place, the words ''the year preceding the date of the variance request'' shall be substituted for ''the date of determination'' for the first mention of that term in both § 4204.13 (a)(1) and (a)(2). In addition, in determining the purchaser's average net income after taxes under § 4204.13(a)(1), for any year included in the average for which the net income figure does not reflect the interest expense incurred with respect to the sale, the purchaser's net income shall be reduced by the amount of interest paid with respect to the sale in the fiscal year following the date of determination.

(c) *Information required.* A request for a variance shall contain financial or other information that is sufficient to establish that one of the criteria in § 4204.12 or § 4204.13(a) is satisfied. A request on the basis of either § 4204.13 (a)(1) or (a)(2) shall also include a copy of the purchaser's audited (if available) or (if not) unaudited financial statements for the specified time period.

(d) *Limited exemption during pendency of request.* Provided that all of the information required to be submitted is submitted before the first day of the first plan year beginning after the sale, a plan may not, pending its decision on the variance, require a purchaser to post a bond or place an amount in escrow pursuant to section 4204(a)(1)(B). In the event a bond or escrow is not in place pursuant to the preceding sentence, and the plan determines that the request does not qualify for a variance, the purchaser shall comply with section 4204(a)(1)(B) within 30 days after the date on which it receives notice of the plan's decision.

(e) *Method and date of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this subpart. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this subpart was provided.

(Approved by the Office of Management and Budget under control number 1212–0021)

[61 FR 34084, July 1, 1996, as amended at 68 FR 61355, Oct. 28, 2003]

§ 4204.12 *De minimis* transactions.

The criterion under this section is that the amount of the bond or escrow does not exceed the lesser of $250,000 or two percent of the average total annual contributions made by all employers to the plan, for the purposes of section 412(b)(3)(A) of the Code, for the three most recent plan years ending before the date of determination. For this purpose, ''contributions made'' shall have the same meaning as the term has under § 4211.12(a) of this chapter.

§ 4204.13 Net income and net tangible assets tests.

(a) *General.* The criteria under this section are that either—

(1) *Net income test.* The purchaser's average net income after taxes for its three most recent fiscal years ending before the date of determination (as defined in § 4204.12), reduced by any interest expense incurred with respect to the sale which is payable in the fiscal year following the date of determination, equals or exceeds 150 percent of the amount of the bond or escrow required under ERISA section 4204(a)(1)(B); or

(2) *Net tangible assets test.* The purchaser's net tangible assets at the end of the fiscal year preceding the date of determination (as defined in § 4204.12), equal or exceed—

(i) If the purchaser was not obligated to contribute to the plan before the sale, the amount of unfunded vested benefits allocable to the seller under section 4211 (with respect to the purchased operations), as of the date of determination, or

(ii) If the purchaser was obligated to contribute to the plan before the sale, the sum of the amount of unfunded vested benefits allocable to the purchaser and to the seller under ERISA section 4211 (with respect to the purchased operations), each as of the date of determination.

(b) *Special rule when more than one plan is covered by request.* For the purposes of paragraphs (a)(1) and (a)(2), if the transaction involves the assumption by the purchaser of the seller's obligation to contribute to more than one multiemployer plan, then the total amount of the bond or escrow or of the unfunded vested benefits, as applicable,