

under this paragraph has been requested”.

3. In § 1126.13(e)(1), the words “and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant”.

4. In § 1126.13, paragraph (e)(2).

5. In § 1126.13(e)(3), the sentence “The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;”.

All persons who desire to submit written data, views or arguments about the proposed suspension should send two copies to USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures for timely implementation of the suspension.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Programs offices during regular business hours (7 CFR 1.27(b)).

#### Statement of Consideration

This proposed action would reinstate the suspension of portions of the pool plant and producer milk definitions under the Texas order that expired July 31, 1999. The proposed suspension would be in effect from the day after publication of the suspension in the **Federal Register** until the implementation of Federal order reform (October 1, 1999). The proposed action would suspend: (1) The 60 percent delivery standard for pool plants operated by cooperatives; (2) the diversion limitation applicable to cooperative associations; (3) the limits on the amount of milk that a pool plant operator may divert to nonpool plants; (4) the shipping standards that must be met by supply plants to be pooled under the order; and (5) the individual producer performance standards that must be met in order for a producer's milk to be eligible for diversion to a nonpool plant.

The order provides for regulating, as a supply plant, a plant that each month ships a sufficient percentage of its receipts to distributing plants. The order sets the requirement as 15 percent of the plant's milk receipts during August and December and 50 percent of the plant's receipts during September through

November and January. In addition, the order provides that a plant that is pooled, as a supply plant, during each of the immediately preceding months of September through January is pooled under the order during the following months of February through July without making qualifying shipments to distributing plants. The requested action would suspend these performance standards, but only for supply plants that were regulated under the Texas order during each of the immediately preceding months of September through January.

The order also permits a cooperative association plant located in the marketing area to be a pool plant if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool distributing plants during the month. In addition, a cooperative association may divert to nonpool plants up to one-third of the amount of milk that the cooperative causes to be physically received during the month at handlers' pool plants, and the operator of a pool plant may divert to nonpool plants not more than one-third of the milk that is physically received during the month at the handler's pool plant. The proposed action would suspend the 60 percent delivery standard for plants operated by a cooperative association and remove the diversion limitations applicable to a cooperative association and to the operator of a pool plant.

The order also specifies that some milk of each producer must be physically received at a pool plant in order for any of the producer's milk to be eligible for diversion to a nonpool plant. During the months of September through January, 15 percent of a producer's milk must be received at a pool plant for the remainder to be eligible for diversion. The proposed action would suspend these requirements.

The reinstatement of the suspension was requested by DFA, a cooperative association that represents a substantial number of dairy farmers who supply the Texas market. The cooperative stated that marketing conditions have not changed materially since the provisions were initially suspended, prior to 1990, and therefore should be suspended until restructuring of the Federal order program is implemented as mandated in the 1996 Farm Bill.

The cooperative states that the reinstatement of the suspension is necessary to assure that dairy farmers who have historically supplied the Texas market will have their milk priced under the Texas order. In addition, DFA maintains that the

suspension would provide handlers the flexibility needed to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the market.

Accordingly, it may be appropriate to suspend the aforesaid provisions effective upon the day after the date of publication of the suspension in the **Federal Register**, continuing until implementation of Federal order reform.

#### List of Subjects in 7 CFR Part 1126

Milk marketing orders.

The authority citation for 7 CFR Part 1126 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

Dated: September 15, 1999.

**Richard M. McKee,**

*Deputy Administrator, Dairy Programs.*

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 340

#### RIN 3064-AB37

### Restrictions on the Purchase of Assets From the Federal Deposit Insurance Corporation

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) is proposing to issue a rule implementing the requirements of the Resolution Trust Corporation Completion Act of 1993 that assets held by the FDIC in the course of liquidating any federally insured institution not be sold to persons who, in ways specified in the Act, contributed to the demise of an insured institution. The proposed rule establishes a self-certification process that is a prerequisite to the purchase of assets from the FDIC and provides definitions that effectuate the intent of Congress regarding the scope of the statutory prohibitions.

