



[4410-050P]

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 550

[BOP-1168-F]

RIN 1120-AB68

Drug Abuse Treatment Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) revises the Residential Drug Abuse Treatment Program (RDAP) regulations to allow greater inmate participation in the program and positively impact recidivism rates.

DATES: This rule is effective on [Insert date 30 days after date of publication in Federal Register].

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 353-8248.

SUPPLEMENTARY INFORMATION:

In this document, the Bureau revises the Residential Drug Abuse Treatment Program (RDAP) regulations to allow greater inmate participation in the program and positively impact recidivism rates. Specifically, the Bureau (1) removes the regulatory

requirement for RDAP written testing because it is more appropriate to assess an inmate's progress through clinical evaluation of behavior change (the written test is no longer used in practice); (2) removes existing regulatory provisions which automatically expel inmates who have committed certain acts (e.g., abuse of drugs or alcohol, violence, attempted escape); (3) limits the time frame for review of prior offenses for early release eligibility purposes to ten years before the date of federal imprisonment; and (4) lessens restrictions relating to early release eligibility.

The proposed rule was published on July 22, 2015, (80 FR 43367). The comment period ended on September 21, 2015. In the proposed rule, we described the following changes:

Section 550.50 Purpose and scope. The regulation previously stated that Bureau facilities have drug abuse treatment specialists who are supervised by a Coordinator and that facilities with residential drug abuse treatment programs (RDAP) should have additional specialists for treatment in the RDAP unit. This is inaccurate. We proposed to change the regulation to explain that the Bureau's drug abuse treatment programs, which include drug abuse education, RDAP and non-residential drug abuse treatment services, are provided by the Psychology Services Department.

We also proposed to make a minor corresponding change in §

550.53(a)(1), which also refers inaccurately to the Drug Abuse Program Coordinator, when instead the course of activities referenced in that regulation is provided by the Psychology Services Department.

Section 550.53 Residential Drug Abuse Treatment Program

(RDAP) (f) (2). The Bureau proposed to remove subparagraph (f)(2) of § 550.53, which required inmates to pass RDAP testing procedures and referred to an RDAP exam. The RDAP program no longer includes written testing as a requirement for completion of the program. Instead, RDAP uses clinical observation and clinical evaluation of inmate behavior change to assess readiness for completion. Therefore, the current language is inaccurate and imposes a requirement upon inmates that no longer exists.

In 2010, the Bureau converted the Residential Drug Abuse Treatment Programs to the Modified Therapeutic Community Model of treatment (MTC). This evidenced-based model is designed to assess progress through treatment as determined by the participants' completion of treatment goals and activities on their individualized treatment plan, and demonstrated behavior change. Each participant jointly works with their treatment specialist to create the content of their treatment plan. Every three months, or more often if necessary, each participant meets with their clinical team (four or more treatment staff) to review their progress in treatment.

Progress in treatment is determined through assessing the accomplishment of their treatment goals and activities, along with demonstrated behavior change, such as improved personal and social conduct, no disciplinary incidents, etc. Unsatisfactory progress is evident when the participant does not accomplish their treatment goals and does not demonstrate mastery of skill development.

There are several studies about the effectiveness of the MTC model of treatment. The most seminal study pertaining to this topic is titled "Outcome Evaluation of A Prison Therapeutic Community for Substance Abuse Treatment."¹

This behavioral form of assessing progress is a much more powerful form of assessment than assessing the results of a written test. The written test assesses knowledge, but knowledge does not necessarily demonstrate whether the program has positively affected an individual's behavior or addictive lifestyle.

All of the treatment coordinators in the Bureau have a doctorate degree in psychology. They are well qualified to use their knowledge of treatment and the behavior of individuals suffering from substance

¹ *Wexler, H., Falkin, G., Lipton, D., (1990). Outcome Evaluation of A Prison Therapeutic Community for Substance Abuse Treatment. Criminal Justice and Behavior, vol.17 No.1, March 1990 71-92, 1990 American Association for Correctional Psychology.*

abuse to objectively determine if a participant is ready to complete the program. There are three decades of evaluation research that support the efficacy of the therapeutic community model of treatment. The most comprehensive source of program description, theory, and summary of research associated with this model of treatment is found in the book entitled *The Therapeutic Community: Theory, Model, and Method*. New York: Springer Publishing Company, Inc. (De Leon, G. (2000)).

