

The rate of failure or refusal to provide blackout notices where required, and the dollar value of penalties to be assessed in those cases cannot be predicted. The civil penalty provisions of the statute and these final rules impose no mandatory requirements or costs, except where a plan administrator has failed to provide the notice required in ERISA section 101(i).

The technical amendments conforming the existing regulatory provisions relating to the assessment of civil penalties under sections 502(c)(2), (c)(5), and (c)(6) of ERISA are procedural in nature, and similarly impose no additional requirements or costs.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. For purposes of its analyses under the RFA, PWBA continues to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reporting for pension plans that cover fewer than 100 participants. Because this guidance was originally issued an interim final rule pursuant to the authority and deadlines prescribed in sections 306(b)(2) of SOA, RFA does not apply, and regulatory flexibility analysis is not required. However, in the interim final rule, the Department requested comments regarding any special issues facing small plans, or any alternative approaches that would assist small plans with compliance with respect to the assessment of civil penalties under ERISA section 502(c)(7) and the conforming amendments to existing administrative and procedural regulations relating to the assessment of civil penalties under ERISA sections 502(c)(2), (c)(5), and (c)(6). No such comments were received.

The terms of the statute pertaining to the assessment of civil penalties for failure to provide notices to plan participants and beneficiaries in the event of a blackout do not vary relative to plan or plan administrator size. The operation of the statute will normally result in the assessment of lower penalties where small plans are involved because a violation with

respect to a single participant or beneficiary is treated as a separate violation for purposes of calculating the penalty. The opportunity for a plan administrator to present facts and circumstances related to a failure or refusal to provide appropriate notice that may be taken into consideration by the Department in assessing penalties under ERISA section 502(c)(7) may offer some degree of flexibility to small entities subject to penalty assessments. Penalty assessments will have no direct impact on small plans because the plan administrator assessed a civil penalty is personally liable for the payment of that penalty pursuant to section 2560.502c-7(j).

Paperwork Reduction Act

This Final Rule on Assessment of Civil Penalties under ERISA section 502(c)(7) is not subject to the requirements of the Paperwork Reduction Act of 1995 (PRA 95) (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). Information otherwise provided to the Secretary in connection with the administrative and procedural requirements of these final rules is excepted from coverage by PRA 95 pursuant to 44 U.S.C. 3518(c)(1)(B), and related regulations at 5 CFR 1320.4(a)(2) and (c). These provisions generally except information provided as a result of an agency's civil or administrative action, investigation, or audit. This exception also applies to the conforming amendments to administrative and procedural rules pertaining to the civil penalty provisions of ERISA sections 502(c)(2), 502(c)(5), and 502(c)(6).

Congressional Review Act

The rules being issued here are subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and have been transmitted to Congress and the Comptroller General for review. The 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 United States-based enterprises to compete with foreign-based enterprises in domestic and 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, these rules do 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.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. These final rules do not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, 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. The requirements implemented in these final rules do not alter the fundamental reporting and disclosure, or administration and enforcement provisions of the statute with respect to employee benefit plans, and as such have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects

29 CFR Part 2560

Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions.

29 CFR Part 2570

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions.

In view of the foregoing, Parts 2560 and 2570 of Chapter XXV of title 29 of the Code of Federal Regulations are amended as follows: