

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****25 CFR Chapter 1****No Child Left Behind Negotiated Rulemaking Committee**

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Replacement of Federal representative.

SUMMARY: The Secretary of the Interior has appointed Lisa Lance as a Federal representative for the No Child Left Behind Negotiated Rulemaking Committee, replacing Michael Rossetti. Ms. Lance will serve for the remainder of the Committee's duration. Ms. Lance is an attorney-advisor in the Office of the Solicitor, Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Catherine Freels, Designated Federal Official, No Child Left Behind Negotiated Rulemaking Project Management Office, P.O. Box 1430, Albuquerque, NM 87103-1430; telephone (505) 248-7240 or fax (505) 248-7242.

SUPPLEMENTARY INFORMATION: For information on negotiated rulemaking under the No Child Left Behind Act, see the **Federal Register** notices published on December 10, 2002 (67 FR 75828) and May 5, 2003 (68 FR 23631) or the Web site at <http://www.oiep.bia.edu> under "Negotiated Rulemaking."

Dated: June 22, 2004.

David W. Anderson,
Assistant Secretary—Indian Affairs.

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DEPARTMENT OF JUSTICE**Bureau of Prisons****28 CFR Part 550**

[Docket No. BOP-1109-P]

RIN 1120-AB07

Drug Abuse Treatment Program: Subpart Revision and Clarification

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to amend its regulations on the drug abuse treatment program. We intend this amendment to streamline and clarify these regulations, eliminating unnecessary text and obsolete language, and removing internal agency

procedures that need not be in rules text. In this proposed rule, we add escape and attempted escape to the list of reasons an inmate may be expelled from the Residential Drug Abuse Program (RDAP). With regard to our incentive program, offered by some institutions in their discretion, we clarify that inmates must meet their financial program responsibility obligations and GED responsibilities before being able to receive an incentive for RDAP participation. Furthermore, in our regulation on considering inmates for early release, we delete obsolete language; clarify that inmates sentenced under provisions other than 18 U.S.C. 227, are ineligible for early release; add as ineligible for early release inmates with a prior felony or misdemeanor conviction for arson or kidnaping; and clarify that inmates cannot earn early release twice.

DATES: Please submit comments only on this rulemaking by August 30, 2004.

ADDRESSES: Comments should be submitted to Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. To ensure proper handling, please reference Docket No. BOP-1109-P on your correspondence. You may view an electronic version of this proposed rule at www.regulations.gov. You may also comment via the Internet to BOP at BOPRULES@BOP.GOV or by using the www.regulations.gov comment form for this regulation. When submitting comments electronically you must include Docket No. BOP-1109-P in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105, e-mail BOPRULES@BOP.GOV.

SUPPLEMENTARY INFORMATION: The Bureau proposes to amend its regulations on drug abuse treatment programs (28 CFR 550) to streamline and clarify these regulations, eliminating unnecessary text and obsolete language, and removing internal agency procedures that need not be in rules text. We are also making some substantive changes to be more inclusive and to clarify existing policy and procedure.

Below, you will find a section-by-section explanation of how we are revising our previous regulations in Subpart F on the Drug Abuse Treatment Programs. *To identify the rules, we will refer first to the section number of the old rule as it currently exists in 28 CFR, and then we will explain what we did to change that rule.* Where we are

creating a new rule or provision, we will simply refer to it as new.

Section-by-Section Explanation

Sections 550.50 Purpose and Scope, and 550.51 Institutional Organization/ Staff Roles and Responsibilities

We consolidated these two sections into a new § 550.50, Purpose and Scope. The new regulation merely simplifies language in the previous regulation.

Sections 550.52 Admission and Orientation Program, and 550.53 Screening and Referral

We deleted these sections because they related to internal agency management procedures and do not benefit or impose a requirement on the public or our inmates.

Specifically, with regard to § 550.52, Admission and Orientation program, these procedures are already in the Bureau's Program Statement on Admission and Orientation, which requires institutions to provide inmates with "an awareness of" the "institution's program opportunities." The Drug Abuse Treatment Program (DATP) is an institution program explained to inmates as part of our Admission and Orientation procedures.

