

By direction of the Commission.

**April J. Tabor,**  
Secretary.

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## DEPARTMENT OF JUSTICE

### Parole Commission

#### 28 CFR Part 2

[Docket No. USPC-2021-03]

RIN 1104-AA08

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

**AGENCY:** United States Parole Commission, Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The United States Parole Commission is revising its regulation to reopen and advance a parole date to explicitly reference medical and compassionate reasons as bases for reopening.

**DATES:** This regulation is effective September 16, 2021. Comments due on or before October 18, 2021.

**ADDRESSES:** Submit your comments, identified by docket identification number USPC-2021-03 by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

2. *Mail:* Office of the General Counsel, U.S. Parole Commission, attention: USPC Rules Group, 90 K Street NE, Washington, DC 20530.

**FOR FURTHER INFORMATION CONTACT:** Helen H. Krapels, General Counsel, U.S. Parole Commission, 90 K Street NE, Third Floor, Washington, DC 20530, telephone (202) 346-7030. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

**SUPPLEMENTARY INFORMATION:** The Parole Commission's regulation at 28 CFR 2.15 provides that after the prisoner has served the minimum term, the Bureau of Prisons ("BOP") may petition the Commission to reopen the case under 28 CFR 2.28(a) to consider the case for parole prior to the date set by the Commission at the initial or review hearing. The regulation requires that the BOP's request show cause for earlier release and provides examples such as "an emergency, hardship, or the

existence of other extraordinary circumstances that would warrant consideration of early parole." These examples encompass a very broad set of circumstances that the Commission could consider, which would include illness and aging.

The Commission is not limited to only considering requests from the BOP, the regulation at 28 CFR 2.28(a), which is used for reopening a case for favorable information, can be used to consider a request from other sources, such as the prisoner or a family member. Revising the heading of the regulation will help to highlight its use to consider prisoners for compassionate release in addition to the "favorable information" that the Commission usually considers, such as program achievement in the institution. Revising the text of the regulation to include medical and other "extraordinary and compelling" information will broaden the circumstances that the Commission can consider for possible advancement of the release date.

Section 2.28(a) permits advancement of a presumptive parole date to an earlier presumptive parole date, advancement of a presumptive parole date to an earlier effective parole date, advancement of a continue to expiration decision to a presumptive or effective parole date, and advancement of a 15-year reconsideration hearing to a presumptive or effective parole date without conducting a hearing. The Commissioner reopening the decision does have the option of ordering a reconsideration hearing to consider this new information.

The Commission is promulgating this rule as an interim rule and is providing a 30-day period for public comment. The revised rule will take effect upon publication in the **Federal Register**.

#### Executive Orders 12866 and 13563

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulation Planning and Review," section 1(b), Principles of Regulation, and in accordance with Executive Order 13565, "Improving Regulation and Regulatory Review," section 1(b), General Principles of Regulation. The Commission has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulation Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

#### Executive Order 13132

This rule will not have substantial direct effects on the States, on the

relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a Federalism Assessment.

#### Regulatory Flexibility Act

This rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

#### Unfunded Mandates Reform Act of 1995

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

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

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

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

Administrative practice and procedure, Prisoners, Probation and parole.

#### The Interim Rule

Accordingly, the U. S. Parole Commission amends 28 CFR part 2 as follows:

#### 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. Revise § 2.28(a) to read as follows:

**§ 2.28 Reopening of cases.**

(a) *Favorable information or information supporting medical parole or compassionate release.* Upon the receipt of new information of substantial significance favorable to the prisoner, including medical information, or other extraordinary and compelling information, a Commissioner may reopen a case (including an original jurisdiction case), and order a special reconsideration hearing on the next available docket, or modify the previous decision. The advancement of a presumptive release date or a decision to continue to a 15-year reconsideration hearing requires the concurrence of two Commissioners.

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Patricia K. Cushwa,  
Chairman (Acting), U.S. Parole Commission.  
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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket Number USCG-2020-0117]

RIN 1625-AA00

**Safety Zones; Hampton Roads Bridge-Tunnel Expansion Project, Hampton/Norfolk, VA**

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing safety zones for certain waters of the Hampton Flats, Willoughby Bay, a defined area between Phoebus Channel and the North Trestle Bridge, and 3 zones around the North Trestle Bridge including the North Island, the South Trestle Bridge including the South Island, and the north and south side of the Willoughby Bay Bridge. This action is necessary to provide for the safety of life on these navigable waters in support of the Hampton Roads Bridge-Tunnel Expansion Project that will take place from 2021 through 2025. This rule prohibits persons and vessels from being in the safety zones unless authorized by the Captain of the Port Sector Virginia or a designated representative or under conditions specified in this rule.

