

## § 2.13

## 28 CFR Ch. I (7-1-08 Edition)

(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.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3405, 3407, Jan. 16, 1979; 48 FR 22919, May 23, 1983; 49 FR 34208, Aug. 29, 1984; 57 FR 41391, Sept. 10, 1992; 60 FR 51350, Oct. 2, 1995]

### § 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 decision 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 therefor.

(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.

[42 FR 39809, Aug. 5, 1977, as amended at 45 FR 6381, Jan. 28, 1980; 47 FR 25736, June 15, 1982; 48 FR 23183, May 24, 1983; 59 FR 45625, Sept. 2, 1994; 68 FR 41528, July 14, 2003]

### § 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 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

## Department of Justice

## § 2.15

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) In the case of a prisoner with an unsatisfied minimum term, the first interim hearing shall be scheduled under paragraphs (a)(1)(i) or (ii) of this section, 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 Discipline 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 prerelease 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 pre-release 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 an Institutional Disciplinary Committee 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).

[46 FR 39136, July 31, 1981; 47 FR 25735, June 15, 1982, as amended at 48 FR 9247, Mar. 4, 1983; 48 FR 44525, Sept. 29, 1983; 49 FR 34208, Aug. 29, 1984; 55 FR 290, Jan. 4, 1990; 60 FR 51350, Oct. 2, 1995; 68 FR 41529, July 14, 2003]

### § 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