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Charlie

Req

has a copy of this complete package.
mm-2/26

P1 - A. Procedure = ? Act.

P2.

P3. - public ofc.
files not used - Justice.

P4 - or evid material to the Bd's decision is corrected or disputed.

P5. - former

P7. - before March 1, 1975

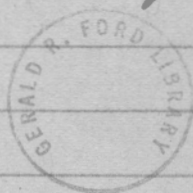
P8 - "or complete service under § 6 (j)

"or offenses directly related thereto"

"or is serving a sentence of confinement for such viol."

"or other law"

Do we have jurisd over man convicted but not dish?



P9 - (i) grant an immediate unconditional pardon without any requirement condition of alternative service.

(iii) punitive dish.

(d) recommendations not specifically precluded.

P12 - Admin's ofc of Act?

P13 - "Files not available to applicant, not used."

P14 - "thus" - therefore.

Regs. 2.

P15. - summary inaccuracies
material from applicant w/ amendments or supps.
30 days after receipt.
applicant

P16 - consid before the Bd. - expedited proceeds?

(d) 10 mins. applicant or repres.
reas. time.

P17 list of factors.

"Each person will be sent a list of the
mitigating and aggravating factors considered
applicable by the Bd to be applicable in
his case."

P18. 2

30 days of receipt.

alternative service

P19 - 10 mins.

P21 - military branch?

confidentiality - Justice's opn.

anonymous case summaries & name.



Regs - 3

P 22 - "terminate by law".

"confidentiality of the indiv"

P 23 - postponement of A/S

"for reasons of pers. hardship, substantial conflicting obligations, or exhaustion of other legal or administrative remedies in his case."

P 24. Why Part 102

P 25. - additional aggravating circ.?

P 27. factors.



(3) prior A/S performed? interrupted.

"remainder" of 4 subtractions?

judges sentence → final sentence.

P 28 - alternative service (b) & (c)

immediate w/o A/S,

Comparison of Baskir and Tropp regulations

- 1.) Purpose and scope: R: p. 1
L: p. 7
L's simply an abridged version.
- 2.) General Definitions: R: p. 1
L: p. 7
L's is simply an abridged version.
- 3.) Jurisdiction: R: pp. 2-3
L: p. 2, pp. 7-8
L's is essentially an abridged version, except "not later than March 1, 1975" replaces "before March 1, 1975" and "or offenses directly related thereto" has been added to the military jurisdiction section.
- 4.) Remedies: R: pp. 3-5
L: pp. 2-3, pp. 8-9
L's differs from R's in that it makes the distinction between restoration of Federal and state civil rights, it deletes the paragraph concerning recommendations to DOD, and it states that in "unusual circumstances" the PCB may make "other recommendations" (e.g., General Discharges) to the President.
- 5.) Initial Filing: R: pp. 5-6
L: pp. 9-11
L's differs significantly from R's. L states that oral applications must be reduced to writing and postmarked "not later than March 31, 1975;" R's says "within thirty (30) calendar days of the oral communication." Regarding initial filings made by representatives, L states; "...applicant must... submit his application promptly thereafter." R's position is "applicant has within seven (7) days."
- 6.) Application Form: R: pp. 7-8
L: pp. 11-12
L's is essentially an abridged version, except "completed application forms should be postmarked within a reasonable period after their receipt" replaces "within thirty (30) calendar



7.) Assignment of Action Attorney, Case Number, and Determination of Jurisdiction:

days." L also omits the application kit.

R: pp. 8-11

L: p. 3, pp. 12-13

L states that: "Files not available to an applicant are not used as the basis of statements in the initial summary." R states "...those pages of other agencies' files which are used by Board staff attorneys as the basis of statements in the I.S. must be available, as a matter of right, to the applicant."

8.) Initial Summary:

R: pp. 12-13

L: pp. 14-15

L's is essentially an abridged version.

9.) Final Summary:

R: p. 14

L: p. 15

L's version does not require that a final summary be sent to the applicant.

10.) Consideration Before the Board:

R: pp. 15-19

L: p. 4, pp. 16-17

L's differs significantly from R's. Regarding a hearing before the Board, L "provides for a personal appearance as a matter of right if an applicant can show that an oral presentation is necessary to the Board's understanding of his case." L has, thus, replaced R's "essential" with "necessary" and omitted the right to appear "if (the) applicant takes the trouble to appear before the Board, without a representative accompanying him." Secondly, L has omitted R's "Presentation of Witnesses" section. Thirdly, L makes no provision for a representative appearing before the Board.

11.) Recommendations to the President:

R: p. 20

L: p. 17

R states: "Following action by the President, the Board will send notice of such action in writing to all persons whose names were submitted to the President. Persons not receiving executive clemency will be so notified, with reasons for denial." To end the implication that the cases of those who do not receive clemency are not submitted to the President, L deleted the second sentence.

12.) Reconsideration:

R: pp. 21-23

L: p. 4, pp. 18-20

R makes the distinction between reconsideration as a matter of discretion and as a matter of right; L doesn't. Secondly, R grants reconsideration if an applicant's petition shows new facts or factual error; L lists these two reasons plus a third one, procedural error. Thirdly, R allows an oral presentation of fifteen minutes in length; L allows ten minutes

13.) Transmittal to Other Agencies of Clemency Decisions:

R: pp. 24-26

L: p. 4, pp. 20-21

R states in detail when and to whom information about an applicant will and will not be released. L essentially makes a general statement that "only such information about the President's decision as is necessary for the agency to perform its functions under the President's clemency program, or for other necessary action respecting the applicant" shall be transmitted. L deleted executive privilege. SECTION

14.) Confidentiality of Communications:

R: pp. 27-28

L: pp. 21-22

Concerning releasing information about the commission of a felony, R wants to release "information which reveals the probable cause to believe..." whereas L wants to release "information which reveals commission..." Secondly, R talks of "destroying" files, L of "sealing" them. Thirdly, L deleted from his regs R's subsection regarding publishing anonymous case summaries.

15.) Representation Before the Board:

R: p. 29

L: p. 22

R states: "Upon request, Board staff will attempt to refer an applicant to a skilled volunteer representative." L states: "The Board staff will advise applicants of those private sources which are available to provide counseling."

16.) Requests for Information About the Clemency Program:

R: pp. 30-31

L: pp. 22-23

L's is essentially an abridged version, except L deleted R's subsection requiring that an Action Attorney make a written summary after talking with a person who requested information

17.) Postponement of Board
Consideration and of the Start
of Alternative Service:

R: not done
L: p. 23

Section 102

1.) Purpose and Scope:

R: p. 1
L: p. 24
L's is simply an abridged version.

2.) Board Recommendations:

R: pp. 1-2
L: p. 24
L's is essentially an abridged version.

3.) Aggravating Circumstances:

R: pp. 2-3
L: pp. 24-25
L's is simply an abridged version.

4.) Mitigating Circumstances:

R: pp. 3-4
L: pp. 26-27
L's list is more up-to-date. Secondly, L deleted R's subsection stating that whenever a mitigating circumstance not listed is considered by the Board as material to the disposition of the case, final decision will be postponed to enable the applicant to submit additional evidence germane to the unlisted circumstance. Thirdly, L states: "An applicant may bring to the Board's attention any other factor which he believes should be considered."

5.) Calculation of Length of
Alternative Service:

R: pp. 2-4
L: p. 5, pp. 27-28
L's is almost verbatim R's. **

Eligibility of Clemency
Recipients for Military
Discharge Review Review
Remedies:

R: Preamble
L: p. 5
L's is essentially an abridged version except R urges veterans to consider simultaneously remedies available through DOD; L doesn't.

** In the copy of R's regs that I saw, I could not find the subsection stating that the PCB credits all creditable military service on a one-for-one basis against the baseline period.

