

## § 4204.1

## 29 CFR Ch. XL (7-1-10 Edition)

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### Subpart A—General

#### § 4204.1 Purpose and scope.

(a) *Purpose.* Under section 4204 of ERISA, an employer that ceases covered operations under a multiemployer plan, or ceases to have an obligation to contribute for such operations, because of a bona fide, arm's-length sale of assets to an unrelated purchaser does not incur withdrawal liability if certain conditions are met. One condition is that the sale contract provide that the seller will be secondarily liable if the purchaser withdraws from the plan within five years and does not pay its withdrawal liability. Another condition is that the purchaser furnish a bond or place funds in escrow, for a period of five plan years, in a prescribed amount. Section 4204 also authorizes the PBGC to provide for variances or exemptions from these requirements. Subpart B of this part provides variances and exemptions from the requirements for certain sales of assets. Subpart C of this part establishes procedures under which a purchaser or seller may, when the conditions set forth in subpart B are not satisfied or when the parties decline to provide certain financial information to the plan, request the PBGC to grant individual or class variances or exemptions from the requirements.

(b) *Scope.* In general, this part applies to any sale of assets described in section 4204(a)(1) of ERISA. However, this part does not apply to a sale of assets involving operations for which the seller is obligated to contribute to a plan described in section 404(c) of the Code, or a continuation of such a plan, unless the plan is amended to provide that section 4204 applies.

#### § 4204.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, employer, ERISA, IRS, multiemployer plan, PBGC, person, plan, plan administrator, plan sponsor, and plan year.

In addition, for purposes of this part:

*Date of determination* means the date on which a seller ceases covered operations or ceases to have an obligation

to contribute for such operations as a result of a sale of assets within the meaning of section 4204(a) of ERISA.

*Net income after taxes* means revenue minus expenses after taxes (excluding extraordinary and non-recurring income or expenses), as presented in an audited financial statement or, in the absence of such statement, in an unaudited financial statement, each prepared in conformance with generally accepted accounting principles.

*Net tangible assets* means tangible assets (assets other than licenses, patents copyrights, trade names, trademarks, goodwill, experimental or organizational expenses, unamortized debt discounts and expenses and all other assets which, under generally accepted accounting principles, are deemed intangible) less liabilities (other than pension liabilities). Encumbered assets shall be excluded from net tangible assets only to the extent of the amount of the encumbrance.

*Purchaser* means a purchaser described in section 4204(a)(1) of ERISA.

*Seller* means a seller described in section 4204(a)(1) of ERISA.

### Subpart B—Variance of the Statutory Requirements

#### § 4204.11 Variance of the bond/escrow and sale-contract requirements.

(a) *General rule.* A purchaser's bond or escrow under section 4204(a)(1)(B) of ERISA and the sale-contract provision under section 4204(a)(1)(C) are not required if the parties to the sale inform the plan in writing of their intention that the sale be covered by section 4204 of ERISA and demonstrate to the satisfaction of the plan that at least one of the criteria contained in § 4204.12 or § 4204.13(a) is satisfied.

(b) *Requests after posting of bond or establishment of escrow.* A request for a variance may be submitted at any time. If, after a purchaser has posted a bond or placed money in escrow pursuant to section 4204(a)(1)(B) of ERISA, the purchaser demonstrates to the satisfaction of the plan that the criterion in either § 4204.13 (a)(1) or (a)(2) is satisfied, then the bond shall be cancelled or the amount in escrow shall be refunded. For purposes of considering a request after the bond or escrow is in