

Pension Benefit Guaranty Corporation

§ 4211.32

of the sponsor's right to request a reconsideration of the decision pursuant to part 4003 of this chapter.

§ 4211.24 Special rule for certain alternative methods previously approved.

A plan may not apply to any employer withdrawing on or after November 25, 1987, an allocation method approved by the PBGC before that date that allocates to the employer the greater of the amounts of unfunded vested benefits determined under two different allocation rules. Until a plan that has been using such a method is amended to adopt a valid allocation method, its allocation method shall be deemed to be the statutory allocation method that would apply if it had never been amended.

Subpart D—Allocation Methods for Merged Multiemployer Plans

§ 4211.31 Allocation of unfunded vested benefits following the merger of plans.

(a) *General rule.* Except as provided in paragraphs (b) through (d) of this section, when two or more multiemployer plans merge, the merged plan shall adopt one of the statutory allocation methods, in accordance with subpart B of this part, or one of the allocation methods prescribed in §§ 4211.32 through 4211.35, and the method adopted shall apply to all employer withdrawals occurring after the initial plan year. Alternatively, a merged plan may adopt its own allocation method in accordance with subpart C of this part. If a merged plan fails to adopt an allocation method pursuant to this subpart or subpart B or C, it shall use the presumptive allocation method prescribed in § 4211.32. In addition, a merged plan may adopt any of the modifications prescribed in § 4211.36 or in subpart B of this part.

(b) *Construction plans.* Except as provided in the next sentence, a merged plan that primarily covers employees in the building and construction industry shall use the presumptive allocation method prescribed in § 4211.32. However, the plan may, with respect to employers that are not construction industry employers within the meaning

of section 4203(b)(1)(A) of ERISA, adopt, by amendment, one of the alternative methods prescribed in §§ 4211.33 through 4211.35 or any other allocation method. Any such amendment shall be adopted in accordance with subpart C of this part. A construction plan may, without the PBGC's approval, adopt by amendment any of the modifications set forth in § 4211.36 or any of the modifications to the statutory presumptive method set forth in § 4211.12.

(c) *Section 404(c) plans.* A merged plan that is a continuation of a plan described in section 404(c) of the Code shall use the rolling-5 allocation method prescribed in § 4211.34, unless the plan, by amendment, adopts an alternative method. The plan may adopt one of the statutory allocation methods or one of the allocation methods set forth in §§ 4211.32 through 4211.35 without PBGC approval; adoption of any other allocation method is subject to PBGC approval under subpart B of this plan. The plan may, without the PBGC's approval, adopt by amendment any of the modifications set forth in § 4211.36 or in subpart B of this part.

(d) *Withdrawals before the end of the initial plan year.* For employer withdrawals after the effective date of a merger and prior to the end of the initial plan year, the amount of unfunded vested benefits allocable to a withdrawing employer shall be determined in accordance with § 4211.37.

§ 4211.32 Presumptive method for withdrawals after the initial plan year.

(a) *General rule.* Under this section, the amount of unfunded vested benefits allocable to an employer that withdraws from a merged plan after the initial plan year is the sum (but not less than zero) of—

(1) The employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits, as determined under paragraph (b) of this section;

(2) The employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after the initial plan year, as determined under paragraph (c) of this section; and