TITLE 2 - CLEMENCY

Chapter 1 - Presidential Clemency Board

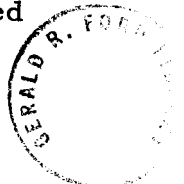
Part 101 - Administrative Procedures

Part 102 - Substantive Standards

The Presidential Clemency Board published its proposed administrative procedures and substantive standards on November 27, 1974 (39 FR 41351). Since that time, the Board has considered the first military cases before it, and has had the benefit of more than 40 comments on its proposed regulations. With the benefit of this additional experience and these comments, the Board publishes the final regulations setting out ~~these~~ ^{its} procedures and standards.

It is the intent of the Board to provide notice to the public of the standards it uses to make recommendations to the President concerning individual applications for clemency. The Board also wishes to ensure equity and consistency for applicants under the President's clemency program.

Because it is a temporary organization within the White House Office the sole function of which is to advise the President with respect to the exercise of his constitutional power of executive clemency, the Board does not consider itself formally bound by the Administrative Procedure Act. Nonetheless, within the time and resources available, the Board wishes to adhere as closely as possible to the principles of procedural due process set forth in the Act. The administrative procedures established



in these regulations reflect ^{THIS} ~~that~~ decision.

The Board reserves the right to publish changes in individual sections as it deems necessary. The Board welcomes continuing comment on problems which may arise in the application of particular sections of these procedures and invites recommendations on how best these problems may be resolved.

Several dozen technical changes have been made in these regulations. Some ^{clarify} ~~refine~~ significantly the rights and procedures available to applicants. The following is an explanation of these changes which seem to the Board to be most significant:

Jurisdiction: ~~Section~~ Section 101.3 has been added in order to incorporate the criteria for determining whether or not a person is eligible for consideration by the Presidential Clemency Board. ^{IT} ~~This section~~ restates the criteria established in Proclamation 4313 (Announcing a Program for the Return of Vietnam Era Draft Evaders and Military Deserters) and repeated in Executive Order 11803 (Establishing a Clemency Board. . .).

^{SECTION}
Remedies: §101.4 has been added to explain the remedies available from the Presidential Clemency Board. ^{IT} ~~This section~~ states the authority with which the Board is vested by Executive Order 11803, issued pursuant to Proclamation 4313.

A Presidential pardon restores those federal civil rights lost as a result of a felony conviction. State law recognizes Presidential pardons as a matter of comity, ^{generally} restoring the right to vote in federal and state

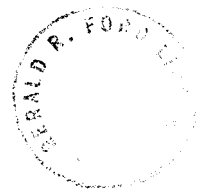


elections, to hold ^{public} ~~local government~~ office, and to obtain licenses for trades and professions from which convicted felons are barred under state law. Since conviction by military court-martial is treated as a felony conviction by many states, and since an Undesirable Discharge may have the same consequences as a punitive discharge resulting from a court-martial conviction, the benefits of a pardon apply to servicemen as well as to civilian draft evaders.

A Clemency Discharge neither entitles its recipient to veterans benefits nor bars his receiving those benefits to which he is otherwise entitled.

Availability of Other Agencies' Files to Applicant. ^{SUBSECTION} ~~§~~ 101.7(c) has been added to clarify which files belonging to other agencies an applicant has a right to see. ^{It} ~~This subsection~~ specifies that where other agencies request that their files remain confidential, these files are not used as the basis of statements in the initial summary. Where the rules of an agency permit an individual to see his file (e.g., Selective Service System), it is open to the applicant and his representative.

This subsection is in response to comments that subsections 201.5(b) and 201.6(c) were unclear.



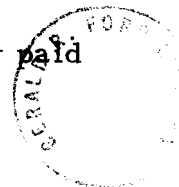
Hearing before the Board. ^{SUBSECTION} §101.10(c) provides for a personal appearance as a matter of right if an applicant can show that an oral presentation is necessary to the Board's understanding of his case.

Reconsideration: Subsection 101.12(c) describes the circumstances in which the Board will reconsider a case. ~~This subsection~~ ^{It} provides for reconsideration when new or over-looked circumstances are shown.

Transmittal to Other Agencies of Presidential Decisions

Section 101.13 provides that grants of unconditional pardon by the President will be transmitted formally to other government agencies, as appropriate. Pending completion of the alternative service requirement, grants of conditional clemency will be communicated to other federal agencies only to the extent this information is necessary for the agency to perform its functions under the clemency program or for other necessary action respecting the applicant. Upon completion of alternative service, notification of the pardon shall be forwarded to all appropriate agencies. Denials of clemency by the President will be held confidential by the Board.

The intent of this section, adopted here in response to comments by veterans organizations, is that a person who applies for clemency should not be prejudiced in his pursuit of other remedies through the military services' discharge review processes or elsewhere. Since the President's clemency program is an extraordinary remedy, its action on a case should not further prejudice a person who has already paid the penalty under the law for his violation.



Calculation of Length of Alternative Service

Subsection 102.5(c) has been added in order to make clear the Board's decision that the initial baseline period of alternative service for applicants with Undesirable Discharges will be three (3) months.

Eligibility of Clemency Recipients for Military Discharge

Review Remedies. The Presidential Clemency Board notes, although the matter is not one for inclusion in its regulations, that it has received numerous comments which assume that a recipient of executive clemency under the President's clemency program is ineligible for consideration under the military services' discharge review processes.

This is incorrect. Any applicant to the Board for executive clemency may also seek review of his discharge through one of the military services' discharge review boards or boards for the correction of military records. Applying to the Board does not bar a ^{former} serviceman from recourse to the military services' boards nor does it preclude the remedies which are available from those boards. These remedies are statutory law and cannot be denied or abridged by Executive Order. (Executive Order 11803, 39 FR 33297, as amended)

In consideration of the foregoing, this chapter will become effective immediately.

Issued in Washington, D. C. on February , 1975.



Charles E. Goodell
Chairman,
Presidential Clemency Board

1. Part 201 is deleted, and Part 101 is added to read as follows:

Sec.

101.1 Purpose and Scope.

101.2 General Definitions.

101.3 Jurisdiction.

101.4 Remedies.

101.5 Initial Filing.

101.6 Application Form.

101.7 Assignment of Action Attorney and Case Number,
and Determination of Jurisdiction.

101.8 Initial Summary.

101.9 Final Summary.

101.10 Consideration before the Board.

101.11 Recommendations to the President.

101.12 Reconsideration.

101.13 ~~Referral to appropriate agencies.~~ TRANSMITTAL TO OTHER AGENCIES OF CLEMENCY DECISIONS.

101.14 Confidentiality of Communications.

101.15 Representation before the Board.

101.16 Requests for Information about the Clemency Program.

101.17 ~~Postponement of Alternative Service.~~ BOARD CONSIDERATION AND OF THE START



Authority: ^{EXECUTIVE ORDER} ~~EO~~ 11803, 39 FR 33297, as amended.

Section 101.1 Purpose and Scope.

This ~~part~~ ^{SECTION} contains the regulations governing the procedures of the Presidential Clemency Board. Certain other matters are also treated, such as the assistance to be given to individuals requesting determinations of jurisdiction, or requesting information respecting those parts of the Presidential Clemency Program which are administered by the Department of Defense and the Department of Justice under Presidential Proclamation 4313 (39 FR 33293).

Section 101.2 General Definitions.

"Action attorney" means an attorney on the staff of the Board who is assigned an applicant's case.

"Applicant" means an individual who invokes the jurisdiction of the Board, and who has submitted an initial filing.

"Board" means the Presidential Clemency Board as created by Executive Order 11803, ^{OR} any duly authorized panel of that Board, ~~or any successor agencies.~~

Section 101.3 Jurisdiction.

