compliance schedule? For example, should the Commission have considered the extent to which its documentation and margin requirements apply to entities and transactions located outside the United States? Also, should the Commission have considered the extent to which such requirements apply to transactions between affiliates (whether domestic or cross-border)? If applicable, how should the Commission adjust the proposed compliance schedule to account for such issues?

Finally, I want to be clear that I support completing the final Dodd-Frank rulemakings in a reasonable time frame. I believe that the timely implementation of such rulemakings is important. Knowing when and how the markets are required to do what is vital to the success of implementing the new market structure required under the Dodd-Frank Act. When billions of dollars are at stake, you simply do not rely on guesses and estimates based on vague conditions.

[FR Doc. 2011–24124 Filed 9–19–11; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 570

[BOP Docket No. 1151]

RIN 1120–AB61

Pre-Release Community Confinement

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) responds to recent litigation surrounding the pre-release community confinement regulation which it published on October 21, 2008 by publishing a proposed rule on this subject.

DATES: Comments are due by November 21, 2011.

ADDRESSES: Submit comments 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 *http://www.regulations.gov.* You may also comment via the Internet to the Bureau at *BOPRULES@BOP.GOV* or by using the *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:

Posting of Public Comments

Please note that all comments received are considered part of the public record and are available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

The Proposed Rule

In this document, the Bureau of Prisons (Bureau) responds to recent litigation surrounding the pre-release community confinement regulation which it published on October 21, 2008 (73 FR 62443) (2008 regulations) by publishing a proposed rule on this subject.

The interim rule published in 2008 revised the Bureau's regulations on pre-release community confinement in 28 CFR part 570, subpart B, to conform with the requirements of the Second Chance Act of 2007, approved April 9th, 2008 (Pub. L. 110–199; 122 Stat. 657) (''Second Chance Act'').

In an opinion filed on June 16, 2010, the District Court for the District of Oregon upheld Bureau policies issued following the Second Chance Act, finding that they are ''internal agency guidelines which do not trigger the procedural requirements of 5 U.S.C. § 553,'' but invalidated the 2008 interim rule on the grounds that the Bureau did not ''establish good cause to forego advance notice and comment'' under the Administrative Procedure Act (5 U.S.C. 552, *et seq.*). *Sacora* v. *Thomas,* No. CV 08–578–MA (D. Or. June 16, 2010). The court enjoined the BOP ''from considering inmates for pre-release RRC [Residential Re-entry Centers] placement pursuant to 28 CFR 570.20–22 until such time as regulations are promulgated in accordance with 5 U.S.C. 553(b).'' We now issue this proposed rule in order to comply with the court's determination. The proposed rule is identical to the 2008 interim rule, and we therefore reprint the rationale for the interim rule below as the rationale for this proposed rule.

Prior to October 21, 2008, the community confinement regulations implemented the Bureau's categorical exercise of discretion for designating inmates to community confinement. The regulations stated that the Bureau would designate inmates to community confinement only as a condition of pre-release custody and programming, during the last ten percent of the prison sentence being served, for a period not exceeding six months, unless specific Bureau programs allow greater periods of community confinement.

To conform these regulations to the language of the Second Chance Act, we made the following revisions:

Section 570.20 Purpose

In this regulation, we describe the Bureau's procedures for designating inmates to pre-release community confinement or home detention. We also provide a new definition of the term ''community confinement.'' Section 231(f) of the Second Chance Act amended 18 U.S.C. 3621 by adding a new subsection (g). New 18 U.S.C. 3621(g)(2) defines the term ''community confinement'' for purposes of that subsection by adopting the meaning ''given that term in the application notes under section 5F1.1 of the Federal Sentencing Guidelines Manual'' in effect on the date of enactment of the Act. On April 9, 2008, the application notes to United States Sentencing Guideline (USSG) § 5F1.1 read in pertinent part as follows:

''Community confinement'' means residence in a community treatment center, halfway house, restitution center, mental

health facility, alcohol or drug rehabilitation center, or other community facility; and participation in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during non-residential hours.

Although new subsection 18 U.S.C. 3621(g) relates on its face only to ''continued access to medical care,'' we adopt the definition of community confinement given in this provision for the purposes of subpart B as amended. The Second Chance Act itself variously uses the terms ''community confinement,'' ''community corrections agencies,'' ''community corrections facilities,'' and ''community confinement facilities,'' but it does so in contexts that indicate that these terms are meant to refer to the concept of community confinement generally. We therefore adopt the definition in 18 U.S.C. 3621(g) for clarity and consistency, and to maintain uniformity in application of the Second Chance Act provisions, we adopt this definition of ''community confinement'' as applicable in the context of these regulations. For clarity, we also add a parenthetical that explains that the Bureau includes residential re-entry centers in the definition of ''community confinement.''

In this section, we also add a definition of ''home detention.'' Section 231(g)(5)(B) of the Second Chance Act provides that ''[t]he term 'home detention' has the same meaning given the term in the Federal Sentencing Guidelines as of the date of the enactment of this Act * * *.'' Once more, although this reference to the Federal Sentencing Guidelines is articulated in a different context, we deem it prudent to model our definition on that given by the Federal Sentencing Guidelines, as suggested by the Second Chance Act, for clarity and consistency in application.