**DATES:** Written comments must be received on or before December 20, 1999.

**ADDRESSES:** Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th St., N.W., Washington, D.C. 20429.

Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F street), between the hours of 7:00 a.m. and 5:00 p.m. on business days. (Fax number (202) 898-3838; Internet: comments@FDIC.gov). Comments will be available for inspection and photocopying in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C., between 9:00 a.m. and 4:30 p.m. on business days.

**FOR FURTHER INFORMATION CONTACT:**

Steven K. Trout, Senior Resolutions Specialist, Division of Resolutions and Receiverships, 202-898-3758, or Elizabeth Falloon, Counsel, Legal Division, 202-736-0725, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 20 of the Resolution Trust Corporation Completion Act of 1993 (RTCCA or Act) amends section 11(p) of the Federal Deposit Insurance Act (FDI Act) by adding a provision that restricts the class of persons eligible to purchase assets held by the FDIC in the course of liquidating depository institutions. The Act amended the FDI Act by requiring the FDIC to promulgate regulations which, at a minimum, prohibit the sale of an asset of a failed financial institution to certain individuals or entities who may have contributed to the demise of that institution and prohibit the sale of an asset using FDIC financing to persons who have defaulted and engaged in fraudulent activities with respect to a loan from the institution. The FDIC has adopted policies beginning in 1991 that addressed various statutory goals as well as other policy concerns. The proposed regulation will meet the requirements of the statute, and the FDIC will continue to have other policies regarding purchaser eligibility, such as policies regarding purchase by individuals and entities who are delinquent in payment of obligations to the FDIC and purchase by FDIC contractors.

The FDIC's implementation of the requirements of the statute expands upon the minimum established by statute in several respects. Under the regulation, prospective purchasers will be restricted from buying assets from failed financial institutions for which the FDIC is conservator or receiver in the following circumstances:

Under § 340.3 of the proposed regulation, if a person or entity (or its

associated person, as that term is defined) has defaulted on obligations owed to failed financial institutions and the FDIC that aggregate over \$1 million, and made fraudulent misrepresentations in connection with any one of those obligations, such a person or entity is prohibited from purchasing any assets of failed financial institutions using FDIC financing. Although the statute would restrict only the sale of assets from the failed financial institution that held the defaulted obligation of the proposed purchaser, restrictions contained in the regulation apply regardless of which failed institution's assets are being sold. Because assets are passed through various institutions from time to time before and after the institutions are placed in receivership and are sometimes acquired from institutions in their corporate capacity, it can be difficult to ascertain which institution may have sustained a loss associated with a particular asset, or which institution held the asset in question at various points in time. Also, assets are sometimes sold in bulk, combining assets from several failed financial institutions. These factors would make it cumbersome to limit the restriction to the assets of the particular institution that incurred the loss. Moreover, the FDIC believes adopting this more stringent approach is consistent with the Act as the statute sets only the minimum standards that the FDIC must set in its rule.

Section 340.4(a)(1) of the regulation provides that if a person participated as an officer or director of a failed financial institution or of a related entity in a material way in one or more transactions that resulted in a substantial (*i.e.*, greater than \$50,000) loss to that failed financial institution, the person would not, using any source of payment or financing (*i.e.*, whether or not the FDIC provides financing), be permitted to purchase an asset of any failed institution from the FDIC. The proposed rule establishes parameters to determine whether a person or entity has "participated in a material way in a transaction that caused a substantial loss to a failed institution", as this phrase is not defined in the statute. This definition includes anyone who has been found by a court or tribunal (or, in certain circumstances, has been alleged in formal legal proceedings) in connection with a substantial loss to a failed institution to have (i) violated any federal banking laws or to have breached a written agreement with a federal banking agency or with the failed financial institution; (ii) engaged in an unsafe or unsound practice in

conducting the affairs of the failed institution; or (iii) breached a fiduciary duty to the failed institution.

Under § 340.4(a)(2), if a person has, by federal regulatory action, been removed from or barred from participating in the affairs of any failed financial institution, the person would not, using any source of payment or financing, be permitted to purchase an asset of any failed financial institution from the FDIC.