Jurisdiction will lie with the Board with respect to a particular person if such person applies to the Board not later than March 1, 1975 and:



(a) He has been convicted for failure under the Military Selective Service Act (50 App. U.S.C. §462) or any rule or regulation promulgated thereunder to register or register on time, to keep the local board informed of his current address, to report for or submit to preinduction or induction examination, to report for or submit to induction itself, or to report for or submit to, or complete ^{alternative} service under Section 6(j) of the Act during the period from August 4, 1964 to March 28, 1973, inclusive; or

(b) He has received a punitive or undesirable discharge as a consequence of offenses under Article 85 (desertion), 86 (AWOL), or 87 (missing movement) of the Uniform Code of Military Justice (10 U.S.C. §§885, 886, 887) ~~or offenses directly related thereto~~ that occurred between August 4, 1964 and March 28, 1973, inclusive, or is serving a sentence of confinement for such violation.

(c) Jurisdiction will not lie with respect to an individual precluded from re-entering the United States under 8 U.S.C. 1182(a) (22) or other law.

Section 101.4 Remedies

(a) The Presidential Clemency Board is empowered only to make recommendations to the President on clemency applications. The Board has no final authority of its own. The Board may recommend to the President that he:



- (i) grant an unconditional pardon;
- (ii) grant ^{an unconditional} ~~a~~ pardon ~~conditioned~~ upon the satisfactory completion of a specified period of alternative service not to exceed 24 months;
- (iii) grant a clemency discharge in substitution for a punitive or Undesirable Discharge;
- (iv) commute the sentence; or
- (v) deny clemency.

(b) In unusual circumstances, and in order to give full effect to the intent and purposes of the President's clemency program, the Board may make such other recommendations as justice requires which are not specifically precluded by the terms of its authority.

Section 101.5 Initial Filing

(a) In order to comply with the requirements of Executive Order 11803, as amended, an individual must make an initial filing to the Board not later than March 1, 1975. The Board will consider sufficient as an initial filing any written communication postmarked not later than March 1, 1975 and received by the Board, the Department of Justice, the Department of Defense, the Department of Transportation, the Selective Service System, or other appropriate federal agency. In the communication an individual or his representative must request consideration of the individual's specific case or demonstrate an intention to apply. A prospective applicant must, however, submit his application promptly thereafter. Oral applications made not later than March 1, 1975



will be considered sufficient if reduced to writing, received by the Board, and postmarked not later than March 31, 1975.



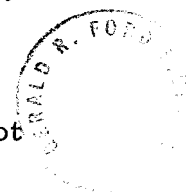
(b) If an application is made by a representation, the case will not be considered by the Board unless and until the applicant submits a written confirmation of his clemency application. This confirmation may be sent either directly or through a representative, but must be sent within a reasonable amount of time. A statement by an attorney that he is acting on behalf of an applicant is sufficient.

Section 101.6 Application form.

(a) Upon receipt of an initial filing, a member of the Board's staff will make a determination of probable jurisdiction. Persons who are clearly beyond the Board's jurisdiction will be so notified in writing. A person who questions this determination should promptly write the General Counsel, Presidential Clemency Board, The White House, Washington, D. C. 20500, stating his reasons for questioning the determination. The General Counsel of the Board shall make the final determination of probable jurisdiction and shall so notify the applicant or his representative in writing stating the reasons why. In doubtful cases, a final determination of jurisdiction will be made by the Board.

(b) A person who has been notified that jurisdiction does not lie in his case will be considered as having made a timely filing should the final determination be that the Board has jurisdiction over his case.

(c) A person who is within the jurisdiction of the Board will be sent an application form, information about the Presidential clemency



program, instructions for the preparation of the application form, a statement describing the Board's procedures and method of determining cases, and a list of available sources of volunteer counseling services.

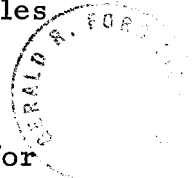
(d) The person will be urged to return the completed application form to the Board as soon as possible. In the absence of extenuating circumstances, completed application forms should be postmarked within a reasonable period after their receipt by applicant.

(e) An applicant who does not wish to file his own application may have his representative do so on his behalf provided that he complies with subsection 101.5.

Section 101.7 Assignment of Action Attorney, Case Number, and Determination of Jurisdiction.

(a) Upon receipt by the Board of the completed application form or of information sufficient for the Board to request the records and files specified in ~~subparagraph~~ ^{SECTION} (b) of this section, the applicant's case will be reviewed for preliminary determination of the Board's jurisdiction. If it appears that the Board has jurisdiction over the case, a file will be opened and a case number will be assigned. The Board will then request from all appropriate government agencies the relevant records and files pertaining to the applicant's case.

(b) In normal circumstances, the relevant records and files for civilian cases will be the applicant's files from the Selective Service System and the Bureau of Prisons. For military cases, it will include the applicant's



military personnel records, military clemency folder, and record of court martial, if any. Applicants have the right to request that the Board consider other pertinent files, and the Board will attempt to comply with the request.

(c) Information collected directly by the Board shall be, as a matter of right, freely available for his examination at the offices of the Board. All material obtained from other agencies will be available to the extent not barred by the rules of the agency owning the file. The reason for denial of access to any file must be stated in writing upon demand. Files not available to an applicant are not used as the basis of statements in the initial summary.

(d) Where the initial filing contains adequate information, the Board staff may assign a case number and request records and files prior to receipt of the completed application form.

(e) If the Action Attorney determines that jurisdiction does not exist, he will promptly notify the applicant in writing, stating the reasons why.

(f) An applicant who questions this adverse determination of jurisdiction should write the General Counsel of the Board in accordance with the provisions of § 101.6(a).



Section 101.8 Initial Summary.

(a) Upon receipt of the necessary records and files, the Action Attorney will prepare an initial summary of the applicant's case. The files, records, and any additional sources used in preparing the initial summary will be listed. No other material will be used. The initial summary shall include the name and business telephone number of the Action Attorney who may be contacted by the applicant or his representative.

(b) The initial summary shall be sent by certified mail to the applicant or his representative. The summary will be accompanied by an instruction sheet describing the method by which the summary was prepared, and by a copy of the guidelines that have been adopted by the Board for the determination of cases. Applicants will be encouraged to review the initial summary for accuracy and completeness and advised of their right to submit additional sworn or unsworn material. Additional material may be submitted in any length. Nothing over three (3) single-spaced, typewritten, letter-sized pages in length will be read verbatim to the Board. Where necessary, thus, an applicant should summarize his additional material to comply with this verbatim presentation requirement. If this is not done, the Action Attorney shall do ^{so} it.



(c) At any time before Board consideration of his case, an applicant may submit evidence of inaccurate, incomplete, or misleading information in the complete Board file or other files. This information shall be incorporated in applicant's Board file.

(d) An applicant's case will be ready for final consideration by the Board not sooner than thirty (30) days after the initial summary has been received by the applicant. Receipt by the applicant shall be attested to by a certified mail receipt returned to the Board by the Postal Service or by a reasonable determination of receipt made by Board staff. Material which amends or supplements the applicant's initial summary must be postmarked within thirty (30) days of receipt to ensure that it will be considered. An applicant's request that this thirty (30) day period be extended shall be liberally granted by the Action Attorney, if the request is received prior to Board action.

Section 101.9 Final Summary.

(a) Upon receipt of the applicant's response to the initial summary, the Action Attorney will note all such amendments, supplements, or corrections on the initial summary submitted by the applicant or his representative. All such amendments must be attached to the initial summary with notation by the Action Attorney of any discrepancies of fact which in his opinion remain unresolved.

(b) The final summary shall then consist of the initial summary as amended and the summary of the materials submitted by the applicants as described in §101.8(b).



Section 101.10 Consideration Before the Board

(a) At a regularly scheduled meeting of the Board, a quorum being present, the Board will consider the applicant's case. A quorum shall consist of a majority of the Board. However, the Board may provide by rule that cases will be considered by panels of three or more members.

(b) The Action Attorney will present to the Board a brief statement of the final summary of the applicant's case together with ~~the~~ material, submitted by the applicant for presentation to the Board. The Action Attorney shall then stand ready to answer from the Board files any questions from the members of the Board concerning the applicant's case.

