

recommendation. Because appeals are almost always decided by a Commissioner other than the Commissioner who initially made the decision under review, if an offender chooses to exercise the option of filing an appeal, the appeal procedure will permit the offender to obtain review of the revocation decision by a second Commissioner. The opportunity for review of the case by a second Commissioner is an adequate substitute for the present voting requirement that two Commissioners concur for supervised release revocation decisions.

This appeal procedure for supervised release revocation decisions is in the nature of a pilot project, as when the Commission inaugurated its paroling policy guidelines for federal offenders. See *Battle v. Norton*, 365 F.Supp. 925 (D.Conn. 1973). In this era of budget constraints, the Commission will have to periodically reevaluate its ability to maintain this additional procedure, including the availability of sufficient staff and Commissioners to handle the appeals and the trends in federal and D.C. caseloads. If the balance of competing factors weighs against the continuation of the appeal procedure, the Commission will have to consider options that may range from enforcing explicit limitations on the grounds for appeals to termination of the appeal procedure.

Summary of Public Comment

In response to the Commission's November, 2000 publication of the interim rules for supervised release cases, the Commission received no public comment. Though the Commission could proceed to promulgate final rules on the exercise of its duties for D.C. supervised releasees, the Commission has decided to publish amended interim rules at this time and extend the opportunity for the submission of public comment. Now that more D.C. offenders are serving terms of supervised release and the Commission is taking an increasing number of actions regarding these offenders, there may be more interest in providing comment on the Commission's policies.

With regard to proposed rules published in April, 2003 on the consolidation and revision of release conditions, the Commission received one comment from a private company. This company, which specializes in the development and implementation of global positioning systems (GPS) for criminal justice applications, recommended that the Commission specify in its condition requiring home detention with electronic monitoring

that the releasee be required to wear a GPS tracking or other electronic signaling device. The Commission has generally allowed the supervision agencies (the U.S. Probation Service and the D.C. Court Services and Offender Supervision Agency) to decide on the appropriate methods and technologies employed to monitor a releasee's compliance with release conditions, whether the monitoring is done through drug tests, mental health evaluations, or electronic tracking devices. The supervision agency, not the Commission, contracts for and pays for the use of the specific method or technology. Therefore, no change is made in the amended interim rule regarding the description of the special condition on home confinement/electronic monitoring.

The Commission is including the rules on the release conditions in the publication of amended interim rules because the agency wants to publish a comprehensive statement of the supervised release rules, of which the rule on conditions of supervised release is a significant part, and promulgating this discrete rule and the companion provisions for federal and D.C. parolees as final rules would be confusing to the public, in the Commission's judgment. Therefore, the Commission is extending the opportunity for public comment regarding the consolidation and revision of rules on release conditions.

Implementation

These interim rules will be applied to all cases as of the effective date of the rules. Appeals of supervised release revocation decisions will be permitted for any revocation decision made on or after the effective date of the rules. The procedural rules on the format of appeals are effective for any appeal dated on or after the effective date of the rules, but these rules will not be strictly enforced until a new appeal form is available to prisoners, releasees, and their representatives.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that this interim rule does not constitute a significant rule within the meaning of Executive Order 12866. The interim rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(c) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Interim Rule

■ Accordingly, the U.S. Parole Commission is adopting 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 § 2.26 by revising paragraph (a) to read as follows:

§ 2.26 Appeal to National Appeals Board.

(a)(1) A prisoner or parolee may submit to the National Appeals Board a written appeal of any decision to grant (other than a decision to grant parole on the date of parole eligibility), rescind, deny, or revoke parole, except that any appeal of a Commission decision pursuant to § 2.17 shall be submitted as a petition for reconsideration under § 2.27.

(2) The appeal must be filed on a form provided for that purpose within 30 days from the date of entry of the decision that is the subject of the appeal. The appeal must include an opening paragraph that briefly summarizes the grounds for the appeal. The appellant shall then list each ground separately and concisely explain the reasons supporting each ground. Appeals that do not conform to the above requirements may be returned at the Commission's discretion, in which case the appellant shall have 30 days from the date the appeal is returned to submit an appeal that complies with the above requirements. The appellant may provide any additional information for the Commission to consider in an addendum to the appeal. Exhibits may be attached to an appeal, but the appellant should not attach exhibits that are copies of documents already in the possession of the Commission. Any exhibits that are copies of documents already in the Commission's files will not be retained by the Commission.

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■ 3. Revise § 2.40 to read as follows:

§ 2.40 Conditions of release.

(a) *General conditions of release.* (1) The conditions set forth in § 2.204(a)(3)–(6) apply for the reasons set forth in § 2.204(a)(1). These conditions are printed on the certificate of release issued to each releasee.

(2)(i) The refusal of a prisoner who has been granted a parole date to sign