

Pension Benefit Guaranty Corporation

85-12

May 28, 1985

REFERENCE:

[*1] 4205(c) Partial Withdrawal. Retail Food Industry Provision

OPINION:

This responds to your request for the PBGC's opinion concerning the meaning of the term "retail food industry" as it is used in Section 4205(c) of ERISA (concerning partial withdrawals in that industry). Specifically you wish to know whether the retail food industry encompasses the food service industry.

Section 4205(c) applies to "a plan in which a majority of the covered employees are employed in the retail food industry." Therefore, the distinction you suggest is relevant, if at all, only in determining whether a plan is covered by this special partial withdrawal rule. If the plan is covered, all contributing employers, regardless of type, would also be covered.

Congress did not define the retail food industry for purposes of Title IV, nor is there any indication in the legislative history of the multiemployer amendments as to what Congress intended. As you note, however, the Standard Industrial Classification published by the Department of Commerce does define two subcategories under the retail food industry. In our view sources such as this would be helpful to a plan's determination of whether it is covered by the [*2] special rule. Relying on such a source the plan might decide that food service employees must be counted for purposes of its determination. Such a determination, of course, is subject to the dispute resolution procedures described in Sections 4219 and 4221 of ERISA.

I hope this is of assistance. If you have further questions on this matter, please contact * * * of my staff at the above address or at (202) 254-4873.

Edward R. Mackiewicz
General Counsel