

(4) **SIMPLE IRA.** Section 408(p) describes a SIMPLE IRA Plan as an employer-sponsored plan under which an employer can make contributions to SIMPLE IRAs established for its employees. The term SIMPLE IRA means an IRA to which the only contributions that can be made are contributions under a SIMPLE IRA Plan or rollovers or transfers from another SIMPLE IRA.

(5) **Roth IRA.** The term Roth IRA means an IRA that meets the requirements of section 408A.

(b) **Other defined terms or phrases—**  
(1) **4-year spread.** The term 4-year spread is described in § 1.408A-4 A-8.

(2) **Conversion.** The term conversion means a transaction satisfying the requirements of § 1.408A-4 A-1.

(3) **Conversion amount or conversion contribution.** The term conversion amount or conversion contribution is the amount of a distribution and contribution with respect to which a conversion described in § 1.408A-4 A-1 is made.

(4) **Failed conversion.** The term failed conversion means a transaction in which an individual contributes to a Roth IRA an amount transferred or distributed from a traditional IRA or Simple IRA (including a transfer by redesignation) in a transaction that does not constitute a conversion under § 1.408A-4 A-1.

(5) **Modified AGI.** The term modified AGI is defined in § 1.408A-3 A-5.

(6) **Recharacterization.** The term recharacterization means a transaction described in § 1.408A-5 A-1.

(7) **Recharacterized amount or recharacterized contribution.** The term recharacterized amount or recharacterized contribution means an amount or contribution treated as contributed to an IRA other than the one to which it was originally contributed pursuant to a recharacterization described in § 1.408A-5 A-1.

(8) **Taxable conversion amount.** The term taxable conversion amount means the portion of a conversion amount includible in income on account of a conversion, determined under the rules of section 408(d)(1) and (2).

(9) **Tax-free transfer.** The term tax-free transfer means a tax-free rollover described in section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), 403(b)(8), 403(b)(10) or 408(d)(3), or a tax-free trustee-to-trustee transfer.

(10) **Treat an IRA as his or her own.** The phrase treat an IRA as his or her own means to treat an IRA for which a surviving spouse is the sole beneficiary as his or her own IRA after the death of the IRA owner in accordance with the terms of the IRA instrument or in the

manner provided in the regulations under section 408(a)(6) or (b)(3).

(11) **Trustee.** The term trustee includes a custodian or issuer (in the case of an annuity) of an IRA (except where the context clearly indicates otherwise).

#### § 1.408A-9 Effective date.

This section contains the following question and answer providing the effective date of §§ 1.408A-1 through 1.408A-8:

Q-1. To what taxable years do §§ 1.408A-1 through 1.408A-8 apply?  
A-1 Sections 1.408A-1 through 1.408A-8 apply to taxable years beginning on or after January 1, 1998.

### PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Paragraph 9.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par.10.** In § 602.101, paragraph (c) is amended by adding an entry in numerical order to the table to read as follows:

#### § 602.101 OMB control numbers.

* * * *	
(c) * * *	
CFR part or section where identified and described	Current OMB control No.
* * * *	
1.408A-2 .....	1545-1616
1.408A-4 .....	1545-1616
1.408A-5 .....	1545-1616
1.408A-7 .....	1545-1616
* * * *	

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: January 25, 1999.

**Donald C. Lubick,**

*Assistant Secretary of the Treasury.*

[FR Doc. 99-2550 Filed 2-3-99; 8:45 am]

BILLING CODE 4830-01-U

### 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:** Interim rule; amendments.

**SUMMARY:** The U.S. Parole Commission is amending the interim rules that govern the parole process for prisoners serving sentences under the District of Columbia Code. The amendments provide criteria for filing applications to reduce a prisoner's minimum sentence, provide deadlines for conducting hearings for youth offenders, expand the guidelines for attempted murder to include offenses of equivalent violence, distinguish between current and prior offenses in the case of probation violators, improve the procedures for medical and geriatric parole applications, and add a new guideline for rewarding prisoners who substantially assist law enforcement.

**DATES:** *Effective Date:* February 4, 1999.  
*Comments:* Comments must be received by March 31, 1999.

**ADDRESSES:** Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

**FOR FURTHER INFORMATION CONTACT:** Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492-5959.

**SUPPLEMENTARY INFORMATION:** Under Section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Pub. L. 105-33) the U.S. Parole Commission assumed, on August 5, 1998, the jurisdiction and authority of the Board of Parole of the District of Columbia to grant and deny parole, and to impose conditions upon an order of parole, in the case of any imprisoned felon who is eligible for parole or reparole under the District of Columbia Code. At 63 FR Part IV (July 21, 1998), and 63 FR 57060 (October 26, 1998), the Commission published and amended interim regulations, with a request for public comment, to govern this new function. The Commission is again amending these interim regulations with a further request for public comment. The Commission intends that final rule making be considered later this year, once it is satisfied that it has had enough experience in the application of these rules to DC Code prisoners.