In this section, therefore, we include a definition of ''home detention'' which is derived from USSG 5F1.2. Specifically, we define ''home detention'' as a program of confinement and supervision that restricts the defendant to his or her place of residence continuously, except for authorized absences, enforced by appropriate means of surveillance by the probation office or other monitoring authority. We add the phrase ''or other monitoring authority'' to the definition given by USSG 5F1.2 to allow for the possibility that the function of monitoring may be accomplished by other federal government agencies, employees, or contractors.

Section 570.21 Time-frames

Section 251(a) of the Second Chance Act amends 18 U.S.C. 3624(c) to require that the Director must, ''to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community.'' Further, section 3624(c) is amended to state that ''[t]he authority under this subsection may be used to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months.''

In this section, we therefore make the following changes to conform to the specific language in section 251(a) of the Second Chance Act: Paragraph (a) of the revised § 570.21 states that inmates may be designated to community confinement as a condition of pre-release custody and programming during the final months of the inmate's term of imprisonment, not to exceed twelve months; and paragraph (b) of the revised § 570.21 states that inmates may be designated to home detention as a condition of pre-release custody and programming during the final months of the inmate's term of imprisonment, not to exceed the shorter of ten percent of the term of the inmate's imprisonment or six months.

Section 570.22 Designation

In this section, we inform inmates that they will be considered for pre-release community confinement in a manner consistent with 18 U.S.C. 3621(b), determined on an individual basis, and of duration sufficient to optimize the likelihood of successful reintegration into the community. This section reflects the requirements of the Second Chance Act regarding the promulgation of these regulations. Section 251(a)(6) of the Second Chance Act requires the Bureau to implement regulations that ensure that placements in community confinement as a condition of pre-release custody are:

- Conducted in a manner consistent with 18 U.S.C. 3621(b);
- Determined on an individual basis; and
- Long enough ''to provide the greatest likelihood of successful reintegration into the community.'' Section 570.22 reflects the three factors listed above.

With regard to the requirement that determinations regarding pre-release community confinement are ''conducted in a manner consistent with 18 U.S.C. 3621(b),'' the Bureau will ensure that the following factors listed in section 3621(b) will be considered in making such determinations:

- The resources of the facility contemplated;
- The nature and circumstances of the offense;
- The history and characteristics of the prisoner;
- Any statement by the sentencing court concerning the purpose for which the sentence was imposed or recommending a specific type of institution; and
- Any pertinent policy statements issued by the United States Sentencing Commission.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute a ''significant regulatory action'' 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 eliminating confusion in the courts that has been caused by the changes in the Bureau's statutory interpretation, while allowing us to continue to operate in compliance with the revised statute. 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 570

Prisoners.

Thomas R. Kane,

Acting 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, we propose to revise 28 CFR part 570 as set forth below.

Subchapter D—Community Programs and Release

PART 570—COMMUNITY PROGRAMS

1. Revise the authority citation for 28 CFR part 570 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 751, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166, 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. In part 570, subpart B is revised to read as follows:

Subpart B—Pre-Release Community Confinement

Sec.
570.20 Purpose.
570.21 Time-frames.
570.22 Designation.

§ 570.20 Purpose.

The purpose of this subpart is to provide the procedures of the Bureau of Prisons (Bureau) for designating inmates to pre-release community confinement or home detention.

(a) *Community confinement* is defined as residence in a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential re-entry centers); and participation in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during non-residential hours.

(b) *Home detention* is defined as a program of confinement and supervision that restricts the defendant to his place of residence continuously, except for authorized absences, enforced by appropriate means of surveillance by the probation office or other monitoring authority.

§ 570.21 Time-frames.

(a) *Community confinement.* Inmates may be designated to community confinement as a condition of pre-release custody and programming during the final months of the inmate's term of imprisonment, not to exceed twelve months.

(b) *Home detention.* Inmates may be designated to home detention as a condition of pre-release custody and programming during the final months of the inmate's term of imprisonment, not to exceed the shorter of ten percent of the inmate's term of imprisonment or six months.

(c) *Exceeding time-frames.* These time-frames may be exceeded when separate statutory authority allows greater periods of community confinement as a condition of pre-release custody.

§ 570.22 Designation.

Inmates will be considered for pre-release community confinement in a manner consistent with 18 U.S.C. Section 3621(b), determined on an individual basis, and of sufficient duration to provide the greatest likelihood of successful reintegration into the community, within the time-frames set forth in this part.

[FR Doc. 2011–23684 Filed 9–19–11; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DOD–2011–HA–0038]

RIN 0720–AB50

TRICARE; Smoking Cessation Program Under TRICARE

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements Section 713 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (FY 2009), Public Law 110–417. Section 713 states the Secretary shall establish a smoking cessation program under the TRICARE program. The smoking cessation program under TRICARE shall, at a minimum, include the following: the availability, at no cost to the beneficiary, of pharmaceuticals used for smoking cessation, with the limitation on the availability of such pharmaceuticals to the mail-order pharmacy program under the TRICARE program; smoking cessation counseling; access to a toll-free quit line 24 hours a day, 7 days a week; and access to print and Internet web-based tobacco cessation material. Per the statute, Medicare-eligible beneficiaries are excluded from the TRICARE smoking cessation program.

DATES: Written comments received at the address indicated below by November 21, 2011 will be accepted.

ADDRESSES: You may submit comments, identified by docket number or Regulatory Information Number (RIN) and title, by any of the following methods:

Federal Rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Barbara (Bobbie) Matthews, Medical