Section 550.53(g) Expulsion from RDAP. We proposed to remove § 550.53(g)(3), which required Discipline Hearing Officers (DHOs) to remove an inmate automatically from RDAP if there is a finding that the inmate has committed a prohibited act involving alcohol, drugs, violence, escape, or any 100-level series incident.

Removing the language gives the Bureau more latitude and clinical discretion when determining which inmates should be expelled from the program. Inmates will then only be expelled from RDAP according to criteria in § 550.53(g)(1) which allows inmates to be removed from the program by the Drug Abuse Program Coordinator because of disruptive behavior related to the program or unsatisfactory progress in treatment, and requires at least one formal warning before removal, unless there is documented lack of compliance and the inmate's continued presence would present an immediate problem for staff and other inmates.

Removing paragraph (g) (3) removes the automatic expulsion of inmates committing the listed prohibited acts and allows for greater possibility of continuance of the program for inmates with discipline problems.

Section 550.55(b) Inmates not eligible for early release. We proposed to modify language precluding inmates from consideration for early release if they have a prior felony or misdemeanor conviction for homicide, forcible rape, robbery, aggravated assault, arson, kidnaping, or an offense that involves sexual abuse of minors. The Bureau modifies this language to clarify that we intend to limit consideration of "prior felony or misdemeanor" convictions to those which were imposed *within the ten years prior to the date of sentencing* for the inmate's current commitment. By making this change, the Bureau clarifies that it will not preclude from early release eligibility those inmates whose prior felony or misdemeanor convictions were imposed longer than ten years before the date of sentencing for the inmate's current commitment.

Title 18 U.S.C. 3621(e) provides the Director of the Bureau of Prisons the discretion to grant an early release of up to one year upon the successful completion of a residential drug abuse treatment program. In exercising the Director's statutory discretion, we considered the crimes of homicide, rape, robbery, aggravated assault, arson, and kidnaping. In the FBI's Uniform Crime Reporting (UCR)

Program, violent crime is composed of four offenses: murder and nonnegligent manslaughter, rape, robbery, and aggravated assault. Violent crimes are defined in the UCR Program as those offenses which involve force or threat of force. The Director exercised his discretion, therefore, to include these categories of violent crimes and also expanded the list to include arson and kidnaping, as they also are crimes of an inherently violent nature and particular dangerousness to the public.

The Director exercises discretion to deny early release eligibility to inmates who have a prior felony or misdemeanor conviction for these offenses because commission of such offenses rationally reflects the view that such inmates displayed readiness to endanger the public. The UCR explained that "because of the variances in punishment for the same offenses in different state codes, no distinction between felony and misdemeanor crimes was possible."

The application of national standards to the numerous local, state, tribal, and federal prior convictions promotes uniformity, but creates unique issues since each separate entity will have its own criminal statutory schemes in which offenses may be categorized as either misdemeanors or felonies. Limiting the Bureau to an analysis of how an offense is categorized in local, state, tribal, or federal criminal codes, rather than to an analysis of the nature

of the prior offense, would effectively prevent the Director from exercising the discretion authorized by 18 U.S.C. 3621(e).

Furthermore, eliminating the analysis of prior violent misdemeanor convictions would allow inmates to receive the benefit of early release merely because of the manner in which the prior convictions were categorized.

Additionally, 28 CFR 550.55(b)(6) provides that inmates who have been convicted of an attempt, conspiracy, or other offense which involved certain underlying offenses are also precluded from early release eligibility. Many state statutes provide that "attempt" convictions are to be categorized as one degree lower than the underlying offense (e.g., Alaska Statutes sec. 11.31.100(d), N.C. Gen Stat. sec. 14-2.5, Tex. Penal Code sec. 15.01(d), and Wash. Rev. Code sec. 9A.28.020(3)). Therefore, eliminating the analysis of prior misdemeanor convictions may result in offenders convicted of attempting to commit a precluding offense being found eligible for early release, despite the provisions of 28 CFR 550.55(b)(6).

Further, based on a random sampling of inmates who participated in RDAP but were precluded from RDAP early release eligibility, the Bureau estimates that of the 856 inmates precluded in the year 2014 based only on convictions for prior offense, at least half that number would have been eligible for early release if the Bureau had not considered prior offenses greater than 10 years old. The Fiscal Year

2015 estimated annual marginal rate to incarcerate an inmate in the Bureau of Prisons is \$11,324 per inmate. Based on an estimate of 400 inmates released up to a year early if this proposed rule change is made, that could equate to a cost avoidance of over \$4.5 million per year.