These amendments are intended to provide solutions to several problems encountered in processing applications for parole and other determinations involving DC Code prisoners since August 5, 1998. In the case of medical and geriatric paroles, comments received from the University of the District of Columbia have persuaded the

Commission that some drafting improvements are in order. All comment received since August 5, 1998, will be carefully reviewed prior to the adoption of final rules.

#### Explanation of the Amendments

The Commission has amended the rule that implements DC Code 24–201(c), which authorizes the Commission to apply to the sentencing court for a reduction in a prisoner's minimum sentence. The present rule, adopted from the rules of the DC Board of Parole, do not provide a clear explanation of the criteria to be used by the Commission in determining whether or not to file such an application. The criteria adopted herein are intended to implement the purposes of the law by requiring that a prisoner must have shown outstanding participation in rehabilitative programs, must have fully observed prison rules, and must appear to be an acceptable risk for parole. The amended rule also specifies that the minimum term must appear to be too long in relation to the seriousness of the offense, before the Commission can justifiably recommend to the court that it be reduced. The Commission finds that, under the law, all the factors that will be considered by the sentencing court (including both rehabilitation and punishment) must be found to justify an application to reduce a minimum sentence. In the practice of the DC Board of Parole, such reductions were sought by the Board only in the most exceptional cases, and the Commission's reading of the law supports a continuation of that policy.

With respect to Youth Rehabilitation Act prisoners, the amended rule provides that the initial parole hearing must be held not later than 120 days from the prisoner's arrival at the institution that is responsible for developing his rehabilitative program. Reconsideration hearings are to be calculated from the date the initial hearing is held. The amended rule also specifies that when a youth offender whose parole has been revoked is again heard for parole, the decision is to be made pursuant to the youth guidelines, and that a new rehabilitative program be developed. However, if a "no benefit" finding has been made with regard to such a prisoner (which removes him from the youth program), the adult reparole guidelines at § 2.21 will thereafter be applied.

With respect to the Point Assignment Table at § 2.80, the guideline for "attempted murder" under Category III has been found to be too restrictive. The Commission has encountered several cases in which extremely violent

conduct that should have resulted in the victim's death (*i.e.*, where death was the most likely outcome that could have been reasonably foreseen) cannot be rated as "attempted murder" because there was no specific intent to kill. The Commission's predictive judgment is that the offender who commits a crime of such a wanton and reckless nature, even though without specific intent to cause death (whether due to his intoxication or otherwise), poses a risk of future violent conduct equivalent to that of the attempted murderer. For a case to fall into this category, however, the survival of the victim must have been clearly against the odds. Pointing a firearm at a robbery victim, or discharging a firearm in the air without taking aim, would not be so rated. However, the case of an intoxicated offender aiming his speeding vehicle directly at a police officer standing in the street, or stabbing a victim multiple times and leaving the victim locked in the trunk of his car (with the victim improbably surviving), would be rated as equivalent to attempted murder, even if there was no specific intent to kill.

In the case of probation violators, the Commission adopts the same rule that applies at § 2.20(j)(2) of this Part, which is that the offense of conviction is included along with the probation violation behavior as part of the "current offense" if the offender did not serve more than six months in jail before commencing the probation that was revoked. If, however, the offender served a period of imprisonment longer than six months for the original offense, then the original offense is counted as a prior conviction (with a prior commitment) rather than as part of the "current offense." The Commission's judgment is that this policy is the best way to assess the predictive significance of the original offense and the intervening period of confinement.

In the case of medical and geriatric parole, the Commission agrees with the comment from UDC that DC Code 24–264 does not require the institution to "certify" the medical status of each applicant, and that case managers are better suited to process applications for medical or geriatric parole than the medical staff. The Commission does not believe that the current rule, however, precludes the institution medical staff from basing their report about an applicant upon outside medical expertise. If the institution medical staff does not have the expertise to evaluate a prisoner's condition, the rule permits the staff to forward to the Commission the report of the private physician or facility to which the prisoner has been referred. (Having some level of review

by official staff helps to guard against the possibility of altered or fraudulent medical reports.) The Commission also disagrees with the UDC comment that, in the case of applications for medical parole on the basis of a "permanent and irreversible incapacitation," it is sufficient for the rule to repeat the statutory criterion that the prisoner "will not be a danger to himself or others." The statutory language leaves unanswered the question as to how serious the qualifying incapacitation must be, and exactly what the prisoner must be incapacitated from doing. The Commission believes that there must be a clear relationship between the qualifying incapacitation and the prisoner's asserted suitability for parole, for the incapacitation to be a legal basis for granting parole. Otherwise, there would be no limit to the types and degrees of incapacitating conditions put forward by prisoners as a reason for early parole consideration. The interim rule has, accordingly, been redrafted to make it clear that the incapacitating condition must be serious enough to require the prisoner to cease his criminal career, thus no longer presenting a danger to himself or others.

