

statutory provisions, and would in fact be estimated to be greater in the absence of a model notice due to higher notice drafting time. Because plans commonly provide advance notice of blackout periods voluntarily, much of this cost is inherent in normal business practice, and the incremental cost attributable to the advance notice requirement will be less than total estimated here. Because the costs of the statute arise from notice provisions, the data and methodology used in developing these estimates are fully described in the Paperwork Reduction Act section of this statement of regulatory impact.

Although the Department requested input from the public concerning the assumptions used in developing these estimates, the likely frequency of blackout periods, the sources of variability in the costs and benefits of providing notices, and any potential differential impacts on small plans, it received a limited number of comments addressing economic impact. As noted earlier in this preamble, several commenters indicated that the interim final rule's requirement for the disclosure of specific beginning and ending dates in the blackout notice, and a corresponding frequency of the requirement for subsequent notices arising from the inability to predict specific dates, would add to the burden of the blackout notice requirement. The Department has made certain modifications in the final rule to address these concerns. A comment was also received with respect to the Department's assumptions with respect to the use of electronic methods of communication. This comment is addressed in the Paperwork Reduction Act statement below.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive 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. It has been determined that this final rule is significant within the meaning of section 3(f)(4) of the Executive Order. OMB has, therefore, reviewed the final rule pursuant to the Executive Order.

Paperwork Reduction Act

At the time of publication of the interim final rule, the Department of Labor submitted the information collection request (ICR) included in the interim final rule to OMB for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995 (PRA 95). OMB subsequently approved the information collection using emergency clearance procedures on December 5, 2002. This emergency clearance will expire on April 30, 2003. As a consequence, the information collection included in this final rule is being submitted at this time for continuing approval. The burden estimates are unchanged, and terms of the final rule that constitute collections of information are not substantively or materially changed. A copy of the ICR with applicable supporting statement may be obtained by calling the Department of Labor, Ms. Marlene Howze, at (202) 693-4158, or by e-mail to Howze-Marlene@dol.gov.

Comments and questions about the ICR should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Desk Officer for the Pension and Welfare Benefits Administration, Room 10235, 725 17th Street, NW., Washington, DC 20503 ((202) 395-7316). Comments should be submitted to OMB by February 24, 2003 to ensure their consideration.

The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Information Collection Provisions

The information collection provisions of this final rule are found in paragraphs (a), (b)(2)(ii)(A) and (B), (b)(2)(iv), (b)(4), and (c)(1). A model notice is provided in paragraph (e) to facilitate compliance and moderate the burden associated with supplying notices to participants and beneficiaries as described in the final rule. Use of the model notice is not mandatory, and the addition of other relevant information to the advance notice should not be viewed as restricted by the model. Modifications described earlier in this preamble to paragraphs (b)(1)(iii)(A) and (B) allowing the use under specific circumstances of a limited range of beginning and ending dates rather than specific dates should serve to allow for greater flexibility and limit the number of follow-up notices required pursuant to paragraph (b)(4). New paragraph (c)(3) clarifies that where an issuer designates the plan administrator as the person to receive notice under paragraphs (c)(1), the plan administrator need not supply this notice separately to itself. This modification may eliminate the need for duplicate notification under some circumstances. Neither of these changes is considered to constitute a substantive or material change to the existing approved information collection.

Comments

As noted, the Department received comments concerning the difficulty of including specific beginning and ending dates in the notice pursuant to paragraphs (b)(1)(iii), and the applicability of the notice requirement of paragraph (c) when an issuer designates the plan administrator as the party to receive notices of blackout periods affecting securities of the issuer. The Department has addressed these and other issues raised by commenters with modifications previously described in this preamble. In addition, one commenter expressed the view that the Department's estimates were understated to the extent that they incorporated the use of electronic media for distribution of the notices. The commenter further stated that the use of electronic technology for communicating with participants and