

programming opportunities will continue to exist.

Despite anecdotal successes, research has found no significant difference in recidivism rates between inmates who complete boot camp programs and similar offenders who serve their sentences in traditional institutions. There is a national trend among correctional agencies to phase out boot camp programs, as a result of many years of experience. (See National Institute of Justice Research for Practice Report, "Correctional Boot Camps: Lessons From a Decade of Research," June 2003).

The Bureau has determined that completion of boot camp programs does not tend to result in lower rates of recidivism as compared to offenders with similar background characteristics who did not participate in the program. (See National Institute of Justice Report, "Multisite Evaluation of Shock Incarceration," September 1994).

Moreover, the costs associated with maintaining the federal boot camp programs exceed the costs of operating ordinary minimum security camps, as a result of (1) the staff resources necessary to maintain the intensive core programming that make up the "shock incarceration" or "intensive confinement" experience, and (2) the high costs of housing offenders for extended periods of time in Community Corrections Centers, where the per capita costs are higher than those of housing offenders in minimum security camps.

While there are some cost savings due to the early release of offenders who successfully complete the program, these savings are minimal compared to the additional costs of operating the program, which create a net increased cost to the agency of more than \$1 million per year.

The lack of significant beneficial results has led the Bureau to the conclusion that it can no longer justify the expenditure of public funds to operate the ICC program.

It is important to note that the phase out of the ICC does not represent a change in the Bureau's mission; the Bureau remains fully committed to operating safe and secure institutions and to providing opportunities for inmates to gain the skills and the training necessary for a successful, crime-free, return to the community.

The Bureau has renewed its emphasis on allocating its resources to support programs that are proven effective. The ICC program has some attractive features, but it does not reduce recidivism. The Bureau operates several programs that are proven to significantly

reduce recidivism. Research conducted over the past 20 years has demonstrated convincingly that inmates who participate in the Bureau's major inmate programs are substantially less likely to recidivate as compared to similar inmates who do not participate. These programs include Residential Substance Abuse Treatment, Vocational Training and Apprenticeship, Education and Federal Prison Industries (operated without appropriated funds). There are also other inmate programs, such as skills building and values development, that have been found, preliminarily, to affect inmate misconduct which is a valid predictor of recidivism. These programs are being carefully reviewed to determine their impact on recidivism.

Therefore, for the aforementioned reasons, we propose to remove our rules in Subpart D of 28 CFR part 524.

#### **Executive Order 12866**

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation. The Director, Bureau of Prisons has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has been reviewed by the Office of Management and Budget.

#### **Executive Order 13132**

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

#### **Regulatory Flexibility Act**

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

#### **Unfunded Mandates Reform Act of 1995**

This rule will not cause State, local and 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. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. 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 competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

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

Prisoners.

**Harley G. Lappin,**

*Director, Bureau of Prisons.*

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we propose to amend 28 CFR part 524 as set forth below.

#### **SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER**

#### **PART 524—CLASSIFICATION OF INMATES**

1. The authority for part 524 continues 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.

2. Subpart D—Intensive Confinement Center Program is removed and reserved.

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#### **DEPARTMENT OF JUSTICE**

#### **Bureau of Prisons**

#### **28 CFR Part 545**

[BOP Docket No. BOP 1132–P]

RIN 1120–AB33

#### **Inmate Work and Performance Pay Program: Reduction in Pay for Drug- and Alcohol-Related Disciplinary Offenses**

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Bureau of Prisons (Bureau) proposes to amend regulations on inmate work and performance pay to require that inmates receiving performance pay who are found through the disciplinary process (found in 28 CFR part 541) to have committed a level 100 or 200 series drug-or alcohol-related prohibited act will automatically have their performance pay reduced to maintenance pay level and will be removed from any assigned work detail outside the secure perimeter of the institution.

**DATES:** Comments are due by January 2, 2007.

**ADDRESSES:** Our e-mail address is [BOPRULES@BOP.GOV](mailto:BOPRULES@BOP.GOV). Comments should be submitted to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this rule at [www.regulations.gov](http://www.regulations.gov). You may also comment on this regulation via the Internet at [BOPRULES@BOP.GOV](mailto:BOPRULES@BOP.GOV) or by using the [www.regulations.gov](http://www.regulations.gov) comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

**SUPPLEMENTARY INFORMATION:** In this document, the Bureau amends regulations on inmate work and performance pay to require that inmates receiving performance pay who are found through the disciplinary process (found in 28 CFR part 541) to have committed a level 100 or 200 series drug-or alcohol-related prohibited act will automatically have their performance pay reduced to maintenance pay level and will be removed from any assigned work detail outside the secure perimeter of the institution.

