

facilitate proper selection or continuance of the best applicants or persons for a given position or contract. Although the primary functions of USAID are not of a law enforcement nature, the mandate to ensure USAID funding is not purposefully or inadvertently used to provide support to entities or individuals deemed to be a risk to national security necessarily requires coordination with law enforcement and intelligence agencies as well as use of their information. Use of these agencies' information necessitates the conveyance of these other systems exemptions to protect the information as stated.

■ 3. Amend § 215.14 by adding the heading "Note to paragraph (c)(5)" to the undesignated text at the end of the section and paragraph (c)(6) to read as follows:

**§ 215.14 Specific exemptions.**

\* \* \* \* \*

(c) \* \* \*

(6) *Partner Vetting System.* This system is exempt under 5 U.S.C. 552a (k)(1), (k)(2), and (k)(5) from the provision of 5 U.S.C. 552a (c)(3); (d); (e)(1); (e)(4)(G), (H), (I); and (f). These exemptions are claimed to protect the materials required by executive order to be kept secret in the interest of national defense or foreign policy, to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources, and to facilitate proper selection or continuance of the best applicants or persons for a given position or contract.

Dated: December 23, 2008.

**Randy T. Streufert,**

*Director, Office of Security.*

[FR Doc. E8-31131 Filed 12-31-08; 8:45 am]

BILLING CODE 6116-01-P

**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

**29 CFR Part 2560**

**RIN 1210-AB24**

**Civil Penalties Under ERISA Section 502(c)(4)**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Final rule.

**SUMMARY:** This document contains a final regulation that establishes procedures relating to the assessment of civil penalties by the Department of Labor under section 502(c)(4) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act). The regulation is necessary to reflect recent amendments to section 502(c)(4) by the Pension Protection Act of 2006, under which the Secretary of Labor is granted authority to assess civil penalties not to exceed \$1,000 per day for each violation of section 101(j), (k), or (l), or section 514(e)(3) of ERISA. The regulation will affect employee benefit plans, plan administrators and sponsors, fiduciaries, as well as participants, beneficiaries, employee representatives, and certain employers.

**DATES:** This final rule is effective on March 3, 2008.

**FOR FURTHER INFORMATION CONTACT:** Melissa R. Dennis, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693-8500. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On August 17, 2006, the Pension Protection Act of 2006 (PPA), Public Law 109-280, 120 Stat. 780, amended title I of ERISA by adding or revising a substantial number of substantive provisions. In conjunction with many of these new or revised provisions, the PPA also amended the civil enforcement provisions in ERISA to provide the Secretary of Labor with authority to assess civil monetary penalties for violations of the substantive provisions.

Specifically, section 103(b)(1) of the PPA amended section 101 of ERISA by adding a new disclosure requirement under subsection (j), under which the plan administrator of a single-employer defined benefit pension plan must provide written notice of limitations on benefits and benefit accruals to participants and beneficiaries pursuant to section 206(g) of ERISA (or the parallel Internal Revenue Code provision at section 436(b)).<sup>1</sup> A notice of benefit limitations must be furnished within 30 days after a plan becomes subject to an ERISA section 206(g) funding-based restriction and at such other time as may be determined by the Secretary of the Treasury. Section 103(b)(2) of the PPA amended section 502(c)(4) of ERISA to provide the

Secretary of Labor with the authority to assess a civil penalty of not more than \$1,000 a day for each violation of ERISA section 101(j). The effective date of the provisions added by PPA section 103(b) is for plan years beginning on or after January 1, 2008.

Section 502(a)(1) of the PPA amended section 101 of ERISA by adding subsection (k), under which the plan administrator of a multiemployer pension plan must, upon written request, furnish certain documents to any plan participant, beneficiary, employee representative, or any employer that has an obligation to contribute to the plan. Section 502(a)(2) of the PPA amended section 502(c)(4) of ERISA to provide the Secretary of Labor with the authority to assess a civil penalty of not more than \$1,000 a day for each violation of ERISA section 101(k). The effective date of the provisions added by PPA section 502(a) is for plan years beginning on or after January 1, 2008.

Section 502(b)(1) of the PPA amended section 101 of ERISA by adding subsection (l), under which a plan sponsor or plan administrator of a multiemployer employee benefit plan must, upon written request, furnish to any employer with an obligation to contribute to such plan, notice of potential withdrawal liability. Section 502(b)(2) of the PPA amended section 502(c)(4) of ERISA to provide the Secretary of Labor with the authority to assess a civil penalty of not more than \$1,000 a day for each violation of ERISA section 101(l). The effective date of the provisions added by PPA section 502(b) is for plan years beginning on or after January 1, 2008.

