

Important Notice Concerning Your Rights Under The [Enter Name of Individual Account Plan]

[Enter date of notice]

1. This notice is to inform you that the [enter name of plan] will be [enter reasons for blackout period, as appropriate: changing investment options, changing recordkeepers, etc.].

2. As a result of these changes, you temporarily will be unable to [enter as appropriate: direct or diversify investments in your individual accounts (if only specific investments are subject to the blackout, those investments should be specifically identified), obtain a loan from the plan, or obtain a distribution from the plan]. This period, during which you will be unable to exercise these rights otherwise available under the plan, is called a "blackout period." Whether or not you are planning retirement in the near future, we encourage you to carefully consider how this blackout period may affect your retirement planning, as well as your overall financial plan.

3. The blackout period for the plan [enter the following as appropriate: is expected to begin on [enter date] and end [enter date]/is expected to begin during the week of [enter date] and end during the week of [enter date]. During these weeks, you can determine whether the blackout period has started or ended by [enter instructions for use toll-free number or accessing web site].

4. [In the case of investments affected by the blackout period, add the following: During blackout period you will be unable to direct or diversify the assets held in your plan account. For this reason, it is very important that you review and consider the appropriateness of your current investments in light of your inability to direct or diversify those investments during the blackout period. For your long-term retirement security, you should give careful consideration to the importance of a well-balanced and diversified investment portfolio, taking into account all your assets, income and investments.] If the plan permits investments in individual securities, add the following: You should be aware that there is a risk to holding substantial portions of your assets in the securities of any one company, as individual securities tend to have wider price swings, up and down, in short periods of time, than investments in diversified funds. Stocks that have wide price swings might have a large loss during the blackout period, and you would not be able to direct the sale of such stocks from your account during the blackout period.]

5. [If timely notice cannot be provided (see paragraph (b)(1)(v) of this section) enter: (A) Federal law generally requires that you be furnished notice of a blackout period at least 30 days in advance of the last date on which you could exercise your affected rights immediately before the commencement of any blackout period in order to provide you with sufficient time to consider the effect of the blackout period on your retirement and financial plans. (B) [Enter explanation of reasons for inability to furnish 30 days advance notice.]]

6. If you have any questions concerning this notice, you should contact [enter name,

address and telephone number of the plan administrator or other contact responsible for answering questions about the blackout period].

(f) *Effective date.* This section shall be effective and shall apply to any blackout period commencing on or after January 26, 2003. For the period January 26, 2003 to February 25, 2003, plan administrators shall furnish notice as soon as reasonably possible.

Dated: January 16, 2003.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Parts 2560 and 2570

RIN 1210-AA91, RIN 1210-AA93

Civil Penalties Under ERISA Section 502(c)(7) and Conforming Technical Changes on Civil Penalties Under ERISA Sections 502(c)(2), 502(c)(5) and 502(c)(6)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final rules.

SUMMARY: This document contains final rules that implement the civil penalty provision in section 502(c)(7) of the Employee Retirement Income Security Act of 1974 (the Act or ERISA) adopted as part of the Sarbanes-Oxley Act of 2002 (SOA). The final rules establish procedures relating to the assessment of civil penalties by the Department of Labor (Department) under section 502(c)(7) of ERISA for failures or refusals by plan administrators to provide notices of a blackout period as required by section 101(i) of ERISA. This document also contains final rules making conforming and technical changes to the agency's rules of practice and procedure for other civil penalties under section 502(c) of ERISA. The final rules affect employee benefit plans, plan sponsors, administrators and fiduciaries, and plan participants and beneficiaries.

DATES: *Effective date:* These final rules are effective January 26, 2003.

FOR FURTHER INFORMATION CONTACT: Susan Elizabeth Rees, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington,

DC 20210, (202) 693-8537 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Background

The Sarbanes-Oxley Act of 2002 (the SOA), Pub. L. 107-204, was enacted on July 30, 2002. Section 306(b)(1) of the SOA amended section 101 of ERISA to add a new subsection (i), requiring that administrators of individual account plans provide notice to affected participants and beneficiaries in advance of the commencement of any blackout period. For purposes of this notice requirement, a blackout period generally includes any period during which the ability of participants or beneficiaries to direct or diversify assets credited to their accounts, to obtain loans from the plan or to obtain distributions from the plan will be temporarily suspended, limited or restricted. Elsewhere in the **Federal Register** today, the Department has published a final rule, to be codified at 29 CFR 2520.101-3, implementing the notice requirements in ERISA section 101(i).

Section 306(b)(3) of SOA amended section 502(c) of ERISA to add a new paragraph (7) establishing a civil penalty for an administrator's failure or refusal to provide timely notice of a blackout period to participants and beneficiaries. Specifically, section 502(c)(7) provides that the Secretary may assess a civil penalty of up to \$100 a day from the date of the plan administrator's failure or refusal to provide notice to a participant or beneficiary in accordance with ERISA section 101(i).

On October 21, 2002, the Department published interim rules implementing section 502(c)(7) of ERISA in the **Federal Register** (67 FR 64774) for public comment. The interim rules established procedures relating to the assessment and administrative review of civil penalties by the Department under section 502(c)(7) for failures or refusals by plan administrators to provide notice of a blackout period as required by section 101(i) of ERISA and 29 CFR 2520.101-3. The interim rules also made changes to the existing civil penalty rules under ERISA sections 502(c)(2), 502(c)(5), and 502(c)(6) to incorporate certain technical improvements being adopted as part of the section 502(c)(7) implementing regulations.

The Department received 7 comments on the section 502(c)(7) interim rules in response to its request for comments. Set forth below is an overview of the final rules, which adopt the interim