Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15944 (74 FR 29126, June 19, 2009) and adding the following new AD:

2009–23–12 SOCATA: Amendment 39–16086; Docket No. FAA–2009–0557; Directorate Identifier 2009–CE–031–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 18, 2009.

Affected ADs

(b) This AD revises AD 2009–13–05, Amendment 39–15944.

Applicability

(c) This AD applies to the following model and serial number airplanes that are:

(i) certificated in any category; and

(ii) equipped with a chemical oxygen generation system.

Model	Serial Nos.
TBM 700	1 through 204, 206 through 239, and 241 through 243.

Subject

(d) Air Transport Association of America (ATA) Code 35: Oxygen.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During a SOCATA flight test, it has been noted some difficulties for the pilot to release oxygen.

After investigation it has been found that, due to the design of the oxygen generator release pin, one of the mask's lanyard linked to the pin can be jammed when it is pulled by a pilot or a passenger.

This condition, if not corrected, would lead, in case of an emergency procedure due to decompression, to a risk of generator fault with subsequent lack of oxygen on crew and/or passenger.

For the reason described above, SOCATA has released Pilot Operating Handbook (POH) Temporary Revision (TR) 03 which asks, in case of failure to release oxygen, to pull on the other mask lanyard in order to activate the oxygen generator.

This revision has been released to clarify the applicability.

A SOCATA modification enabling to solve this issue is under preparation. Once this modification has been released, this AD is expected to be revised to confirm the acceptability of that modification.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Before further flight after July 9, 2009 (the effective date retained from AD 2009–13–05), insert Page 3.13.5 of Temporary Revision No. 3, dated March 2009, into the Emergency Procedures section and the Limitations section of SOCATA TBM 700 A & B Pilot Operating Handbook (POH).

(2) Under 14 CFR section 43.7 of the Federal Aviation Administration Regulations (14 CFR 43.7), the owner/operator holding at least a private pilot certificate is allowed to insert the temporary revision into the POH. Make an entry into the aircraft logbook showing compliance with this portion of the AD per compliance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4119; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Material Incorporated by Reference

(h) You must use page 3.13.5 of Temporary Revision No. 3, dated March 2009, of SOCATA TBM 700 A & B Pilot Operating Handbook (POH), to do the actions required by this AD, unless the AD specifies otherwise.

(1) On July 9, 2009 (74 FR 29126, June 19, 2009), the Director of the Federal Register previously approved the incorporation by reference of page 3.13.5 of Temporary Revision No. 3, dated March 2009, of SOCATA TBM 700 A & B Pilot Operating Handbook (POH).

(2) For service information identified in this AD, contact SOCATA, 65921—TARBES Cedex 9, France; *telephone:* +33 6 07 32 62 24; or SOCATA, North Perry Airport, 7501 South Airport Rd., Pembrokes Pines, FL 33023; *telephone:* (954) 893–1400; *fax:* (954) 964–4141; *Internet: http://mysocata.com.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on November 6, 2009.

Margaret Kline,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–27321 Filed 11–12–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Department of Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is establishing an administrative remedy

that responds to a Federal district court decision which finds that, for some District of Columbia prisoners, the Commission's use of parole guidelines it promulgated in 2000 may significantly risk an increase of their punishment in violation of the Ex Post Facto Clause of the Constitution. Under the remedial plan, the Commission will schedule new parole hearings for those prisoners who meet the plan's eligibility criteria, unless the Commission grants the prisoner a parole effective date on the record. In conducting the new consideration, the Commission will apply the parole guidelines of the former District of Columbia Board of Parole that were promulgated in March 1985.

DATES: *Effective Date:* November 13, 2009.

