mortgagee may request an informal conference with the Deputy Assistant Secretary for Single Family Housing or designee. The conference will be conducted within 30 days after HUD receives a timely request for the conference. After the conference, the Deputy Assistant Secretary (or designee) may decide to affirm the termination action or to reinstate the mortgagee's Lender Insurance program approval. The decision will be communicated to the mortgagee in writing, will be deemed a final agency action, and, pursuant to section 256(d) of the National Housing Act (12 U.S.C. 1715z–21(d)), is not subject to judicial review.

(3) Termination of an origination approval agreement under part 202 of this chapter or termination of Direct Endorsement approval under § 203.3(d)(2) for a mortgagee or one or more branch offices automatically terminates Lender Insurance approval for the mortgagee or the branch office or offices, without imposing any further requirement on the mortgagee or such offices to comply with this paragraph.

(4) Any termination instituted under this section is distinct from withdrawal of mortgagee approval by the Mortgagee Review Board under 24 CFR part 25.

3. In § 203.255, revise paragraph (f)(1), remove paragraph (f)(4), and add paragraph (g) to read as follows:

§ 203.255 Insurance of mortgage.

* * * * *

(f) *Lender Insurance.* (1) *Pre-insurance review.* For applications for insurance involving mortgages originated under the Lender Insurance program under § 203.6, the mortgagee is responsible for performing a pre-insurance review that would otherwise be performed by HUD under § 203.255(c) on the documents that would otherwise be submitted to HUD under § 203.255(b). The mortgagee's staff that performs the pre-insurance review must not be the same staff that originated the mortgage or underwrote the mortgage for insurance.

* * * * *

(g) *Indemnification.* (1) *General.* By insuring the mortgage, a Lender Insurance mortgagee agrees to indemnify HUD, in accordance with this paragraph.

(2) *Definition of origination.* For purposes of indemnification under this paragraph, the term "origination" means the process of creating a mortgage, starting with the taking of the initial application, continuing with the processing and underwriting, and ending with the mortgagee endorsing the mortgage note for FHA insurance.

(3) *Serious and material violation.* The mortgagee shall indemnify HUD for an FHA insurance claim paid within 5 years of mortgage insurance endorsement, if the mortgagee knew or should have known of a serious and material violation of FHA origination requirements, such that the mortgage loan should not have been approved and endorsed by the mortgagee and irrespective of whether the violation caused the mortgage default. Such a serious and material violation of FHA requirements in the origination of the mortgage may occur if the mortgagee failed to, among other actions:

(i) Verify the creditworthiness, income, and/or employment of the mortgagor in accordance with FHA requirements;

(ii) Verify the assets brought by the mortgagor for payment of the required down payment and/or closing costs in accordance with FHA requirements; or

(iii) Address property deficiencies identified in the appraisal affecting the health and safety of the occupants or the structural integrity of the property in accordance with FHA requirements, or

(iv) Ensure that the appraisal of the property serving as security for the mortgage loan satisfies FHA appraisal requirements, in accordance with § 203.5(e).

(4) *Fraud or misrepresentation.* The mortgagee shall indemnify HUD for an insurance claim if fraud or misrepresentation was involved in connection with the origination of the mortgage, regardless of when the mortgage was endorsed for insurance and irrespective of whether the fraud or misrepresentation caused the mortgage default.

(5) *Demand for indemnification.* The demand for indemnification will be made by either the Secretary or the Mortgagee Review Board. Under an indemnification agreement, the Lender Insurance mortgagee agrees to either abstain from filing an insurance claim, or reimburse FHA if a subsequent holder of the mortgage files an insurance claim and FHA suffers a financial loss.

Dated: September 16, 2010.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2010–25441 Filed 10–7–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF JUSTICE

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Proposed rule.

SUMMARY: The United States Parole Commission seeks public comment on a proposed rule that would amend the Offense Behavior Severity Index in its paroling policy guidelines to equalize the ratings for crack cocaine and powder cocaine offenses.

DATES: Comments must be received by December 1, 2010.

ADDRESSES: Submit your comments, identified by docket identification number USPC–2010–03 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Office of the General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.
- *Fax:* (301) 492–5563.