Also, in § 550.55(b), the Director exercises his discretion to disallow particular categories of inmates from eligibility for early release, including, in (6), those who were convicted of an attempt, conspiracy, or other offense which involved an underlying offense listed in paragraph (b) (4) and/or (b) (5) of § 550.55. We narrowed the language of § 550.55(b) (6) to preclude only those inmates whose prior conviction involved direct knowledge of the underlying criminal activity and who either participated in or directed the underlying criminal activity. This change tailors the regulation to the congressional intent to exclude from early release consideration only those inmates who have been convicted of a violent offense. Furthermore, the changed language expands early release benefits to more inmates.

Beginning in 1991, in coordination with the National Institute on Drug Abuse, the Bureau conducted a 3-year outcome study of the RDAP. Federal Bureau of Prisons (2000). TRIAD Drug Treatment Evaluation Project Final Report of Three-Year Outcomes: Part I. ("TRIAD Study"). The study evaluated the

effect of treatment on both male and female inmates (1,842 men and 473 women). This study demonstrates that the Bureau's RDAP makes a positive difference in the lives of inmates and improves public safety.

The TRIAD study showed that the RDAP program is effective in reducing recidivism. Male participants were 16 percent less likely to recidivate and 15 percent less likely to relapse than similarly situated inmates who do not participate in residential drug abuse treatment for up to 3 years after release. The analysis also found that female inmates who participate in RDAP are 18 percent less likely to recidivate than similarly situated female inmates who do not participate in treatment.

The TRIAD study defined criminal recidivism was defined two ways: 1) an arrest for a new offense or 2) an arrest for a new offense or supervision revocation. Revocation was defined as occurring only when the revocation was solely the result of a technical violation of one or more conditions of supervision (e.g., detected drug use, failure to report to probation officer). Drug use as a post-release outcome, for the purposes of the study, referred to the *first* occurrence of drug or alcohol use as reported by U.S. Probation officers (i.e., a positive urinalysis (u/a), refusal to submit to a urinalysis, admission of drug use to the probation officer, or a positive breathalyser

test).

Offenders who completed the residential drug abuse treatment program and had been released to the community for three years were less likely to be re-arrested or to be detected for drug use than were similar inmates who did not participate in the drug abuse treatment program. Specifically, 44.3 percent of male inmates who completed the program were likely to be re-arrested or revoked within three years after release to supervision in the community, compared to 52.5 percent of those inmates who did not receive such treatment. For women, 24.5 percent of those who completed the residential drug abuse treatment program were arrested or revoked within three years after release, compared to 29.7 percent of the untreated women.

With respect to drug use, 49.4 percent of men who completed treatment were likely to use drugs within 3 years following release, compared to 58.5 percent of those who did not receive treatment. Among female inmates who completed treatment, 35.2 percent were likely to use drugs within the three-year postrelease period in the community, compared to 42.6 percent of those who did not receive such treatment.

Section 550.56 Community Transitional Drug Abuse Treatment Program (TDAT). In addition to changing "Transitional Drug Abuse Treatment Program (TDAT)" to "Community Treatment Services (CTS)"

throughout this regulation as indicated earlier, we also deleted paragraph (c), which appears to require that inmates successfully completing RDAP and participating in transitional treatment programming must participate in such programming for one hour per month. The provision in the regulation was an error. It did not relate to Community Treatment Services (CTS), but instead related to RDAP. It was therefore unnecessary to retain this language. The substance of this language will be retained as implementing text in the relevant policy statement as part of RDAP procedures.

Comments: We received a total of 187 comments during the comment period. Approximately 77 were in support of the proposed rule. Eighteen "comments" sent, although captioned as "comments," were not properly phrased as comments because they either related to personal accounts of inmate eligibility for drug abuse treatment and/or early release eligibility, or simply did not address issues raised in the proposed rule. We address the issues raised in the remaining 92 comments below.

Discussion of Comments: In summary, for the reasons discussed below, the Bureau adopts the regulatory changes of the proposed rule without change.

Comment: Inmates with gun possession offenses should be eligible for early release.

Approximately 58 commenters felt that eligibility for early

release should be offered for participation in RDAP to inmates with "non-violent" offenses and/or inmates with convictions for offenses in which firearm possession was present but perhaps no evidence of actual use was found.