The presence of even minute quantities of drug or alcohol contraband poses serious problems to the security, discipline, and good order of a correctional institution. By requiring a reduction in performance pay as a result of a level 100 or 200 series drug-or alcohol-related prohibited act, this rule provides a disincentive that is commensurate with the seriousness of those types of prohibited acts.

We currently have similar rules removing inmates from certain programs as a collateral consequence of disciplinary action. For instance, 28 CFR 345.52(g), pertaining to inmates earning Federal Prison Industries

premium pay, provides for *automatic* removal from premium pay status if an inmate is found by a DHO to have committed any level 100 or 200 series offense. Likewise, with regard to the Bureau's drug abuse treatment program, 28 CFR 550.56(d) states that the drug abuse treatment coordinator may remove from the program an inmate found to have committed any level 100 or 200 offense.

Also, under 28 CFR 544.73 (b)(1)(ii), if an inmate commits a prohibited act during enrollment in the Bureau's Literacy Program, that inmate is considered not to be making "satisfactory progress" towards obtaining a General Educational Development (GED) credential, which could result in loss of good conduct time credit under 28 CFR 523.20.

Like the aforementioned rules, this rule provides an additional disincentive for inmates in an effort to target and eliminate the use and/or introduction of drugs or alcohol into Bureau institutions.

#### **Executive Order 12866**

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was reviewed by OMB.

The Bureau has assessed the costs and benefits of this rule as required by Executive Order 12866 Section 1(b)(6) and has made a reasoned determination that the benefits of this rule justify its costs. This rule will have the benefit of strengthening ongoing efforts to target and eliminate the use and/or introduction of drugs or alcohol into Bureau institutions. There will be no new costs associated with this rulemaking.

#### **Executive Order 13132**

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

#### **Regulatory Flexibility Act**

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small

entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

#### **Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. 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 competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### **List of Subjects in 28 CFR Part 545**

Prisoners.

**Harley G. Lappin,**

*Director, Bureau of Prisons.*

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we propose to amend 28 CFR part 545 as set forth below.

#### **Subchapter C—Institutional Management**

#### **PART 545—WORK AND COMPENSATION**

1. Revise the authority citation for 28 CFR part 545 to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3572, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. In § 545.25, add paragraph (e) to read as follows:

#### **§ 545.25 Eligibility for performance pay.**

\* \* \* \* \*

(e) Inmates receiving performance pay who are found through the disciplinary

process (part 541 of this subchapter) to have committed a level 100 or 200 series drug-or alcohol-related prohibited act will automatically have their performance pay reduced to maintenance pay level and will be removed from any assigned work detail outside the secure perimeter of the institution.

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## DEPARTMENT OF JUSTICE

### Bureau of Prisons

#### 28 CFR Part 550

[Docket No. BOP-1139-P]

RIN 1120-AB41

#### Drug Abuse Treatment Program: Eligibility of D.C. Code Offenders for Early Release Consideration

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Bureau of Prisons (Bureau) proposes to extend early release consideration to D.C. Code offenders pursuant to D.C. Code § 24-403.01.

**DATES:** Comments due by January 2, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105, e-mail [BOPRULES@BOP.GOV](mailto:BOPRULES@BOP.GOV).

**SUPPLEMENTARY INFORMATION:** On July 1, 2004 (69 FR 39887), we published a proposed rule revising all the regulations on the Drug Abuse Treatment Program in 28 CFR part 550, subpart F (2004 proposed rule). We now propose to revise 28 CFR 550.55(a) of the 2004 proposed rule to extend early release consideration to D.C. Code offenders pursuant to D.C. Code § 24-403.01.

The 2004 proposed rule, § 550.55(a), stated that inmates may be eligible for early release by a period not to exceed 12 months if they were sentenced to a term of imprisonment under 18 U.S.C. Chapter 227, Subchapter D for a nonviolent offense and successfully complete a residential drug abuse treatment program, as described in § 550.53, during their current commitment.

