Unauthorized removal of material.

Seal is a device used to detect nuclear material. A tamper-indicating tamper-safing containers of special systems and types of security seals that are acceptable to the NRC staff for applications for permits and licenses. The NRC has issued a revision to a guide in its Availability Regulatory Guide; Issuance, Research.

The NRC has verified with the Office of Nuclear Regulatory Affairs Department, Suite 240, 1200 K Street NW., Washington, DC 20005-4026, between the hours of 9 a.m. and 4 p.m., Monday through Friday.


SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (“ERISA” or “the Act”), provides that a bona fide arm’s-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)-(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contributions base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller’s average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller’s required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204. The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan during the first five plan years beginning after the sale.
Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation (the “PBGC”) to grant individual or class variances or exemptions from the purchaser’s bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S.1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Consideration (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The requirement of section 4204(a)(1)(B) is warranted, in that approval of the request is based on satisfaction of one of the regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of section 552(b)(4) of the Freedom of Information Act.

Under § 4204.22 of the regulation, the PBGC shall approve a request for a variance or exemption if it 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 the Act; and
2. Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 4204.22(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the Federal Register, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Decision
On December 20, 1996 (61 FR 67355), the PBGC published a notice of request from Dunham-Bush, Inc. (the “Buyer”) for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its January 6, 1995 purchase of certain assets of Allagash Fluid Controls, Inc., which was formerly known as Dunham-Bush, Inc. (the “Seller”). No comments were received in response to the notice during the comment period.

According to the request, on January 6, 1995, the Buyer acquired certain assets of the Seller. The Seller was obligated to contribute to the Sheet Metal Workers’ National Pension Plan (the “Plan”). The Buyer has assumed the Seller’s obligation to contribute to the Plan at the purchased operations, and continues to make contributions for substantially the same number of contribution base units as the Seller. The Seller has agreed to be secondarily liable for any withdrawal liability it would have had with respect to the sold operations (if not for section 4204). Should the Buyer withdraw from the Plan within the five plan years following the sale and fail to pay withdrawal liability, the estimated amount of the unfunded vested benefits allocable to the Buyer with respect to the sold operations is $3,000,000. The amount of the bond/escrow required under section 4204(a)(1)(B) is $545,409.29.

The Buyer submitted its financial statement as of January 26, 1996. According to that statement, the Buyer’s net tangible assets are just over $20 million, which is in excess of the unfunded vested benefits allocable to the Seller.

Based on the facts of this case and the representations and statements made in connection with the request for an exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the Plan. Therefore, the PBGC hereby grants the request for an exemption from the bond/escrow requirement. The granting of an exemption from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the Plan sponsor.