

the 1990 Act, as amended, to determine whether the CMPs under title I of ERISA must be adjusted for inflation. The Department did not exercise discretion as to the calculation of the CMP adjustments and the final rule involves minor technical amendments to part 2575 of title 29 of the CFR for only two CMPs. Accordingly, the regulation is being published as a final rule.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is not "significant" and therefore is not subject to review by OMB.

As required by the Act for each civil monetary penalty, the Department has applied the relevant COLA to the penalty amount to be adjusted, rounded the penalty increase as prescribed under the 1990 Act, and added the increase to the unadjusted penalty to determine changes, if any, in the penalty amounts. The recalculation resulted in a small penalty increase of 10 percent to the penalty amounts contained in sections 502(c)(5) and 502(c)(6) of ERISA. No other adjustments are required for civil penalties under ERISA as a result of the recalculation. The amendments implement the statutory adjustment required by the 1990 Act, as amended, and having no impact that is separate from that of the statutory provisions, are not "significant" under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires each Federal agency to perform a regulatory flexibility analysis for all rules subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

Because this rule is being issued as a final rule without notice and comment under the provision of section 553(b)(3)(B) of the APA, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant impact on a substantial number of small entities or conduct a regulatory flexibility analysis. The Department does not anticipate that this final rule will impose a significant impact on a substantial number of small entities because it is expected to have no impact that is separate from the statutory adjustment required by the 1990 Act, as amended.

Paperwork Reduction Act

This rule is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain a "collection of information" as defined in 44 U.S.C. 3502(3).

Congressional Review Act

The final rule is subject to the provisions of the Congressional Review Act (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Controller General for review. The final rule is not a "major rule" as that term is defined in 5 U.S.C. 804 because it is not likely to result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), as well as Executive Order 12875, this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal

governments, and does not impose an annual burden exceeding \$100 million on the private sector.

Executive Order 13132

The Department has reviewed this regulation in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does not have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain specifically enumerated exceptions not applicable here, that the provisions of titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA.

Statutory Authority

This regulation is adopted pursuant to the authority contained in the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. 2461 note), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, title III, section 31001(s), 110 Stat. 1321-373), and the authority contained in sections 502(c) and 505 of ERISA, 29 U.S.C. 1132(c) and 1135.

List of Subjects in 29 CFR Part 2575

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Penalties, Pensions, Pension and Welfare Benefits Administration.

Final Rule

In view of the foregoing, subpart A of part 2575 of chapter XXV of title 29 of the Code of Federal Regulations is amended as follows:

PART 2575—[AMENDED]

1. The authority citation for part 2575 is revised to read as follows:

Authority: Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by section 31001(s) of Pub. L. 104-134, 110 Stat. 1321-373; 29 U.S.C. 1059(b), 1132(c) and 1135; Secretary of Labor Order No. 1-87.

2. Amend part 2575 by revising § 2575.100 and adding in the appropriate place §§ 2575.502c-5 and 2575.502c-6 to read as follows:

§ 2575.100 In general.

Section 31001(s) of the Debt Collection Improvement Act of 1996 (the Act, Public Law 104-134, 110 Stat. 1321-373) amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act, Public Law 101-