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

SUPPLEMENTARY INFORMATION:

Background

The U.S. Parole Commission is responsible for making parole release decisions for those federal prisoners who are eligible for parole under the now-repealed indeterminate sentencing system. Under this system, a prisoner may be released to community supervision after he serves a minimum term required by his sentence or by operation of law. After the Commission makes a discretionary judgment to release the prisoner and imposes conditions of release, the released prisoner remains on supervision until the expiration of his sentence or his supervision is terminated early. Parole may be revoked and the offender returned to imprisonment for violating the conditions of release. The Commission carries out its duties under the statutes at 18 U.S.C. 4201–4218. The Commission also has similar

responsibility for making parole release and revocation decisions for District of Columbia parole-eligible prisoners, under the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33. Regarding DC prisoners who committed their crimes after August 4, 2000, the Commission has responsibility for imposing conditions of supervised release and revoking supervised release terms for violation of the conditions.

The Parole Commission uses paroling policy guidelines in making decisions on parole release for parole-eligible federal prisoners, and federal and DC parolees whose paroles have been revoked and are eligible for reparole. These guidelines are also used for D.C. supervised releasees whose supervised release has been revoked. The guidelines are found at 28 CFR 2.20 and consist of an Offense Behavior Severity Index and a parole prognosis based on an actuarial tool known as the Salient Factor Score. The Offense Behavior Severity Index divides various crimes, including drug distribution crimes, into eight categories, from Category One (lowest severity) to Category Eight (highest severity). The guidelines also list four parole prognoses based on the Salient Factor Score from "very good" to "poor". The offense categories are arrayed on a vertical axis and the parole prognoses on a horizontal axis. At the intersection of each offense category and parole prognosis, there is a suggested range of months to be served before release. For example, a prisoner with an offense severity rating of Category Five and a parole prognosis of poor has a suggested range of 60–72 months to be served. The Commission may set a release date that falls within the guideline range, or make a decision outside the guidelines.

In February 2010, the Commission Chair appointed a committee to review the Commission's rating of crack cocaine offenses and to recommend any changes it believed were needed. The committee's findings are summarized below. Based on those findings, the committee recommended that the Parole Commission amend its Offense Behavior Severity Index to equalize the weight ratios between powder and crack cocaine.

Study Committee Findings

Effective April 5, 1987, the Parole Commission adopted its current guidelines for grading the severity of offenses involving cocaine distribution. *See* 52 FR 5761–63 (Feb. 26, 1987).

The Commission created separate guidelines for freebase or "crack" cocaine, and powder cocaine, under which offenses involving crack are sanctioned more severely than offenses involving powder cocaine, generally under a 10-to-1 ratio. That is, an offender distributing (or intending to distribute) a given weight of crack is presumptively sanctioned the same as an offender distributing (or intending to distribute) ten times that weight of powder cocaine. The Commission instituted the change because it was concerned that its prior guidelines did not appropriately sanction offenses related to the freebase form of the drug given the addictive nature of crack cocaine, the violence associated with its manufacture and distribution, and its relatively inexpensive street sale price. Former Senator D'Amato apparently recommended the 10-to-1 ratio. 51 FR 42594 (Nov. 25, 1986); 52 FR 5762. The basis for the selection of the 10-to-1 ratio was not further explained. The Commission sought public comment about "the relative potency of 'CRACK' cocaine as compared with other forms of the drug," but did not receive any response. 51 FR 42594; 52 FR 5762.

The Commission's current policy was adopted at about the same time Congress passed the Anti-Drug Abuse Act of 1986, Public Law 99–570, and at the time the U.S. Sentencing Commission was formulating its sentencing guidelines. Crack was a relatively new drug at the time but, in the words of the U.S. Supreme Court, it was "a matter of great public concern." *Kimbrough* v. *United States,* 552 U.S. 85, 95 (2007). The 1986 Anti-Drug Abuse Act reflected that concern by adopting a 100-to-1 ratio that treated a single gram of crack as equivalent to 100 grams of powder cocaine. The Sentencing Commission incorporated the 1986 law's 100-to-1 ratio for crack offenses. Subsequently, the Sentencing Commission conducted research into cocaine usage and addiction as well as research into the application of the federal sentencing guidelines. The Sentencing Commission's February 1995 report *Cocaine and Federal Sentencing Policy* concluded that under the 100-to-1 sentencing disparity, low-level 'street' dealers potentially receive harsher punishments than major drug traffickers, whereas the 1986 Anti-Drug Abuse Act was intended to have the opposite effect. The Sentencing Commission's May 2002 report on the same subject included the following findings:

