an offender will live and remain at liberty without violating the law. The prisoner's record of criminal conduct (including the nature and circumstances of the current offense) shall be used to assist the Commission in determining the probable seriousness of the recidivism that is predicted by the Salient Factor Score.

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

(e) *Program achievement.* (1) The Commission shall assess whether the prisoner has demonstrated ordinary or superior achievement in the area of prison programs, industries, or work assignments while under confinement for the current offense. Superior program achievement means program achievement that is beyond the level that the prisoner might ordinarily be expected to accomplish. Credit for program achievement may be granted regardless of whether the guidelines for disciplinary infractions have been applied for misconduct during the same period. The guidelines in this section presume that the prisoner will have ordinary program achievement.

(2) In the case of a prisoner who has declined to participate in institutional programming, a decision in the upper half of the applicable guideline range generally will be warranted, except that in the case of a prisoner who has a base point score of 3 or less, or who has a criminal record involving violence or sexual offenses and who has not participated in available programming to address a potential for criminal behavior of a violent or sexual nature, a decision above the guidelines may be warranted.

(f) *Base point score.* Add the applicable points from Categories I–III of the Point Assignment Table to determine the base point score.

POINT ASSIGNMENT TABLE

Categories	Points
CATEGORY I: RISK OF RECIDIVISM (Salient Factor Score)	
10–8 (Very Good Risk)	+0
7–6 (Good Risk)	+1
5–4 (Fair Risk)	+2
3–0 (Poor Risk)	+3
CATEGORY II: CURRENT OR PRIOR VIOLENCE (Type of Risk)	
Note: Use the highest applicable subcategory. If no subcategory is applicable, score = 0.	
A. Violence in current offense, and any felony violence in two or more prior offenses	+4
B. Violence in current offense, and any felony violence in one prior offense	+3
C. Violence in current offense	+2
D. No violence in current offense and any felony violence in two or more prior offenses	+2
E. Possession of firearm in current offense if current offense is not scored as a crime of violence	+2
F. No violence in current offense and any felony violence in one prior offense	+1
CATEGORY III: DEATH OF VICTIM OR HIGH LEVEL VIOLENCE	
Note: Use highest applicable subcategory. If no subcategory is applicable, score = 0. A current offense that involved high level violence must be scored under both Category II (A, B, or C) and under Category III.	
A. Current offense was high level or other violence with death of victim resulting	+3
B. Current offense involved attempted murder, conspiracy to murder, solicitation to murder, or any willful violence in which the victim survived despite death having been the most probable result at the time the offense was committed	+2
C. Current offense involved high level violence (other than the behaviors described above)	+1
BASE POINT SCORE (Total of Categories I–III)	

(g) *Definitions and instructions for application of point assignment table.*

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

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

(i) Murder;

(ii) Voluntary manslaughter;

(iii) Arson of a building in which a person other than the offender was present or likely to be present at the time of the offense;

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

(v) Kidnapping, hostage taking, or any armed abduction of a victim during a carjacking or other offense;

(vi) Burglary of a residence while armed with any weapon if a victim was in the residence during the offense;

(vii) Obstruction of justice through violence or threats of violence;

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

(ix) Mayhem, malicious disfigurement, or any offense defined as other violence in paragraph

(g)(4) of this section that results in *serious bodily injury* as defined in paragraph (g)(3) of this section;

(x) Any offense defined as *other violence* in paragraph (g)(4) of this section in which the offender intentionally discharged a firearm;

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

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

(i) Robbery;

(ii) Residential burglary;

(iii) Felony assault;

(iv) Felony offenses involving a threat, or risk, of bodily harm;

(v) Felony offenses involving sexual abuse or sexual contact;

(vi) Involuntary manslaughter (excluding negligent homicide).

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

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

(i) Reflected in the offense of conviction, or

(ii) Is not reflected in the offense of conviction but is found by the Commission to be related to the offense of conviction (i.e., part of the same course of conduct as the offense of conviction). In probation violation cases, the current offense includes both the original offense and the violation offense, except that the original offense shall be scored as a prior conviction (with a prior commitment) rather than as part of the current offense, if the prisoner served more than six months in prison for the original offense before his probation commenced

(7) Category IIE applies whenever a firearm is possessed by the offender during, or is used by the offender to commit, any offense that is not scored under Category II(A-D). Category IIE also applies when the current offense is felony unlawful possession of a firearm and there is no other current offense. Possession for purposes of Category IIE includes constructive possession.

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

(i) Caused by the offender, or

(ii) Caused by an accomplice and the killing was planned or approved by the offender in furtherance of a joint criminal venture.

(h) *Determining the base guideline range.* Determine the base guideline range for adult prisoners from the following table:

Base point score	Base guideline range (months)
3 or less	0
4	12–18
5	18–24
6	36–48
7	54–72
8	72–96
9	110–140
10	136–172

(i) *Months to parole eligibility.* Determine the total number of months until parole eligibility.

(j) *Guideline range for disciplinary infractions.* Determine the applicable guideline range from § 2.36 for any significant disciplinary infractions since the beginning of confinement on the current offense in the case of an initial hearing, and since the last hearing in the case of a rehearing. If there are no significant disciplinary infractions, this step is not applicable.

(k) *Guidelines for superior program achievement.* If superior program achievement is found, the award for superior program achievement shall be one-third of the number of months during which the prisoner demonstrated superior program achievement. The award is determined on the basis of all time in confinement on the current offense in the case of an initial hearing, and on the basis of time in confinement since the last hearing in the case of a rehearing. If superior program achievement is not found, this step is not applicable.

Note: When superior program achievement is found, it is presumed that the award will be based on the total number of months since the beginning of confinement on the current offense in the case of an initial hearing, or since the last hearing in the case of a rehearing. Where, however, the Commission determines that the prisoner did not have superior program achievement during the entire period, it may base its decision solely on the number of months during which the prisoner had superior program achievement.

(l) *Determining the total guideline range at an initial hearing.* At an initial hearing

(1) Add together the minimum of the base point guideline range (from paragraph (h) of this section), the number of months required by the prisoner's parole eligibility date (from (i) of this section), and the minimum of the guideline range for disciplinary infractions, if applicable (from paragraph (j) of this section). Then subtract the award for superior program achievement, if applicable (from paragraph (k) of this section). The result is the minimum of the Total Guideline Range.

(2) Add together the maximum of the base point guideline range (from paragraph (h) of this section), the number of months required by the prisoner's parole eligibility date (from paragraph (i) of this section), and the maximum of the guideline range for disciplinary infractions, if applicable (from paragraph (j) of this section). Then subtract the award for superior program achievement, if applicable (from paragraph (k) of this section). The result is the maximum of the Total Guideline Range.

(m) *Determining the total guideline range at a reconsideration hearing.* At a reconsideration hearing—

(1) Add together the minimum of the Total Guideline Range from the previous hearing, and the minimum of the guideline range for disciplinary infractions since the previous hearing, if applicable (from paragraph (j) of this section). Then subtract the award for superior program achievement, if applicable (from paragraph (k) of this section). The result is the minimum of the Total Guideline Range for the current hearing.

(2) Add together the maximum of the Total Guideline Range from the previous hearing, and the maximum of the guideline range for disciplinary infractions since the previous hearing, if applicable (from paragraph (j) of this section). Then subtract the award for superior program achievement since the previous hearing, if applicable (from paragraph (k) of this section). The result is the maximum of the Total Guideline Range for the current hearing.

(n) *Decisions outside the guidelines.*

(1) The Commission may, in unusual circumstances, grant or deny parole to a prisoner notwithstanding the guidelines. Unusual circumstances are case-specific factors that are not fully taken into account in the guidelines, and that are relevant to the grant or

denial of parole. In such cases, the Commission shall specify in the notice of action the specific factors that it relied on in departing from the applicable guideline or guideline range. If the prisoner is deemed to be a poorer or more serious risk than the guidelines indicate, the Commission shall determine what Base Point Score would more appropriately fit the prisoner's case, and shall render its initial and rehearing decisions as if the prisoner had that higher Base Point Score. It is to be noted that, in some cases, an extreme level of risk presented by the prisoner may make it inappropriate for the Commission to contemplate a parole at any hearing without a significant change in the prisoner's circumstances.