We have addressed this issue in the final rule published on January 14, 2009 (74 FR 1892), in which we stated the following:

Under 18 U.S.C. 3621(e), the Bureau has the discretion to determine eligibility for early release consideration (See Lopez v. Davis, 531 U.S. 230 (2001)). The Director of the Bureau exercises discretion to deny early release eligibility to inmates who have a felony conviction for the offenses listed in § 550.55(b)(5)(i) - (iv) because commission of such offenses illustrates a readiness to endanger the public. Denial of early release to all inmates convicted of these offenses rationally reflects the view that, in committing such offenses, these inmates displayed a readiness to endanger another's life.

The Director of the Bureau, in his discretion, chooses to preclude from early release consideration inmates convicted of offenses involving carrying, possession or use of a firearm and offenses that present a serious risk of physical force against person or property, as described in § 550.55(b)(5)(ii) and (iii). Further, in the

correctional experience of the Bureau, the offense conduct of both armed offenders and certain recidivists suggests that they pose a particular risk to the public. There is a significant potential for violence from criminals who carry, possess or use firearms.

As the Supreme Court noted in Lopez v. Davis, "denial of early release to all inmates who possessed a firearm in connection with their current offense rationally reflects the view that such inmates displayed a readiness to endanger another's life." Id. at 240. The Bureau adopts this reasoning. The Bureau recognizes that there is a significant potential for violence from criminals who carry, possess or use firearms while engaged in felonious activity. Thus, in the interest of public safety, these inmates should not be released months in advance of completing their sentences.

It is important to note that these inmates are not precluded from participating in the drug abuse treatment program. However, these inmates are not eligible for early release consideration because the specified elements of these offenses pose a significant threat of dangerousness or violent behavior to the public. This threat presents a potential safety risk to the public if inmates who have

demonstrated such behavior are released to the community prematurely. Also, early release would undermine the seriousness of these offenses as reflected by the length of the sentence which the court deemed appropriate to impose.

Comment: All inmates participating in any kind of drug treatment should be eligible for early release, violent offenders should be eligible, non-U.S. citizens should be eligible:

Approximately 12 commenters stated that all inmates participating in any type of drug treatment with the Bureau of Prisons should be eligible for early release, including non-U.S. citizens and all other currently non-eligible inmates.

18 U.S.C. 3621(e) only authorizes the Bureau to extend drug abuse treatment participation and eligibility for early release to inmates with "a substance abuse problem," not to all inmates. Although, by statute, inmates without a substance abuse problem may not have the opportunity for early release consideration, § 550.52 allows all inmates to participate in non-residential drug abuse treatment services. The final rule seeks to make the program even more inclusive.

In the final rule, we modify the language of § 550.55(b)(4), which precludes inmates from consideration for early release if they have

a prior felony or misdemeanor conviction for homicide, forcible rape, robbery, aggravated assault, arson, kidnaping, or an offense that involves sexual abuse of minors. The Bureau modifies this language to clarify that we intend to limit consideration of "prior felony or misdemeanor" convictions to those which were imposed within the ten years prior to the date of sentencing for the inmate's current commitment. By making this change, the Bureau clarifies that it will not preclude from early release eligibility those inmates whose prior felony or misdemeanor convictions were imposed longer than ten years before the date of sentencing for the inmate's current commitment.

18 U.S.C. 3621(e) provides the Director of the Bureau of Prisons the discretion to grant an early release of up to one year upon the successful completion of a residential drug abuse treatment program. In exercising the Director's statutory discretion, we considered the crimes of homicide, rape, robbery, aggravated assault, arson, and kidnaping. In the FBI's Uniform Crime Reporting (UCR) Program, violent crime is composed of four offenses: murder and non-negligent manslaughter, rape, robbery, and aggravated assault. Violent crimes are defined in the UCR Program as those offenses which involve force or threat of force. The Director exercised his discretion, therefore, to include these categories of violent crimes and also expanded the list to include arson and kidnaping, as they also are

crimes of an inherently violent nature and particular dangerousness to the public.

As mentioned, this change is being made to clarify that inmates will be eligible for early release eligibility if their prior felony or misdemeanor convictions are older than ten years before the date of sentencing for the inmate's current commitment. In other words, for example, if an inmate's prior felony or misdemeanor was imposed nine years before the date of sentencing for the inmate's current commitment, the inmate WILL NOT be considered for early release eligibility. The Director exercises discretion to *deny* early release eligibility to inmates who have a prior felony or misdemeanor conviction for these offenses (*within the ten years prior to the date of sentencing for the inmate's current commitment*) because commission of such offenses rationally reflects the view that such inmates displayed readiness to endanger the public. The UCR explained that "because of the variances in punishment for the same offenses in different state codes, no distinction between felony and misdemeanor crimes was possible."

