DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2560

RIN 1210–AA54

Interim Rule for the Assessment of Civil Penalties Under Section 502(c)(5) of ERISA

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

ACTION: Interim final rule with request for comments.

SUMMARY: This document contains an interim final rule that describes procedures relating to the assessment of civil penalties under section 502(c)(5) of the Employee Retirement Income Security Act of 1974, (ERISA) as amended by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Section 502(c)(5) authorizes the Secretary of Labor (the Secretary) to assess a civil penalty against any person of up to $1,000 a day from the date of the person's failure or refusal to file the information required to be filed by such person with the Secretary under regulations prescribed pursuant to section 101(g){h} of ERISA. The interim final rule clarifies the manner in which the Secretary will assess penalties under ERISA section 502(c)(5), as amended by HIPAA, and the procedures for agency review. Separate documents containing interim final rules implementing the reporting requirement under section 101(g){h} of ERISA and interim final rules relating to procedures for administrative hearings and appeals on assessments of penalties under ERISA section 502(c)(5) appear separately in this issue of the **Federal Register**.

DATES: *Effective date:* This interim final rule is effective April 11, 2000.

Comment date: Written comments are invited and must be received by the Department on or before March 13, 2000.

Applicability date: This section applies to administrators of multiple employer welfare arrangements that are not group health plans beginning May 1, 2000.

ADDRESSES: Interested persons are invited to submit written comments (preferably with three copies) to: Pension and Welfare Benefits Administration, Room C–5331, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: MEWA reporting. Written comments may also be sent by Internet to the following address: ''MEWApen@pwba.dol.gov'' (without the quotation marks).

All submissions will be open to public inspection and copying from 8:30 a.m. to 4:30 p.m. in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Amy J. Turner, Pension and Welfare Benefits Administration, U.S. Department of Labor, Rm C–5331, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone (202) 219–7006). This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

This document contains an interim final rule that provides guidance relating to the assessment of civil penalties under section 502(c)(5) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) (HIPAA), for the failure or refusal to file a report pursuant to section 101(g){h} [1] of ERISA, as amended by HIPAA. This regulation is designed to parallel the procedures set forth in § 2560.502c–2 regarding civil penalties under section 502(c)(2) of ERISA relating to reports required to be filed under ERISA section 101(b)(4).

B. Overview of the Interim Final Rule

Section 502(c)(5) provides that the Secretary may assess a civil penalty against any person of up to $1,000 a day from the date of the person's failure or refusal to file the report required to be filed under section 101(g){h}. In order to implement this provision, the Department is publishing this interim final rule, and, in a separate document, interim final rules relating to procedures for administrative hearings and appeals on assessments of civil penalties under ERISA section 502(c)(5).

In general, the interim final rule in § 2560.502c–5, discussed in detail below, addresses:

- The circumstances under which a penalty may be assessed (§ 2560.502c–5(a));
- Factors considered by the Department in determining the amount of a penalty (§ 2560.502c–5(b));
- The provision of notice to the administrator of the Department's intention to assess a penalty (§ 2560.502c–5(c));
- Waiver of all or part of the penalty by the Department upon a showing of reasonable cause and the requirements relating to a showing of reasonable cause (§ 2560.502c–5(d) and (e));
- The effect of a failure to file a statement of reasonable cause (§ 2560.502c–5(f));
- The provision of notice to the administrator of the Department's findings as to reasonable cause and the effect of such notice where a penalty is assessed (§ 2560.502c–5(g));
- The effect of a request for a hearing before an administrative law judge (§ 2560.502c–5(h));
- Service of notices (§ 2560.502c–5(i));
- The liability of the administrator for assessed penalties (§ 2560.502c–5(j));
- A cross-reference to procedural rules relating to administrative hearings (§ 2560.502c–5(k)); and
- An applicability date provision (§ 2560.502c–5(l)).