Under § 340.4(a)(3), if a person or related entity has demonstrated a pattern or practice of defalcation, as defined in the proposed rule, regarding an obligation to a failed financial institution, the person would be barred from purchasing any asset or assets of any failed institution from the FDIC, regardless of the intended source of financing or payment. The definition of "pattern or practice of defalcation" requires more than one incident involving either intent or reckless disregard for whether a loss was caused and requires that the resulting loss be "substantial".

Finally, under § 340.4(a)(4), no person who has defaulted on an obligation to a failed institution and has been convicted of committing, or conspiring to commit, any offense under section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, 1341, 1343 or 1344 of Title 18 of the United States Code (having generally to do with financial crimes, fraud and embezzlement) affecting any failed institution will be permitted to purchase any asset of any failed institution from the FDIC.

In promulgating this regulation, the FDIC does not intend to imply that it will provide seller financing in connection with any asset sales nor that, if it determines to provide seller financing, it will do so to a person who does not meet other criteria, such as creditworthiness, as the FDIC may lawfully impose. Further, the FDIC expressly reserves its authority to promulgate other policies and rules restricting purchaser eligibility to buy assets from the FDIC.

The proposed rule provides for implementation of the restrictions set forth above through a self-certification process. All purchasers of assets covered by the regulation, other than federal, state and local governmental agencies and instrumentalities and government-sponsored entities such as Government National Mortgage Association, Fannie Mae and Freddie Mac, will be required to execute a Purchaser Eligibility Certification in the form established by the FDIC. Because of the nature of these entities, including their organizational purposes or goals and the fact that they are subject to strict

governmental control or oversight, it is reasonable to presume compliance without requiring self-certification. However, authority is given to the Director of the FDIC's Division of Resolutions and Receiverships, or his designee, to require a certification from any of these entities if facts exist that suggest that such a prospective purchaser would fall within the restricted categories. Comment is expressly sought about the nature and scope of this aspect of the certification requirement.

The prohibitions do not apply to a sale or transfer of assets that is part of a workout or settlement of obligations to a failed institution.

#### Paperwork Reduction Act

As indicated by § 340.7 of the proposed rule, the FDIC intends to develop a purchaser eligibility certification relating to this rule. If the certification is covered by the Paperwork Reduction Act, the FDIC will publish **Federal Register** notices and make submissions to the Office of Management and Budget consistent with the requirements of 5 CFR 1320.10.

#### Regulatory Flexibility Act

The only burden imposed by this regulation is the completion of a certification form described above in the Paperwork Reduction Act section. The burden produced by this requirement does not require the use of professional skills or the preparation of special reports or records and has a minimal impact, economic and time-wise, on those individuals and entities that seek to purchase assets from the FDIC. Moreover, this minimal burden is imposed only on those entities voluntarily seeking to purchase assets from the FDIC. Accordingly, the Board hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable.

#### The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families.

The FDIC has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

#### List of Subjects in 12 CFR Part 340

Asset disposition, Banks, banking.

For the reasons set out in the preamble, the FDIC hereby proposes to amend chapter III of title 12 of the Code of Federal Regulations by adding a new part 340 as follows:

#### PART 340—RESTRICTIONS ON SALE OF ASSETS BY THE FEDERAL DEPOSIT INSURANCE CORPORATION

Sec.

340.1 Authority, purpose, scope and preservation of existing authority.

340.2 Definitions.

340.3 Restrictions on the sale of assets by the FDIC in conjunction with a loan or extension of credit.

340.4 Restrictions on the sale of assets by the FDIC regardless of the method of financing.

340.5 Independent determination of eligibility for seller financing.

340.6 Certain asset sales unaffected by this part.

340.7 Certification required.

340.8 Workout, resolution, or settlement of obligations.

**Authority:** 12 U.S.C. 1819 (Tenth), 1821(p).

##### § 340.1 Authority, purpose, scope and preservation of existing authority.

(a) *Authority.* This part is issued by the Federal Deposit Insurance Corporation (FDIC) pursuant to section 11(p) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1821(p), as added by section 20 of the Resolution Trust Corporation Completion Act (Pub. L. 103-204, 107 Stat. 2369 (1993)).