**DATES:** This rule is effective without actual notice September 16, 2021,

though December 25, 2025. For the purposes of enforcement, actual notice will be used from September 10, 2021, until September 16, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0117 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LCDR Ashley Holm, Waterways Management Division Chief, Sector Virginia, U.S. Coast Guard; telephone 757-668-5580, email [Ashley.E.Holm@uscg.mil](mailto:Ashley.E.Holm@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR Code of Federal Regulations  
COTP U.S. Coast Guard Captain of the Port  
DHS Department of Homeland Security  
FR Federal Register  
HRBT Hampton Roads Bridge-Tunnel  
HRCP Hampton Roads Connector Partners  
NPRM Notice of proposed rulemaking  
NSRA Navigation Safety Risk Assessment  
§ Section  
U.S.C. United States Code  
USCG United States Coast Guard  
USACE United States Army Corps of Engineers

**II. Background Information and Regulatory History**

In April 2019, the Virginia Department of Transportation (VDOT) awarded the design and construction of the Hampton Roads Bridge-Tunnel (HRBT) Expansion Project to the Hampton Roads Connector Partners (HRCP), as the Design-Build contractor. The HRBT Expansion Project is a major road transport infrastructure project that will create an 8-lane facility with 6 consistent use lanes along 9.9 miles of Interstate 64 (I-64), from Settler’s Landing Interchange in Hampton, Virginia, to the Interstate 564 (I-564) interchange in Norfolk, Virginia. To better understand the waterways impact from the project, the USCG and U.S. Army Corps of Engineers (USACE) recommended the submission of a formal Navigation Safety Risk Assessment (NSRA) and Tunnel Construction Plan (TCP) prior to any permit or approval action by the U.S. Army Corps of Engineers.<sup>1</sup> The NSRA identified three key objectives for consideration. The first included

<sup>1</sup> See Memorandum of Agreement between the United States Army Corps of Engineers and the United States Coast Guard, dated June 2, 2000 (available at: <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll11/id/2518>).

potential impacts to current and forecasted vessel traffic directly related to the bridge and tunnel construction including all on-water operations and staging areas. The second aimed to identify the best/least disruptive times to schedule movement of construction-related vessels. Finally, it identified the measures necessary for implementation in order to minimize potential hazards to navigation. On-water construction activities are expected to last approximately 5 years (2021–2025). In support of construction efforts, multiple surface craft will be necessary on-site, transiting to and from, as well as pre-staged, to ensure continued operations are maintained. The increase in waterborne traffic in the vicinity of construction areas and staging areas will introduce hazards to waterways users prior to and throughout the duration of the construction project. Specific hazards during the construction project include the proximity of dozens of construction-related vessels in the bridge area and fleeting areas, including material barges and construction equipment barges. In addition, construction of navigable spans by this equipment, as well as construction lighting and loud construction activity noises will make normal passage through the bridge areas unsafe except in areas specifically established as safe transit corridors by the project contractors, HRCP. The Sector Virginia Captain of the Port (COTP) has determined that these potential hazards associated with the HRBT Expansion Project will be a safety concern for anyone transiting in the vicinity of on-water construction activities related to the project. To discuss these safety concerns, representatives of the HRCP along with the COTP’s staff conducted a series of outreach meetings. These meetings covered the HRBT Expansion Project and the notional safety zones that would mitigate the hazards discussed above. Due to the COVID-19 pandemic, those outreach meetings were conducted virtually on May 5th, 6th, and 7th, 2020. They were announced beforehand by a marine safety information bulletin<sup>2</sup> issued by the COTP, which is distributed to over 1,000 subscribed maritime stakeholders by email, along with direct email notification to community organizations in the coastal areas of the cities of Norfolk and Hampton, Virginia, which are the two cities in the immediate area of the construction activity. Twenty-six

<sup>2</sup> See USCG Sector Virginia Marine Safety Information Bulletin #20-113 (available at <https://content.govdelivery.com/accounts/USDHSCG/bulletins/289cb80>).