

Pension Benefit Guaranty Corporation

§ 4219.13

in accordance with § 4219.17, that determinations of mass withdrawal liability have been completed.

(c) *Extensions of time.* The plan sponsor of a multiemployer plan that experiences a mass withdrawal may apply to the PBGC for an extension of the deadlines contained in paragraph (b) of this section. The PBGC shall approve such a request only if it finds that failure to grant the extension will create an unreasonable risk of loss to plan participants or the PBGC.

§ 4219.12 Employers liable upon mass withdrawal.

(a) *Liability for de minimis amounts.* An employer shall be liable for *de minimis* amounts to the extent provided in section 4219(c)(1)(D) of ERISA if the employer's initial withdrawal liability was reduced pursuant to section 4209 (a) or (b) of ERISA.

(b) *Liability for 20-year-limitation amounts.* An employer shall be liable for 20-year-limitation amounts to the extent provided in section 4219(c)(1)(D) of ERISA.

(c) *Liability for reallocation liability.* An employer shall be liable for reallocation liability if the employer withdrew pursuant to an agreement or arrangement to withdraw from a multiemployer plan from which substantially all employers withdrew pursuant to an agreement or arrangement to withdraw, or if the employer withdrew after the beginning of the second full plan year preceding the termination date from a plan that terminated by the withdrawal of every employer, and, as of the reallocation record date—

(1) The employer has not been completely liquidated or dissolved;

(2) The employer is not the subject of a case or proceeding under title 11, United States Code, or any case or proceeding under similar provisions of state insolvency laws, except that a plan sponsor may determine that such an employer is liable for reallocation liability if the plan sponsor determines that the employer is reasonably expected to be able to pay its initial withdrawal liability and its redetermination liability in full and on time to the plan; and

(3) The plan sponsor has not determined that the employer's initial with-

drawal liability or its redetermination liability is limited by section 4225 of ERISA.

(d) *General exclusion.* In the event that a plan experiences successive mass withdrawals, an employer that has been determined to be liable under this subpart for any component of mass withdrawal liability shall not be liable as a result of the same withdrawal for that component of mass withdrawal liability with respect to a subsequent mass withdrawal.

(e) *Free-look rule.* An employer that is not liable for initial withdrawal liability pursuant to a plan amendment adopting section 4210(a) of ERISA shall not be liable for *de minimis* amounts or for 20-year-limitation amounts, but shall be liable for reallocation liability in accordance with paragraph (c) of this section.

(f) *Payment of initial withdrawal liability.* An employer's payment of its total initial withdrawal liability, whether by prepayment or otherwise, for a withdrawal which is later determined to be part of a mass withdrawal shall not exclude the employer from or otherwise limit the employer's mass withdrawal liability under this subpart.

(g) *Agreement presumed.* Withdrawal by an employer during a period of three consecutive plan years within which substantially all employers withdraw from a plan shall be presumed to be a withdrawal pursuant to an agreement or arrangement to withdraw unless the employer proves otherwise by a preponderance of the evidence.

§ 4219.13 Amount of liability for de minimis amounts.

An employer that is liable for *de minimis* amounts shall be liable to the plan for the amount by which the employer's allocable share of unfunded vested benefits for the purpose of determining its initial withdrawal liability was reduced pursuant to section 4209 (a) or (b) of ERISA. Any liability for *de minimis* amounts determined under this section shall be limited by section 4225 of ERISA to the extent that section would have been limiting had the employer's initial withdrawal liability been determined without regard to the *de minimis* reduction.