In general, the assessment of penalties under section 502(c)(5) and § 2560.502c–5 would occur only in those instances where the administrator fails or refuses to file a report within the prescribed time frames or, after notification that the report has been rejected and the reasons therefor, where the administrator fails or refuses to file a corrected report within the 45 day period prescribed in § 2560.502c–5(b)(3). Accordingly, in the case of a report rejected under § 2520.101–2(d)(2), the administrator can avoid the assessment of any penalty under section 502(c)(5) by making the necessary corrections to the filing within the prescribed time frame. Moreover, as reflected in paragraph (g) of the interim final rule, penalties may be waived, in whole or in part, upon the administrator's showing of reasonable cause for the failure to file a complete or timely report.

C. Discussion of the Interim Final Rule

1. Scope

Paragraph (a) of the interim final rule addresses the general application of section 502(c)(5). Paragraph (a)(1) provides that the administrator of a MEWA that is not a group health plan and for which a report is required to be filed under section 101(g){h} of ERISA and § 2520.101–2 is liable for the penalties assessed under section 502(c)(5) for each failure or refusal to file a completed report. Accordingly, if a person is required to file more than

[1] Both the Small Business Job Protection Act of 1996 (Pub. L. 104–188) and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) created a new section 101(g) of EIRSA. Accordingly, section 101(g) of ERISA that relates to reporting by certain arrangements is referred to in this document as section 101(g){h} of ERISA.

one report because that person serves an administrator with respect to several entities for which a filing is required, separate penalties may be assessed with respect to each instance for which there is a failure or refusal to file the required report. Paragraph (a)(2) defines a failure or refusal to file the report as a failure or refusal to file, in whole or in part, that information described in ERISA section 101(g){h} and § 2520.101–2, at the time and in the manner prescribed for such filings. Accordingly, the filing of an incomplete report will be treated as a failure to file under section 502(c)(5). *See* § 2520.101–2(d)(2).

2. Amount Assessed

Paragraph (b)(1) of the interim final rule provides that the Department shall take into account the degree and/or willfulness of the failure to file the report in determining the amount to be assessed under section 502(c)(5). Consistent with the terms of section 502(c)(5), paragraph (b)(1) provides that the penalty assessed by the Department shall not exceed $1,000 a day. With regard to the period for which a penalty may be assessed, paragraph (b)(1) provides that the penalty generally will be computed from the date of the administrator's failure or refusal to file the report and continue up to the date on which a report meeting the requirements of section 101(g){h} and § 2520.101–2, as determined by the Secretary, is filed. Accordingly, under paragraph (b)(1) of this section, liability for penalties under section 502(c)(5) would continue for each day up to the date compliance is achieved. However, under paragraph (b)(2), the interim final rule provides for tolling of the daily penalty where, upon receipt of a notice of intent to assess a penalty (as described in paragraph (c)), the administrator files with the Department a statement of reasonable cause for the failure to file (as described in paragraph (e)). Under paragraph (b)(2), the administrator will not incur liability for penalties for any day beginning with the date the Department serves the administrator a copy of the notice to assess a penalty and ending with the day after the Department issues the notice of determination on the statement of reasonable cause (as described in paragraph(g)). This limited tolling of the penalty will permit MEWA administrators to present arguments to the Department concerning any reasonable cause for the failure to file without incurring penalties for the period of time during which the administrator's statement of reasonable cause is being considered by the Department.

Paragraph (b)(3) defines the date on which an administrator failed or refused to file the report as the date on which the report was due (determined without regard to any extension of time for filing). In this regard, paragraph (b)(3) provides that a report which is rejected under § 2520.101–2(d)(2) shall be treated as a failure to file the report when a revised report meeting the requirements of this section is not filed within 45 days of the date of the Department's notice of rejection.

In those situations where an extension of time is granted for the filing of the report and the administrator fails either to file a timely report or a complete report within the extension period, the administrator should not, for purposes of the section 502(c)(5) penalty, benefit from the requested extension. Accordingly, the interim rule states that for purposes of paragraph (b)(3), the penalty is assessed beginning on the day after the date of the administrator's failure or refusal to file the report.