Finally, the Commission is adding an additional paragraph to § 2.63, the rule that provides a guideline for rewarding assistance by federal prisoners in the prosecution of other offenders. The rule contains criteria that are equally applicable to DC Code prisoners, but does not provide a guideline that can be applied to them. Thus, the Commission is amending the rule to permit either an application for reduction of the minimum term by up to one-third, or the deduction of one point from the Total Point Score under § 2.80, as if the cooperation had been positive program achievement. It is the Commission's intent that such rewards be limited to cases wherein the cooperation by the prisoner has produced significant results, and may signal the prisoner's eventual rehabilitation. It is never the Commission's practice, however, to grant a reward in advance of cooperation, regardless of what agreements may be made between prosecutors and prisoners.

#### Good Cause Finding

The Commission is making these amendments effective on the date of this publication, for good cause pursuant to 5 U.S.C. 553(d)(3). This is because the amendments are needed to address issues that frequently arise in the parole determination process for which the Commission is currently responsible.

**Executive Order 12866 and Regulatory Flexibility Statement**

The U.S. Parole Commission has determined that this amended interim rule is not a significant rule within the meaning of Executive Order 12866, and the amended interim rule has, accordingly, not been reviewed by the Office of Management and Budget. The amended interim 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).

**List of Subjects in 28 CFR Part 2**

Administrative practice and procedure, Probation and parole, Prisoners.

**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).

**Subpart A—United States Code Prisoners and Parolees**

2. 28 CFR Part 2 is amended by adding a new paragraph (c) to § 2.62 to read as follows:

**§ 2.62 Rewarding Assistance in the Prosecution of Other Offenders: Criteria and Guidelines**

(c) In the case of an eligible DC Code prisoner whose assistance meets the criteria of this section, the Commission may consider deducting a point under Category V of the Point Assignment Table at § 2.80, in addition to any other deduction for positive program achievement, when considering such prisoner for parole. In the case of a DC Code prisoner with an unserved minimum term, the Commission may consider filing an application under § 2.76 for a reduction of up to one-third of such term less applicable good time.

**Supart C—District of Columbia Code Prisoners and Parolees**

3. 28 CFR Part 2 is amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e) and adding the following new paragraph (c) to § 2.76 to read as follows:

**§ 2.76 Reduction in minimum sentence.**

\* \* \* \* \*

(c) Pursuant to DC Code § 24–201c, the Commission may file an application to the sentencing court for a reduction of a prisoner's minimum term if the Commission finds that:

(1) The prisoner has completed three years of the minimum term imposed by the court;

(2) The prisoner has shown, in the opinion of the Commission, outstanding participation in the rehabilitative program(s) of the institution;

(3) The prisoner has fully observed the rules of each institution in which the prisoner has been confined;

(4) The prisoner appears to be an acceptable risk for parole based on both the prisoner's pre-and post-incarceration record; and,

(5) Service of the minimum term imposed by the court does not appear necessary to achieve appropriate punishment and deterrence.

\* \* \* \* \*

4. 28 CFR Part 2 is amended by revising § 2.71(b) to read as follows:

**§ 2.71 Application for parole.**

\* \* \* \* \*

(b) To the extent practicable, the initial hearing for an eligible prisoner who has applied for parole shall be held at least 180 days prior to an adult prisoner's date of eligibility for parole, and at least 120 days from the date a youth offender has been admitted to the institution that is responsible for developing his rehabilitative program.

\* \* \* \* \*

4a. Section 2.75(a) is revised to read as follows:

**§ 2.75 Reconsideration proceedings.**

(a) If the Commission denies parole, it shall establish an appropriate reconsideration date in accordance with the provisions of § 2.80. 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 there be no docket of hearings scheduled for the month specified. If the prisoner's mandatory release date will occur before the reconsideration date deemed appropriate by the Commission pursuant to § 2.80, the Commission may order that the prisoner be released by the expiration of his sentence less good time ("continue to expiration"). 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.