Section 550.53 Screening and referral, relates to internal agency management procedures particularly because it is our simple direction to Bureau psychologists, drug abuse treatment specialists, case managers and staff to interview newly-admitted inmates for drug abuse problems. While we remove this rule from the CFR, its substance will remain in our DATP policy as instruction to staff.

Section 550.54 Drug Abuse Education Course

We previously published a proposed rule on September 20, 2000 (65 FR 5684; BOP 1093; RIN 1120-AA88), in which we proposed to revise this section. The Bureau intends to publish a final rule based on BOP 1093 in the future. When we publish the final BOP 1093 rule, we expect to clarify and alter the substantive provisions of the rule. In this proposed rule (BOP 1109), we do not substantively change the provisions of section 550.54, but we are merely redesignating it as the new section 550.51.

Section 550.55 Non-Residential Drug Abuse Treatment Program

We redesignate this rule as § 550.52 and simplify its language. We also clarify that non-residential drug abuse treatment services are available to inmates who voluntarily decide to participate, and we remove several

eligibility requirements for the program to make it more inclusive. We do not impose any new requirements by changing this rule.

For instance, the rule previously required that inmates have a *verifiable* documented drug abuse problem. Under the new rule, we will accept self-reported information as evidence of a drug problem, without further verification for the purposes of the non-residential drug abuse program. We also removed previous eligibility criteria requiring inmates to have “no serious mental impairment which would substantially interfere with or preclude full participation in the program,” and requiring an inmate to “sign an agreement acknowledging his/her program responsibility.”

Section 550.56 Institution Residential Drug Abuse Treatment Program

We redesignate this section as § 550.53, “Institution residential drug abuse treatment program (RDAP).” We broke the introductory paragraph of current § 550.56 down into subparts to more clearly describe the different components of the program. We also added language to the admissions criteria clarifying that we will only admit to the program inmates who, upon the expiration of their sentences, will be released within the United States, or to other such places within the United States as authorized and approved.

Research indicates that combining community based treatment with in-prison treatment programs results in the best outcomes. The rates of relapse to drug use and recidivism to crime are significantly lower if the inmate continues treatment after returning to the community. The Bureau, therefore, adopts this approach consistent with the latest research findings in the drug addiction field.

The current § 550.56(a)(4) states that the “security level of the residential program institution must be appropriate for the inmate.” We removed this provision because it is an obvious statement and need not be in regulation, as it relates to internal agency practice and procedure. In addition, our DATP policy document, which provides guidance to staff and is accessible by inmates and the public, will retain this language. This will ensure that our staff understand that, as with all of our inmates, those that participate in DATP must do so consistent with safety and security of the institution.

To clarify language describing “completion” of RDAP, we separated what was previously a block paragraph into further subdivisions. We also

removed language on awarding certificates of achievement because it is internal agency practice and procedure and need not be rules text. This language also remains part of our staff guidance in our DATP policy, along with other suggestions for incentives and rewards for participating in the program.

We also clarified language describing “withdrawal/expulsion” by reorganizing and breaking block paragraphs into smaller subdivisions. We further revised this section to provide that an inmate will be immediately expelled, if he/she is found by the Disciplinary Hearing Officer (DHO) to have committed a prohibited act involving escape or attempted escape. We added escape or attempted escape as a prohibited act warranting immediate expulsion because (1) escape is viewed as a serious prohibited act in correctional environments; and (2) immediate expulsion is intended to deter others from attempting escape.

Section 550.57 Incentives for RDAP Participation

We redesignated this section as § 550.54. In both the current version and the new version of this section, we require inmates to meet financial program responsibility obligations under 28 CFR part 545 before being able to receive an incentive for RDAP participation. In our new § 550.54, we also require that inmates meet their GED responsibilities under 28 CFR part 544, subpart H before they can receive an incentive for RDAP participation under this section.