3. Notice of Penalty

Paragraph (c) of the interim final rule provides that, prior to the assessment of any penalty under section 502(c)(5), the Department shall provide the administrator with a written notice indicating the Department's intent to assess a penalty under section 502(c)(5), the amount of the penalty, the period to which the penalty applies, and a statement of the facts and reasons for the penalty. This notice is to be served in accordance with the service of notice provisions of § 2560.502c–5(i) of this interim final rule. Under § 2560.502c–5(f) of this interim final rule, this notice becomes a final order of the Secretary, within the meaning of § 2570.91(g) (*see* interim final rules §§ 2570.90 *et seq.*, published separately in this issue of the **Federal Register**), within 30 days of the service of notice, unless a statement of reasonable cause, described in § 2560.502c–5(e) of the interim final rule, is filed with the Department.

4. Waiver of Penalty

Paragraphs (d), (e), (f), (g) and (h) of the interim final rule generally relate to the waiver of penalties under section 502(c)(5). Paragraph (d) provides that the Department may waive all or part of the penalty to be assessed under section 502(c)(5) upon a showing of reasonable cause for the failure to file the report. Paragraph (e) provides that, subsequent to the issuance of a notice of the Department's intent to assess a penalty, the administrator shall have 30 days from the date of the service of notice to make an affirmative showing of reasonable cause for the failure to file a complete report or why the penalty, as calculated, should not be assessed. Paragraph (e) requires that the statement of reasonable cause be in the form of a written statement that sets forth all the facts alleged in support of reasonable cause and contains a declaration by the administrator that the statement is made under penalties of perjury.

Paragraph (f) describes the effect of a failure to file the statement of reasonable cause within the prescribed 30 day period. A failure on the part of the administrator to file a timely statement of reasonable cause will constitute a waiver of the right to appear and contest the facts alleged in the Department's notice and an admission of the facts alleged in the notice for purposes of any adjudicatory proceeding involving the assessment of a penalty under section 502(c)(5). Under paragraph (f), the Department's notice of intent to assess a penalty, described in paragraph (c), then becomes a final order of the Secretary, within the meaning of paragraph (g) of § 2570.91. (*See* §§ 2570.90 *et seq.*, published separately in this issue of the **Federal Register**).

Paragraph (g)(1) of the interim final rule provides that, following a review of the facts alleged in the statement of reasonable cause, the Department, in a notice of determination, 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 and a brief statement of the reasons for assessing the penalty. Under paragraph (g)(2), this notice becomes a final order 30 days after the date of service of the notice, except as provided in paragraph (h). In general, paragraph (h) provides that the notice described in paragraph (g) shall not become a final order unless, within 30 days of the date of service of the notice, the administrator or representative thereof files a request for a hearing under § 2570.90 *et seq.* (published separately in this issue of the **Federal Register**), and files an answer to the notice. The request for hearing and answer shall be filed in accordance with § 2570.92. 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).

5. Service of Notices

Paragraph (i) of the interim final rule describes the manner in which the notice of intent to assess a penalty, described in paragraph (c), and the

notice of determination on a statement of reasonable cause, described in paragraph (g), will be served. Under paragraph (i) of the interim final rule, service of notice shall be made either: (1) By delivering a copy to the administrator or the administrator's representative; (2) by leaving a copy at the principal office, place of business, or residence of the administrator or the administrator's representative; or (3) by mailing a copy to the last known address of the administrator or the administrator's representative. If service is accomplished by certified mail, service is complete upon mailing. If service is done be regular mail, service is complete upon receipt by the addressee.

6. Liability

Paragraph (j) of the interim final rule clarifies the liability of the parties for penalties assessed under section 502(c)(5). Paragraph (j)(1) provides that if more than one person is responsible as administrator for the failure to file the report, 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)(5) is personally liable for the payment of such penalty. Paragraph (j)(2) is intended to make clear that liability for the payment of penalties assessed under section 502(c)(5) is the personal liability of the person against whom the penalty is assessed and not a liability of the MEWA. Accordingly, assets of the MEWA can not be used to pay the penalty.

