

Proposed Rules

Federal Register

Vol. 78, No. 215

Wednesday, November 6, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[NRC–2013–0050]

RIN 3150–AJ24

Potential Changes to Interlocutory Appeals Process for Adjudicatory Decisions

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing an advance notice of proposed rulemaking (ANPR) that presented possible changes to its interlocutory appeals process for certain adjudicatory decisions. The NRC published the ANPR on April 5, 2013, and solicited public comments. Based upon the limited public comments received, the NRC does not believe that amendments to the current regulations are warranted at this time.

DATES: The ANPR to make changes to the NRC's interlocutory appeals process for certain adjudicatory decisions that was published on April 5, 2013 (78 FR 20498), is withdrawn on November 6, 2013.

ADDRESSES: Please refer to Docket ID NRC–2013–0050 when contacting the NRC about the availability of information for this final rule. You may access publicly-available information related to this final rule by any of the following methods:

- Federal Rulemaking Web site: Go to <http://www.regulations.gov> and search for Docket ID NRC–2013–0050. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

- NRC's Agencywide Documents Access and Management System

(ADAMS): You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Tison Campbell, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8579; email: Tison.Campbell@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On April 5, 2013 (78 FR 20498), the NRC published an ANPR soliciting public comment on proposed changes to its process for interlocutory review of rulings on requests for hearings or petitions to intervene under § 2.311 of Title 10 of the *Code of Federal Regulations* (10 CFR). The NRC presented four options for amending the 10 CFR 2.311 interlocutory review provision:

(1) Retaining the current rule without any change (status quo), which permits interlocutory appeals, without any threshold requirements, of rulings on requests for hearings or petitions to intervene regarding only whether the hearing or intervention should be granted or denied in its entirety.

(2) Increasing the scope of 10 CFR 2.311 beyond just whether the hearing or intervention should be granted or denied in its entirety to encompass the interlocutory review of each individual contention admissibility determination. All appeals would have to be made immediately following the issuance of the ruling by the presiding officer.

(3) Increasing the scope of 10 CFR 2.311 to encompass the interlocutory review of each individual contention admissibility determination, except for

the admission or denial of contentions grounded in the National Environmental Policy Act of 1969, as amended (NEPA). For decisions on environmental contentions partially admitting or partially denying a request or petition, the appeal of which would only be entertained either a) after the issuance of a final Environmental Impact Statement (or other NEPA document) or, alternatively, b) after a final decision in the proceeding (noninterlocutory).

(4) Reducing the scope of 10 CFR 2.311 to include only interlocutory review of whether a request for hearing or petition to intervene was properly denied in its entirety. Orders granting a hearing, but only admitting some contentions would not be immediately appealable by any party.

In addition to presenting these options, the NRC sought comment on clarifying the interlocutory review process.

II. Public Comment on the Potential Changes to 10 CFR 2.311

The NRC received a single response during the public comment period, from the Nuclear Energy Institute (NEI). NEI suggested that the rulemaking be deferred, suspended, or withdrawn because it will not clearly improve safety or efficiency, and therefore should not be an agency priority. In its comments, NEI indicated that there is little information available to help predict the advantages and disadvantages of each potential option described in the ANPR. Because of this, NEI supported Option 1—to not take any action at this time. NEI noted that if the NRC were to proceed with a rulemaking, Option 2 may result in some increased efficiency. NEI did not support Options 3 or 4, and stated that Option 4 would be an inequitable standard.

III. Reasons for Withdrawing the ANPR

The sole public response to the ANPR argued that the NRC should preserve its existing interlocutory appeals standards. No public comments were received in favor of modifying the rule. Accordingly, the NRC believes that there is not significant public interest in a rule change at this time. The NRC also received no public comments suggesting that the current interlocutory appeals process is inefficient, prejudicial, or otherwise deficient. For these reasons, the NRC is withdrawing the ANPR.

Dated at Rockville, Maryland, this 25th day of October 2013

For the Nuclear Regulatory Commission.

Margaret M. Doane,
General Counsel, Office of the General Counsel.

[FR Doc. 2013-26582 Filed 11-5-13; 8:45 am]

BILLING CODE 7590-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 380

RIN 3064-AE05

Restrictions on Sales of Assets of a Covered Financial Company by the Federal Deposit Insurance Corporation

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (“FDIC”) is proposing a rule to implement a section of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). Under the section, individuals or entities that have, or may have, contributed to the failure of a “covered financial company” cannot buy a covered financial company’s assets from the FDIC. This proposed rule establishes a self-certification process that is a prerequisite to the purchase of assets of a covered financial company from the FDIC.