This change does not in any way limit an inmate’s ability to participate in RDAP. This change merely conditions receiving incentives on fulfilling GED responsibilities.

Vocational and educational improvement for RDAP participants is critical. The RDAP program incorporates a comprehensive lifestyle change philosophy, including elimination of any obstacles that could lead an inmate to relapse or recidivism. Therefore, improvements in education and vocational skills for the drug involved offender are likely to increase his or her chance to lead a productive and drug-free lifestyle.

Section 550.58 Consideration for Early Release

We redesignate this section as § 550.55. In this section, we made the following changes:

Old rule (550.58), Introductory paragraph: In the new § 550.55, we redesignated the introductory paragraph as (a), “Eligibility,” and broke the

paragraph into subparagraphs which more clearly set forth eligibility criteria. The new subparagraph (a) does not add eligibility criteria, but merely restates former eligibility criteria.

Old rule, subparagraph (a) Additional early release criteria: In the new § 550.55, we redesignated this as subparagraph (b), “Inmates not eligible for early release,” as this was a more accurate description of the substance of this subparagraph.

Arson and kidnaping. We also add language to make inmates with a prior felony or misdemeanor conviction of arson or kidnaping ineligible for early release. In implementing the early release incentive program over the past five years, we concluded that arson and kidnaping are serious offenses which we had not previously identified. Also, the Federal Bureau of Investigations (FBI) Uniform Crime Reporting Program (UCR), which tracks all of the other offenses listed in new subparagraph (b)(5), lists arson and kidnaping as serious “Group A” offenses. (*See <http://www.fbi.gov/ucr/faqs.htm> for more information on the Uniform Crime Reporting Program.*)

Furthermore, in *Lopez v. Davis, et al.*, 121 S.Ct. 714 (2001), the Supreme Court upheld the Director’s discretion under 18 U.S.C. 3621(e) in identifying inmates not eligible for early release. We are, therefore, adding these offenses to this category of inmates not eligible for early release.

New rule: New subparagraph (b)(5)(i): Prior felony or misdemeanor conviction for homicide. We also clarify that inmates will be precluded from receiving early release consideration if they have a prior felony or misdemeanor conviction for homicide, including deaths caused by recklessness, but not including deaths caused by negligence or justifiable homicide. In doing so, we clarify the type of past conviction for homicide that will preclude early release consideration. This is not a new requirement. It is merely a clarification of our existing policy and philosophy.

In addition to murder and non-negligent manslaughter, homicides also include those caused by recklessness. Often, homicides caused by recklessness are general intent crimes. Because of the serious nature of this crime, the Director chooses to preclude these offenses from early release consideration. Inmates will still be eligible for early release, however, if they committed homicides found to be negligent or justifiable.

New rule: New subparagraph (b)(7): Inmates who have been convicted of an attempt, conspiracy, or other crime which involved an underlying offense to commit any crime listed in Section

(b)(5) and (b)(6). By adding this new provision, we intend to mirror the common theory in law that an individual is accountable when he or she has planned with others to commit a particular crime or tried but did not succeed in committing a crime.

New rule: New subparagraph (b)(9): Inmates who have previously earned an early release under 18 U.S.C. 3621(e): In the new rule, we added this subparagraph to exempt from early release consideration inmates who previously earned early release under 18 U.S.C. 3621(e).

Congress created the early release incentive to motivate drug addicted inmates to enter residential drug abuse treatment who would not do so without this incentive. However, in our discretion, it is not appropriate to provide this incentive for inmates who completed RDAP, gained early release, but failed to remain drug and crime free. To provide this incentive to the same inmate twice would be counter to our drug treatment philosophy that inmates must be held accountable for their actions when released to the community.

This is not a new requirement. It is merely a clarification of our existing policy and philosophy. In fact, since implementation of the early release statute in June 1995, we have not granted early release to an inmate more than once.