(c) ^{ANY} ~~Each~~ applicant wishing to make an oral presentation must provide the Board with a written statement giving the reasons why he thinks a personal appearance is particularly appropriate to an understanding of his case. The Board will consider each request for an oral presentation at a regular meeting and shall inform the applicant

whether or not his request has been granted. ^{AN APPLICANT SHALL BE PERMITTED AN ORAL PRESENTATION AS A MATTER OF RIGHT IF HE CAN SHOW THAT IT IS NECESSARY TO THE BOARD'S UNDERSTANDING OF HIS CASE.}

(d) Any oral presentation granted by the Board shall not exceed ten (10) minutes. Neither applicant nor his representative may be present when the Board begins deliberations, but should remain available for further consultation immediately thereafter for a period not to exceed one hour.



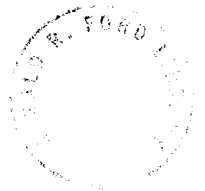
(e) After due deliberation the Board will decide ^{UNCO} its recommendation to the President listing the factors it considered in making its recommendation. ~~A list of these factors~~ will be forwarded to the applicant ~~together with the President's decision.~~

(f) If the Board believes it requires more information before making its recommendation, it will table the case and return the file to the Action Attorney with directions to conduct further investigation.

Section 101.11 Recommendations to the President

(a) At appropriate intervals, the Chairman of the Board will submit to the President certain master warrants listing the names of applicants recommended for executive clemency, and a list of the names of applicants considered by the Board but not recommended for clemency. The Chairman will also submit such terms and conditions for executive clemency, if any, that have been recommended in each case by the Board.

(b) Following action by the President, the Board will send notice of such action in writing to all persons whose names were submitted to the President. ~~Persons not receiving executive clemency will also be so notified.~~ All persons will be sent the list of factors deemed present and pertinent by the Board in making its recommendation.



Section 101.12 Reconsideration

(a) An applicant may ask the Board for reconsideration of his case. Petitions for reconsideration, including any supplementary material, must be postmarked within thirty (30) days of the receipt of the notification in §101.11(b).

(b) At a regularly scheduled Board meeting, a quorum being present, the Board will reconsider the applicant's case if the applicant's petition shows:

(1) [→] new facts, material to the disposition of his case, which the Board had not previously considered, provided that the applicant explains to the Board's satisfaction why such facts were not submitted earlier. New facts shall, for purposes of this section, be considered material only if they relate to presence or absence of an aggravating circumstance under §102.3 or of a mitigating circumstance under §102.4, or to calculation of length of alternate service under §102.5; or

(2) factual error, in the final summary or other document considered by the Board that was material to the Board's disposition of his case and detrimental to him.



(b) Procedural error that was material to the Board's disposition of his case and detrimental to him.

(c) The Board may in its discretion permit an applicant or his representative to present before the Board an oral statement not to exceed ten (10) minutes in length. The provisions of §101.10 apply to any request for a personal appearance.

(d) After due deliberation, the Board may:

(1) → Leave unchanged its original recommendation;

(2) → As to any person granted executive clemency, recommend to the President that he diminish the length of alternative service on which the grant of clemency has been conditioned, or immediately grant a full and unconditional pardon;

(3) → As to any person not granted executive clemency, recommend to the President that he grant executive clemency in accordance with such terms and conditions as may be appropriate.



(e) Applicants requesting reconsideration will be so notified in writing of the Board's decision, together with the reasons.

Section 101.13 Transmittal to Other Agencies of Clemency Decisions.

(a) The Chairman of the Board shall forward for further action to the Secretaries of the Army, Navy, and Air Force, the Secretary of Transportation, the Director of the Selective Service System, and the Attorney General, as appropriate, only such information about the President's decision as is necessary for the agency to perform its functions under the President's clemency program, or for other necessary action respecting the applicant.




(b)
(d) Decisions by the President to deny executive clemency to a person who has fully discharged his obligations under the law for his offense shall not be transmitted by the Board to any other agency of the United States Government or to any other person, public or private, except the applicant or his representative.

Section 101.14 Confidentiality of Communications

(a) In order to have his case considered by the Board, an applicant need submit only information sufficient for a determination of jurisdiction, and for the retrieval of necessary official records and files. The application form will require the applicant's name, date of birth, selective service number, military ^{branch} ~~service~~ ^{only} and service number, if applicable, information concerning the draft evasion offense or absence-related military offense, and the disposition thereof, and the mailing address and telephone number of either the applicant or his representative.

(b) The Board has determined that it will take all steps possible to protect the privacy of applicants and potential applicants to the Presidential clemency program. No personal information concerning an applicant or potential applicant and related to the Presidential clemency program will be made known to any agency, organization, or individual, whether public or private, unless disclosure is necessary for the normal and proper functioning of the Presidential Clemency Board or unless required by court order or otherwise required under law. However, information which reveals ~~that there has been~~ commission of a serious



offense previously unknown (other than an offense subject to the Presidential clemency program) will be forwarded to the appropriate authorities.

(c) All personal information obtained by the Board in the course of reviewing an applicant's case, except information obtained ~~from~~ ^{FROM} other agencies, will be sealed by the Board, ^{THIS SHALL HAPPEN} when the applicant has received his pardon from the President or when the Board's operations terminate by law.

~~(d) The Board shall publish anonymous case summaries of all recommendations to the President, upon final action by the President.~~

Section 101.15 Representation Before the Board

(a) Although an applicant may bring his case before the Board without a representative, each applicant will be advised of his right to representation and will be encouraged to seek counsel experienced in military or selective service law. A representative need not be an attorney, although legal counsel is recommended to applicants. The Board staff will advise applicants of those private sources which are available to provide counseling.

Section 101.16 Requests for Information About the Clemency Program

(a) Upon receipt by the Board of a request for information, the Board's staff shall attempt to determine the individual's eligibility ^{FOR} in any part of the Presidential clemency program. In doing so, the Board attorney will preserve the confidentiality of the individual if requested to do so.



(b) A member of the Board's staff shall also inform any individual of other remedies available to him, including those ^{FROM} ~~at~~ the Departments of Justice and Defense

Section 101.17 Postponement of Board Consideration and of the start of Alternative Service.

(a) An applicant may request that the Board defer consideration of his case for a reasonable time to permit the ^{PURSUIT} ~~purview~~ of ^{OTHER} ~~alternate~~ remedies. Such deferments will be liberally granted provided that they do not result in an undue disruption of the Board's operations.

(b) An applicant who has been granted executive clemency conditioned upon a period of alternative service may ask for the postponement of the beginning of his period of alternative service, ~~because of current enrollment in school, certain employment contracts, and the like.~~ The Board will make every effort, consistent with its own authority and that of the Selective Service System, to make reasonable accommodations to such requests.



Part 202 is deleted, and Part 102 is added to read as follows:

Section

- 102.1 Purpose and Scope.
- 102.2 Board Recommendations.
- 102.3 Aggravating Circumstances.
- 102.4 Mitigating Circumstances.
- 102.5 Calculation of Length of Alternative Service.

AUTHORITY: ^{EXECUTIVE ORDER} ~~E. O.~~ 11803.39 FR 33297, as amended.

Section 102.1 Purpose and Scope.

This ^{SECTION} ~~part~~ contains the standards which the Board will employ in deciding whether or not to recommend that the President grant executive clemency and whether or not clemency should be conditioned upon a period of alternative service.

Section 102.2 Board Recommendations on Executive Clemency

In each case the Board will first decide whether or not it will recommend to the President that the applicant be granted executive clemency. In reaching that decision, the Board will consider the aggravating circumstances listed in Section 102.3 and the mitigating circumstances listed in Section 102.4.

Section 102.3 Aggravating Circumstances

(a) Presence of any of the aggravating circumstances listed below may either disqualify an individual for executive clemency or



may be considered by the Board as cause for recommending to the President a period of alternative service exceeding the applicant's "baseline period of alternative service," as determined under Section 102.5.

