

Therefore, except for the technical changes noted below intended to address the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, the interim rules are being adopted as final rules without change.

4. Technical Changes to §§ 2560.502c-2(b), 2560.502c-5(b), 2560.502c-6(b), 2560.502c-7(b), To Reflect the Requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as Amended

This document also contains technical amendments to § 2560.502c-2(b), § 2560.502c-5(b), § 2560.502c-6(b), and § 2560.502c-7(b), regarding the maximum penalty amounts that may be assessed. The amendments are designed to reflect the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act), Pub. L. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996 (the Act), Pub. L. 104-134, 110 Stat. 1321-373. The Act amended the 1990 Act to require generally that federal agencies adjust certain civil monetary penalties for inflation no later than 180 days after the enactment of the Act, and at least once every four years thereafter, in accordance with the guidelines specified in the 1990 Act, as amended. The Act specifies that any such increase in a civil monetary penalty shall apply only to violations that occur after the date the increase takes effect. The Department's civil monetary penalty inflation adjustment regulations are codified in part 2575 of Title 29 of the Code of Federal Regulations.² The technical amendments to § 2560.502c-2(b), § 2560.502c-5(b), § 2560.502c-6(b), and § 2560.502c-7(b) in this document are being made under section 505 of ERISA which authorizes the Department to prescribe such regulations as the Secretary finds necessary or appropriate to carry out the provisions of Title I of ERISA. As a general matter, the Administrative Procedure Act (APA) requires rulemakings to be published in

the **Federal Register** and also mandates that an opportunity for comments be provided when an agency promulgates regulations. Section 553(b)(3)(B) of the APA exempts certain rules or agency procedures from the notice and comment requirements when an agency finds for good cause that notice and public comment are impracticable, unnecessary, or contrary to the public interest. The Department finds for good cause that notice and comment on these technical amendments to § 2560.502c-2(b), § 2560.502c-5(b), § 2560.502c-6(b), and § 2560.502c-7(b) is unnecessary. The amendments merely confirm that the maximum amount of the civil penalty assessable by the Department under its implementing regulations is the maximum amount stated in sections 502(c)(2), 502(c)(5), 502(c)(6), and 502(c)(7), or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Accordingly, the Secretary determined that these technical changes were appropriate to issue in final form.

5. Effective Date

These final rules are effective January 26, 2003. The final rules establishing procedures relating to the assessment of civil penalties by the Department under section 502(c)(7) of ERISA shall apply to failures or refusals by plan administrators to provide notices of a blackout period as required by section 101(i) of ERISA and 29 CFR 2520.101-3 on or after that date. Pursuant to section 553(c) of the APA, the Department finds good cause for these rules to be effective less than 30 days after publication. The Department believes that having the blackout notice civil penalty rules effective on the effective date of the underlying statutory provisions will avoid confusion for plan administrators, and the amendments to the existing civil penalty rules under ERISA sections 502(c)(2), 502(c)(5), and 502(c)(6) merely incorporate certain technical improvements being adopted as part of the section 502(c)(7) implementing regulations. Moreover, the limited extent of the differences between the instant rule and the interim rules will minimize any difficulties in complying with these rules by the effective date.

C. Regulatory Impact Analysis

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. The Department has determined that these final rules relating to the assessment of civil monetary penalties under section 502(c)(7) of ERISA are significant in that they provide guidance on the administration and enforcement of the notice provisions of section 101(i) of ERISA. Separate guidance on the notice requirements of section 101(i) (Final Rule Relating to Notice of Blackout Periods to Participants and Beneficiaries), also published in today's issue of the **Federal Register**, is also considered significant within the meaning of section 3(f)(4) of the Executive Order. Accordingly, OMB has reviewed the final rules pertaining to both the blackout notice and the related civil penalty pursuant to the terms of the Executive Order.

The principal benefit of the statutory penalty provisions and these final rules will be greater adherence to the requirement of ERISA section 101(i) that plan administrators provide advance written notice to participants and beneficiaries in individual account retirement plans whose existing rights to direct investments in their accounts or to obtain loans or distributions will be suspended or limited. The implementation of orderly and consistent processes for the assessment of penalties and the review of such assessments will also be beneficial for plan administrators. The procedures established in these final rules will also allow facts and circumstances related to a failure or refusal to provide appropriate notice to be presented by a plan administrator and to be taken into consideration by the Department in assessing penalties under ERISA section 502(c)(7).

² The Department will be publishing shortly a separate final rule implementing the required inflation adjustment for this adjustment cycle. Application of the required methodology will result in a small increase in only two Title I civil penalty amounts. Specifically, the civil monetary penalty set by ERISA section 502(c)(5) for a failure or refusal on the part of certain administrators to file Form M-1 information with the Department as required by ERISA section 101(g) will be adjusted from \$1,000 to \$1,100 per day, and the civil monetary penalty set by ERISA section 502(c)(6) for a failure on the part of the plan administrator to furnish certain plan documents to the Secretary on request will be adjusted from \$100 to \$110 per day with the penalty cap being adjusted from \$1,000 to \$1,100 per request. No adjustments were required for any other civil penalties under Title I of ERISA.