Old rule, subparagraph (a)(2): When we first implemented the early release incentive in June 1995, we anticipated that a few inmates who had completed BOP residential drug abuse programs before 1989 would apply for early release. We therefore developed this subparagraph to explain their eligibility. Also, because the 18 U.S.C. 3621(e) statute defined minimum standards for residential drug program completion, we wanted to ensure that inmates who did complete residential drug programs before 1989 met the statutory definition of residential treatment and, subsequently, were of uniform good behavior. We therefore developed and implemented regulations, as necessary before we could grant early release to this group of inmates (see old rule, 550.58 (a)(2)(i-iv).

Since then, there has not been a case where an inmate who completed a residential drug program before October 1, 1989 applied for early release. Therefore, rules language that divided an inmate's participation either before or after October 1, 1989 is no longer necessary. We therefore delete this subparagraph.

Old rule, subparagraph (b), Application Procedures: In the new

rule, we delete this subparagraph on application procedures because application procedures in early release are no longer necessary. The procedures in the old rule related to the 1989 division (see previous paragraph). This subparagraph is unnecessary because we currently have policy, procedures, and forms in place to automatically review the early release status before an inmate is placed on the waiting list.

Old rule, subparagraph (c), Length of Reduction: In the new rule, § 550.55, we designate this subparagraph as (c), "Length of Reduction of Sentence." We also delete former (c)(2), which read: "If the inmate has less than 12 months to serve after completion of all required transitional services, the amount of reduction may not exceed the amount of time left on service of sentence."

We view it as self-evident that we cannot reduce an inmate's sentence beyond the time the inmate has left to serve. We therefore delete this provision as unnecessary.

In the new § 550.55(c)(2), we add new language explaining that, under the Director's discretion allowed by 18 U.S.C. 3621(e), we may limit the amount of reduction in sentence based upon the length of sentence imposed by the Court.

Section 550.59 Community Transitional Drug Treatment Services

We redesignate this section as § 550.56. To clarify our transitional drug abuse treatment (TDAT), we reorganized and separated what was previously several block paragraphs into further subdivisions. We also eliminated unnecessary and complex language. We do not intend to modify the substance of this section or any requirements imposed by this section.

Section 550.60 Inmate Appeals

We redesignate this section as § 550.57. In the new § 550.57, we clarify language that currently appears in § 550.60(a) which generally states that an inmate may seek formal review of a complaint relating to any aspect of an inmate's confinement (including the operation of the drug abuse treatment programs) by using the Administrative Remedy Program (28 CFR part 542, subpart B).

Also, current § 550.60(b) states that, to expedite staff response, inmates previously found eligible for early release must indicate in the first sentence of the Administrative Remedy request that the request affects the inmate's early release. In the new § 550.57, we delete this provision, as it appears to dictate how inmates should write their appeals. We remove this

requirement to afford inmates broader latitude in composing and drafting their Administrative Remedy request as they wish.

Where To Send Comments

You can send written comments on this rule to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

We will consider comments we receive during the comment period before we take final action. We will try to consider comments we receive after the end of the comment period. In light of comments we receive, we may change the rule.

We do not plan to have oral hearings on this rule. All the comments we receive remain on file for public inspection at the above address.

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 not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

In particular, 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. Clarifying and streamlining this rule and eliminating unnecessary text and obsolete language will have the benefit of easier readability and improved understanding of our drug treatment programs. We strengthen the program by calculated revisions designed to allow inmates to succeed in drug treatment while avoiding expending resources unnecessarily.

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 550:

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

Under the 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 part 550 in subchapter C of 28 CFR, chapter V as follows.

Subchapter C—Institutional Management

PART 550—DRUG PROGRAMS

1. Revise the authority citation for part 550 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).

Subpart F—Drug Abuse Treatment Program

2. Revise Subpart F to read as follows:
Sec.

550.50 Purpose and scope.

- 550.51 Drug abuse education course.
- 550.52 Non-residential drug abuse treatment services.
- 550.53 Institution Residential Drug Abuse Treatment Program (RDAP).
- 550.54 Incentives for RDAP participation.
- 550.55 Eligibility for early release.
- 550.56 Community Transitional Drug Abuse Treatment Program (TDAT).
- 550.57 Inmate appeals.