It is important to note that the Bureau does not deny drug abuse treatment to any inmates, including inmates who are not U.S. citizens. Instead, we offer several program options, such as a drug abuse education course or non-residential drug abuse treatment to inmates who have drug problems but who do not otherwise meet the admission

criteria for the RDAP. These options are currently available for "non-U.S. citizen" inmates.

Comment: All inmates should be eligible for drug treatment.

Several commenters stated that inmates whose records and/or offenses of conviction show no elements of drug abuse should also be permitted to participate in drug treatment.

As noted in response to the previous comment, the Bureau does not deny drug abuse treatment to any inmates. We offer several program options, such as a drug abuse education course or non-residential drug abuse treatment to inmates who have drug problems, as provided in § 550.52, even if they do not meet the admission criteria for the RDAP.

With regard to eligibility for early release, however, as stated earlier, 18 U.S.C. 3621(e) only authorizes the Bureau to extend drug abuse treatment participation and eligibility for early release to inmates with "a substance abuse problem," not to all inmates.

Because the early release is such a powerful incentive, as evidenced by over 5,000 inmates waiting to enter treatment, the Bureau must take appropriate measures to ensure that inmates requesting treatment actually have a substance abuse problem that can be verified with documentation. For those inmates who want treatment but do not have the requisite documentation to enter the RDAP, non-residential

counseling services are available and encouraged.

Comment: Inmates eligible for up to a year of early release should have it taken from "time served."

Three commenters felt that if inmates earn early release eligibility, the time should be taken from "time served." While it is unclear from the comments, the Bureau interprets this to mean that the commenters believe that up to a year of early release should be taken from the total amount of time that the inmate has already served, including any time in custody before the date of sentencing. However, the Bureau is bound by statute in this regard. 18 U.S.C. 3621(e)(2)(B) provides that "[t]he 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." In other words, the early release time must be taken from the term of sentence imposed.

Comment: Inmates who escape should be removed from RDAP.

One commenter felt that inmates who escape should be removed from RDAP. The same commenter also felt that staff should retain discretion to remove inmates who commit 100 series prohibited acts.

In the proposed rule, we proposed to delete language in § 550.53(g)(3) which requires the Drug Abuse Treatment Program

Coordinator to remove an inmate *automatically* from RDAP if there is a finding by the Discipline Hearing Officer (DHO) that the inmate has committed a prohibited act involving alcohol, drugs, violence, escape, or any other 100-level series incident. As we stated in the proposed rule, removing the language would give the Bureau more latitude and clinical discretion when determining which inmates should be expelled from the program. The final rule retains this revised language. The Bureau will retain the ability to remove inmates if they commit a 100-level series incident, if, under the criteria in (g) (2), they are given at least one formal warning before removal or when the documented lack of compliance with program standards is of such magnitude that an inmate's continued presence would create an immediate and ongoing problem for staff and other inmates, but *automatic* expulsion due to commission of a 100-level prohibited act will not occur.

As stated above, because the *automatic* expulsion language is deleted, inmates will only be expelled from RDAP according to criteria in § 550.53(g) (1) which allows inmates to be removed from the program by the Drug Abuse Program Coordinator because of disruptive behavior related to the program or unsatisfactory progress in treatment, and requires at least one formal warning before removal, unless there is documented lack of compliance and the inmate's continued presence would present an immediate problem for staff and other inmates.

Removing paragraph (g) (3) removes the automatic expulsion of inmates committing the listed prohibited acts and allows for greater possibility of continuance of the program for inmates with discipline problems.

Comment: Drug treatment specialists should have some skills in addiction treatment or addiction education.

One commenter felt that drug treatment specialists should be qualified in addiction treatment or education. As we stated in the preamble to the proposed rule, all of the treatment "specialists," also known as "coordinators" in the Bureau have a doctorate degree in psychology. They are well qualified to use their knowledge of treatment and the behavior of individuals suffering from substance abuse to objectively determine if a participant is ready to complete the program.

Comment: Increase incentives for those who participate in drug treatment but are not eligible for early release.