(b) Aggravating circumstances of which the Board will take notice ^{ARE:} ~~include and are limited to:~~

- (1) Prior criminal convictions;
- (2) False statement to the Presidential Clemency Board by applicant;
- (3) Use of force by applicant collaterally to AWOL, desertion, or missing movement;
- (4) Desertion during combat;
- (5) Evidence that applicant committed offense for obviously manipulative and selfish reasons;
- (6) Prior refusal to fulfill alternative service;
- (7) Violation of probation or parole;
- (8) Multiple AWOL/UA offenses; AND
- (9) Length of AWOL/UA.

(c) Whenever an additional aggravating circumstance not listed is considered by the Board in the discussion of a particular case, and is material to the disposition of that case, the Board shall postpone final decision of the case so that the applicant may submit evidence material to the additional circumstance.



Section 102.4 Mitigating circumstances

(a) Presence of any of the mitigating circumstances listed below or of any other appropriate mitigating circumstance will be considered as cause for recommending that the President grant executive clemency to an applicant, and as cause for reducing the applicant's baseline period of alternative service, as determined under Section 102.5.

(b) Mitigating circumstances of which the Board will take notice are:

1. Lack of sufficient education or ability to understand obligations under the law;
2. Personal and family circumstances either at the time of offense or afterwards;
3. Mental or physical condition;
4. Employment and other activities of service to the public;
5. Service-connected disability, wounds in combat or special decorations and commendations;
6. Period of creditable military service;
7. Tours of service in the war zone;
8. Substantial evidence of personal or procedural unfairness;
9. Denial of conscientious objector status on procedural, technical or improper grounds;
10. Evidence that an applicant acted for conscientious, not for manipulative or selfish reasons;
11. Voluntarily submitted himself to authorities;
12. Behavior which reflects mental stress caused by combat;
13. Volunteering for combat, or extension of service while in combat;



14. Above average military conduct and proficiency; ~~ANA~~

15. Personal decorations for valor.

(c) An applicant may bring to the Board's attention any other factor~~s~~ which he believes should be considered.

Section 102.5 Calculation of Length of Alternative Service.

(a) Having reached a decision to recommend that the President grant executive clemency to a particular applicant, the Board will then decide whether ^{OR NOT} clemency should be conditioned upon a specified period of alternative service and, if so, what length that period should be:

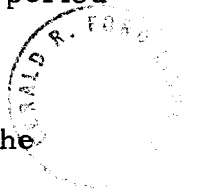
(1) The starting point for calculation of length of alternative service will be 24 months.

(2) The starting point will be reduced by three times the amount of prison time served.

(3) The starting point will be further reduced by the amount of prior alternative service performed, provided that ^{THE} prescribed period of alternative service has been satisfactorily completed.

(4) The starting point will be further reduced by the amount of time served on probation or parole, provided that ^{THE} prescribed period has been satisfactorily completed.

(5) The baseline period of alternative service will be the remainder of these four subtractions or the judge's sentence to imprisonment, whichever is less.



(b) In no case will the baseline period of alternate service be less than three ⁽³⁾ months.

(c) For applicants who have received an Undesirable Discharge from a military service, the baseline period of alternate service shall be three (3) months.

(d) The Board may consider mitigating circumstances as cause for recommending clemency conditioned upon a period of alternative service less than an applicant's baseline period of alternative service, or for recommending unconditional clemency.

(e) In cases in which aggravating circumstances are present and are not, in the Board's judgment, balanced by mitigating circumstances, the Board may consider such aggravating circumstances as cause for recommending clemency conditioned upon a period of alternative service exceeding, ~~either~~ by three (3), six (6), or nine (9) additional months, the applicant's baseline period of alternative service. In extraordinary cases, as an alternative to denying clemency, the Board may increase the baseline period to a maximum of not more than 24 months.



rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1300.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 2—Clemency CHAPTER 1—PRESIDENTIAL CLEMENCY BOARD ADMINISTRATIVE PROCEDURES AND SUBSTANTIVE STANDARDS

The Presidential Clemency Board published its proposed administrative procedures and substantive standards on November 27, 1974 (39 FR 41351). Since that time, the Board has considered the first military cases before it, and has had the benefit of more than 40 comments on its proposed regulations. With the benefit of this additional experience and these comments, the Board publishes the final regulations setting out its procedures and standards.

It is the intent of the Board to provide notice to the public of the standards it uses to make recommendations to the President concerning individual applications for clemency. The Board also wishes to ensure equity and consistency for applicants under the President's clemency program.

Because it is a temporary organization within the White House Office, the sole function of which is to advise the President with respect to the exercise of his constitutional power of executive clemency, the Board does not consider itself formally bound by the Administrative Procedure Act. Nonetheless, within the time and resource constraints governing it, the Board wishes to adhere as closely as possible to the principles of procedural due process. The administrative procedures established in these regulations reflect this decision.

The Board may publish changes in individual sections as it deems necessary. The Board welcomes continuing comment on problems which may arise in the application of particular sections of these procedures and invites recommendations on how best these problems may be resolved.

Several dozen technical changes have been made in these regulations in response to new circumstances that were presented to the Board. Some clarify significantly the rights and procedures available to applicants. The following is an explanation of those changes which seem to the Board to be most significant:

Jurisdiction. Section 101.3 has been added in order to incorporate the criteria for determining whether or not a person is eligible for consideration by the Presidential Clemency Board. It restates the criteria established in Proclamation 4313 (Announcing a Program for the Return of Vietnam Era Draft Evaders and Military Deserters) and repeated in Executive Order 11803 (Establishing a Clemency Board * * *).

Remedies. Section 101.4 has been added to explain the remedies available from the Presidential Clemency Board. It states the authority with which the Board is vested by Executive Order 11803, issued pursuant to Proclamation 4313.

A Presidential pardon restores those federal civil rights lost as a result of a felony conviction. State law recognizes Presidential pardons as a matter of comity, usually restoring the right to vote in federal and state elections, to hold public office, and to obtain licenses for trades and professions from which convicted felons are barred under state law. Since conviction by military court-martial is treated as a felony conviction by many states, and since an Undesirable Discharge may have the same consequences as a court-martial conviction, the benefits of a pardon apply to former servicemen as well as to civilian draft evaders.

A Clemency Discharge neither entitles its recipient to veterans benefits nor bars his receiving those benefits to which he is otherwise entitled. The Veterans Administration and other agencies may extend veterans' benefits to some holders of a Clemency Discharge, but it is contemplated that most will not receive veterans benefits.

Availability of files to applicant and his representative. Section 101.7(c) clarifies which files an applicant and his representative have a right to see. At the offices of the Board, information collected by the Board independently of any other government agency is readily available to an applicant or his representative. All files obtained from other agencies are available to the extent not barred by the rules of the agency owning the file. For example, the Selective Service System file is available to him and his representative. Files from another agency are cited in a summary when they are used as the basis of statements in that summary. Reason for denial of access to any of these files is stated in writing upon request.

This subsection is in response to comments that §§ 201.5(b) and 201.6(c), read together, were either unclear or overbroad.

Completed case summary. The completed case summary consists of the initial case summary, amendments as described in the §§ 101.8 (c) and (e), and the materials submitted by the applicant and his representative as described in § 101.8(b). Where, in the opinion of the Board, there is a conflict of fact, false statement, or omission material to the Board's consideration of an aggravating or mitigating circumstance,

as specified in §§ 102.3 and 102.4, the case is tabled. The action attorney is instructed to obtain additional facts.

This is in response to comments from the private bar.

Hearing before the Board. Subsection 101.9(c) provides for a personal appearance as a matter of right if an applicant can show that an oral presentation is necessary to the Board's understanding of a mitigating circumstance or an aggravating circumstance which applies to his case. The Board has provided a right to personal appearance in response to several comments.