§ 550.50 Purpose and scope.

The purpose of this subpart is to describe the Bureau's drug abuse treatment programs. All Bureau institutions have a drug abuse treatment specialist who, under the Drug Abuse Program Coordinator's supervision, provides drug abuse education and non-residential drug abuse treatment services to the inmate population. Institutions with residential drug abuse treatment programs (RDAP) should have additional drug abuse treatment specialists to provide treatment services in the residential drug abuse treatment program unit.

§ 550.51 Drug abuse education course.

(a) *Purpose of the Drug Abuse education course.* All institutions provide a drug abuse education course to:

(1) Inform inmates of the consequences of drug/alcohol abuse and addiction; and

(2) Motivate inmates needing drug abuse treatment to apply for further drug abuse treatment, both while incarcerated and after release.

(b) *Course Placement.* (1) Staff give primary consideration for course placement to an inmate sentenced or returned to custody as a violator after September 30, 1991, when unit and/or drug abuse treatment staff determine, through interviews and file review that:

(i) There is evidence that alcohol or other drug use contributed to the commission of the inmate's offense;

(ii) Alcohol or other drug use was a reason for violation either of supervised release, including parole, or Bureau community status for which the inmate is now incarcerated;

(iii) The inmate was recommended for drug programming (or an evaluation for drug programming) during incarceration by the sentencing judge;

(iv) There is evidence of a history of alcohol or other drug use.

(2) Staff may also consider for course placement an inmate who requests to participate in the drug abuse education program but who does not meet the criteria of paragraph (b)(1) of this section.

(3) Staff may not consider an inmate for course placement if the inmate:

(i) Does not have enough time remaining to serve to complete the course;

(ii) Volunteers for, enters or otherwise completes a residential drug abuse treatment program (RDAP), or

(iii) Completes a structured drug abuse treatment program at one of the Bureau's Intensive Confinement Centers (ICC).

(c) *Inmate Consent.* We will only admit inmates to the drug abuse education course if they agree to comply with all Bureau requirements for the program.

(d) *Completion.* To complete the drug abuse education course, an inmate must attend and participate during course sessions and pass a final course exam. We will ordinarily give inmates at least three chances to pass the final course exam before the inmate loses privileges or we invoke effects of non-participation (see paragraph (e) of this section).

(e) *Effects of non-participation.* (1) If an inmate considered for placement under paragraph (b)(1) of this section refuses participation, withdraws, is expelled, or otherwise fails to meet attendance and examination requirements, that inmate:

(i) Is not eligible for performance pay above maintenance pay level, or for bonus pay, or vacation pay;

(ii) Is not eligible for a Federal Prison Industries work program assignment (unless the Warden makes exception on the basis of work program labor needs);

(iii) Is not eligible for community programs.

(2) The Warden may make exceptions to the provisions of this section for good cause with reasons for such exceptions documented in writing.

§ 550.52 Non-residential drug abuse treatment services

All institutions must have non-residential drug abuse treatment services, provided through the institution's Psychology Services department. These services are available to inmates who voluntarily decide to participate.

§ 550.53 Institution Residential Drug Abuse Treatment Program (RDAP).

(a) *RDAP.* The institution RDAP, available at some Bureau institutions, has the following components:

(1) *Unit-based component:* Inmates must complete a course of activities provided by drug abuse treatment specialists and the Drug Abuse Program Coordinator in a treatment unit set apart from the general prison population. This component must last at least 500 hours over a six to twelve-month period.

(2) *Follow-up services.* If time allows between completion of the unit-based

component of the program and transfer to a community-based program, the inmate must participate in the follow-up services to the unit-based component of the residential drug abuse treatment program.

(3) *Transitional drug abuse treatment (TDAT) program component.* Inmates must complete drug abuse treatment in a community-based program.