7. Applicability

Paragraph (l) of the interim rule clarifies that this section generally applies to administrators of multiple employer welfare arrangements that are not group health plans beginning May 1, 2000. Under a transition safe harbor period, however, no civil penalty will be assessed against an administrator that has made a good faith effort to comply with a § 2520.101–2 filing that is due in the Year 2000. This transition rule was created because, during this first year in particular, the Department is focused on educating administrators about this filing requirement and is committed to working with them to help them comply. In this regard, the Department has developed filers' guides which may be helpful in filing the Form M–1. These filers' guides will be made available on the Pension and Welfare Benefits Administration's website at www.dol.gov/dol/pwba and through their toll-free publication hotline at 1–800–998–7542. Also, the Pension and Welfare Benefits Administration's help desk (202–219–8818) is available in case administrators have questions or if they need any assistance with filings.

D. Interim Final Rule With Request for Comments

Section 734 of ERISA (formerly section 707) authorizes the Secretary of Labor, consistent with section 104 of HIPAA, to promulgate any such regulations as may be necessary or appropriate to carry out the provisions of Part 7 of ERISA. In addition, this section specifically authorizes the Secretary to promulgate any interim final rules as the Secretary determines are appropriate to carry out Part 7 of ERISA. In addition, section 505 of ERISA authorizes the Secretary to prescribe such regulations as the Secretary finds necessary or appropriate to carry out the provisions of Title I of ERISA. The report required to be filed under section 101(g)(h) is for the purpose of determining the extent to which the requirements of Part 7 are being carried out. Accordingly, the Department has determined that issuing this regulation in interim final form is necessary in order for the Secretary to continue to effectively enforce the requirements of section 101(g){h} of ERISA and the implementing regulations under § 2520.101–2. Written comments on these interim rules are invited.

E. Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a ''significant regulatory action'' is 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. On the basis of these criteria, the Department has determined that this regulatory action is not significant within the meaning of the Executive Order.

F. Paperwork Reduction Act

The rule being issued here is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain an ''information collection request'' as defined in 44 U.S.C. 3502(3).

G. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, (RFA) requires each Federal agency to perform an initial regulatory flexibility analysis for all rules subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C 551 *et seq.*) unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

Because these rules are being issued as interim final rules and not as a notice of proposed rulemaking, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant impact on a substantial number of small entities or conduct a regulatory flexibility analysis. The Department does not anticipate that this interim final rule will impose a significant impact on a substantial number of small entities, however, regardless of whether one uses the definition of small entity found in regulations issued by the Small Business Administration (13 CFR 121.201) or one defines small entity, on the basis of section 104(a)(2) of ERISA, as an employee benefit plan with fewer than 100 participants. The Department invites comments on the effect of this interim final rule on small entities.

H. Small Business Regulatory Enforcement Fairness Act

The interim final rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has 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 or export markets.

I. 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 proposed rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and will not impose an annual burden of $100 million or more on the private sector.

Statutory Authority

The interim final rule set forth herein is issued pursuant to the authority contained in section 502(c)(5) of ERISA (Pub. L. 104–191, 110 Stat. 1936, 1952, 29 U.S.C. 1132(c)(5)), section 505 of ERISA (Pub. L. 93–406, 88 Stat. 892, 894, 29 U.S.C. 1135) and section 734 of ERISA (Pub. L. 104–204, 110 Stat. 2874, 2935, 29 U.S.C. 1194c), and under Secretary of Labor's Order 1–87, 52 FR 13139, April 21, 1987.

List of Subjects in 29 CFR Part 2560

Claims, Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Multiple Employer Welfare Arrangements, Pension and Welfare Benefits Administration, Reporting and disclosure.

For the reasons set out in the preamble, Part 2560 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2560—[AMENDED]

1. The authority for Part 2560 is revised to read:

Authority: 29 U.S.C. 1132, 1135, 1194 and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

Section 2560.502–1 also issued under 29 U.S.C. 1132(b)(2).

Section 2560.502i–1 also issued under 29 U.S.C. 1132(i).

Section 2560.503–1 also issued under 29 U.S.C. 1133.