\* \* \* \* \*

4b. Section 2.87 is revised to read as follows:

**§ 2.87 Reparole.**

Each decision to grant or deny reparole shall be made by reference to the Commission's reparole guidelines at § 2.21, which shall include the establishment of a presumptive or effective release date pursuant to § 2.12(b) and interim hearings pursuant to § 2.14. However, if the prisoner is also eligible for parole on a new DC Code felony sentence that has been aggregated with the prisoner's parole violation term, or is a youth offender serving the remainder of a Youth Rehabilitation Act sentence following revocation of parole, the applicable guideline at § 2.80 (adult or youth) shall be applied in lieu of such provisions. Reparole hearings shall be conducted according to the procedures set forth in § 2.72.

5. 28 CFR Part 2 is amended by revising Category III B of the Point Assignment Table at § 2.80(f) to read as follows:

**§ 2.80 Guidelines for DC Code Offenders.**

\* \* \* \* \*

(f) Point assignment table.

\* \* \* \* \*

Category III: Death of victim or high level violence

(Salient factor score)

	*	*	*	*	*	*	*
B. Current Offense Involved Attempted Murder or Violence in which Death of Victim Would Have Been the Probable Result .....							+2
	*	*	*	*	*	*	*

6. 28 CFR Part 2 is amended by revising the heading of § 2.80 (g) and paragraph (g)(6) to read as follows:

**§ 2.80 Guidelines for DC Code Offenders.**

\* \* \* \* \*

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

\* \* \* \* \*

(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) if the prisoner served more than six months in prison for the original offense before commencement of probation.

\* \* \* \* \*

7. 28 CFR Part 2 is amended by removing the word "certifying" from § 2.77(a), by revising the phrase "medical staff" to read "case management staff" in § 2.77(e) and by revising § 2.77(c) to read as follows:

**§ 2.77 Medical parole.**

\* \* \* \* \*

(c) A prisoner may be granted a medical parole on the basis of permanent and irreversible incapacitation only if the Commission finds that:

- (1) The prisoner will not be a danger to himself or others because his condition renders him incapable of continuing his criminal career; and,
- (2) Release on parole will not be incompatible with the welfare of society.

\* \* \* \* \*

7a. Section 2.78(d) is amended by revising the phrase "medical staff" to read "case management staff".

8. 28 CFR Part 2 is amended by adding the following reference to § 2.89 between the reference to 2.56 and the reference to 2.66:

**§ 2.89 Miscellaneous provisions.**

\* \* \* \* \*

2.63 Rewarding assistance in the prosecution of other offenders: criteria and guidelines.

\* \* \* \* \*

Dated: January 26, 1999.

**Michael J. Gaines,**

*Chairman, U.S. Parole Commission.*

[FR Doc. 99-2383 Filed 2-3-99; 8:45 am]

BILLING CODE 4410-31-P

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### 31 CFR Part 501

#### Reporting and Procedures Regulations: Procedure for Requests for Removal from List of Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Narcotics Traffickers, and Blocked Vessels

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule; amendment.

**SUMMARY:** The Treasury Department is amending the Reporting and Procedures Regulations to modify the procedures for removal of names of blocked persons or vessels from the Office of Foreign Assets Control's list of blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, specially designated narcotics traffickers, and blocked vessels.

**EFFECTIVE DATE:** January 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** J. Robert McBrien, Chief, International Programs Division (tel.: 202/622-2420), or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

#### SUPPLEMENTARY INFORMATION:

#### Electronic and Facsimile Availability

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Control is available for downloading from the Office's Internet Home Page: <http://www.treas.gov/ofac>, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622-0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

#### Background

On August 25, 1997, the Office of Foreign Assets Control of the Treasury Department ("OFAC") promulgated the Reporting and Procedures Regulations, 31 CFR part 501 (the "Regulations"), to simplify, by consolidating and standardizing in a single part, common provisions on collections of information in existing OFAC regulations. Section 501.807 of the Regulations described a procedure to be followed by a person seeking administrative reconsideration of its designation or that of a vessel as blocked, or who wished to assert that the circumstances resulting in the designation are no longer applicable. Section 501.807 is amended to modify the procedure set forth in that section.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553)(the "APA") requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601-612) does not apply.

#### List of Subjects in 31 CFR Part 501

Administrative practice and procedure, Banks, banking, Blocking of assets, Foreign trade, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 31 CFR part 501 is amended as set forth below:

#### PART 501—REPORTING AND PROCEDURES REGULATIONS

1. The authority citation for part 501 continues to read as follows:

**Authority:** 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1701-1706; 50 U.S.C. App. 1-44.

#### Subpart D -- Procedures

2. Section 501.807 is revised to read as follows:

**§ 501.807. Procedures governing removal of names from appendices A, B, and C to this chapter.**

A person may seek administrative reconsideration of his, her or its designation or that of a vessel as