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

(i) *Poorer parole risk than indicated by salient factor score.* The offender is a poorer parole risk than indicated by the salient factor score because of—

(A) Unusually persistent failure under supervision (pretrial release, probation, or parole);

(B) Unusually persistent history of criminally related substance (drug or alcohol) abuse and resistance to treatment efforts; or

(C) Unusually extensive prior record (sufficient to make the offender a poorer risk than the ''poor'' prognosis category).

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

(A) Prior record of violence more extensive or serious than that taken into account in the guidelines;

(B) Current offense demonstrates extraordinary criminal sophistication, criminal professionalism in the employment of violence or threats of violence, or leadership role in instigating others to commit a serious offense;

(C) Unusual cruelty to the victim (beyond that accounted for by scoring the offense as high level violence), or predation upon extremely vulnerable victim;

(D) Unusual propensity to inflict unprovoked and potentially homicidal violence, as demonstrated by the circumstances of the current offense; or

(E) Additional serious offense(s) committed after (or while on bond or fugitive status from) current offense that show unusual capacity for sustained, repeated violent criminal activity.

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

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

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

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

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

(ii) *Other factors:*

(A) Unusually lengthy period of incarceration on the minimum sentence (in relation to the seriousness of the offense and prior record) that warrants an initial parole determination as if the offender were being considered at a rehearing;

(B) Substantial period in custody on other sentence(s) sufficient to warrant a finding in paragraph (n)(3) of this section; or

(C) Clearly exceptional program achievement.

Appendix to § 2.80

(a) *Applicability.* (1) The guidelines in this Appendix apply to:

(i) Any adult offender who received an initial hearing on or after August 5, 1998 and before December 4, 2000, and who also received positive points for disciplinary infractions or negative points for superior program achievement at any hearing (initial or rehearing) during the above period; and

(ii) Any youth offender who received an initial hearing on or after August 5, 1998.

(2) For prisoners whose initial hearings were held prior to August 5, 1998, the Commission shall render its decisions by reference to the guidelines applied by the D.C. Board of Parole. However, when a decision outside such guidelines has been made by the Board, or is ordered by the Commission, the Commission may determine the appropriateness and extent of the departure by comparison with the guidelines in this appendix. The Commission may also correct any error in the calculation of the D.C. Board's guidelines.

(b) *Guidelines.* Apply § 2.80(b).

(c) *Salient factor score and criminal record.* Apply § 2.80(c).

(d) *Disciplinary infractions.* The Commission shall assess whether the prisoner has been found guilty of committing disciplinary infractions while under confinement for the current offense. The Commission shall refer to the offense classification tables of the D.C. Department of Corrections or the Bureau of Prisons, as applicable, in determining whether the prisoner's disciplinary record should be counted on the point score. A single Class I or Code 100 offense, or two or more Class II or Code 200 offenses, shall be counted as negative institutional behavior at an initial hearing or any rehearing. A persistent record of lesser offenses may also be counted as negative institutional behavior at an initial hearing or a rehearing. At initial hearings, an infraction-free period of at least three years preceding the date of the hearing may be considered by the Commission as sufficient to exclude from consideration a previous record of Class I (or Code 100) or Class II (or Code 200) offenses, provided that such offenses would result in not more than one point added to the prisoner's score.

(e) *Program achievement.* The Commission shall assess whether the prisoner has demonstrated ordinary or superior achievement in the area of prison programs, industries, or work assignments while under confinement for the current offense. Superior Program Achievement means program achievement that is beyond the level that the prisoner might ordinarily be expected to accomplish. Where prison programs and work assignments are limited or unavailable, the Commission may exercise discretion based on the prisoner's record of behavior. Points may be deducted for program achievement regardless of whether points have been added for negative institutional behavior during the same period.