(b) *Admission Criteria.* An inmate must meet all of the following criteria to be admitted into RDAP.

(1) The inmate must have a verifiable, documented substance use disorder.

(2) The inmate must sign an agreement acknowledging his/her program responsibility.

(3) Upon the expiration of his/her sentence, the inmate will be released within the United States, or to other such place within the United States as authorized and approved.

(c) *Application to RDAP.* An inmate may apply for the RDAP by submitting a request to a staff member (ordinarily, a member of the inmate's unit team or the Drug Abuse Program Coordinator).

(d) *Referral to RDAP.* Unit or drug treatment staff may identify an inmate for referral and evaluation for RDAP.

(e) *Placement in RDAP.* The Drug Abuse Treatment Coordinator decides whether to place an inmate in RDAP based on the criteria set forth in paragraph (b) of this section.

(f) *Completing the unit-based component of RDAP.* To complete the unit-based component of RDAP, an inmate must:

(1) Have satisfactory attendance and participation in all RDAP activities; and
(2) Pass each RDAP testing procedure. Ordinarily, we will allow an inmate who fails any RDAP exam to retest one time.

(g) *Expulsion from RDAP.* (1) The Drug Abuse Program Coordinator may remove an inmate from the program because of disruptive behavior related to the program or unsatisfactory progress in treatment.

(2) Ordinarily, staff must provide an inmate with at least one formal warning before removing the inmate from RDAP. A formal warning is not necessary when the inmate's documented lack of compliance with program standards is of such magnitude that his or her continued presence would create an immediate and ongoing problem for staff and inmates.

(3) Staff will remove an inmate from RDAP immediately if the DHO finds that the inmate has committed a prohibited act involving:

- (i) Alcohol or drugs;
- (ii) Violence or threats of violence;
- (iii) Escape or attempted escape; or

(iv) Any 100-level series incident.

(h) *Effects of non-participation.* (1) If an inmate refuses to participate in RDAP after being selected by the Drug Abuse Program Coordinator for treatment at an institution that authorizes enhanced incentives under § 550.54(a)(2), or withdraws or is otherwise removed from RDAP, the inmate is not eligible for:

(i) A furlough (other than possibly an emergency furlough);

(ii) More than 90 days community-based program placement;

(iii) Performance pay above maintenance pay level, bonus pay, or vacation pay; and/or

(iv) A Federal Prison Industries work program assignment (unless the Warden makes exception on the basis of work program labor needs).

(2) Where applicable, staff will notify the United States Parole Commission of the inmate's need for treatment and the inmate's failure to participate in the residential drug abuse treatment program.

§ 550.54 Incentives for RDAP participation.

(a) An inmate may receive incentives for his or her satisfactory participation in the RDAP. Institutions may offer the basic incentives described in paragraph (a)(1) of this section. Bureau-authorized institutions may also offer enhanced incentives as described in paragraph (a)(2) of this section.

(1) *Basic incentives.* (i) Limited financial awards, based upon the inmate's achievement/completion of program phases.

(ii) Consideration for the maximum period of time (currently 180 days) in a community-based treatment program, if the inmate is otherwise eligible.

(iii) Local institution incentives such as preferred living quarters or special recognition privileges.

(iv) Early release, if eligible under § 550.55.

(2) *Enhanced incentives.* (i) Tangible achievement awards as permitted by the Warden and allowed by the regulations governing personal property (see 28 CFR part 553).

(ii) Photographs of treatment ceremonies may be sent to the inmate's family.

(iii) Formal consideration for a nearer release transfer for medium and low security inmates.

(b) An inmate must meet his/her financial program responsibility obligations (see 28 CFR part 545) and GED responsibilities (see 28 CFR part 544, subpart H) before being able to receive an incentive for his/her RDAP participation.

(c) If an inmate withdraws from or is otherwise removed from RDAP, that

inmate may lose incentives he/she previously achieved.

§ 550.55 Eligibility for early release.