2. Part 2560 is amended by adding § 2560.502c–5 to read:

§ 2560.502c–5—Civil penalties under section 502(c)(5).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(5) of the Employee Retirement Income Security Act of 1974 Pub.L. 93–406, 88 Stat. 840–52, as amended by Pub. L. 104–191, 101 Stat. 1936) (the Act), the administrator of a multiple employer welfare arrangement (MEWA) (within the meaning of section 3(40)(A) of the Act) that is not a group health plan, and that provides benefits consisting of medical care (within the meaning of section 733(a)(2)), for which a report is required to be filed under section 101(g){h} of the Act and § 2520.101–2, shall be liable for civil penalties assessed by the Secretary under section 502(c)(5) of the Act for each failure or refusal to file a completed report required to be filed under section 101(g){h} and § 2520.101–2. The term ''administrator'' is defined in § 2520.101–2(b).

(2) For purposes of this section, a failure or refusal to file the report required to be filed under section 101(g){h} shall mean a failure or refusal to file, in whole or in part, that information described in section 101(g){h} and § 2520.101–2, on behalf of the MEWA, at the time and in the manner prescribed therefor.

(b) *Amount assessed.*—(1) The amount assessed under section 502(c)(5) shall be determined by the Department of Labor, taking into consideration the degree and/or willfulness of the failure to file the report. However, the amount assessed under section 502(c)(5) of the Act shall not exceed $1,000 a day, computed from the date of the administrator's failure or refusal to file the report and, except as provided in paragraph (b)(2) of this section, continuing up to the date on which a report meeting the requirements of section 101(g){h} and § 2520.101–2, as determined by the Secretary, is filed.

(2) If, upon receipt of a notice of intent to assess a penalty (as described in paragraph (c) of this section), the administrator files a statement of reasonable cause for the failure to file, in accordance with paragraph (e) of this section, a penalty shall not be assessed for any day from the date the Department serves the administrator with a copy of such notice until the day after the Department serves notice on the administrator of its determination on reasonable cause and its intention to assess a penalty (as described in paragraph (g) of this section).

(3) For purposes of this paragraph, the date on which the administrator failed or refused to file the report shall be the date on which the report was due (determined without regard to any extension of time for filing). A report which is rejected under § 2520.101–2 shall be treated as a failure to file a report when a revised report meeting the requirements of this section is not filed within 45 days of the date of the Department's notice of rejection. If a revised report meeting the requirements of this section, as determined by the Secretary, is not submitted within 45 days of the date of the notice of rejection by the Department, a penalty shall be assessed under section 502(c)(5) beginning on the day after the date of the administrator's failure or refusal to file the report.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(5), the Department shall provide to the administrator of the MEWA a written notice indicating the Department's intent to assess a penalty under section 502(c)(5), the amount of such penalty, the period to which the penalty applies, and a statement of the facts and the reason(s) for the penalty.

(d) *Waiver of assessed penalty.* The Department may waive all or part of the penalty to be assessed under section 502(c)(5) on a showing by the administrator that there was reasonable cause for the failure to file the report.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have 30 days from the date of the service of notice, as described in paragraph (i) of this section, to file a statement of reasonable cause for the failure to file a complete report or why the penalty, as calculated, should not be assessed. A showing of reasonable cause must be made in the form of a written statement setting forth all the facts alleged as reasonable cause. 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 of an administrator to file a statement of reasonable cause within the 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, 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)(5). Such notice shall then become a final order of the Secretary, within the meaning of § 2570.91(g).

(g) *Notice of the determination on statement of reasonable cause*—(1) The Department, following a review of all the facts alleged in support of a complete or partial waiver of the penalty, shall notify the administrator, in writing, 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, not to exceed the amount described in paragraph (c) of this section, and a brief statement of the reasons for assessing the penalty.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to this paragraph indicating the Department's intention to assess a penalty shall become a final order, within the meaning of § 2570.91(g), 30 days after the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will become the final order of the Department of Labor, unless, within 30 days from the date of the service of the notice, the administrator or representative thereof files a request for a hearing under § 2570.90 *et seq.*, and files and answer to the notice. The request for hearing and answer shall be filed in accordance with § 2570.92. 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).