a. Crack is typically prepared at or near the end of the distribution chain. Two-thirds of federal crack cocaine offenders were street-level dealers and only 5.9% performed trafficking functions.

b. "The overwhelming majority of offenders subject to the heightened crack cocaine penalties are black, about 85 percent in 2000 * * *. This has contributed to a widely held perception that the current penalty structure promotes unwarranted disparity based on race."

c. Cocaine in any form produces the same physiological and psychotropic effects, but powder cocaine, because it is usually snorted, poses a lesser risk of addiction to the typical user than does crack cocaine, which is usually smoked. Precisely quantifying this difference in addictiveness is impossible.

d. While serious, the relative harmfulness of crack has been exaggerated. Violence was associated only with a small minority of crack offenses. In 2000, three out of four crack offenders had no involvement with a weapon and even when offenders possessed weapons, the weapons were rarely used. Only 2.3% of crack offenders used a weapon, and only 7.9% of crack offenses involved bodily injury of any type. Research showed that the negative effects of prenatal exposure to crack were identical to the negative effects of cocaine powder. The feared epidemic of youth using crack did not materialize to the extent feared.

The Commission's study committee relied upon research collected by the Sentencing Commission as its starting point in reviewing Parole Commission policies for sanctioning crack cocaine offenses. Glen R. Hanson, then Acting Director, National Institute on Drug Abuse, National Institutes of Health, U.S. Department of Health and Human Services, testified before the Sentencing Commission on February 25, 2002, that: "Cocaine, in any form, produces the same effects once it reaches the brain. It produces similar physiological and psychological effects, but the onset, intensity and duration of its effects are related directly to the method of use and how rapidly cocaine enters the brain." According to Dr. Hanson, a drug user snorting powder cocaine begins to feel the "high" within 3–5 minutes, the blood level peaks at 10–20 minutes, and fades within 45–60 minutes. Intravenous use, or injection—for which powder cocaine is also used—results in a cocaine "rush" within 30–45 seconds and the drug's effects last for 10–20 minutes. Inhalation, or smoking—*i.e.,* using crack—produces the quickest and highest peak blood levels in the brain. The user experiences the "high" within only 8–10 seconds. On February 12, 2008, the Senate Judiciary Subcommittee on Crime and Drugs received similar testimony from Nora D. Volkow, current Director, National

Institute on Drug Abuse, National Institutes of Health, U.S. Department of Health and Human Services, to the effect that crack and powder cocaine have the same effect on the brain but that the user experiences the high and low much faster by smoking crack than by snorting cocaine powder.

Unlike the offense ratings for powder cocaine, the ratings for crack do not require the Parole Commission to determine its purity level before determining the severity category for the possession or distribution of the drug. The study committee examined whether the guidelines should be revised to consider purity level for a mixture containing cocaine base as it does for a mixture containing cocaine powder. When the guidelines were developed in the 1970s, the purity of cocaine powder and heroin varied widely from original production to street level distribution. It was not uncommon to see virtually pure cocaine powder diluted numerous times with cutting agents as it moved down the line through various levels of drug dealers. Therefore, the Commission determined that the only fair way to gauge the seriousness of a cocaine offense was to ascertain the purity of the substance and to sanction based only on the actual amount (weight) of pure cocaine involved.

In considering the issue of an appropriate severity rating for crack cocaine, the Commission was aware that once crack rocks are produced, they can be cut into smaller rocks but they cannot readily be diluted. The purity remains the same as the product moves down the distribution chain. Moreover, the purity of crack produced for use generally does not vary much from one batch to the next. Much as the purity of marijuana remains rather constant from batch to batch, the seriousness of crack offenses seemed to be better judged strictly by gross quantity (weight) without regard for purity.

