

## DEPARTMENT OF JUSTICE

## Bureau of Prisons

## 28 CFR Parts 524 and 550

[BOP-1070-I]

RIN 1120-AA66

**Drug Abuse Treatment and Intensive Confinement Center Programs: Early Release Consideration**

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule with request for comments.

**SUMMARY:** In this document, the Bureau of Prisons is revising its rule on Drug Abuse Treatment Programs which allows for consideration of early release of eligible inmates who complete a residential drug abuse treatment program. The Bureau of Prisons is revising the rules with respect to the criteria for receiving a sentence reduction and also with respect to the authority of the Community Corrections Regional Administrator to adjust the presumptive release date for an inmate in a community-based program. The amendment is intended to provide for adequate drug treatment transitional programs and to demonstrate more clearly the discretion granted to the Director of the Bureau of Prisons under 18 U.S.C. 3621(e) by listing the criteria that would preclude an inmate from receiving a sentence reduction as determined by the Director of the Bureau of Prisons. Criteria for possible sentence reduction under the intensive confinement center program are being modified in a similar manner as a conforming amendment.

**DATES:** Effective October 9, 1997. Comments are due December 15, 1997.

**ADDRESSES:** Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, D.C. 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) and was amended on May 17, 1996 (61 FR 25122). Comments received on these previous interim rules will be

addressed in a separate document when the rules are finalized.

The interim rule published on May 25, 1995, attempted to define the term "crime of violence" pursuant to 18 U.S.C. 924(c)(3). Because of differences in application of case law among the various Federal courts, a few crimes would not be clearly covered by the Bureau's definition. This interim rule avoids this complication by using the discretion allotted to the Director of the Bureau of Prisons in granting a sentence reduction to exclude inmates whose current offense is a felony (a) that has as an element, the actual, attempted, or threatened use of physical force against the person or property of another, or (b) that involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device), or (c) that by its nature or conduct, presents a serious potential risk of physical force against the person or property of another, or (d) that by its nature or conduct involves sexual abuse offenses committed upon children.

As a conforming amendment, the criteria for possible sentence reduction under the intensive confinement center program (28 CFR 524, subpart D) pertaining to crimes of violence (§ 524.31(a)(3)) are being modified in a similar manner.

Under § 550.58(c)(3), the Community Corrections Regional Administrator had the authority to retard or disallow any portion of the maximum 12 month reduction for an inmate in a community-based program based upon a disciplinary finding or based on program needs (for example, the inmate has not established an adequate release plan). This paragraph is being revised to specify that if an inmate cannot fulfill his or her community-based treatment obligations by the presumptive release date, the Community Corrections Regional Administrator may adjust the presumptive release date by the minimum amount of time necessary to fulfill treatment obligations. The Community Corrections Regional Administrator, as the Bureau official responsible for monitoring the quality of the treatment programs available in community-based programs, makes determinations as to the inmate's completion of applicable transitional services. Such determinations are responsive to the treatment needs of the inmate and are not intended to be punitive. Disciplinary findings which can result in an inmate's being precluded from receiving a sentence reduction (see redesignated § 550.58(a)(2)(iv) and (3)(ii)) remain as a

determination of the Discipline Hearing Officer.

The Bureau is publishing this change as an interim rule in order to solicit public comment while continuing to provide consideration for early release to qualified inmates. Interested persons may participate in this interim rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Federal Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, D.C. 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. 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 (5 U.S.C. § 601, et seq.), does not have a significant impact on a substantial number of small entities within the meaning of the Act. Because this rule pertains to correctional management of persons committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

**List of Subjects***28 CFR Part 524*

Prisoners.

*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 524 in subchapter B of 28 CFR, chapter V, and part 550 in subchapter C of 28 CFR, chapter V are amended as set forth below.

**SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER****PART 524—CLASSIFICATION OF INMATES**

1. The authority citation for 28 CFR part 524 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3521-3528, 3621, 3622, 3624, 4001, 4042, 4046,

4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510; Title V, Pub. L. 91-452, 84 Stat. 933 (18 U.S.C. Chapter 223); 28 CFR 0.95-0.99.

2. In § 524.31, paragraph (a)(3) is revised to read as follows:

**§ 524.31 Eligibility and placement.**

(a) \* \* \*

(3) Is not serving a term of imprisonment for a crime of violence or a felony offense:

(i) That has as an element, the actual, attempted, or threatened use of physical force against the person or property of another, or

(ii) That involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device), or

(iii) That by its nature or conduct, presents a serious potential risk of physical force against the person or property of another, or

(iv) That by its nature or conduct involves sexual abuse offenses committed upon children.

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**SUBCHAPTER C—INSTITUTIONAL MANAGEMENT**

**PART 550—DRUG PROGRAMS**

3. 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.

4. In § 550.58, the introductory text, paragraph (a) heading, and paragraph (c)(3) are revised, paragraphs (a)(1) and (a)(2) are redesignated as paragraphs (a)(2) and (a)(3), and a new paragraph (a)(1) is added to read as follows:

**§ 550.58 Consideration for early release.**

An inmate who was sentenced to a term of imprisonment pursuant to the provisions of 18 U.S.C. Chapter 227, Subchapter D for a nonviolent offense, and who is determined to have a substance abuse problem, and successfully completes a residential drug abuse treatment program 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.

(a) *Additional early release criteria.*

(1) As an exercise of the discretion vested in the Director of the Federal Bureau of Prisons, the following categories of inmates are not eligible for early release:

(i) INS detainees;

(ii) Pretrial inmates;

(iii) Contractual boarders (for example, D.C., State, or military inmates);

(iv) Inmates who have a prior felony or misdemeanor conviction for homicide, forcible rape, robbery, or

aggravated assault, or child sexual abuse offenses;

(v) 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;

(vi) Inmates whose current offense is a felony:

(A) That has as an element, the actual, attempted, or threatened use of physical force against the person or property of another, or

(B) That involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device), or

(C) That by its nature or conduct, presents a serious potential risk of physical force against the person or property of another, or

(D) That by its nature or conduct involves sexual abuse offenses committed upon children.

\* \* \* \* \*

(c) \* \* \*

(3) If the inmate cannot fulfill his or her community-based treatment obligations by the presumptive release date, the Community Corrections Regional Administrator may adjust the presumptive release date by the minimum amount of time necessary to allow for fulfillment of the treatment obligations.

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