

Background

In an interim rule effective and published in the **Federal Register** on February 1, 2002 (67 FR 4877–4878, Docket No. 01–122–1), we amended the regulations in 9 CFR part 94 by adding Slovakia and Slovenia to the list of regions where bovine spongiform encephalopathy (BSE) exists. Slovakia and Slovenia had previously been listed in § 94.18(a)(2) as regions that present an undue risk of introducing BSE into the United States. However, due to the detection of BSE in native-born animals in those regions, the interim rule was necessary to update the disease status of Slovakia and Slovenia regarding BSE.

Comments on the interim rule were required to be received on or before April 2, 2002. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 94 that was published at 67 FR 4877–4878 on February 1, 2002.

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 9th day of May, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–12137 Filed 5–14–02; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 366

RIN 3064–AC29

Minimum Standards of Integrity and Fitness for an FDIC Contractor

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Interim final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is issuing a rule entitled, “Minimum Standards of Integrity and Fitness for an FDIC Contractor”. This rule replaces the March 11, 1996, interim final rule entitled, “Contractor Conflicts of Interest”. This rule establishes standards for independent contractors governing contracting prohibitions, conflicts of interest, ethical responsibilities, confidential information, and reportable information. It is also consistent with the goals and purposes of titles 18 and 41 of the United States Code. This rule is in addition to, and not in lieu of, any other statute or rule which may apply to the conduct of persons performing services pursuant to a contract.

DATES: This rule becomes effective May 15, 2002. We must receive your written comments on or before July 15, 2002.

ADDRESSES: Address your written comments to Robert E. Feldman, Executive Secretary, Attention: comments/OES, and:

1. Mail to Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429;
2. Hand-deliver to the guard station located at the rear of the 17th Street Building on F Street, between 8:30 a.m. and 5:00 p.m. on business days;
3. Fax to (202) 898–3838;
4. E-mail to: comments@FDIC.gov <<mailto:comments@fdic.gov>>; or
5. Post on the FDIC internet site at <http://www.fdic.gov/regulations/laws/Federal/propose.html>.

Comments are available for inspection and photocopying at the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Martin A. Blumenthal, Counsel, (202) 736–0359, or Peter M. Somerville, Counsel, (202) 736–0110, Legal Division; or Donald L. Rosholt, Senior Ethics Program Specialist, Office of the Executive Secretary, (202) 898–7287, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

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I. Introduction

A. Overview

This rule sets forth integrity and fitness provisions for FDIC contractors in three areas. The first area regards those persons from whom the FDIC is prohibited from entering into a contract. The second area identifies integrity and fitness responsibilities for independent contractors. These include conflicts of interest, minimum standards of ethical responsibility, confidential information, and information that contractors must disclose to the FDIC. The last area regards a contractor's expectations, rights and obligations. These include what advice and determinations the FDIC will provide a contractor, reconsiderations and reviews of those determinations, and the possible consequences a person may face for violating the provisions of this rule.

This rule and **SUPPLEMENTARY INFORMATION** section are drafted in plain language. The word “person” refers to an individual, corporation, partnership, or other entity with a legally independent existence. The terms “I”, “me”, “my”, “mine”, “you”, and “yourself” refer to a person who submits an offer to perform or performs, directly or indirectly, contractual services or functions on behalf of the FDIC. The terms “we”, “our”, and “us” refer to the FDIC, except when the FDIC operates an insured depository institution such as a bridge bank or conservatorship. The phrase “insured depository institution” refers to any bank or savings association whose deposits are insured by the FDIC.

B. Authority

The statutory authorities for adopting this rule are sections 12(f)(3) and (4) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1822(f)(3) and (4), and our general rulemaking authority found at 12 U.S.C. 1819 (Tenth). Section 19 of the Resolution Trust Corporation Completion Act (RTCCA), Pub. L. 103–204, 107 Stat. 2369 (1993), required the addition of section 12(f) to the FDI Act.

We may establish other integrity and fitness policies where we determine such policies are required by law or appropriate to maintain the integrity of our programs. Any such policies may be independent of, in conjunction with, or in addition to the restrictions set forth in this rule.

We may also, temporarily or permanently, suspend this rule or exempt a person from compliance with any part of this rule for good cause shown, in order to protect our interests or to provide an orderly transfer of services to another person.

C. Background

The contractor integrity and fitness rules, based on statutory requirements, are regulatory tools the FDIC uses to assure that certain of its contractors meet minimum standards of competence, experience, integrity and fitness. See 501(a), FHLB Act Sec. 21A(p)(6). This statute was enacted to ensure that no person who contributed to the failure of an insured depository institution could contract with the FDIC without disclosure and considerable scrutiny. The Oversight Board of the Resolution Trust Corporation (RTC) issued the original proposed rule on November 28, 1989. From that original rule, related FDIC rules, and many years of RTC and FDIC experience, we propose this rule.