Section 902(f)(1) of the PPA amended section 514 of ERISA by adding subsection (e)(3), under which the plan administrator of a plan with an automatic contribution arrangement shall provide to each participant, to whom the arrangement applies, notice of the participant's rights and obligations under such arrangement. Section 902(f)(2) of the PPA amended section 502(c)(4) of ERISA to provide the Secretary of Labor with the authority to assess a civil penalty of not more than \$1,000 a day for each violation of ERISA section 514(e)(3). The effective date of the provisions added by PPA section 902(f) is August 17, 2006.

On December 19, 2007, the Department published in the **Federal Register** a proposed rule to implement section 502(c)(4) of ERISA and invited interested parties to comment.<sup>2</sup> In

<sup>1</sup> Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over section 206(g) of ERISA.

<sup>2</sup> 72 FR 71842.

response to the proposal, the Department received two written comments representing plans and plan sponsors. Copies of the two comments are available under the "Public Comments" section of the Department's Web site at <http://www.dol.gov/ebsa>. After careful consideration of the issues raised in the written comments, the Department is publishing a final regulation, to be codified at 29 CFR 2560.502c-4, without change.

One commenter suggested that it may be premature to issue this civil penalty regulation in advance of substantive regulations under section 101(j), (k), or (l), or section 514(e)(3) of ERISA. As explained below, the civil penalty regulation being adopted herein is merely procedural in nature, *i.e.*, it establishes the process by which the Department may assess civil penalties and the process by which the respondent may challenge that assessment. If the Department or the Secretary of the Treasury were to issue regulations under section 101(j), (k), or (l), or section 514(e)(3) of ERISA, they would not likely have any impact on such procedures.<sup>3</sup> Moreover, the Secretary's authority to assess civil penalties under this section is not conditioned on the existence of substantive regulations implementing section 101(j), (k), or (l), or section 514(e)(3) of ERISA. For these reasons, the Department does not believe it is premature to establish this civil penalty regulation at this time.

The commenters also asked whether the notice requirement in section 514(e)(3) of ERISA applies to plans with automatic contribution arrangements that are not intended to meet the requirements of the Department's regulation on qualified default investment alternatives, at 29 CFR 2550.404c-5. The notice requirement in section 514(e)(3) of ERISA applies only to automatic contribution arrangements described in section 514(e)(2) of ERISA. For purposes of section 514(e), section 514(e)(2) of ERISA, in relevant part, defines an automatic contribution arrangement as an arrangement under which "contributions are invested in accordance with regulations prescribed by the Secretary under section 404(c)(5)." Accordingly, the notice requirement in section 514(e)(3) of ERISA, as well as the related civil penalty provision in section 502(c)(4) of

ERISA, extend only to automatic contribution arrangements described in § 2550.404c-5(f)(1).

#### B. Overview of Section 2560.502c-4

In general, the final regulation sets forth how the maximum penalty amounts are computed, identifies the circumstances under which a penalty may be assessed, sets forth certain procedural rules for service and filing, and provides a plan administrator a means to contest an assessment by the Department and to request an administrative hearing.

Paragraph (a) of the regulation addresses the general application of section 502(c)(4) of ERISA, under which the plan administrator of an eligible plan shall be liable for civil penalties assessed by the Secretary of Labor in each case in which there is a failure or refusal, in whole or in part, to furnish the item(s) to each person entitled under the requirements of section 101(j), (k), or (l), or section 514(e)(3) of ERISA, as applicable.

Paragraph (b) of the regulation sets forth the amount of penalties that may be assessed under section 502(c)(4) of ERISA and provides that the penalty assessed under section 502(c)(4) for each separate violation is to be determined by the Department, taking into consideration the degree or willfulness of the failure or refusal. Paragraph (b) provides that the maximum amount assessed for each violation shall not exceed \$1,000 per day per violation.<sup>4</sup>

Paragraph (c) of the regulation provides that, prior to assessing a penalty under ERISA section 502(c)(4), the Department shall provide the plan administrator with written notice of the Department's intent to assess a penalty, the amount of such penalty, the number of individuals (*e.g.*, participants and beneficiaries) on which the penalty is based, the period to which the penalty applies, and the reason(s) for the penalty. The notice would indicate the specific provision violated (*i.e.*, section 101(j), (k), or (l), or section 514(e)(3) of ERISA). The notice is to be served in accordance with paragraph (i) of the regulation (service of notice provision).