FOR FURTHER INFORMATION CONTACT: Rockne Chickinell, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Parole Commission is responsible for making parole release decisions for District of Columbia felony offenders who are eligible for parole. DC Code 24–131(a)(1). The Commission took over this responsibility from the District of Columbia Board of Parole (hereinafter ''Board'') on August 5, 1998 as a result of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Pub. L. 105–33). In fulfilling this duty, the Commission must follow the parole laws and regulations of the District of Columbia. DC Code 24–131(c). However, the Commission was granted the exclusive authority to amend any regulation governing the parole release function. DC Code 24–131(a)(1). In July 1998, the Commission promulgated regulations to implement its new duties, including paroling policy guidelines at 28 CFR 2.80. 63 FR 39172–83 (July 21, 1998). In developing these guidelines, the Commission used the basic approach and format of the paroling guidelines promulgated by the Board in March 1985 and published in May 1987, but made modifications to these guidelines to incorporate factors that had led the Board to depart from the guidelines. 63 FR 39172–74. In July 2000, the Commission amended the § 2.80 guidelines, creating suggested ranges of months to be served based on the pre- and post-incarceration factors evaluated under the guidelines, which in turn allowed the Commission to extend presumptive parole dates to prisoners up to three years from the hearing date. 65 FR 45885–45903 (July 26, 2000) (hereinafter the ''2000 Commission guidelines''). Effective August 5, 2000, the Board was abolished. 47 DC Reg. 8669 (Oct. 27, 2000).

Also in 2000, the U.S. Supreme Court decided the case of *Garner* v. *Jones,* 529 U.S. 244 (2000), and indicated in the opinion that parole rules that allow for the use of discretionary judgment may come within the proscription of the Ex Post Facto Clause of the Constitution. For over twenty years, federal appellate courts had rejected claims that the Commission's use of discretionary guidelines for parole release decisions violated the constitutional ban against ex post facto laws. As a result of the Supreme Court's decision in *Garner,* the U.S. Court of Appeals for the District of Columbia Circuit held that parole release guidelines may constitute laws that are covered by the Ex Post Facto Clause. *Fletcher* v. *District of Columbia,* 391 F.3d 250 (DC Cir. 2004) (*Fletcher II*). Following upon the *Fletcher II* decision and the decision in *Fletcher* v. *Reilly,* 433 F.3d 867 (DC Cir. 2006) (*Fletcher III*), the U.S. District Court for the District of Columbia (Huvelle, District Judge) held that the Commission's application of the 2000 Commission guidelines for several DC Code prisoners violated the Ex Post Facto Clause. *Sellmon* v. *Reilly,* 551 F.Supp.2d 66 (D. DC 2008). Several other prisoner-plaintiffs were denied relief by the district court. The court ordered that the Commission conduct new parole hearings for the successful plaintiffs, using the 1987 Board guidelines, instead of the 2000 Commission guidelines. The Justice Department ultimately decided to withdraw its appeal of the district court's order regarding the successful plaintiffs. Several of the unsuccessful plaintiffs appealed to the U.S. Court of Appeals for the District of Columbia Circuit and these cases are still pending. While the *Sellmon* decision only requires new hearings for the successful plaintiffs in that case, the Commission concluded that the cost and burden of future litigation compelled a reassessment of its position and the establishment of an administrative remedy to avoid continued ex post facto challenges to its parole determinations for DC prisoners.

Discussion of the Rule and Public Comment

Effective August 17, 2009, the Commission promulgated an interim rule allowing some DC prisoners to receive new parole determinations using the 1987 Board guidelines. *See* 74 FR 34688–90 (July 17, 2009). Before and after the publication of the interim rule, the Commission sought and received public comment on the proposed plan, as discussed below. The Commission adopted the following criteria for eligibility under the remedial plan: (1) The DC prisoner committed the crime after March 3, 1985 and before August 5, 1998; (2) the prisoner received an initial hearing after August 4, 1998 and therefore has not been considered for parole under the 1987 Board guidelines; (3) the prisoner is not incarcerated on a parole revocation; and (4) the prisoner does not have a parole effective date, or a presumptive parole date before January 1, 2010. The Commission has retained these criteria for eligibility in the final rule. The Commission has modified the interim rule to remove a requirement that an eligible prisoner apply for the consideration under the 1987 Board guidelines. An eligible prisoner who waives consideration under the 1987 Board guidelines will not be heard for parole under these guidelines.

At a record review or hearing under the remedial plan, the hearing examiner will evaluate the prisoner for parole using the 1987 Board guidelines. The ''1987 Board guidelines'' include the Board's version of the salient factor score, the calculation of points for pre- and post-incarceration factors, the point assignment grid, the decisions indicated by the prisoner's point score (also known as the ''grid score''), and the reasons for departing from the guidelines listed in the decision worksheet at Appendix 2–1 of the Board's 1987 rules. Because the suggested reasons include the term ''other,'' the Commission may use a reason not listed in the worksheet in making departures from the guidelines.

A 1991 Board policy guideline provides definitions of terms used in scoring post-incarceration factors of the 1987 Board guidelines (''negative institutional behavior'' and ''sustained program or work assignment achievement''), and in giving reasons for departing from the outcome indicated by the guidelines point score (*e.g.,* ''unusually extensive or serious prior record''). For prisoners who committed their crimes while this policy guideline was in effect (from December 16, 1991 to October 23, 1995), the Commission

will use the definitions given in the 1991 policy guideline for scoring negative behavior or sustained achievement, and the departure reasons that have been identified by the Board in its rules and the policy guideline. But again, the Commission may rely on ''other'' reasons for departing from the guidelines, reasons not listed in the rules and the policy statement. However, as a result of the *Sellmon* litigation, the Commission will not depart from the guidelines for the reason that the prisoner has not served a sufficient prison term to be ''accountable'' for the crime, or because the prisoner's release would depreciate the seriousness of the offense.

The remedial hearing will be conducted using the 1987 Board guidelines for making a release decision at an initial hearing. If the prisoner has already had a rehearing or has already served a sufficient period of time to come up for a rehearing, the hearing examiner will then apply the Board guidelines for a rehearing decision. The Commission modified the interim rule to simplify a direction concerning application of the rehearing guidelines. If the Commission has granted the prisoner a presumptive parole date under the 2000 Commission guidelines, the Commission will not rescind the presumptive date unless one of the accepted bases for such action exists, *i.e.,* new criminal conduct, new institutional misconduct, or new adverse information. The final rule also provides that the Commission may set a presumptive parole date for a prisoner who is considered under the remedial plan if the Commission determines that the prisoner needs to successfully complete a treatment program to reduce the risk that release would pose to the community, and the prisoner's eligibility for entry into the program includes an expected release date within a certain number of months or years. In these cases, the Commission may grant the presumptive parole date on the condition that the prisoner successfully completes the particular treatment program. The Commission may rescind the presumptive date if the prisoner fails in the program or if one of the other accepted bases for rescission of a presumptive date are present.

At the May 14, 2009, business meeting, the Commission received written and oral comments from interested organizations on a proposed remedial plan. The comments came from representatives of the District of Columbia Public Defender Service, the Washington Lawyers' Committee on Civil Rights and Urban Affairs (hereinafter ''Lawyers' Committee''), the attorney who represented the plaintiffs in the *Sellmon* case, and the U.S. Attorney's Office for the District of Columbia. Several commenters questioned the plan's eligibility criteria, especially the limitation regarding offenders who committed their crimes before the Board's guidelines became effective on March 4, 1985. In their view, the Commission should apply the 1987 Board guidelines to those offenders as well as offenders who committed their crimes when these guidelines were in effect. Concerns were also expressed regarding the proposal's allowance that the Commission be able to depart from the Board's guidelines for reasons ''other'' than those listed in the Board's regulations and policy guidelines.

The Lawyers' Committee reiterated these concerns in its written comments to the Commission's promulgation of the interim rule. In its comments, the Lawyers' Committee asserted that the Commission should: (1) Establish a clear and short time line for completing the hearings and reviews under the new policy; (2) limit itself to the reasons for guideline departures specifically listed by the Board in its rules and policy guidelines; (3) ensure that offenders who were heard under the 2000 Commission guidelines would continue to be considered under the 1987 Board guidelines; and (4) extend the use of the 1987 Board guidelines to all D.C. Code offenders regardless of the date of the offense. The Lawyers' Committee provided the only substantive comments to the Commission's interim rule.