On June 24, 1994, we published a proposed rule applicable to independent contractors (59 FR 32661–32668), as required by 12 U.S.C. 1822(f)(3). That rulemaking proposed standards governing conflicts of interest, ethical responsibilities, and use of confidential information. It also proposed procedures for ensuring that independent contractors meet minimum standards for competence, experience, integrity, and fitness. We received six comment letters. After careful consideration of each comment and numerous changes that the Office of Government Ethics (OGE) requested, we made appropriate modifications to the proposal resulting in the reorganization and modification of some provisions.

On March 11, 1996, we adopted an interim final rule entitled, “Contractor

Conflicts of Interest”, (61 FR 9590), with the concurrence of OGE. We determined that an interim final rule was appropriate in order to allow interested parties to comment on the rule while providing prompt implementation of the rule to satisfy concerns relating to the merger of the RTC into the FDIC. We received only one comment on the interim final rule and it was non-substantive. We have gained significant experience regarding requests for (1) waivers of disqualifying conditions and conflicts of interest, and (2) reconsiderations of our determinations since the interim final rule was issued.

We now publish this rule entitled, “Minimum Standards of Integrity and Fitness for an FDIC Contractor”, to allow for public comment. We believe that public comment is appropriate given the length of time that has transpired since the March 11, 1996, interim final rule was published and the changes we are making now. The provisions of this rule are similar to the interim final rule, except as addressed in section II below. In general, those changes relieve restrictions on contractors. Therefore, although we request comments on all aspects of this rule, we will publish the rule as an interim final rule, having found good cause for making it effective immediately. The March 11, 1996, interim final rule is replaced with this rule. 5 U.S.C. 533(b)(3)(B) and 533(d)(1) and (3).

II. Comparison of This Rule to the March 11, 1996, Interim Final Rule

A. General Changes

This rule is published in accordance with plain language guidelines. It does not include the internal agency procedures that were incorporated in the March 11, 1996, interim final rule. Instead, it provides for the Board of Directors to delegate to the Chairman, or his designee, the authority to grant waivers and implement procedures for this rule. Examples are added at §§ 366.4(b), 366.6(c), 366.10(b), 366.11(b), 366.12(e) and 366.13(b) for clarity and guidance.

The title of this rule is changed from “Contractor Conflicts of Interest” to “Minimum Standards of Integrity and Fitness for an FDIC Contractor” to better describe its provisions.

The waiver and reconsideration provisions established in the March 11, 1996, interim final rule set forth internal agency processes and procedures, some of which do not meet the needs or satisfy the requirements of our diverse activities. For example, a conflict of interest consideration is different for a

service contractor when it expresses an interest in purchasing an asset from us than when it competes to provide us with asset services. A service contractor is an independent contractor that provides services other than goods, including, but not limited to, legal services, asset disposition or management services, or management and consulting services. Furthermore, the universe of persons subject to the provisions of this rule represents a wide variety of professions and organizational structures, which we must take into consideration in making our integrity and fitness determinations. For example, the threshold of what constitutes a conflict of interest for legal services is not necessarily the same as that for non-legal services. Conflicts of interest for legal matters involve representational and non-representational issues. For these reasons, we will continue to issue separate and complementary internal policies and procedures, consistent with this rule, for our different program areas as may be necessary.

We interpret the language of section 1822(f) to distinguish between two different types of service contracts. The first type is incidental or housekeeping service contracts. The phrase “incidental or housekeeping” refers to services or activities relating to our day-to-day routine corporate operations. Examples of incidental or housekeeping service contracts would include, but would not be limited to, (1) food service contracts for employee cafeteria services, (2) contracts for janitorial or cleaning services, (3) contracts for mail delivery services, and (4) contracts providing employee benefits. Such incidental or housekeeping service contracts do not arrange for contract workers (rather than FDIC employees) to perform services for or on our behalf a FDIC function or activity required of the FDIC by statute (described below). Incidental and housekeeping service contracts are not covered by the statutory minimum standards of fitness and integrity set forth at 12 U.S.C. 1822(f)(4)(E), nor are they covered by this rule. We reserve our discretion and flexibility to determine an appropriate standard of integrity and fitness where a contract worker would provide incidental or housekeeping services for or to us. We may impose fitness and integrity requirements up to and including the statutory standards upon such contract workers.