Reconsideration. Subsection 101.11(h) has been amended in order to add standards which must be met if the Board is to consider an applicant's petition for reconsideration. In the proposed regulations, consideration of such petition by the Board was a matter of discretion. This amendment limits the circumstances under which reconsideration will be granted, but provides that when an applicant shows that any of those circumstances are present, reconsideration will be granted as a matter of right.

Transmittal to other agencies of Presidential decisions. Section 101.12 provides that grants of immediate pardon by the President are transmitted formally to other government agencies, as appropriate. Pending completion of the alternative service requirement, grants of conditional clemency are communicated to another federal agency only to the extent this information is necessary for the agency to perform its functions under the clemency program or for other necessary action respecting the applicant. Upon completion of alternative service, notification of the pardon is forwarded to all appropriate agencies. Denials of clemency by the President are held confidential by the Board.

The intent of this section, adopted here in response to several comments is that a person who applies for clemency should not be prejudiced in his pursuit of other remedies through the military services' discharge review processes or elsewhere.

Other remedies available to applicant. Section 101.15(b) requires that Board staff inform both applicants to the Board and persons who inquire about the clemency program, but are clearly not under the Board's jurisdiction, of the remedies available to them under military discharge review processes and through the judiciary. Applicants to the Board or to one of the other agencies administering part of the clemency program may pursue such other remedies simultaneously or subsequently to, or instead of their remedies under the clemency program. The Board's staff informs them of their other options.

Aggravating and mitigating circumstances. Sections 102.3 and 102.4 contain new aggravating and mitigating circumstances which the Board deems material to its decisions.

The Board notes that it has seen a number of cases of persons who behaved with valor during combat, but then committed AWOL offenses because of mental stress caused by combat. The Board calls attention to this mitigating circumstance as one which it considers particularly important in some cases.

A number of comments from the private bar have suggested that the Board should add as a mitigating circumstance "evidence that an applicant would probably have obtained a Selective Service status or military discharge or reassignment beneficial to him, but failed to apply due to lack of knowledge or confusion." Mitigating circumstances #1, 8, and 9, in conjunction, are adequate to meet this problem.

Calculation of length of alternative service. Subsection 102.5(c) has been added in order to make clear the Board's decision that the initial baseline period of alternative service for applicants with Undesirable Discharges is three (3) months.

Eligibility of clemency recipients for military discharge review remedies. The Presidential Clemency Board notes, although the matter is not one for inclusion in its regulations, that it has received numerous comments which assume that a recipient of executive clemency under the President's clemency program is ineligible for consideration under the military services' discharge review processes.

This is incorrect. Any applicant to the Board for executive clemency may also seek review of his discharge through one of the military services' discharge review boards or boards for the correction of military records. Applying to the Board does not exclude a former serviceman from the jurisdiction of the military services' boards, nor does it preclude the remedies which are available from those boards.

The Presidential Clemency Board notes that a veteran who receives a Clemency Discharge through the Board may subsequently seek, according to the Department of Defense, an upgrading of that discharge through the military services' normal discharge review processes.

This chapter will become effective immediately.

Issued in Washington, D.C. on March 18, 1975.

CHARLES E. GOODELL,
Chairman, Presidential Clemency Board, The White House.

1. Part 101 is added to read as follows:

PART 101—ADMINISTRATIVE PROCEDURES

Sec.	
101.1	Purpose and scope.
101.2	General definitions.
101.3	Jurisdiction.
101.4	Remedies.
101.5	Initial filing.
101.6	Application form.

Sec.	
101.7	Assignment of Action Attorney and case number, and determination of jurisdiction.
101.8	Initial case summary.
101.9	Consideration before the Board.
101.10	Recommendations to the President.
101.11	Reconsideration.
101.12	Transmittal to other agencies of clemency decisions.
101.13	Confidentiality of communications.
101.14	Representation before the Board.
101.15	Requests for information about the Clemency Program.
101.16	Postponement of Board consideration and of the start of alternative service.
	Appendix A: Application kit.
	Appendix B: Proclamation 4313.
	Appendix C: Executive Order 11803.

AUTHORITY: Executive Order 11803, 39 FR 33297, as amended.

§ 101.1 Purpose and scope.

This part establishes the procedures of the Presidential Clemency Board. Certain other matters are also treated, such as the assistance to be given to individuals requesting determinations of jurisdiction, or requesting information respecting those parts of the Presidential Clemency Program which are administered by the Department of Defense and the Department of Justice under Presidential Proclamation 4313 (39 FR 33293).

§ 101.2 General definitions.

"Action attorney" means an attorney on the staff of the Board who is assigned an applicant's case.

"Applicant" means an individual who invokes the jurisdiction of the Board, and who has submitted an initial filing.

"Board" means the Presidential Clemency Board as created by Executive Order 11803 (39 FR 33297) or any duly authorized panel of that Board.

§ 101.3 Jurisdiction.

Jurisdiction lies with the Board with respect to a particular person if such person applies to the Board not later than March 31, 1975 and:

(a) He has been convicted for failure under the Military Selective Service Act (50 App. U.S.C. 462) or any rule or regulation promulgated thereunder to register or register on time, to keep the local board informed of his current address, to report for or submit to preinduction or induction examination, to report for or submit to induction itself, or to report for or submit to, or complete (alternative) service under section 6(j) of the Act for offenses committed during the period from August 4, 1964 to March 28, 1973, inclusive; or

(b) He has received a punitive or undesirable discharge as a consequence of offenses under Article 85 (desertion), 86 (AWOL), or 87 (missing movement) of the Uniform Code of Military Justice (10 U.S.C. 885, 886, 887) that occurred between August 4, 1964 and March 28, 1973, inclusive, or is serving a sentence of confinement for such violation.

(c) Jurisdiction will not lie with respect to an individual precluded from re-entering the United States under 8 U.S.C. 1182(a) (22) or other law.

§ 101.4 Remedies.

(a) The Board is empowered only to make recommendations to the President on clemency applications. The Board has no final authority of its own. The Board may recommend to the President that he take one or more of the following actions:

(1) Grant an unconditional pardon without a requirement of alternative service;

(2) Grant an unconditional pardon upon the satisfactory completion of a specified period of alternative service not to exceed 24 months;

(3) Grant a clemency discharge in substitution for a Dishonorable, Bad Conduct, or Undesirable Discharge;

(4) Commute the sentence; or

(5) Deny clemency.

(b) In unusual circumstances and as authorized by Executive Order 11803, the Board may make other recommendations as to the form that clemency should take. This shall only be done in order to give full effect to the intent and purposes of the Presidential Clemency program.

§ 101.5 Initial filing.

(a) In order to comply with the requirements of Executive Order 11803, as amended, an individual must make an initial filing to the Board not later than March 31, 1975. The Board considers sufficient as an initial filing any written communication postmarked not later than March 31, 1975, and received by the Board, the Department of Justice, the Department of Defense, the Department of Transportation, or the Selective Service System. In the communication an individual or his representative must request consideration of the individual's case or raise questions which evidence a serious interest in applying for the program. Oral applications made not later than March 31, 1975 are considered sufficient if reduced to writing, and postmarked not later than May 31, 1975.

(b) If an initial filing is made by a representative, the case is not considered by the Board unless and until the applicant submits a written confirmation of his clemency application. This confirmation by the applicant may be sent either directly or through a representative, but it must be mailed not later than May 31, 1975. A statement by an attorney that he is acting on behalf of an applicant is sufficient. Applications by a representative on behalf of an applicant may be considered by the Board where good cause is shown why the applicant is unable to apply.

§ 101.6 Application form.

(a) Upon receipt of an initial filing, a member of the Board's staff makes a determination of probable jurisdiction. Persons who are clearly beyond the Board's jurisdiction are so notified in writing. A person who questions this determination should promptly write the General Counsel, Presidential Clemency Board, The White House, Washington, D.C. 20500, stating his reasons for questioning the determination. The General Counsel of the Board makes the final determination of probable jurisdiction and

so notifies the applicant or his representative in writing stating the reasons why. In doubtful cases, a final determination of jurisdiction is made by the Board.