We now propose to modify § 550.55(a) from the 2004 proposed rule to state that inmates may be eligible for early release by a period not to exceed 12 months if they were sentenced to a term of

imprisonment under *either* 18 U.S.C. Chapter 227, Subchapter D for a nonviolent offense; or D.C. Code § 24-403.01 for a nonviolent offense, meaning an offense other than those in D.C. Code § 23-1331(4). There has been no change to the provision in the 2004 rule stating that in addition to the above criteria, inmates must successfully complete a residential drug abuse treatment program, as described in § 550.53, during their current commitment.

#### Statutory Authority

The Residential Drug Abuse Program (RDAP) is available to all eligible inmates pursuant to Title 18 U.S.C. 3621(b) and (e). Section 3621(b) generally obligates the Bureau to provide “substance abuse treatment for each prisoner the Bureau determines has a treatable condition of addiction or abuse.” Section 3621(e)(1) states that the Bureau “shall, subject to the availability of appropriations, provide residential substance abuse treatment \* \* \* for all eligible prisoners.”

Further, under § 3621(e)(2)(B), the period a prisoner convicted of a nonviolent offense remains in custody after successfully completing a treatment program may be reduced by the Bureau of Prisons, but such reduction may not be more than one year from the term the prisoner must otherwise serve.

#### Early Release Regulation

In 1995, the Bureau published a regulation to implement the early release incentive which defined the term “crime of violence” and provided a framework for Bureau employees to make early release determinations. See 60 FR 27692 (May 25, 1995) (previously codified at 28 CFR 550.58). Instructive policy was issued in Program Statement 5162.02, Definition of Term, “Crimes of Violence.” In the regulation and policy, the Bureau defined the term “crime of violence” pursuant to 18 U.S.C. 924(c)(3). Subsequently, there was a split among Circuit Courts regarding the validity of this approach. The split prompted the Bureau to revise the regulation in 1997 to explicitly rely upon the discretion allotted to the Director of the Bureau to grant a sentence reduction. See 62 FR 53690 (Oct. 15, 1997) (codified at 28 CFR 550.58(a), currently in 550.55). The revised regulation was designed to achieve consistent administration of the early release incentive and to clearly demonstrate that the Bureau now relied upon the discretion of the Director to determine eligibility for certain program benefits.

The revised regulation and policy resulted in another split among the Circuit Courts which was resolved by the Supreme Court’s decision in *Lopez v. Davis*, 531 U.S. 230 (2001). In *Lopez*, the Supreme Court held that the revised regulation found at 28 CFR 550.58 (currently in § 550.55) is a permissible exercise of the Bureau’s discretion under § 3621(e)(2)(B) for assessing program benefit eligibility.

#### D.C. Code Offenders—Eligibility for Early Release

The Bureau initially codified its rules regarding its Drug Abuse Treatment Programs on January 7, 1994. Subsequently, on May 25, 1995, the Bureau amended its rules on Drug Abuse Treatment Programs to allow for the consideration of early release of eligible inmates who successfully completed the RDAP. Excluded from this category of eligible inmates were inmates in Bureau custody not serving a sentence for a federal offense (e.g., D.C. Code offenders, contractual borders, INS detainees, and pretrial inmates).

However, D.C. Code § 24-403.01(d-1), amended on May 24, 2005, states that D.C. Code offenders sentenced under D.C. Code § 24-403.01 for a nonviolent offense are eligible for early release consideration in accordance with 18 U.S.C. 3621(e)(2). Accordingly, the Director now extends early release eligibility pursuant to 18 U.S.C. 3621(e)(2) to D.C. Code offenders for successful completion of the RDAP.

Eligibility for early release for D.C. Code offenders participating in the Residential Drug Abuse Program (RDAP) requires a determination that the inmate has not committed a crime of violence as defined by D.C. Code § 23-1331(4).

The National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997, (Pub. L. 105-33; 111 Stat. 740) (“Revitalization Act”) dictates that D.C. Code felony offenders “shall be subject to any law or regulation applicable to persons committed for violations of laws of the United States consistent with the sentence imposed, and the Bureau of Prisons shall be responsible for the custody, care, subsistence, education, treatment and training of such persons.” D.C. Code § 24-101(b). Therefore, as with federal offenders, it is also within the Director’s discretion, as provided by 18 U.S.C. 3621(e), to determine D.C. Code offenders’ eligibility for early release according to the same criteria used for federal offenders. This criteria, which appears in current § 550.58, gives the following