

accordance with paragraph (a) of this section may be imposed for up to 120 days. Special restrictions imposed in accordance with paragraph (a) of this section may be extended thereafter by the Director, Bureau of Prisons, in 120-day increments upon receipt by the Director of additional written notification from the Attorney General, or, at the Attorney General's direction, from the head of a federal law enforcement agency, or the head of a member agency of the United States intelligence community, that the circumstances identified in the original notification continue to exist. The authority of the Director under this paragraph may not be delegated below the level of Acting Director.

(d) The affected inmate may seek review of any special restrictions imposed in accordance with paragraph (a) of this section through the Administrative Remedy Program, 28 CFR part 542.

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 550

[BOP-1052-I]

RIN 1120-AA36

Drug Abuse Treatment Programs: Early Release Consideration

AGENCY: Bureau of Prisons, Justice.

ACTION: Further issuance of interim rule with request for comments.

SUMMARY: In this document, the Bureau of Prisons is further amending its interim rule on Drug Abuse Treatment Programs which allows for consideration of early release of eligible inmates who complete a residential drug abuse treatment program, including a transitional treatment phase. Based upon initial public comment, the Bureau is adding to the interim regulations a requirement that an inmate seeking consideration for early release must complete transitional drug treatment services in a community-based program (i.e., in a Community Corrections Center or on home confinement). This further amendment is necessary to solicit additional comments from the public on this new requirement.

DATES: Effective May 17, 1996; comments are due July 16, 1996.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320

First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is further amending its regulations on Drug Abuse Treatment Programs (28 CFR part 550, subpart F). An interim rule on this subject which implemented Section 32001 of the Violent Crime Control and Law Enforcement Act of 1994 (codified at 18 U.S.C. 3621(e)) was published in the Federal Register on May 25, 1995 (60 FR 27692).

Public comment received on the interim rule, published May 25, 1995, included comment from the American Psychiatric Association (Association). The Association stated that it believed the program was a good idea, but expressed concern about the adequacy of transitional drug treatment services offered at an institution. Bureau regulations in 28 CFR 550.59(a) require minimum participation of one hour per month for such transitional services. The Association stated that this minimum was probably not of sufficient intensity to facilitate a good outcome and recommended enhanced psychiatric consultation and the availability of a broad array of services.

The Bureau recognizes the importance of transitional services in drug treatment programming and agrees with the Association that an enhanced transitional program, such as is available in a community-based program, increases the opportunity for a good outcome. The Bureau recognizes that implementation of this requirement may preclude some inmates from participation in a community-based program. However, while the Bureau may be able to increase the availability of certain transitional services at an institution, it cannot duplicate within the institution the environment of community-based transitional services (i.e., the evaluation of the inmate in conditions where the inmate is reintegrating into the community). The Bureau, in exercising its discretion in determining the successful completion of a residential drug abuse treatment program under 18 U.S.C. 3621(e), is therefore requiring that consideration for early release be contingent upon the inmate's completion of transitional services in a community-based program (i.e., in a Community Corrections Center or on home confinement).

Section 550.58 has accordingly been amended to reflect this addition. Inmates who will not be able to

complete the community-based portion of treatment will be those whose placement in such programs is precluded due to custodial considerations. Such considerations would include the presence of a detainer or the possibility that the inmate's placement in a community-based program would pose a danger to the public. The decision to place an inmate in a community-based program is made by the Warden based on his or her professional discretion.

As of August 17, 1995, approximately 160 inmates who had already qualified for early release consideration under the provisions of the May 25, 1995 interim rule (meaning they had completed the residential program or had been placed in the residential program with an adjusted release date to follow) would not be able to complete the community-based portion of the program due to the exclusion from community-based programs as a result of a detainer. The Bureau has determined that this group of inmates will not be adversely affected by this new interim rule. They will be considered under the rules in effect at the time they entered the residential program. However, any inmate in this group who loses his or her eligibility for early release (due to expulsion from the program or for other reasons as provided by the regulations) must reenter the program and will then be governed by the eligibility requirements of this new interim rule. Any inmate with a detainer, however, who has not entered the residential drug treatment program by August 17, 1995 will be subject to the restrictions of the new interim rule.

This exception from application of this new interim rule for inmates with detainers who had already entered the residential treatment program will not be extended to any other group of inmates. Inmates who are excluded for any other reasons from a community-based program, such as posing a danger to the public, are no longer eligible for an early release. The adjusted projected release dates for these inmates will revert to their prior status. This action is similar to the manner in which projected good time may be recomputed before it is vested.

Additional changes to the introductory text have been made for the sake of clarity. For example, the introductory text more clearly emphasizes that early release consideration for inmates is applicable to inmates sentenced to a term of imprisonment pursuant to the provisions of 18 U.S.C. Chapter 227,

Subchapter D. Inmates sentenced under "old law" provisions are not eligible, regardless of their eligibility for parole. The restriction for inmates who have a prior federal and/or state conviction for homicide, forcible rape, robbery, or aggravated assault has been reworded to remove the phrase "federal and/or state". This is being done in order to include foreign convictions.

The Bureau's response to other comments to the May 25, 1995 interim rule will be contained in a future Federal Register document.

Interested persons may participate in this new interim rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received on the interim rule provisions during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 550
Prisoners.
Kathleen M. Hawk,
Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 550 in subchapter C of 28 CFR, chapter V is amended as set forth below.

**SUBCHAPTER C—INSTITUTIONAL
MANAGEMENT**

PART 550—DRUG PROGRAMS

1. The authority citation for 28 CFR part 550 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4251-4255, 5006-5024 (repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. In § 550.58, the introductory text and paragraphs (a)(1)(iii) and (a)(2)(i) are revised to read as follows:

§ 550.58 Consideration for early release.

Except as provided in this paragraph, an inmate who was sentenced to a term of imprisonment pursuant to the provisions of 18 U.S.C. Chapter 227, Subchapter D, and who completes a residential drug abuse treatment program including subsequent transitional services in a community-based program (i.e., in a Community Corrections Center or on home

confinement) during his or her current commitment may be eligible, in accordance with paragraph (a) of this section, for early release by a period not to exceed 12 months. The following categories of inmates are not eligible: INS detainees, pretrial inmates, contractual boarders (for example, D.C., State, or military inmates), inmates whose current offense is determined to be a crime of violence as defined in 18 U.S.C. 924(c)(3), inmates who have a prior conviction for homicide, forcible rape, robbery, or aggravated assault, and inmates who are not eligible for participation in a community-based program as determined by the Warden on the basis of his or her professional discretion.

(a) *Eligibility.* (1) * * *

(iii) The inmate completes a refresher treatment program and all applicable transitional services programs in a community-based program (i.e., in a Community Corrections Center or on home confinement); and

(2) * * *

(i) The inmate completes all applicable transitional services programs in a community-based program (i.e., in a Community Corrections Center or on home confinement); and