



DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC-2018-02]

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: Final rule.

SUMMARY: The United States Parole Commission is amending its rule allowing hearings by videoconference to include parole termination hearings.

DATES: This regulation is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

SUPPLEMENTARY INFORMATION: Since early 2004, the United States Parole Commission has been conducting some parole proceedings by videoconference to cut down on delays in scheduling in-person hearings and conserve Commission resources. The Commission originally initiated the use of videoconference in parole release hearings as a pilot project in 2004 and then extended the use of videoconferencing to institutional revocation hearings in 2005, followed by probable cause hearings in 2007. Using videoconference for termination hearings is a natural progression in the use of this technology.

Conducted pursuant to 28 CFR 2.43(c) and 2.95(c), the primary objective of a termination hearing is to obtain information which assists the Commission in determining whether or not early termination of parole is appropriate. The subject is usually represented by an attorney, and the community supervision officer or the U.S. Probation officer provides a recommendation based on the subject's compliance with parole requirements. Given the limited purpose of the hearing, other witnesses are usually not present, and the hearing does not typically last long. The amendment will save travel time and expense, allowing the Commission to conduct termination hearings in a more expeditious manner.

In the interim rule with request for comments (83 FR 58500 (Nov. 20, 2018)), we encouraged the public to comment on our changes. We received written comments from the Public Defender Service for the District of Columbia (PDS) and one anonymous comment. We discuss those public comments below.

Public Comment from the Public Defender Service

PDS objects to amending § 2.25 to include parole termination hearings, and renews its prior objections to the use of videoconference for probable cause hearings. PDS's comments, both past and present, characterize videoconference as a barrier to due process which unjustifiably denies a subject the opportunity to appear in person before the Commission. The Commission does not agree with this proposition. Termination hearings are limited in scope. Unlike revocation hearings, when all facets of the case are explored, witnesses testify, and the status of the offender is finally determined, the purpose of a termination hearing is to obtain information regarding the parolee's conduct in the community. The liberty interest implicated in a revocation hearing is not implicated in a termination hearing. At a termination hearing, the subject does not face the possibility of a loss of freedom as a result of termination being denied. *See Henderson v. Sims*, 223 F.3d 267, 274 (4th Cir. 2000); *Little v. Thomas*, 719 F.2d 50, 52 (3d Cir. 1982). Further, there is no constitutional or statutory entitlement to early termination of parole supervision. *See Myers v. U.S. Parole Comm'n*, 813 F.2d 957, 960 (9th Cir. 1987). Thus, the fact that the parolee's appearance for the termination hearing will be by videoconference does not violate due process.

PDS recommends that termination hearings only be conducted by videoconference in circumstances where either distance or physical hardship renders the subject unable to appear in person. While the Commission agrees that videoconferencing may be appropriate in the circumstances described by PDS, the Commission does not agree that the rule should be so narrow. It is within the Commission's discretion to determine when conducting a termination hearing by videoconference is appropriate.

PDS also raises concerns about technological issues, stating that experiencing technical difficulties during a hearing would completely undermine the value of having a hearing at all. Over the years, the Commission’s experience has been that the quality of the transmission has improved and the personal interactions among the hearing participants does not appreciably decline with the use of videoconferencing.

Anonymous Comment

The Commission also received an anonymous comment in support the use of videoconferencing for parole termination hearings. The comment, while acknowledging the issue of losing face-to-face contact, described the amendment as a logical practice that will increase the efficiency of the termination process.

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), Regulatory 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

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

Unfunded Mandates Reform Act of 1995

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

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

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

within the meaning of the term “rule” as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Final Rule

Accordingly, the U. S. Parole Commission adopts the interim rule amending 28 CFR part 2, which was published at 83 FR 58500 on November 20, 2018, as final without change.

Patricia K. Cushwa
Chairman (Acting), U.S. Parole Commission

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