(b) *Purpose.* The sale by the FDIC of assets of any failed financial institution to certain persons who profited or engaged in wrongdoing at the expense of an insured institution, or seriously mismanaged an insured institution, is prohibited.

(c) *Scope.* The restrictions of this part generally apply to assets owned or controlled by the FDIC in any capacity, even though the assets are not owned by the insured institution that the prospective purchaser injured. Unless the FDIC determines otherwise, this part shall not apply to the sale of securities in connection with the investment of corporate and receivership funds pursuant to the Investment Policy for Liquidation Funds managed by the FDIC as the same shall be in effect from time to time. These restrictions shall not apply to any sale by a trust or other entity of securities backed by a pool of assets that may include assets of failed institutions to a purchaser other than the underwriter purchasing in an initial offering.

(d) *Preservation of existing authority.* Neither section 11(p) of the FDI Act nor

this part in any way limits the authority of the FDIC to establish policies prohibiting the sale of assets to prospective purchasers who have injured any FDIC-insured institution or to other prospective purchasers, such as certain employees or contractors of the FDIC, or individuals who are not in compliance with the terms of any debt or duty owed to the FDIC. Any such policies may be independent of, in conjunction with, or in addition to the restrictions set forth in this part.

##### § 340.2 Definitions.

(a) *Associated person* of an entity or individual shall mean:

(1) With respect to an individual:

(i) That individual's spouse or dependent child or any member of that individual's immediate household;

(ii) A partnership of which that individual is or was a general or limited partner; or

(iii) A corporation of which that individual is or was an officer or director;

(2) With respect to a partnership, a managing or general partner of the partnership; or

(3) With respect to any entity, an individual or entity who, acting individually or in concert with one or more individuals or entities, owns or controls 25 percent or more of the entity.

(b) *Default* shall mean any failure to comply with the terms of an obligation to such an extent that:

(1) A judgment has been rendered in favor of the FDIC or a failed institution; or (2) In the case of a secured obligation, the property securing such obligation is foreclosed on.

(c) *FDIC* shall mean the Federal Deposit Insurance Corporation.

(d) *Failed institution* shall mean any bank or savings association that has been under the conservatorship or receivership of the FDIC or RTC. For the purpose of this part, "failed institution" shall be deemed to include any entity owned and controlled by a failed institution.

(e) *Obligation* shall mean any debt or duty to pay money owed to the FDIC or a failed institution, including any guarantee of any such debt or duty.

(f) *Person* shall mean an individual, or an entity with a legally independent existence, including, without limitation, a trustee; the beneficiary of at least a 25 percent share of the proceeds of a trust; a partnership; a corporation; an association; or other organization or society.

(g) *RTC* shall mean the former Resolution Trust Corporation.

(h) *Substantial loss* shall mean:

(1) An obligation that is delinquent for ninety (90) or more days and on which there remains an outstanding balance of more than \$50,000;

(2) An unpaid final judgment in excess of \$50,000 regardless of whether it becomes forgiven in whole or in part in a bankruptcy proceeding;

(3) A deficiency balance following a foreclosure of collateral in excess of \$50,000, regardless of whether it becomes forgiven in whole or in part in a bankruptcy proceeding;

(4) Any loss in excess of \$50,000 evidenced by an IRS Form 1099-C (Information Reporting for Discharge of Indebtedness).

**§ 340.3 Restrictions on the sale of assets by the FDIC in conjunction with a loan or extension of credit.**

A person shall not, in purchasing one or more assets from the FDIC or any failed institution, receive a loan, advance, or other extension of credit from the FDIC or any failed institution, if:

(a) There has been a default with respect to one or more obligations totaling in excess of \$1,000,000 owed by that person or its associated person; and

(b) Such person or its associated person shall have made any fraudulent misrepresentations in connection with any such obligation(s).