More recent information indicates that there is some variance in the purity levels of crack, but less so than in the purity levels of powder cocaine. This conclusion is based on interviews conducted by committee members and by the written conclusions of the Sentencing Commission. The Sentencing Commission's 1995 report *Cocaine and Federal Sentencing Policy* states: "One gram of pure powder cocaine will convert to approximately 0.89 grams of crack cocaine. The Drug Enforcement Administration estimates that crack rocks are between 75 and 90 percent pure cocaine."

The bulk of the Parole Commission's current caseload involving crack sales concerns small-time street sales in the District of Columbia. The Commission's experience is that the DEA laboratory performs an analysis of crack confiscated by DC police only if a case appears headed for trial. If the case appears headed for a guilty plea or if a revocation hearing is held before a case is adjudicated, it is often difficult for the Commission to obtain a laboratory report. As a practical matter, Commission files frequently do not contain DEA lab reports in crack cocaine cases, and so it would be impossible in many cases to determine the purity level of crack involved.

The committee sought feedback from Commission hearing examiners about the current policy and whether it should be changed. Those examiners who responded unanimously favored equalizing the treatment of crack and powder cocaine. The general consensus was that the existing sanctions for crack are too harsh and discriminatory (socioeconomically if not racially), and that many of those caught selling were not in fact hard-core dealers but were essentially addicts trying to fund their own habit.

In sum, the study committee found:

a. There was no empirical basis for the 10-to-1 ratio adopted by the Parole Commission in 1987 which is currently used in Commission guidelines.

b. Cocaine in any form produces the same physiological and psychotropic effects on the brain.

c. Crack cocaine is more addictive than powder cocaine because the method of taking the drug (inhalation) results in the user experiencing a faster "high" and faster "crash." Unfortunately, the committee was unable to identify any authoritative sources quantifying the increased risk of addiction that crack represents. Furthermore, a user who injects powder also experiences a rapid high and low from the drug, although the effects from injection are not felt quite as rapidly as from smoking crack, and powder is more often snorted than injected.

d. According to the DEA and Sentencing Commission, one gram of cocaine powder converts/reduces to 0.89 gram cocaine base. Conversely, one gram of cocaine base would convert to 1.12 grams of cocaine powder.

e. As a practical matter, establishing the exact purity ratio of crack in a transaction that is examined by the Commission but that did not result in a trial would be all but impossible in most revocation cases unless a practical means is found for hearing examiners to obtain laboratory analyses on a consistent basis.

f. Commission hearing examiners who provided feedback to the committee unanimously favored equalizing the weight-based sanctions for crack and powder cocaine.

Revision of Sentencing Guidelines Ratio

In 1995, the Sentencing Commission recommended eliminating the sentencing guidelines' 100-to-1 disparity in rating powder cocaine and crack cocaine crimes. After Congress rejected that suggestion, the Sentencing Commission recommended reducing the disparity to 5-to-1. In 2007, the Sentencing Commission adopted an ameliorative change reducing the sentencing guidelines base offense score by two levels in crack cases to reduce the disparity; depending on the weight of drugs involved, the revised ratio varied from 25-to-1 to 50-to-1.

In July 2009, the House Judiciary Committee approved legislation (H.R. 3245, The Fairness in Cocaine Sentencing Act of 2009) that would completely eliminate the disparity between powder and crack cocaine. On October 15, 2009, Senator Durbin introduced a draft bill (S. 1789, The Fair Sentencing Act) in the Senate that would likewise have eliminated the disparity. On March 11, 2010, the Senate Judiciary Committee unanimously approved a revised version that reduced the disparity on new sentences to 18-to-1. The full Senate passed the bill (applying an 18-to-1 ratio) on March 17, 2010, and the House approved it on July 28, 2010. Now known as the Fair Sentencing Act of 2010, the President signed it into law on August 3, 2010.

