

violation behavior as an institutional hearing without the need to require the attendance of adverse or necessary witnesses.

Since the publication of the interim rules in November, 2000, the Commission promulgated rule changes to the Commission's procedures for revoking paroles granted to D.C. offenders in order to implement a consent decree resolving class action litigation in the U.S. District Court for the District of Columbia. *See* 68 FR 3389–92 (Jan. 24, 2003). Though supervised releasees were not members of the plaintiff class in the litigation, the Commission extended the revised procedures to supervised releasees because the new rules represented the most efficient revocation system and the best means of protecting the public safety. *Id.* at 3389. These revocation procedures are included in the amended interim rules.

Recently the Commission published as proposed rules with request for comment revisions of three regulations describing the conditions of supervision for federal parolees, D.C. parolees, and D.C. supervised releasees. 68 FR 16743–46 (Apr. 7, 2003). These proposed rules consolidated similar provisions for the three groups of offenders, using the rule governing conditions of supervised release as the rule for the full statement of applicable conditions, and then placing cross-references to this rule in the provisions for federal parolees and D.C. parolees. *Id.* at 16744. The Commission is now adopting these rules on the release conditions as interim rules with changes that are mostly editorial in nature.

One amendment to the proposed rules adds a general condition that, upon receiving a direction from the supervision officer, the releasee must notify a person, normally an employer, of a risk of harm that may be evidenced by the releasee's criminal record or personal history, and permit the officer to confirm that the releasee gave the required notice. This condition also authorizes the supervision officer to provide notice of possible risk to the third party if the notification is authorized by the Commission's rules. The Commission already authorizes disclosure of risk of harm to persons in the rule at § 2.37(a) and companion rules for D.C. parolees and supervised releasees. The standard conditions of supervised release recommended for federal offenders includes a similar condition. U.S. Sentencing Guidelines, § 5D1.3(c)(13). When the supervision officer determines that a disclosure of risk of harm is appropriate, this additional condition is another step

toward ensuring that the releasee is adequately supervised in the community, and that the recipient of the notice is sufficiently informed of the releasee's background so as not to place the releasee in a position that may increase the risk of future criminal behavior by the releasee, or to take suitable precautions in dealing with the releasee. Another amendment to the proposed rules restores a current reporting instruction for an offender who is delayed by an emergency in making his initial visit to the supervision office. The instruction from the current rule—that the offender report to the nearest U.S. Probation Office if he cannot timely report to his designated supervision office—is retained to be consistent with written directions that are given to the offender by the Bureau of Prisons upon the offender's discharge from the institution. Finally, another amendment implements statutory provisions on mandatory revocation of a supervised release term if the Commission finds that the releasee has committed certain violations (*e.g.*, possession of a firearm or repeated positive test results for drug use). *See* 18 U.S.C. 3583(g).

The amended interim rules also add an appeal procedure for supervised release revocation decisions at § 2.220. Up to now, the Commission has not included an appeal procedure for any of the decisions it makes for D.C. offenders. In past publications of procedural rules for D.C. offenders, the Commission has acknowledged concerns that D.C. offenders have not been given the opportunity to file administrative appeals regarding parole release and parole revocation decisions. *See* 65 FR 45886 (July 26, 2000). The Commission has explained that it does not have the staff resources to review appeals submitted by D.C. offenders, and that the additional review that is afforded by the appeal procedure is effectively obtained by having two Commissioners vote at the initial stage of decision-making.

However, the Commission has decided that there are several reasons to establish an administrative appeal procedure limited to supervised release revocation decisions. First, though the Commission has considerable experience in executing the similar function of parole revocation, the statutes governing supervised release revocation decisions impose complex and unfamiliar limits when the Commission revokes supervised release and then must determine the length of a term of imprisonment and a subsequent term of supervised release. An appeal procedure for supervised

release revocations is an additional administrative safeguard in the agency's effort to ensure error-free decision-making in carrying out this new function. Second, the number of supervised release revocations is still small and providing an administrative appeal procedure will not impose, at least at this time, a significant burden on the Commissioners and staff reviewing the appeals.

By a cross-reference, the new rule at § 2.220 carries over from the regulation at § 2.26, the deadlines for filing and deciding the appeal, the limit on exhibits that may be appended to the appeal, the grounds for appeal, and the voting requirements. The Commission is including in § 2.26 a new procedural requirement on the formatting of the appeal, and incorporates this requirement in § 2.220 by the cross-reference to § 2.26. The new procedural requirement is that the appellant briefly summarize at the beginning of his appeal all of the grounds for appeal, and then provide a concise statement of facts and reasons in support of each ground identified. The appellant may provide any additional information in an addendum to the appeal. Appeals that do not conform to this procedural requirement may be returned in the agency's discretion. The purpose of this requirement is to enhance the Commission's ability to readily identify meritorious claims, and focus its effort in the most productive manner, for the benefit of the agency and the appellant. The Commission is preparing a revised appeal form that incorporates the new format requirements and will distribute the revised form to federal correctional facilities and those organizations that have frequently filed administrative appeals with the Commission in the past.

The Commission would emphasize that the degree of review given to each appeal lies within the agency's discretion and depends on its evaluation of the strength of the appellant's claims as stated in the appeal. Because the purpose of the appeal is to correct error rather than decide each case *de novo*, some appeals will result in a summary denial, while others will deserve an in-depth review on the merits.

Because the Commission is providing this appeal procedure, the Commission is amending the voting requirements stated at § 2.218(g) for making the initial decisions on supervised release revocation. The amendment allows these decisions to be made on the vote of one Commissioner, except that two Commissioner votes are needed for any decision disagreeing with the panel