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or the plan to submit any other information the PBGC determines it needs to review the request.

(f) *Disclosure of information.* Any party submitting information pursuant to this section may include a statement of whether any of the information is of a nature that its disclosure may not be required under the Freedom of Information Act, 5 U.S.C. 552. The statement should specify the information that may not be subject to disclosure and the grounds therefor.

(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]

§ 4204.22 PBGC action on requests.

(a) *General.* The PBGC shall approve a request for a variance or exemption if PBGC determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of title IV of ERISA; and

(2) Would not significantly increase the risk of financial loss to the plan.

(b) *Notice of pendency of request.* As soon as practicable after receiving a variance or exemption request containing all the information specified in § 4204.21, the PBGC shall publish a notice of the pendency of the request in the FEDERAL REGISTER. The notice shall provide that any interested person may, within the period of time specified therein, submit written comments to the PBGC concerning the request. The notice will usually provide for a comment period of 45 days.

(c) *PBGC decision on request.* The PBGC shall issue a decision on a variance or exemption request as soon as practicable after the close of the comment period described in paragraph (b) of this section. PBGC's decision shall be in writing, and if the PBGC disapproves the request, the decision shall state the reasons therefor. Notice of the decision shall be published in the FEDERAL REGISTER.

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PART 4206—ADJUSTMENT OF LIABILITY FOR A WITHDRAWAL SUBSEQUENT TO A PARTIAL WITHDRAWAL

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AUTHORITY: 29 U.S.C. 1302(b)(3) and 1386(b).

SOURCE: 61 FR 34086, July 1, 1996, unless otherwise noted.

§ 4206.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe rules, pursuant to section 4206(b) of ERISA, for adjusting the partial or complete withdrawal liability of an employer that previously partially withdrew from the same multi-employer plan. Section 4206(b)(1) provides that when an employer that has partially withdrawn from a plan subsequently incurs liability for another partial or a complete withdrawal from that plan, the employer's liability for the subsequent withdrawal is to be reduced by the amount of its liability for the prior partial withdrawal (less any waiver or reduction of that prior liability). Section 4206(b)(2) requires the PBGC to prescribe regulations adjusting the amount of this credit to ensure that the liability for the subsequent withdrawal properly reflects the employer's share of liability with respect to the plan. The purpose of the credit is to protect a withdrawing employer from being charged twice for the same unfunded vested benefits of the plan. The reduction in the credit protects the other employers in the plan from becoming responsible for unfunded vested benefits properly allocable to

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the withdrawing employer. In the interests of simplicity, the rules in this part provide for, generally, a one-step calculation of the adjusted credit under section 4206(b)(2) against the subsequent liability, rather than for separate calculations first of the credit under section 4206(b)(1) and then of the reduction in the credit under paragraph (b)(2) of that section. In cases where the withdrawal liability for the prior partial withdrawal was reduced by an abatement or other reduction of that liability, the adjusted credit is further reduced in accordance with § 4206.8 of this part.

(b) *Scope.* This part applies to multi-employer plans covered under title IV of ERISA, and to employers that have partially withdrawn from such plans after September 25, 1980 and subsequently completely or partially withdraw from the same plan.

§ 4206.2 Definitions.

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

In addition, for purposes of this part:

Complete withdrawal means a complete withdrawal as described in section 4203 of ERISA.

Partial withdrawal means a partial withdrawal as described in section 4205 of ERISA.

§ 4206.3 Credit against liability for a subsequent withdrawal.

Whenever an employer that was assessed withdrawal liability for a partial withdrawal from a plan partially or completely withdraws from that plan in a subsequent plan year, it shall receive a credit against the new withdrawal liability in an amount greater than or equal to zero, determined in accordance with this part. If the credit determined under §§ 4206.4 through 4206.9 is less than zero, the amount of the credit shall equal zero.

§ 4206.4 Amount of credit in plans using the presumptive method.

(a) *General.* In a plan that uses the presumptive allocation method described in section 4211(b) of ERISA, the credit shall equal the sum of the unamortized old liabilities determined

under paragraph (b) of this section, multiplied by the fractions described or determined under paragraph (c) of this section. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with § 4206.8.

(b) *Unamortized old liabilities.* The amounts determined under this paragraph are the employer's proportional shares, if any, of the unamortized amounts as of the end of the plan year preceding the withdrawal for which the credit is being calculated, of—

(1) The plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980;

(2) The annual changes in the plan's unfunded vested benefits for plan years ending after September 25, 1980, and before the year of the prior partial withdrawal; and

(3) The reallocated unfunded vested benefits (if any), as determined under section 4211(b)(4) of ERISA, for plan years ending before the year of the prior partial withdrawal.

(c) *Employer's allocable share of old liabilities.* The sum of the amounts determined under paragraph (b) are multiplied by the two fractions described in this paragraph in order to determine the amount of the old liabilities that was previously assessed against the employer.

(1) The first fraction is the fraction determined under section 4206(a)(2) of ERISA for the prior partial withdrawal.

(2) The second fraction is a fraction, the numerator of which is the amount of the liability assessed against the employer for the prior partial withdrawal, and the denominator of which is the product of—

(i) The amount of unfunded vested benefits allocable to the employer as if it had completely withdrawn as of the date of the prior partial withdrawal (determined without regard to any adjustments), multiplied by—

(ii) The fraction determined under section 4206(a)(2) of ERISA for the prior partial withdrawal.