Opponents of equalization of crack and powder cocaine offenses have argued that differential treatment of powder and crack cocaine offenses is supported by the association of violence with crack crimes. The new law requires the Sentencing Commission to provide a sentencing enhancement "if the defendant used violence" or threatened or directed the use of violence. Parole Commission guidelines take violence into account through a different method. In the case of drug crimes involving violence, if the guidelines offense severity rating for the violent/assaultive conduct exceeds the rating for the drug offense, the former will be applied.

Study Committee Recommendations and Commission Action

After weighing the above findings, the study committee recommended that the Commission propose a rule change to the paroling guidelines at Chapter Nine of the Offense Behavior Severity Index that would equalize the offense severity ratings for crack and powder cocaine

offenses. The Commission recently voted to promulgate a proposed rule for public comment that would remove the different ratings for crack and powder cocaine crimes. The proposed rule also makes minor revisions to the breakdown of drug weights in the interest of greater clarity and consistency.

Executive Order 12866

The U.S. Parole Commission has determined that this proposed rule does not constitute a significant rule within the meaning of Executive Order 12866.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications to require a Federalism Assessment.

Regulatory Flexibility Act

The proposed 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).

Unfunded Mandates Reform Act of 1995

The rule will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act)

This rule is not a "major rule" as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act), now codified at 5 U.S.C. 804(2). The rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, this is a rule of agency practice or procedure that does not substantially affect the rights or obligations of non-agency parties, and does not come within the meaning of the term "rule" as used in Section 804(3)(c), now codified at 5 U.S.C. 804(3)(c). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Proposed Rule

Accordingly, the U.S. Parole Commission is proposing the following amendment 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. Amend § 2.20, in the U.S. Parole Commission Offense Behavior Severity Index, Chapter Nine—Offenses Involving Illicit Drugs, by revising the entry entitled "921 *Distribution or Possession With Intent To Distribute*" in Subchapter C—Cocaine Offenses to read as follows:

§ 2.20 Paroling policy guidelines: Statement of general policy.

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U.S. Parole Commission Offense Behavior Severity Index

* * * * *

Chapter Nine—Offenses Involving Illicit Drugs

* * * * *

Subchapter C—Cocaine Offenses

921 *Distribution or Possession With Intent To Distribute*

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

(b) If very large scale (*e.g.,* involving at least 5 kilograms but less than 15 kilograms cocaine powder of 100% purity, or equivalent amount; or at least 5 kilograms but less than 15 kilograms of a substance containing a detectable amount of cocaine base), 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 at least 1 kilogram but less than 5 kilograms cocaine powder of 100% purity, or equivalent amount; or at least 1 kilogram but less than 5 kilograms of a substance containing a detectable amount of cocaine base), 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 at least 100 grams but less than 1 kilogram cocaine powder of 100% purity, or equivalent amount; or at least 100 grams but less than 1 kilogram of a substance containing a detectable amount of cocaine base), grade as Category Five;

(g) If small scale (*e.g.,* involving at least 5 grams but less than 100 grams cocaine powder of 100% purity, or equivalent amount; or at least 5 grams but less than 100 grams of a substance containing a detectable amount of cocaine base), grade as Category Four;

(h) If very small scale (*e.g.,* involving at least 1 gram but less than 5 grams cocaine powder of 100% purity, or equivalent amount; or at least 1 gram but less than 5 grams of a substance containing a detectable amount of cocaine base), grade as Category Three;

(i) If extremely small scale (*e.g.,* involving less than 1 gram cocaine powder of 100% purity, or equivalent amount; or less than 1 gram of a substance containing a detectable amount of cocaine base), grade as Category Two.

* * * * *

Dated: September 17, 2010.

Isaac Fulwood,

Chairman, U.S. Parole Commission.

[FR Doc. 2010–24648 Filed 10–7–10; 8:45 am]

BILLING CODE 4410–31–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2009–4]

Minimum Balance Requirement and Automatic Replenishment Option for Deposit Account Holders

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office is proposing to amend its regulations to set the minimum level of activity required to hold a deposit account at 12 transactions per year; require deposit account holders to maintain a minimum balance in that account; mandate the closure of a deposit account the second time it is overdrawn; and offer deposit account holders the option of automatic replenishment of their account via their bank account or credit card.

DATES: Written comments must be received in the Office of the General