<sup>4</sup> The Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act), Public Law 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996 (the Act), Public Law 104-134, 110 Stat. 1321-373, generally provides 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. 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.

Paragraph (d) of the regulation provides that the Department may determine not to assess a penalty, or to waive all or part of the penalty to be assessed, under ERISA section 502(c)(4), upon a showing by the administrator, under paragraph (e) of the regulation, of compliance with section 101(j), (k), or (l), or section 514(e)(3) of ERISA or that there were mitigating circumstances for noncompliance. Under paragraph (e) of the regulation, the administrator has 30 days from the date of the service of the notice issued under paragraph (c) of the regulation within which to file a statement making such a showing. When the Department serves the notice under paragraph (c) by certified mail, service is complete upon mailing but five (5) days are added to the time allowed for the filing of the statement (see § 2560.502c-4(i)(2)).

Paragraph (f) of the regulation provides that a failure to file a timely statement under paragraph (e) shall be deemed to be a waiver of the right to appear and contest the facts alleged in the Department's notice of intent to assess a penalty for purposes of any adjudicatory proceeding involving the assessment of the penalty under section 502(c)(4) of ERISA, and to be an admission of the facts alleged in the notice of intent to assess. Such notice then becomes a final order of the Secretary 45 days from the date of service of the notice.

Paragraph (g)(1) of the regulation provides that, following a review of the facts alleged in the statement under paragraph (e), the Department shall notify the administrator of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty. Under paragraph (g)(2) of the regulation, this notice becomes a final order 45 days after the date of service of the notice, except as provided in paragraph (h).

Paragraph (h) of the regulation provides that the notice described in paragraph (g) will become a final order of the Department unless, within 30 days of the date of service of the notice, the plan administrator or representative files a request for a hearing to contest the assessment in administrative proceedings set forth in regulations issued under part 2570 of title 29 of the Code of Federal Regulations and files an answer, in writing, opposing the sanction. When the Department serves the notice under paragraph (g) by mail, service is complete upon mailing, but five days are added to the time allowed for the filing of a request for hearing and

<sup>3</sup> Pursuant to section 101(c)(1)(A)(ii) of the Worker, Retiree, and Employer Recovery Act of 2008, Pub. L. 110-458, the Secretary of the Treasury, in consultation with the Secretary of Labor, shall have the authority to prescribe rules applicable to the notices required under section 101(j) of ERISA.

answer if the notice was served by certified mail (see 2560.502c-4(i)(2)).

Paragraph (i)(1) of the regulation describes the rules relating to service of the Department's notice of penalty assessment (Sec. 2560.502c-4(c)) and the Department's notice of determination on a statement of reasonable cause (Sec. 2560.502c-4(g)). Paragraph (i)(1) provides that service by the Department shall be made by delivering a copy to the administrator or representative thereof; by leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or by mailing a copy to the last known address of the administrator or representative thereof. As noted above, paragraph (i)(2) of this section provides that when service of a notice under paragraph (c) or (g) is by certified mail, service is complete upon mailing, but five days are added to the time allowed for the filing of a statement or a request for hearing and answer, as applicable. Service by regular mail is complete upon receipt by the addressee.

Paragraph (i)(3) of the regulation, which relates to the filing of statements of reasonable cause, provides that a statement of reasonable cause shall be considered filed (i) upon mailing if accomplished using United States Postal Service certified mail or express mail, (ii) upon receipt by the delivery service if accomplished using a "designated private delivery service" within the meaning of 26 U.S.C. 7502(f), (iii) upon transmittal if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment, or (iv) in the case of any other method of filing, upon receipt by the Department at the address provided in the notice. This provision does not apply to the filing of requests for hearing and answers with the Office of the Administrative Law Judge (OALJ) which are governed by the Department's OALJ rules in 29 CFR 18.4.

