

request for comments in the **Federal Register** on November 28, 2003 (68 FR 66700). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 19, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on January 5, 2004.

**Elizabeth S. Wallis,**

*Acting Manager, Air Traffic Division, Central Region.*

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## DEPARTMENT OF JUSTICE

### Office of Justice Programs

#### 28 CFR Part 91

[OJP(OJP)-Docket No. 1099F]

RIN 1121-AA41

#### Grants for Correctional Facilities on Tribal Lands Program

**AGENCY:** Office of Justice Programs, Justice.

**ACTION:** Second interim rule with request for comments.

**SUMMARY:** The Office of Justice Programs is issuing this second interim rule to update and further clarify what the Bureau of Justice Assistance considers to be an eligible "Indian tribe" and what is considered to be "construction," under the Grants for Correctional Facilities on Tribal Lands Program.

**DATES:** This rule will become effective February 17, 2004. All comments must be received by March 15, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule, by U.S. mail, to Renee Giger, Bureau of Justice Assistance, Office of Justice Programs, 810 Seventh Street, NW., Washington, DC 20531; and by electronic mail, to: [gigerr@ojp.usdoj.gov](mailto:gigerr@ojp.usdoj.gov). Communications should refer to the above docket number and title.

**FOR FURTHER INFORMATION CONTACT:** Phillip Merkle, Senior Policy Advisor, Bureau of Justice Assistance, Office of Justice Programs, 810 Seventh Street,

NW., Washington, DC 20531; Telephone: (202) 305-2550. (This is not a toll-free number.)

#### SUPPLEMENTARY INFORMATION:

##### Background

The Bureau of Justice Assistance (BJA) in the Office of Justice Programs (OJP) administers several major grant programs and provides technical assistance to state, local, and tribal governments to help them with the implementation of the 1994 Crime Act's corrections-related programs. One of these programs is the Grants for Correctional Facilities on Tribal Lands Program. This program provides funding for the construction of correctional facilities on tribal lands for the incarceration of offenders subject to tribal jurisdiction.

Grant funds may not be used for the purchase of land or for the costs associated with the operation of the correctional facility.

##### History of This Rulemaking

On September 24, 1996, OJP published an interim rule (at 61 FR 49969), amending 28 CFR Part 91, Subpart C, Grants for Correctional Facilities, to implement the Violent Offender Incarceration and Truth-In-Sentencing Grants Program for Indian Tribes, as required by section 114 of the Fiscal Year 1996 Omnibus Consolidated Rescissions and Appropriations Act. Section 114 amended the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 13701 *et seq.*, to authorize a reservation of funds for the specific purpose of allowing the Attorney General to make discretionary grants to Indian tribes.

Since the publication of the 1996 interim rule, OJP has received requests for further clarification of certain terms. Accordingly, OJP is now issuing this second interim rule, revising Subpart C to update and clarify what is an eligible "Indian tribe" and what is considered "construction" under this program.

##### Regulatory Certifications

*Administrative Procedure Act 5 U.S.C. 553*

Because this rule makes only technical clarifications to a previously published interim rule, and imposes no new restrictions, the Department of Justice finds good cause for exempting it from the provision of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule-making, and the 60-day period required for public comment. For the same reasons, a delay in the effective date of

these changes would be unnecessary and contrary to the public interest.

##### *Executive Order 12866*

This regulation has been written and reviewed in accordance with Executive Order 12866, Sec. 1(b), Principles of Regulation. OJP has determined that this rule is not a "significant regulatory action" under Executive Order 12866, Sec. 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

##### *Regulatory Flexibility Act*

OJP, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities because the economic impact is limited to OJP'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 Sec. 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 cost 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.

##### *Paperwork Reduction Act*

No new collection of information requirements as defined under the Paperwork Reduction Act (44 U.S.C. 3504(h)) are being added by this regulation.

##### *Environmental Impact*

OJP has evaluated this rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of OJP's actions, as required by the National Environmental Policy Act (42

U.S.C. § 4321 *et seq.*) and related directives. OJP has concluded that the issuance of this rule does not have a significant impact on the quality of the human environment and, therefore, does not require the preparation of an Environmental Impact Statement.

#### *Energy Impact Statement*

OJP has evaluated this rule and has determined that it creates no new impact on the energy supply or distribution.

#### List of Subjects in 28 CFR Part 91

Grant programs—Law.

■ Accordingly, for the reasons set forth in the preamble, 28 CFR part 91, as amended by the interim rule published at 61 FR 49969 on September 24, 1996, is further amended by this second interim rule as follows:

#### PART 91—GRANTS FOR CORRECTIONAL FACILITIES

■ 1. The authority citation for subpart C continues to read as follows:

**Authority:** 42 U.S.C. 13701 *et seq.*, as amended by Pub. L. 104–134.

■ 2. Subpart C is amended by revising the heading to read as follows:

#### Subpart C—Correctional Facilities on Tribal Lands

2. Section 91.22 is amended by revising paragraphs (d) and (e) to read as follows:

##### § 91.22 Definitions.

\* \* \* \* \*

(d) *Indian Tribe* means an eligible Native American tribe as defined by the Indian Self Determination Act, 25 U.S.C. 450b(e).

(e) *Construction* means the erection, acquisition, renovation, repair, remodeling, or expansion of new or existing buildings or other physical facilities, and the acquisition or installation of fixed furnishings and equipment. It includes facility planning (including environmental impact analysis), pre-architectural programming, architectural design, preservation, construction, administration, construction management, or project management costs. Construction does not include the purchase of land.

**Deborah J. Daniels,**

*Assistant Attorney General, Office of Justice Programs.*

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#### PENSION BENEFIT GUARANTY CORPORATION

#### 29 CFR Parts 4022 and 4044

#### Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in February 2004. Interest assumptions are also published on the PBGC's Web site (<http://www.pbgc.gov>).

**EFFECTIVE DATE:** February 1, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, 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:** The 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.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in appendix C to part 4022).

Accordingly, this amendment (1) adds to appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during February 2004,

(2) adds to appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during February 2004, and (3) 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 the PBGC's historical methodology for valuation dates during February 2004.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in appendix B to part 4044) will be 4.10 percent for the first 20 years following the valuation date and 5.00 percent thereafter. These interest assumptions represent a decrease (from those in effect for January 2004) of 0.10 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in appendix B to part 4022) will be 3.25 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. These interest assumptions are unchanged from those in effect for January 2004.

For private-sector payments, the interest assumptions (set forth in appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in appendix B to part 4022).

The 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, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during February 2004, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The 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).