Two commenters believed that the Bureau should increase the incentives that are available for inmates who participate in drug treatment but may not be eligible for early release. Currently, 28 CFR 550.54 describes possible incentives for RDAP participation, including limited financial awards, community-based treatment programs, preferred living quarters, special recognition privileges,

achievement awards, and formal consideration for a nearer release transfer for medium and low security inmates. The Bureau believes the allowance of these incentives is adequate.

Comment: RDAP waiting lists are too long.

One commenter felt that inmate waiting lists for participation in RDAP treatment are too long. Currently, the Bureau has over 5,000 inmates waiting for residential treatment that is provided with limited Bureau resources. Inmates are selected for admission based on their proximity to release. Those nearest to release enter the program first. Using this method, we are able to ensure all inmates who qualify for the program, and volunteer to participate, are able to complete the program before their release from prison.

Comment: RDAP should be only 6 months instead of 9 months.

One commenter felt that the 9-month RDAP was "too long" and that the program should instead be no more than 6 months.

Research of prison drug treatment programs has shown a greater percentage of success in treatment if a unit-based component of the treatment lasts for nine to twelve months. One study found a strong relationship between time-in-program and treatment outcomes.

Wexler, Falkin, & Lipton: Outcome Evaluation of A Prison Therapeutic Community for Substance Abuse Treatment. Criminal Justice and Behavior, Vol. 17 No. 1, March 1990. In this study, of the male inmates

who participated in a drug treatment program, the percentage of those who had no parole violations during community supervision rose from 49 percent for those who remained less than three months to 77 percent for parolees who were in the program between nine and twelve months while in prison. Similar findings were obtained for females, although the percentage of those who had no parole violations was higher than for their male counterparts (79 percent for those who remained in treatment less than three months to the entire program and 92 percent for those who completed the nine- to twelve-month program). Additionally, the study also found that individuals who participate in a prison-based drug treatment for longer than twelve months do not have outcomes that are as successful as those who participated for nine to twelve months. An intensive residential treatment period between nine and twelve months near the end of an offender's sentence, coupled with individually tailored community transitional services program, may provide the best clinical outcomes and optimal resource utilization.

Also, the National Institute on Drug Abuse funded three large-scale National Treatment evaluations covering three decades, the 1970s, 1980s, and 1990s. Collectively, these studies - known as the Drug Abuse Reporting Program, the Treatment Outcome Prospective Study and the Drug Abuse Treatment Outcome Study, examined treatment performance and predictors of treatment outcomes for samples of 65,000

individuals admitted for drug abuse treatment. NIH Publication Number 02-4877, August 2002. This NIH Publication provides one of the most comprehensive overviews of the most salient research findings derived from the 250 publications. Findings from publications based on this research give broad support for the effectiveness of treatment, particularly for those with an adequate length of stay.

The Bureau's inmate population generally tends toward greater instances of addictive disorders, anti-social personality disorders, and other types of disorders, such as depression, anxiety, etc. These additional issues, which must be dealt with when treating an inmate's substance abuse problem, increase the difficulty of successfully treating an inmate within a six-month period. Although the Bureau makes specific treatment decisions for inmates on a case-by-case basis, based on the above research, and given the greater difficulty inherent in maintaining the success of drug treatment for inmates, we chose to require the unit-based component to be at least nine to twelve months to afford the greatest likelihood of success in treatment.

Comment: Staff should receive training regarding lesbian, gay, bisexual and transgender sensitivity issues.

One commenter stated that "[b]ecause [lesbian, gay, bisexual and transgender] LGBTQ people face additional challenges while incarcerated, from physical safety to accessing health care, we

recommend that all treatment specialists receive cultural competency training to best address the needs of LGBTQ prisoners in RDAP.”

The Bureau agrees with this important concern. All Bureau staff receive training both at the start of their employment and annually regarding the Bureau’s anti-discrimination policy, including cultural competency training to best address the needs of LGBTQ prisoners in RDAP. It is the policy of the Bureau of Prisons to “eliminate any internal policy, practice, or procedure that results in discrimination on the basis of race, color, sex, religion, national origin, age, physical or mental disability, genetic information, equal pay, pregnancy, retaliation, sexual orientation, gender identity, or status as a parent” Bureau of Prisons Anti-Discrimination Policy, PS 3713.25, June 16, 2014.