Paragraph (j) of the regulation clarifies the liability of the parties for penalties assessed under section 502(c)(4) of ERISA. Paragraph (j)(1) provides that, if more than one person is responsible as administrator for the failure to provide the required item(s), all such persons shall be jointly and severally liable for such failure. Paragraph (j)(2) provides that any person against whom a penalty is assessed under section 502(c)(4) of ERISA, pursuant to a final order, is personally liable for the payment of such penalty. Paragraph (j)(2) provides that liability for the payment of penalties assessed under section 502(c)(4) of ERISA is a personal liability of the person against whom the penalty

is assessed and not a liability of the plan. It is the Department's view that payment of penalties assessed under ERISA section 502(c) from plan assets would not constitute a reasonable expense of administering a plan for purposes of sections 403 and 404 of ERISA. Consistent with section 101(l) of ERISA, for purposes of any civil penalty imposed under section 502(c)(4) of ERISA pursuant to the requirements of section 101(l) of ERISA, the term "administrator" shall include plan sponsor (within the meaning of section 3(16)(B) of the Act).

Paragraph (k) of the regulation establishes procedures for hearings before an Administrative Law Judge (ALJ) with respect to assessment by the Department of a civil penalty under ERISA section 502(c)(4), and for appealing an ALJ decision to the Secretary or her delegate. The procedures are the same procedures that would apply in the case of a civil penalty assessment under section 502(c)(7) of ERISA.

### 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. Pursuant to the terms of the Executive Order, it has been determined that this action is not "significant" within the meaning of section 3(f) of the Executive Order and therefore is not subject to review by OMB.

#### *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, EBSA 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.

The terms of the statute pertaining to the assessment of civil penalties under section 502(c)(4) of ERISA 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 penalty assessments are based, in part, on the number of plan participants. The opportunity for a plan administrator to present facts and circumstances related to a failure or refusal to provide appropriate disclosure that may be taken into consideration by the Department in assessing penalties under ERISA section 502(c)(4) 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-4(j).

The Department invited interested persons to submit comments on the impact of this rule on small entities and on any alternative approaches that may serve to minimize the impact on small plans or other entities while accomplishing the objectives of the statutory provisions when the notice of proposed rulemaking was published; however, no comments on these issues were received.

#### *Paperwork Reduction Act*

The final regulation 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 this final rule 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.

#### *Congressional Review Act*

This final rule is 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 will be transmitted to the Congress and the Comptroller General for review.

#### *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, as adjusted for inflation, 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. This final rule does 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 this final rule 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 in 29 CFR Part 2560**

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

■ Accordingly, 29 CFR part 2560 is amended as follows:

#### **PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT**

■ 1. The authority citation for part 2560 continues to read as follows:

**Authority:** 29 U.S.C. 1132, 1135, and Secretary of Labor's Order 1-2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2560.503-1 also issued under 29 U.S.C. 1133. Sections 2560.502c-7 and 2560.502c-4 also issued under Public Law 109-280, 120 Stat. 780.

■ 2. Add § 2560.502c-4 to read as follows:

#### **§ 2560.502c-4 Civil penalties under section 502(c)(4).**

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(4) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator (within the meaning of section 3(16)(A) of the Act) shall be liable for civil penalties assessed by the Secretary under section 502(c)(4) of the Act, for failure or refusal to furnish:

- (i) Notice of funding-based limits in accordance with section 101(j) of the Act;
- (ii) Actuarial, financial or funding information in accordance with section 101(k) of the Act;
- (iii) Notice of potential withdrawal liability in accordance with section 101(l) of the Act; or
- (iv) Notice of rights and obligations under an automatic contribution arrangement in accordance with section 514(e)(3) of the Act.

(2) For purposes of this section, a failure or refusal to furnish the items referred to in paragraph (a)(1) above shall mean a failure or refusal to furnish, in whole or in part, the items required under section 101(j), (k), or (l), or section 514(e)(3) of the Act at the relevant times and manners prescribed in such sections.

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(4) of the Act for each separate violation shall be determined by the Department of Labor, taking into consideration the degree or willfulness of the failure or refusal to furnish the items referred to in paragraph (a) of this section. However, the amount assessed for each violation under section 502(c)(4) of the Act shall not exceed \$1,000 a day (or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended), computed from the date of the administrator's failure or refusal to furnish the items referred to in paragraph (a) of this section.