(f) *Base Point Score.* Add the applicable points from Categories I–III of the Point Assignment Table in § 2.80 (f) to determine the Base Point Score (using the definitions in § 2.80(g)).

(g) *Negative institutional behavior.* Determine the points applicable, if any, for negative institutional behavior (Category IV).

CATEGORY IV: NEGATIVE INSTITUTIONAL BEHAVIOR

Notes:

(1) Use the highest applicable subcategory. If no subcategory is applicable, score = 0.

(2) In some cases, negative institutional behavior that involves violence will result in a higher score if scored as an additional current offense under Categories II and/or III, than if scored under Category IVA. In such cases, the prisoner's point score is recalculated to reflect the conduct as an additional current offense under Categories II and/or III, rather than as a disciplinary infraction under Category IVA. For example, the attempted murder of another inmate will result in a higher score when treated as an additional current offense under Categories II and III, if the offense of conviction was scored under Category IIC only as violence in current offense. If negative institutional behavior is treated as an additional current offense, points may nonetheless be assessed under Category IVA or B for other disciplinary infractions.

A. Aggravated negative institutional behavior involving: (1) assault upon a correctional staff member, with bodily harm inflicted or threatened, (2) possession of a deadly weapon, (3) setting a fire so as to risk human life, (4) introduction of drugs for purposes of distribution, or (5) participating in a violent demonstration or riot	+2
B. Ordinary negative institutional behavior	+1

(h) *Superior program achievement.* Determine the (minus) points applicable, if any, for superior or ordinary program achievement (Category V).

CATEGORY V: PROGRAM ACHIEVEMENT

Note: Use the highest applicable subcategory. If no subcategory is applicable, score = 0.

A. No program achievement	0
B. Ordinary program achievement	−1
C. Superior program achievement	−2

(i) Determine the Total Point Score by adding the Base Point Score (Categories I, II, and III) to any points applicable for Negative Institutional Behavior (Category IV) and then subtracting any points applicable for Program Achievement (Category V).

(j) *Guidelines for decisions at initial hearing—adult offenders.* In considering whether to parole an adult offender at an initial hearing, the Commission shall determine the offender's Total Point Score and then consult the following guidelines for the appropriate action:

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

(k) *Guidelines for decisions at initial hearing—youth offenders.* In considering whether to parole a youth offender at an initial hearing, the Commission shall determine the youth offender's total point score and then consult the following guidelines for the appropriate action:

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

(l) *Guidelines for time to rehearing—adult offenders.* (1) If parole is denied or rescinded, the time to the subsequent hearing for an adult offender shall be determined by the following guidelines:

Base point score (Categories I through III)	Months to rehearing
0–4	12–18
5	18–24
6	18–24
7	18–24
8	18–24
9	22–28
10	26–32

(2) The time to a rehearing shall be determined by the prisoner's Base Point Score, and not by the Total Point Score at the current hearing, which indicates only whether parole should be granted or denied. Exception: In the case of institutional misconduct deemed insufficiently serious to warrant the addition of one or more points for negative institutional behavior, the Commission may nonetheless deny or rescind parole and render a decision based on the guideline ranges at § 2.36.

(3) At any initial hearing or rehearing, if the prisoner's Total Point Score is 4 or less, the Commission may order both a rehearing date and a presumptive parole date that is not more than 9 months from the rehearing date. Such presumptive date may be converted to a parole effective date following the rehearing, or the case may be reopened based on new favorable information and a parole effective date granted on the record.

(m) *Guidelines for decisions at subsequent hearing—adult offenders.* In determining whether to parole an adult offender at a rehearing or rescission hearing, the Commission shall take the Total Point Score from the initial hearing or last rehearing, as the case may be, and adjust that score according to the institutional record of the candidate since the last hearing. The following guidelines are applicable:

Total points	Guideline recommendation
If Points = 0–3	Parole with highest level of supervision indicated.
If Points = 4+	Deny parole at rehearing and schedule a further rehearing in accordance with § 2.75(c) and the time ranges set forth in paragraph (l) of this appendix.