(b) A person who has been notified that jurisdiction does not lie in his case is considered as having made a timely filing if the final determination is that the Board has jurisdiction over his case.

(c) A person who is within the jurisdiction of the Board is sent an application form, information about the Presidential clemency program, instructions for the preparation of the application form, a statement describing the Board's procedures and method of determining cases, and a list of volunteer counseling services.

(d) The person is urged to return the completed application form to the Board as soon as possible. Completed application forms must be postmarked within sixty (60) days of the time they were mailed by the Board, in order to qualify for the Board's consideration as a matter of right.

§ 101.7 Assignment of Action Attorney, case number, and determination of jurisdiction.

(a) Upon receipt by the Board of the completed application form or of information sufficient for the Board to request the records and files specified in paragraph (b) of this section, the applicant's case is reviewed for preliminary determination of the Board's jurisdiction. If it appears that the Board has jurisdiction over the case, a file is opened and a case number assigned. The Board will then request from all appropriate government agencies the relevant records and files pertaining to the applicant's case.

(b) In normal circumstances, the relevant records and files for civilian cases are the applicant's files from the Bureau of Prisons and information that he has sent to the Board. For military cases, they will include the applicant's military personnel records, military clemency folder, record of court martial, if any, and information that the applicant has sent to the Board. Applicants and their representatives have the right to request that the Board consider other pertinent files. The Board will attempt to comply with these requests.

(c) At the offices of the Board, information collected by the Board independently of any other agency is readily available to an applicant or his representative. All files obtained from other agencies are available to the extent not barred by the rules of the agency owning the file. Files from another agency are cited in a summary when they are used as the basis of statements in that summary. Reason for denial of access to any of these files is stated in writing upon request.

(d) Where the initial filing contains adequate information, the Board staff may assign a case number and request records, and files prior to receipt of the completed application form.

(e) If the Action Attorney determines that the Board does not have jurisdiction

in a particular case, he promptly notifies the applicant or his representative in writing, stating the reasons for such a determination.

(f) An applicant or his representative who questions this adverse determination of jurisdiction should write the General Counsel of the Board in accordance with the provisions of § 101.6(a).

§ 101.8 Initial case summary.

(a) Upon receipt of the necessary records and files, the Action Attorney prepares an initial case summary of the applicant's case. The files, records, and any additional sources used in preparing the initial case summary are listed. No other material is used. The initial case summary includes the name and business telephone number of the Action Attorney who may be contacted by the applicant or his representative.

(b) The initial case summary is sent by certified mail to the applicant or his representative. The summary is accompanied by an instruction sheet describing the method by which the summary was prepared and by a copy of the guidelines used by the Board for the determination of cases. Applicants are encouraged to review the initial case summary for accuracy and completeness and advised of their right to submit additional sworn or unsworn material. Additional material may be submitted in any length. Nothing over three (3) single-spaced, typewritten, letter-sized pages in length is read verbatim to the Board. Where necessary, therefore, an applicant should summarize his additional material to comply with this verbatim presentation requirement. If this is not done, the Action Attorney does so.

(c) At any time before Board consideration of his case, an applicant may submit evidence of inaccurate, incomplete, or misleading information in the complete Board file or other files. This information is incorporated in applicant's Board file.

(d) An applicant's case is ready for final consideration by the Board not sooner than thirty (30) days after the initial case summary is mailed to the applicant. Material which amends or supplements the applicant's initial case summary must be postmarked within this thirty (30) day period to ensure that it is considered. An applicant's request that this thirty (30) day period be extended is liberally granted by the Action Attorney, if the request is received prior to Board action and is reasonable.

(e) Upon receipt of the applicant's response to the initial summary, the Action Attorney notes all such amendments, supplements, or corrections on the initial summary submitted by the applicant or his representative. All such amendments are attached to the initial case summary with notation by the Action Attorney of any discrepancies of fact which in his opinion remain unresolved. The complete case summary consists of the initial summary, amendments as described in paragraph (c) and this section, and the materials submitted by the applicant and his representative as described in paragraph (b) of this section.

(f) Where, in the opinion of the Board, there is a conflict of fact, false statement, or omission material to the Board's consideration of an aggravating or mitigating circumstance, as specified in §§ 102.3 and 102.4, the case is tabled. The Action Attorney is then instructed to obtain additional facts.

§ 101.9 Consideration before the Board.

(a) At a regularly scheduled meeting of the Board, an applicant's case is considered. The Board may provide by rule, however, that cases will be initially considered by panels of not less than three Board members. Any case may be brought before a majority of the full Board for consideration at the request of a panel member. Panel recommendations will be considered and approved by a majority of the full Board.

(b) The Action Attorney presents to the Board a brief statement of the completed case summary and, as provided in § 101.8(b), the material submitted by the applicant.

(c) The Board grants a personal appearance to an applicant and his representative if they can show in a written statement that such an appearance is necessary to the Board's understanding of the applicant's case. The Board considers each request for an oral presentation at a regular meeting and informs the applicant and his representative whether or not his request has been granted.

(d) Any oral presentation granted by the Board shall not exceed a reasonable period of time. Neither applicant nor his representative may be present when the Board begins deliberations, but should remain available for further consultation immediately thereafter.

(e) After due deliberation the Board decides upon its recommendation to the President listing the factors it considered in making its recommendation.

§ 101.10 Recommendations to the President.

(a) At appropriate intervals, the Chairman of the Board submits to the President certain master warrants listing the names of applicants recommended for executive clemency and a list of the names of applicants considered by the Board but not recommended for clemency. The Chairman will also submit such terms and conditions for executive clemency, if any, that have been recommended in each case by the Board.

(b) Following action by the President, the Board sends notice of such action in writing to all applicants whose names were submitted to the President. Each applicant is sent a list of the mitigating and aggravating circumstances decided by the Board to be applicable in his case.

§ 101.11 Reconsideration.

(a) An applicant may ask the Board for reconsideration of his case. Petitions for reconsideration, including any supplementary material, must be postmarked within thirty (30) days of Board mailing specified in § 101.10(b).

(b) At a regularly scheduled Board meeting, a majority of the Board being present, it will reconsider the applicant's case if the applicant's petition shows one or more of the following:

(1) New fact, material to the disposition of his case, which the Board had not previously considered, provided that the applicant explains to the Board's satisfaction why such facts were not submitted earlier. New facts are, for purposes of this section, considered material only if they relate to presence or absence of an aggravating circumstance under § 102.3 or of a mitigating circumstance under § 102.4, or to calculation of length of alternative service under § 102.5.

(2) Factual error, in the complete case summary or other document considered by the Board that was material to the Board's disposition of his case and detrimental to him; or

(3) Procedural error that was material to the Board disposition of his case and detrimental to him.

(c) The Board may at its discretion permit an applicant or his representative a reasonable period of time to present before the Board an oral statement. The provisions of § 101.9 apply to any request for a personal appearance.

(d) After due deliberation, the Board may:

(1) Leave unchanged its original recommendation;

(2) Where executive clemency was not granted, recommended to the President that he grant it in accordance with such terms and conditions as may be appropriate;

(3) Where executive clemency was granted, recommend to the President that he diminish the length of alternative service on which the grant of clemency has been conditioned or immediately grant a full and unconditional pardon.

(e) Applicants requesting reconsideration are so notified in writing of the Board's decision, together with the reasons.

§ 101.12 Transmittal to other agencies of clemency decisions.

(a) The Chairman of the Board may forward for further action to the Secretaries of the Army, Navy, and Air Force, the Secretary of Transportation, the Director of the Selective Service System, and the Attorney General, as appropriate, only such information about the President's decision as is necessary in the Board's judgment for the agency to perform its functions under the President's clemency program or for other necessary action respecting the applicant.