**§ 340.4 Restrictions on the sale of assets by the FDIC regardless of the method of financing.**

(a) No person may acquire any assets from the FDIC or from any failed institution if the person or its associated person:

(1) Has participated, as an officer or director of a failed institution or of an affiliate of a failed institution, in a material way in one or more transaction(s) that caused a substantial loss to that failed institution;

(2) Has been removed from, or prohibited from participating in the affairs of, a failed institution, pursuant to any final enforcement action by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, the FDIC, or the successors of any of them;

(3) Has demonstrated a pattern or practice of defalcation regarding obligations to any failed institution; or

(4) Has been convicted of committing or conspiring to commit any offense under section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, 1341, 1343 or 1344 of title 18 of the United States Code affecting any failed institution and there has been a default with respect to one or more obligations owed by that person or its associated person.

(b) For purposes of paragraph (a) of this section, a person has participated "in a material way in a transaction that caused a substantial loss to a failed institution" if, in connection with a substantial loss to a failed institution, the person has been found in a final determination by a court or administrative tribunal, or is alleged in a judicial or administrative action brought by the FDIC or by any component of the government of the United States or of any state:

(1) To have violated any law, regulation, or order issued by a federal or state banking agency, or breached or defaulted on a written agreement with a federal or state banking agency, or breached a written agreement with a failed institution;

(2) To have engaged in an unsafe or unsound practice in conducting the affairs of a failed institution; or

(3) To have breached a fiduciary duty owed to a failed institution.

(c) For purposes of paragraph (a) of this section, a person or its associated person shall have demonstrated a pattern or practice of defalcations regarding obligations to a failed institution if the person or associated person has engaged in the following:

(1) The person or associated person has engaged in more than one transaction which created an obligation on the part of such person or its associated person with intent to cause a loss to any financial institution insured by the FDIC or with reckless disregard for whether such transactions would cause a loss to any such insured financial institution; and

(2) Such transactions, in the aggregate, caused a substantial loss to one or more failed institution(s).

**§ 340.5 Independent determination of eligibility for seller financing.**

The absence of any disqualification under the restrictions set forth in this part does not create any right to obtain a loan or advance by or through the FDIC or remove the right of the FDIC to make an independent determination, based upon all relevant facts of the offeror's financial condition and history, of the offeror's eligibility to receive any such loan or advance.

**§ 340.6 Certain asset sales unaffected by this part.**

The effectiveness of this part shall not affect the enforceability of a contract of sale and/or agreement for seller financing in effect prior to [insert effective date of final rule].

**§ 340.7 Certification required.**

(a) Except as provided in paragraph (b) of this section, no person shall

purchase any asset from the FDIC, unless that person shall have certified, under penalty of perjury with notice that a false certification may lead to punishment under 18 U.S.C. 1001, 1007, 1014 and 1621, in such form as may be established by the FDIC, that none of the restrictions contained in this part applies to such purchase.

(b) Notwithstanding paragraph (a) of this section, no certification shall be required of a state or political subdivision thereof, a federal agency or instrumentality, the Government National Mortgage Association, Fannie Mae, or Freddie Mac; provided however, that the Director of the FDIC's Division of Resolutions and Receiverships, or his designee, may, in his discretion, require a certification of any such entity.

**§ 340.8 Workout, resolution, or settlement of obligations.**

The restrictions of §§ 340.3 and 340.4 shall not apply if the sale or transfer of an asset resolves or settles, or is part of the resolution or settlement of, one or more obligations, regardless of the amount of such obligations.

By Order of the Board of Directors.

Dated at Washington, D.C. this 31st day of August, 1999.

Federal Deposit Insurance Corporation.

**James D. LaPierre,**

*Deputy Executive Secretary.*

[FR Doc. 99-24541 Filed 9-20-99; 8:45 am]

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**FEDERAL TRADE COMMISSION**

**16 CFR Part 432**

**Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products**

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of extension of comment period.

**SUMMARY:** On July 19, 1999, the Federal Trade Commission (the "Commission") commenced a rulemaking proceeding and requested public comments on a notice of proposed rulemaking to amend its Rule relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products (the "Amplifier Rule" or the "Rule"). The Commission solicited comments until September 17, 1999. In response to a request from an industry trade association, the Commission grants an extension of the comment period until October 15, 1999.

**DATES:** Written comments will be accepted until October 15, 1999.