(n) *Guidelines for decisions at subsequent hearing—youth offenders.* (1) In determining whether to parole a youth offender appearing at a rehearing or rescission hearing, the Commission shall take the Total Point Score from the initial hearing or last rehearing, as the case may be, and adjust that score according to the institutional record of the candidate since the last hearing. The following guidelines are applicable:

Total points	Guideline recommendation
If Points = 0–3	Parole with highest level of supervision indicated.

Total points	Guideline recommendation
If Points = 4+	Deny parole and schedule a rehearing based on estimated time to achieve program objectives or by reference to the time ranges in paragraph (l) of this appendix, whichever is less.

(2) Prison officials may in any case recommend an earlier rehearing date than ordered by the Commission if the Commission's program objectives have been met.

(o)(1) The Commission may, in unusual circumstances, waive the Salient Factor Score and the pre- and post-incarceration factors set forth in this section to grant or deny parole to a prisoner notwithstanding the guidelines, or to schedule a reconsideration hearing at a time different from that indicated in paragraph (l) of this appendix. Unusual circumstances are case-specific factors that are not fully taken into account in the guidelines, and that are relevant to the grant or denial of parole. In such cases, the Commission shall specify in the notice of action the specific factors that it relied on in departing from the applicable guideline or guideline range. For examples of factors that may warrant a decision outside the applicable guideline range, see § 2.80(n).

(2) If the prisoner is deemed to be a poorer or more serious risk than the guidelines indicate, the Commission shall determine what Base Point Score would more appropriately fit the prisoner's case, and shall render its initial and rehearing decisions as if the prisoner had that higher Base Point Score. If possible, the factors justifying such a departure shall be fully accounted for in the initial continuance, so that the guidelines can be followed at subsequent hearings. In some cases, however, an extreme level of risk presented by the prisoner may make it inappropriate for the Commission to contemplate a parole at any hearing without a significant change in the prisoner's circumstances.

4. Section 2.86 is revised to read as follows:

§ 2.86 Release on parole; rescission for misconduct.

(a) When a parole effective date has been set, actual release on parole on that date shall be conditioned upon the individual maintaining a good conduct record in the institution or prerelease program to which the prisoner has been assigned.

(b) The Commission may reconsider any grant of parole prior to the prisoner's actual release on parole, and may advance or retard a parole effective date or rescind a parole date previously granted based upon the receipt of any new and significant information concerning the prisoner, including disciplinary infractions. The Commission may retard a parole date for disciplinary infractions (*e.g.,* to permit the use of graduated sanctions) for up to 120 days without a hearing, in addition to any retardation ordered under § 2.83(d).

(c) If a parole effective date is rescinded for disciplinary infractions, an appropriate sanction shall be determined—

(1) By reference to § 2.36 in the case of a prisoner subject to the guidelines at § 2.80; or

(2) In the case of a prisoner subject to the guidelines at the appendix to § 2.80, either by adding the appropriate points for negative institutional behavior to the prisoner's Total Point Score, or by reference to § 2.36 if the misconduct is not sufficiently serious to warrant a continuance under § 2.80 (k). A Total Point Score of 0–2 shall be adjusted to a total point score of 3 prior to adding points for negative institutional behavior pursuant to the Point Assignment Table at § 2.80(f).

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

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

Dated: November 15, 2000.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

[FR Doc. 00–29963 Filed 11–24–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2562; MM Docket No. 00–151; RM–9942]

Radio Broadcasting Services; Grapeland, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 232C3 at Grapeland, Texas, in response to a petition filed by Grapeland Broadcasting Company. *See* 65 FR 53973, September 6, 2000. The coordinates for Channel 232C3 at Grapeland are 31–29–30 NL and 95–28–41 WL A filing window for Channel 232C3 at Grapeland will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective December 26, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 00–151, adopted November 1, 2000, and released November 9, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.