(b) A decision by the President to deny executive clemency to a person who has fully discharged his obligations under the law for his offense is not transmitted by the Board to any other agency of the United States Government or to any other person, public or private, except the applicant or his representative.

§ 101.13 Confidentiality of communications.

(a) In order to have his case considered by the Board, an applicant need

submit only information sufficient for a determination of jurisdiction and for the retrieval of necessary official records and files. The application form requires the applicant's name, date of birth, selective service number, military branch and service number, if applicable, information concerning the draft evasion offense or absence-related military offense, and the disposition thereof, and the mailing address and telephone number of either the applicant or his representative.

(b) The Board takes all steps in its power to protect the privacy of applicants and potential applicants to the Presidential clemency program. No personal information concerning an applicant or potential applicant is released by the Board unless disclosure is necessary for the proper functioning of the Board (e.g., to the Selective Service System so that alternative service may be performed) or unless required by law.

(1) Information which reveals commission of a serious crime, unrelated to any offense subject to the jurisdiction of the Presidential clemency program is forwarded to the appropriate authorities.

(2) As required by law, the name (but only the name) of a recipient of clemency is released to the public.

(c) All personal information obtained by the Board in the course of reviewing an applicant's case, except information obtained from other agencies, is sealed by the Board. This happens when the applicant has received his pardon from the President or when the Board's operations terminate, whichever is earlier.

(d) Upon announcement of the President's disposition of a case, the Board may publish a summary of that case after the removal of all information likely to identify the individual.

§ 101.14 Representation before the Board.

(a) Although an applicant may bring his case before the Board without a representative, each applicant is advised of his right to representation and encouraged to seek counsel experienced in military or selective service law. A representative need not be an attorney, although legal counsel is recommended to applicants. The Board staff advises applicants of those private sources which are available to provide counseling.

§ 101.15 Requests for information about the Clemency Program.

(a) Upon receipt by the Board of a request for information from an individual clearly not within the jurisdiction of the Board, the Board's staff attempts to determine his eligibility for any other part of the Presidential clemency program. If requested, the Board attorney preserves the confidentiality of the individual's location.

(b) A member of the Board's staff also informs any individual of other remedies available to him, including those from the Departments of Justice and Defense and through judicial processes.

§ 101.16 Postponement of Board consideration and of the start of alternative service.

(a) An applicant may request that the Board defer consideration of his case for a reasonable period of time. Such deferrals are liberally granted provided that they do not result in an undue disruption of the Board's operations or delay the final termination of the Board's operations.

(b) An applicant who has been granted executive clemency conditioned upon a period of alternative service may ask for the postponement of the beginning of his period of alternative service for a reasonable period of time. The reasons for which a postponement may be granted include personal hardship and conflicting obligations. The Board makes every effort, consistent with its own authority and that of the Selective Service System to accommodate postponement requests.

2. Part 102 is added to read as follows:

PART 102—SUBSTANTIVE STANDARDS

Sec.	
102.1	Purpose and scope.
102.2	Board recommendations.
102.4	Mitigating circumstances.
102.5	Calculation of length of alternative service.

AUTHORITY: Executive Order 11803, 36 FR 83297, as amended.

§ 102.1 Purpose and scope.

This section contains the standards which the Board employs in deciding whether or not to recommend that the President grant executive clemency, whether or not clemency should be conditioned upon satisfactory completion of a period of alternative service, and, if so, what the length of this alternative service is.

§ 102.2 Board recommendations.

In each case the Board decides first whether or not it will recommend to the President that the applicant be granted executive clemency. In reaching this decision, the Board considers the aggravating circumstances in § 102.3 and the mitigating circumstances in § 102.4.

§ 102.3 Aggravating circumstances.

(a) Presence of any of the aggravating circumstances listed below may either disqualify an individual for executive clemency or cause the Board to recommend to the President a period of alternative service exceeding the applicant's "baseline period of alternative service," as determined under § 102.5.

(b) Aggravating circumstances of which the Board takes notice are:

(1) Other adult criminal convictions;

(2) False statement by applicant to the Presidential Clemency Board;

(3) Use of force by applicant collaterally to AWOL, desertion, or missing movement or civilian draft evasion offense;

(4) Desertion during combat;

(5) Evidence that applicant committed offense for obviously manipulative and selfish reasons;

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(6) Prior refusal to fulfill court ordered alternative service;

(7) Violation of probation or parole;

(8) Multiple AWOL/UA offenses; and

(9) AWOL/UA of extended length.

(c) Whenever an additional aggravating circumstance not listed is considered by the Board in the discussion of a particular case, and is material to the disposition of that case, the Board postpones final decision of the case and immediately informs the applicant and his representative of their opportunity to submit evidence material to the additional circumstance.

§ 102.4 Mitigating circumstances.

(a) Presence of any of the mitigating circumstances listed below or of any other appropriate mitigating circumstance is considered as cause for recommending that the President grant executive clemency to an applicant, and as cause for reducing the applicant's alternative service below the baseline period, as determined under § 102.5.

(b) Mitigating circumstances of which the Board takes notice are:

(1) Lack of sufficient education or ability to understand obligations or remedies available under the law;

(2) Personal and family problems either at the time of offense or if applicant were to perform alternative service;

(3) Mental or physical condition;

(4) Employment and other activities of service to the public;

(5) Service-connected disability, wounds in combat or decorations for valor in combat;

(6) Period of creditable military service;

(7) Tours of service in the war zone;

(8) Substantial evidence of personal or procedural unfairness;

(9) Denial of conscientious objector status, of other claim for Selective Service exemption or deferment, or of a claim for hardship discharge, compassionate reassignment, emergency leave, or other remedy available under military law, on procedural, technical, or improper grounds, or on grounds which have subsequently been held unlawful by the judiciary;

(10) Evidence that an applicant acted for conscientious, not manipulative or selfish reasons;

(11) Voluntary submission to authorities by applicant;

(12) Behavior which reflects mental stress caused by combat;

(13) Volunteering for combat, or extension of service while in combat;

(14) Above average military conduct and proficiency; and

(15) Personal decorations for valor.

(c) An applicant may bring to the Board's attention any other factor which he believes should be considered.

§ 102.5 Calculation of length of alternative service.

(a) Having reached a decision to recommend that the President grant executive clemency to a particular applicant, the Board will then decide whether or

not clemency should be conditioned upon a specified period of alternative service and, if so, what length that period should be:

(1) The starting point for calculation of length of alternative service will be 24 months.

(2) The starting point will be reduced by three times the amount of prison time served.

(3) The starting point will be further reduced by the amount of prior alternative service performed, provided that the prescribed period of alternative service has been satisfactorily completed or is being satisfactorily performed.

(4) The starting point will be further reduced by the amount of time served on probation or parole, provided that the prescribed period has been satisfactorily completed or is being satisfactorily performed.

(5) Subject to paragraphs (b) and (c) of this section, the baseline period of alternative service will be the remainder of these four subtractions or final sentence to imprisonment, whichever is less.

(b) In no case will the baseline period of alternative service be less than three (3) months.

(c) For applicants who have received an Undesirable Discharge from a military service, the baseline period of alternative service shall be three (3) months.

(d) The Board may consider mitigating circumstances as cause for recommending clemency upon satisfactory completion of a period of alternative service that is less than an applicant's baseline period of alternative service, or for recommending an immediate pardon.

(e) In cases in which aggravating circumstances are present and are not, in the Board's judgment, balanced by mitigating circumstances, the Board may consider such aggravating circumstances as cause for recommending clemency upon satisfactory completion of a period of alternative service exceeding, by three (3), six (6), or nine (9) additional months, the applicant's baseline period of alternative service. In extraordinary cases, as an alternative to denying clemency, the Board may increase the baseline period to a maximum of not more than 24 months.

PART 201—[REVOKED]

3. Part 201 is revoked.

PART 202—[REVOKED]

4. Part 202 is revoked.

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