With respect to the first assertion, the Commission initially set a goal of completing the hearings and reviews by January 31, 2010. At the October 6, 2009 Commission business meeting, the representative from the Lawyers' Committee questioned whether this deadline was realistic considering the resources that the Commission could devote to the project. The Commission estimates that approximately 550 prisoners are eligible for consideration under the plan. The Commission has begun reviewing these cases on the record and has completed over 100 record reviews. Beginning this month the Commission will conduct 19 special hearing dockets at various institutions to apply the 1987 Board guidelines to eligible prisoners. Based on its experience so far, combined with changes from the original staffing plan, the Commission has revised the goal for completion of the project to March 31, 2010.

On the second assertion, the Commission has concluded that it has the authority to use ''other'' reasons to depart from the guidelines. The district judge in *Sellmon* took a contrary view. The Commission respectfully disagrees with the district court's decision on this point and finds support for its position in the Board's paper on the development of the 1987 guidelines, the Board's 1992 policy guideline on making decisions on rehearing dates, and case precedent from the U.S. Court of Appeals for the DC Circuit. The Commission's authority to release a prisoner on parole is dependent on satisfaction of the statutory criteria, *i.e.,* that there is a reasonable probability that the prisoner will live and remain at liberty without violating the law, and that the prisoner's release is not incompatible with the welfare of society. The Board was not free to make release decisions in violation of the statutory criteria, whether by policy or by a decision in an individual case, and neither is the Commission. The clear majority of the cases reviewed by the Commission so far under the interim rule are prisoners who have committed crimes of extreme violence: murder, manslaughter, and sexual assault. The Commission expects that many of the remaining prisoners eligible for consideration under the plan have committed crimes of a similar nature, given the dates of their crimes, the length of their sentences, and time served to date. Some of these prisoners will be paroled under the 1987 Board guidelines as long as the Commission determines that their release would not endanger the public and would be compatible with the public welfare. But if, after a conscientious examination of the record, the Commission decides that the prisoner's release would pose an unreasonable risk to the public, the Commission will depart from the guidelines and deny parole to meet its statutory obligation.

Regarding the third assertion, the Commission will apply the 1987 Board guidelines to eligible prisoners in the special hearings and record reviews, and at every future parole determination proceeding held for such a prisoner, whichever set of guidelines were used in past considerations. The Commission will not revert to using the 2000 Commission guidelines at a later parole hearing after a parole proceeding under the 1987 Board guidelines. Finally, on the fourth assertion, as the Lawyers' Committee notes in its comments, the DC Circuit is presently considering an appeal from a *Sellmon* plaintiff who was denied relief on the claim that the

Commission should have used the 1987 Board guidelines in his case even though he committed his crime before these guidelines were in effect. The Commission will await the decision of the circuit before considering any amendment of the rule to expand the coverage of the rule beyond the present limit set on the basis of the offense date. The 1987 Board guidelines were in effect from March 4, 1985 through August 4, 1998, and the Commission will continue to apply the remedial plan only to a DC prisoner who committed his crime in this period.

Implementation

This final rule shall apply to any DC prisoner eligible under the terms of the rule for a hearing using the 1987 Board guidelines. The Commission will begin special hearing dockets to carry out the remedial plan in November 2009 and end the special dockets by March 31, 2010. The Commission will consider extending the special dockets beyond March 2010 for demonstrated need. If eligible prisoners are scheduled for hearings on regular dockets during the period from November 2009 to March 2010, these eligible prisoners shall be considered for parole using the 1987 Board guidelines. If an eligible prisoner comes up for a hearing after the special dockets are concluded, the prisoner shall be considered for parole using the 1987 Board guidelines. An eligible prisoner who is denied parole after consideration under the 1987 Board guidelines shall continue to be considered for parole under these guidelines until released as a result of a parole or accumulation of good time credits.