DATES: Written comments must be received by the FDIC not later than January 6, 2014.

ADDRESSES: You may submit comments by any of the following methods:

- **Agency Web site:** <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow instructions for submitting comments on the Agency Web site.

- **Email:** Comments@FDIC.gov. Include “RIN 3064-AE05” in the subject line of the message.

- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

- **Hand Delivery/Courier:** Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EDT).

- **Federal eRulemaking Portal:** <http://www.regulations.gov/>. Follow the instructions for submitting comments.

- **Public Inspection:** All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html> including any

personal information provided. Paper copies of public comments may be ordered from the Public Information Center by telephone at 703-562-2200 or 1-877-275-3342.

FOR FURTHER INFORMATION CONTACT:

Marc Steckel, Deputy Director, Division of Resolutions and Receiverships, 202-898-3618; Craig Rice, Senior Capital Markets Specialist, Division of Resolutions and Receiverships, 202-898-3501; Chuck Templeton, Senior Resolution Planning & Implementation Specialist, Office of Complex Financial Institutions, 202-898-6774; Elizabeth Falloon, Supervisory Counsel, Legal Division, 703-562-6148; Shane Kiernan, Counsel, Legal Division, 703-562-2632; Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Section 210(r) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5390(r) (“Section 210(r)”), prohibits certain sales of assets held by the FDIC in the course of liquidating a covered financial company, including sales of equity stakes in subsidiaries. The Dodd-Frank Act requires the FDIC to promulgate regulations which, at a minimum, prohibit the sale of an asset of a covered financial company by the FDIC to: (1) Any person who has defaulted, or was a member of a partnership or an officer or director of a corporation that has defaulted, on one or more obligations exceeding \$1,000,000 to such covered financial company, has been found to have engaged in fraudulent activity in connection with such obligation, and proposes to purchase any such asset in whole or in part through the use of financing from the FDIC; (2) any person who participated, as an officer or director of such covered financial company or of any affiliate of such company, in a material way in any transaction that resulted in a substantial loss to such covered financial company; or (3) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such covered financial company.

A similar restriction applicable to sales of assets of insured depository institutions in conservatorship or receivership is found in section 11(p) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(p) (“Section 11(p)”). The FDIC promulgated a rule implementing this statutory proscription on July 1, 2000. That rule, entitled “Restrictions on the Sale of Assets by the Federal

Deposit Insurance Corporation,” can be found at 12 CFR part 340¹ (“Part 340”).

Because Section 210(r) and Section 11(p) share substantially similar statutory language, Part 340 serves as a model for the proposed rule. Although Part 340 and the proposed rule are similar in many ways, the proposed rule is distinct because it applies to sales of covered financial company assets by the FDIC and does not apply to sales of failed insured depository institution assets. A covered financial company resolution will be different from an insured depository institution resolution because the nature of the assets and the manner in which sales are conducted will be different. Furthermore, although the FDIC has been appointed as receiver of hundreds of insured depository institutions, appointment of the FDIC as receiver for a covered financial company is expected to be rare. The proposed rule would not apply to sales of assets of a failed insured depository institution by the FDIC and prospective purchasers seeking to buy assets of an insured depository institution from the FDIC should refer to Part 340 only.

The proposed rule addresses the statutory prohibitions contained in Section 210(r). It does not address other restrictions on sales of assets. For instance, the proposed rule does not address sales of assets by the FDIC to its own employees or to contractors it engages. Further, the proposed rule is separate and apart from any policy that the FDIC has, or may adopt or amend, regarding collection of amounts owed by obligors of a failed insured depository institution or a covered financial company. The focus of a collection policy is to encourage delinquent obligors to promptly repay or settle obligations, which is outside the scope of Section 210(r) and the proposed rule.

Section-by-Section Analysis

Paragraph (a)(1) of the proposed rule states its purpose, which is to prohibit individuals or entities who profited or engaged in wrongdoing at the expense of a covered financial company, or seriously mismanaged a covered financial company, from buying assets of any covered financial company from the FDIC.

Paragraph (a)(2) describes the proposed rule’s applicability. Paragraph (a)(2)(i) states that the proposed rule applies to sales of assets of a covered financial company by the FDIC. The assets of a covered financial company vary in character and composition, and

¹ See 65 FR 14816 (July 1, 2000).