(a) *Eligibility.* An inmate may be eligible for early release by a period not to exceed 12 months if that inmate:

(1) Was sentenced to a term of imprisonment under 18 U.S.C. Chapter 227, Subchapter D for a nonviolent offense;

(2) Is determined by Bureau staff to have a substance abuse problem; and

(3) Completes a residential drug abuse treatment program successfully, as defined by the Bureau, during his or her current commitment.

(b) *Inmates not eligible for early release.* As an exercise of the Director's discretion, the following categories of inmates are not eligible for early release:

(1) BICE detainees;

(2) Pretrial inmates;

(3) Contractual boarders (for example, State, or military inmates);

(4) Inmates sentenced under provisions other than 18 U.S.C. Chapter 227;

(5) Inmates who have a prior felony or misdemeanor conviction for:

(i) Homicide (including deaths caused by recklessness, but not including deaths caused by negligence or justifiable homicide),

(ii) Forcible rape,

(iii) Robbery,

(iv) Aggravated assault,

(v) Arson,

(vi) Kidnaping; or

(vii) A crime that by its nature or conduct involves sexual abuse offenses committed upon minors;

(6) Inmates who have a current felony conviction for:

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

(ii) A crime 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) A crime that by its nature or conduct, presents a serious potential risk of physical force against the person or property of another, or

(iv) A crime that by its nature or conduct involves sexual abuse offenses committed upon minors;

(7) Inmates who have been convicted of an attempt, conspiracy, or other crime which involved an underlying offense to commit any crime listed in paragraph (b)(5) and/or (b)(6) of this section.

(8) 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; or

(9) Inmates who have previously earned an early release under 18 U.S.C. 3621(e).

(c) *Length of reduction of sentence.* (1) An inmate approved for early release may receive a reduction of up to 12 months of the term of incarceration, except as provided in paragraphs (c)(2) and (3) of this section.

(2) Under the Director's discretion allowed by 18 U.S.C. 3621(e), we may limit the length of reduction in sentence based upon the length of sentence imposed by the Court.

(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 provisional release date by the least amount of time necessary to allow the inmate to fulfill his or her treatment obligations.

§ 550.56 Community Transitional Drug Abuse Treatment Program (TDAT).

(a) For an inmate to successfully complete all components of RDAP, the inmate must participate in TDAT in the community. If an inmate refuses or fails to complete TDAT, that inmate fails the RDAP and is disqualified for any additional incentives.

(b) We may require an inmate with a documented drug abuse problem who did not choose to volunteer for RDAP to participate in TDAT as a condition of participation in a community-based program, with the approval of the Transitional Drug Abuse Treatment Coordinator.

(c) An inmate who successfully completes a RDAP and who participates in TDAT at an institution must participate in TDAT for at least one hour per month.

§ 550.57 Inmate appeals.

You may seek formal review of a complaint regarding the operation of DATP by using administrative remedy procedures in 28 CFR part 542, subpart B.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA217-4230b; FRL-7777-8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revision to the 1-Hour Ozone Maintenance Plan for the Pittsburgh-Beaver Valley Area To Reflect the Use of MOBILE6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of amending Pennsylvania's ten-year plan to maintain the 1-hour ozone national ambient air quality standard (NAAQS) in the Pittsburgh-Beaver Valley maintenance area. The maintenance plan is being amended to revise the volatile organic compound (VOC) and nitrogen oxides (NO_x) motor vehicle emission budgets (MVEBs) to reflect the use of MOBILE6. In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by August 2, 2004.

ADDRESSES: Submit your comments, identified by PA217-4230 by one of the following methods:

A. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. E-mail: budney.larry@epa.gov.

C. Mail: Carol Febbo, Chief, Energy, Radiation and Indoor Environment Branch, Mail Code 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such

deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. PA217-4230. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal *regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Larry Budney, (215) 814-2184, or by e-mail at budney.larry@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: June 10, 2004.

Richard J. Kampf,

Acting Regional Administrator, Region III.

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