Good Cause Finding

The Commission finds that there is good cause to make this final rule effective before the expiration of 30 days from the date of publication. *See* 5 U.S.C. 553(d)(3). The plan described in this rule was the subject of public comment from May-September 2009, and has been implemented as an interim rule since August 17, 2009. There are no significant changes in the final rule from the interim rule. Delaying the effective date of the rule is not necessary to prepare correctional or supervision agencies for the workload caused by implementation of the rule. Delaying the effective date would arguably expose the Commission to continued litigation over the subject of the final rule.

Executive Order 12866

The U.S. Parole Commission has determined that this final rule does not constitute a significant rule within the meaning of Executive Order 12866.

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 the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

The final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(c) of the Congressional Review Act.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local, or 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. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E-Congressional Review Act)

This rule is not a ''major rule'' as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E-Congressional Review Act), now codified at 5 U.S.C. 804(2). The 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 the ability of United States-based companies to compete with foreign-based companies. Moreover, this is a rule of agency practice or procedure that does not substantially affect the rights or obligations of non-agency parties, and does not come within the meaning of the term ''rule'' as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Final Rule

■ Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR Part 2.

PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. Amend § 2.80 by revising paragraph (o) to read as follows:

§ 2.80 Guidelines for DC Code offenders.

* * * * *

(o) (1) A prisoner who is eligible under the criteria of paragraph (o)(2) may receive a parole determination using the 1987 guidelines of the former District of Columbia Board of Parole (hereinafter ''the 1987 Board guidelines'').

(2) A prisoner must satisfy the following criteria to obtain a determination using the 1987 Board guidelines:

(i) The prisoner committed the offense of conviction after March 3, 1985 and before August 5, 1998;

(ii) The prisoner is not incarcerated as a parole violator;

(iii) The prisoner received his initial hearing after August 4, 1998; and

(iv) The prisoner does not have a parole effective date, or a presumptive parole date before January 1, 2010.

(3) For a prisoner eligible for application of the 1987 Board guidelines, a hearing examiner shall first review the case on the record. If the hearing examiner recommends that the prisoner receive a parole effective date and the Commission concurs in the recommendation, the case shall not be scheduled for a hearing. If the hearing examiner does not recommend a parole effective date, a hearing shall be conducted on an appropriate hearing docket.

(4) At the hearing, the hearing examiner shall evaluate the prisoner's case using the 1987 Board guidelines, as if the prisoner were receiving an initial hearing. If appropriate, the hearing examiner shall evaluate the case using the 1987 Board guidelines for rehearings, revising the initial point score based on the prisoner's prison conduct record and program performance. The Commission shall use the former Board's policy guidelines in making its determinations under this paragraph, according to the policy guideline in effect at the time of the prisoner's offense.

(5) If the Commission denies parole after the hearing, and the prisoner

received a presumptive parole date under the parole determination that preceded the hearing under this paragraph, the prisoner shall not forfeit the presumptive parole date unless the presumptive date is rescinded for institutional misconduct, new criminal conduct, or for new adverse information.

(6) Decisions resulting from hearings under this paragraph may not be appealed to the Commission.

Dated: November 6, 2009.

Isaac Fulwood,

Chairman, United States Parole Commission.

[FR Doc. E9–27308 Filed 11–12–09; 8:45 am]

BILLING CODE 4410–31–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans prescribes interest assumptions for valuing and paying certain benefits under terminating single-employer plans. This final rule amends the benefit payments regulation to adopt interest assumptions for plans with valuation dates in December 2009. Interest assumptions are also published on PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective December 1, 2009.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

These interest assumptions are found in two PBGC regulations: the regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022) and the regulation on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044). Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates only the assumptions under the benefit payments regulation.

Two sets of interest assumptions are prescribed under the benefit payments regulation: (1) A set for PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by PBGC (found in Appendix B to Part 4022), and (2) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to Part 4022 the interest assumptions for PBGC to use for its own lump-sum payments in plans with valuation dates during December 2009, and (2) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology for valuation dates during December 2009.

The interest assumptions that PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 2.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for November 2009, these interest assumptions represent an increase of 0.25 percent in the immediate annuity rate and are otherwise unchanged. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during December 2009, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE–EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 194, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
194	12–1–09	1–1–10	2.50	4.00	4.00	4.00	7	8