Executive Orders 12866 and 13563

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Principles of Regulation, and Executive Order 13563, "Improving Regulation and Regulatory Review." These executive orders direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the

importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

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.

As context regarding the current impact of the RDAP (i.e., prior to the changes made in this rule), 18,102 inmates participated in the residential drug abuse treatment program in FY 2014. 18 U.S.C. 3621(e)(2) allows the Bureau to grant a non-violent offender up to one year off his/her term of imprisonment for successful completion of the RDAP. In FY 2014, 5,229 inmates received a reduction in their term of imprisonment resulting in a cost avoidance of nearly \$50 million based on this law (average reduction was 10.4 months and the marginal cost avoidance was \$10,994 annually). The changes made by this rule will likely increase the number of current inmates who benefit from the RDAP program and increase the number of inmates who may be eligible for early release, thereby resulting in cost avoidance to the Bureau in the future.

For instance, with regard to § 550.55(b)(6), changing "other offense" to "solicitation to commit," based on prior year data (from 2014), we estimate that approximately 45 inmates would be made eligible for early release as a result of the changes made by this

rule.

Since 2013, the Bureau was able to expand RDAP capacity due to increased funding through annual congressional budgeting processes. The Bureau will therefore not require more resources in order to put more individuals through RDAP. RDAP is a nine-month program. The program has a treatment capacity large enough to accommodate about 8,400 participants at any given time. This number also reflects inmates who may drop out of the program and are replaced with other inmates on the wait list. Therefore, during a 12-month period, program capacity is filled twice (8,400 inmates will complete one nine-month term, and another 8,400 inmates will begin a new nine-month term), which means that at least 16,800 participants can be included in the program in a given year.

Executive Order 13132

This regulation would 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 rulemaking 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 section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule would 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 550:

Prisoners.

Kathleen M. Kenney
Assistant Director / General Counsel
Federal Bureau of Prisons

Accordingly, for the reasons set forth in the preamble, part 550 of title 28 of the Code of Federal Regulations is amended as follows:

PART 550 -- DRUG PROGRAMS

1. The authority citation for part 550 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; Title V, Pub. L. 91-452, 84 Stat. 933 (18 U.S.C. Chapter 223).

2. Revise § 550.50 to read as follows:

§ 550.50 Purpose and scope.

The purpose of this subpart is to describe the Bureau's drug abuse treatment programs for the inmate population, to include drug abuse education, non-residential drug abuse treatment services, and residential drug abuse treatment programs (RDAP). These services are provided by Psychology Services department.

3. Amend § 550.53 by revising paragraphs (a) (1), (a) (3), and (f), removing paragraph (g) (3), and redesignating paragraph (g) (4) as new paragraph (g) (3) to read as follows:

§ 550.53 Residential Drug Abuse Treatment Program (RDAP).

(a) * * *

(1) Unit-based component. Inmates must complete a course of activities provided by the Psychology Services Department in a treatment unit set apart from the general prison population. This component must last at least six months.

* * * * *

(3) Community Treatment Services (CTS). Inmates who have completed the unit-based program and (when appropriate) the follow-up treatment and transferred to a community-based program must complete

CTS to have successfully completed RDAP and receive incentives. The Warden, on the basis of his or her discretion, may find an inmate ineligible for participation in a community-based program; therefore, the inmate cannot complete RDAP.

* * * * *

(f) Completing the unit-based component of RDAP. To complete the unit-based component of RDAP, inmates must have satisfactory attendance and participation in all RDAP activities.

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4. In § 550.55, revise paragraph (b) (4) introductory text and paragraph (b) (6), to read as follows:

§ 550.55 Eligibility for early release.

* * * * *

(b) * * *

(4) Inmates who have a prior felony or misdemeanor conviction within the ten years prior to the date of sentencing for their current commitment for:

* * * * *

(6) Inmates who have been convicted of an attempt, conspiracy, or solicitation to commit an underlying offense listed in paragraph (b) (4) and/or (b) (5) of this section; or

* * * * *

5. Revise § 550.56 to read as follows:

§ 550.56 Community Treatment Services (CTS)

(a) For inmates to successfully complete all components of RDAP, they must participate in CTS. If inmates refuse or fail to complete CTS, they fail RDAP and are disqualified for any additional incentives.

(b) Inmates with a documented drug use problem who did not choose to participate in RDAP may be required to participate in CTS as a condition of participation in a community-based program, with the approval of the Supervisory Community Treatment Services Coordinator.

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