(i) *Service of notice*—(1) Service of notice shall be made either:

(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 done by regular mail, service is complete upon receipt by the addressee

(j) *Liability*—(1) If more than one person is responsible as administrator for the failure to file the report, all such persons shall be jointly and severally liable with respect to such failure.

(2) Any person against whom a civil penalty has been assessed under section 502(c)(5) pursuant to a final order, within the meaning of § 2570.91(g), shall be personally liable for the payment of such penalty.

(k) Cross-reference. See §§ 2570.90 through 101 of this chapter for procedural rules relating to administrative hearings under section 502(c)(5) of the Act.

(l) *Applicability date*—(1) *In general.* This section applies to administrators of multiple employer welfare arrangements that are not group health plans beginning May 1, 2000.

(2) *Transitional safe harbor period.* No civil penalty will be assessed against an administrator that has made a good faith effort to comply with a § 2520.101–2 filing that is due in the Year 2000.

Signed at Washington DC, this 4th day of February, 2000.

Leslie B. Kramerich,

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

[FR Doc. 00–2936 Filed 2–10–00; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2570

RIN 1210–AA54

Interim Rule Governing Procedures for Administrative Hearings Regarding the Assessment of Civil Penalties under Section 502(c)(5) of ERISA

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

ACTION: Interim final rule with request for comments.

SUMMARY: This document contains an interim final rule that describes procedures relating to administrative hearings, in connection with the assessment of civil penalties under section 502(c)(5) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Section 502(c)(5) of ERISA authorizes the Secretary of Labor (the Secretary) to assess a civil penalty against any person of up to $1,000 a day from the date of the person's failure or refusal to file the information required to be filed by such person with the Secretary under regulations prescribed pursuant to section 101(g){h} of ERISA. Separate documents are also being published today in the **Federal Register** containing interim final rules implementing the reporting requirement under section 101(g){h} of ERISA and interim final rules describing the manner in which the Department will assess civil penalties under ERISA section 502(c)(5).

DATES: *Effective date:* This interim final rule is effective April 11, 2000.

Comment date: Written comments are invited and must be received by the Department on or before March 13, 2000.

Applicability Date: This section applies to administrators of multiple employer welfare arrangements that are not group health plans beginning May 1, 2000.

ADDRESSES: Interested persons are invited to submit written comments (preferably with three copies) to: Pension and Welfare Benefits Administration, Room C–5331, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: MEWA reporting. Written comments may also be sent by Internet to the following address: ''MEWAproc@pwba.dol.gov'' (without the quotation marks).

All submissions will be open to public inspection and copying from 8:30 a.m. to 4:30 p.m. in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Amy J. Turner, Pension and Welfare Benefits Administration, U.S. Department of Labor, Rm C–5331, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone (202) 219–7006). This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

This document contains an interim final rule that provides guidance relating to the procedures for administrative hearings and appeals regarding the assessment of civil penalties under section 502(c)(5) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) (HIPAA), for the failure or refusal to file a completed report pursuant to section 101(g){h} [1] of ERISA, as amended by HIPAA. This regulation is designed to parallel the procedures set forth in § 2570.502c–2 regarding civil penalties under section 502(c)(2) of ERISA relating to reports required to be filed under ERISA section 104(b)(4).

B. Overview of the Interim Final Rule

Section 502(c)(5) provides that the Secretary may assess a civil penalty against any person of up to $1,000 a day from the date of the person's failure or refusal to file the report required to be filed under section 101(g){h}. In order to implement this provision, the Department is publishing this interim final rule, and in a separate document, an interim final rule describing the manner in which the Department will assess civil penalties under ERISA section 502(c)(5). *See* § 2560.502c–5.

[1] Both the Small Business Job Protection Act of 1996 (Pub. L. 104–188) and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) created a new section 101(g) of ERISA. Accordingly, section 101(g) of ERISA that relates to reporting by certain arrangements is referred to in this document as section 101(g){h} of ERISA.