(2) For purposes of calculating the amount to be assessed under this

section, a failure or refusal to furnish the item with respect to any person entitled to receive such item, shall be treated as a separate violation under section 101(j), (k), or (l), or section 514(e)(3) of the Act, as applicable.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(4) of the Act, the Department shall provide to the administrator of the plan a written notice indicating the Department's intent to assess a penalty under section 502(c)(4) of the Act, the amount of such penalty, the number of individuals on which the penalty is based, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the administrator complied with the requirements of section 101(j), (k), or (l), or section 514(e)(3) of the Act, as applicable, or on a showing by such person of mitigating circumstances regarding the degree or willfulness of the noncompliance.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have thirty (30) days from the date of service of the notice, as described in paragraph (i) of this section, to file a statement of reasonable cause explaining why the penalty, as calculated, should be reduced, or not be assessed, for the reasons set forth in paragraph (d) of this section. Such statement must be made in writing and set forth all the facts alleged as reasonable cause for the reduction or nonassessment of the penalty. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure to file a statement of reasonable cause within the thirty (30) day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice of intent, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(4) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.131(g) of this chapter, forty-five (45) days from the date of service of the notice.

(g) *Notice of determination on statement of reasonable cause.* (1) The Department, following a review of all of

the facts in a statement of reasonable cause alleged in support of nonassessment or a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its determination on the statement of reasonable cause and its determination whether to waive the penalty in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty assessment, not to exceed the amount described in paragraph (c) of this section. This notice is a "pleading" for purposes of § 2570.131(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department's determination to assess a penalty, shall become a final order, within the meaning of § 2570.131(g) of this chapter, forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of § 2570.131(g) of this chapter, if, within thirty (30) days from the date of the service of the notice, the administrator or a representative thereof files a request for a hearing under §§ 2570.130 through 2570.141 of this chapter, and files an answer to the notice. The request for hearing and answer must be filed in accordance with § 2570.132 of this chapter and § 18.4 of this title. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements.* (1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five days shall be added to the time allowed by these rules for the filing of a statement or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or express mail;

(ii) Upon receipt by the delivery service, if accomplished using a "designated private delivery service" within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to furnish the items required under section 101(j), (k), or (l), or section 514(e)(3) of the Act, as applicable, all such persons shall be jointly and severally liable for such failure. For purposes of paragraph (a)(1)(iii) of this section, the term "administrator" shall include plan sponsor (within the meaning of section 3(16)(B) of the Act).

(2) Any person, or persons under paragraph (j)(1) of this section, against whom a civil penalty has been assessed under section 502(c)(4) of the Act, pursuant to a final order within the meaning of § 2570.131(g) of this chapter shall be personally liable for the payment of such penalty.

(k) *Cross-references.* (1) The procedural rules in §§ 2570.130 through 2570.141 of this chapter apply to administrative hearings under section 502(c)(4) of the Act.

(2) When applying procedural rules in §§ 2570.130 through 2570.140:

(i) Wherever the term "502(c)(7)" appears, such term shall mean "502(c)(4)";

(ii) Reference to § 2560.502c-7(g) in 2570.131(c) shall be construed as reference to § 2560.502c-4(g) of this chapter;

(iii) Reference to § 2560.502c-7(e) in § 2570.131(g) shall be construed as reference to § 2560.502c-4(e) of this chapter;

(iv) Reference to § 2560.502c-7(g) in § 2570.131(m) shall be construed as reference to § 2560.502c-4(g); and

(v) Reference to §§ 2560.502c-7(g) and 2560.502c-7(h) in § 2570.134 shall be construed as reference to §§ 2560.502c-4(g) and 2560.502c-4(h), respectively.

Signed at Washington, DC, this 24th day of December 2008.

**Bradford P. Campbell,**

*Assistant Secretary, Employee Benefits Security Administration, Department of Labor.*

[FR Doc. E8-31188 Filed 12-31-08; 8:45 am]

**BILLING CODE 4510-29-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 82**

**[EPA-HQ-OAR-2003-0118; FRL-8758-9]**

**RIN 2060-AG12**

### **Protection of Stratospheric Ozone: Notice 23 for Significant New Alternatives Policy Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Determination of Acceptability.

**SUMMARY:** This Determination of Acceptability expands the list of acceptable substitutes for ozone-depleting substances under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. The determinations concern new substitutes for use in the refrigeration and air conditioning, fire suppression and explosion protection, and foam blowing sectors.

**DATES:** Effective January 2, 2009.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2003-0118 (continuation of Air Docket A-91-42). All electronic documents in the docket are listed in the index at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically at [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Air Docket (No. A-91-42), EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

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