The second type of service contract provides for contract workers (rather than FDIC employees) to perform FDIC functions and/or activities for or on our behalf. The FDIC functions and/or

activities performed for or on our behalf relate to any of our responsibilities that are required by statute such as regulating banks, providing deposit insurance, examining banks, conducting receivership activities, and conducting liquidation activities. These types of service contracts would include, but would not be limited to, contracts to service, manage or sell receivership or corporate assets. The minimum standards of integrity and fitness as set forth in section 12 U.S.C. 1822(f)(4)(E) apply to these contracts. These contracts are covered by this rule.

Previously, since the rule was first proposed in June 1994, we chose to voluntarily apply the provisions of the rule to all service contracts, including corporate contracts for incidental or housekeeping services. This rule differs from the March 11, 1996, interim final rule in that we have decided to limit the scope as stated above.

After careful review of the FDI Act, we propose to establish a provision for us to grant waivers at our discretion regarding the prohibition to perform contractual services on our behalf to persons other than individuals at § 366.7. We believe this change is consistent with the FDI Act, which mandates that we establish procedures to ensure that any individual who is performing, directly or indirectly, any function or service on our behalf meets minimum standards of integrity and fitness. Because the statutory language refers only to individuals, and not other entities, we believe this approach is appropriate.

In addition, we removed the reference to an obsolete interim supplemental financial disclosure rule entitled, "Supplemental Financial Disclosure Requirements for Employees of the Federal Deposit Insurance Corporation", 61 FR 50947-48 (September 30, 1996). This supplemental financial disclosure rule was codified at 5 CFR part 3202 and referenced in the interim final rule at § 366.1(c)(1)(ii).

There are several provisions in the March 11, 1996, interim final rule that are repetitive. For example, the provisions for reconsidering our decisions are found at §§ 366.4(d) and 366.5(e). The contractor's 10-day and immediate notification requirements are found at §§ 366.4(b)(2) and (c), 366.5(c)(1)(ii) and (d), and 366.6(b)(2). The remedies for the contractor's failure to comply with the rule and the contractor's liability requirements are found at §§ 366.4(c)(2), 366.5(d)(2), 366.6(c), 366.8(b), and 366.9. We eliminate this repetitiveness to make this rule more concise. The reconsideration provisions in this rule

are consolidated at § 366.16. The notification requirements are consolidated at § 366.14(c) of this rule. Our remedies for the contractor's failure to comply with the rule and contractor's liability requirements are consolidated at § 366.17.

In addition, there are several provisions in the March 11, 1996, interim final rule that make distinctions with respect to their applicability prior to contract award, after contract award, and during the term of a contract. These are found at §§ 366.4(b) and (c), 366.5(c) and (d), and 366.7(a). We make no such distinctions in this rule at § 366.15(b). There are also separate provisions for a person's initial and subsequent submissions of information at §§ 366.6(a) and (b) of the interim final rule. No such distinction between these provisions is made in this rule at § 366.14. We eliminate these distinctions found in the interim final rule to make this rule more concise. This rule applies equally to prior to contract award, after contract award, and during the term of a contract.

B. Definitional Changes

The terms "affiliated business entity", "company", and "management official" found at §§ 366.2(a), (b), and (i), respectively, in the March 11, 1996, interim final rule do not appear in this rule. Other terms that we defined in the interim final rule are used in this rule without a formal definition. We rely, instead, on the common meaning of the terms as used in the contracting environment. For example, reference to "contractor", "offer", and "subcontractor" found at §§ 366.2(d), (j) and (n), respectively, in the interim final rule are not defined in this rule. The question-and-answer format is used in this rule to describe the terms "pattern or practice of defalcation" and "substantial loss" that were defined in the interim final rule at §§ 366.2(k) and (o), respectively.

1. The following is a discussion of the changes to three terms:

Conflict of Interest. The definition of a conflict of interest at § 366.2(c) of the March 11, 1996, interim final rule includes four provisions. We now believe that the suspension and exclusion provision at § 366.2(c)(3) of the interim final rule does not constitute a conflict of interest, and it is not included in this rule. According to the March 11, 1996, interim final rule, a previously suspended or excluded person is permanently restricted from performing services on our behalf, unless we grant a waiver. This requires us to consider waivers for any

previously suspended or excluded person even when the person is no longer debarred from contracting with us or any other federal agency. This waiver requirement is an unnecessary burden for us and the previously suspended or excluded person. Moreover, it does not provide us with any additional safeguards. We believe a previously suspended or excluded person should be eligible to contract with us to the same extent they are eligible to contract with other Federal agencies, unless § 366.3 of this rule prohibits them from doing so. This is consistent with federal debarment restrictions that are usually temporary or limited in time.

Section 366.10 of this rule incorporates the other three provisions of the original definition of the term "conflict of interest" in § 366.2(c) of the March 11, 1996, interim final rule. Section 366.2(c)(4) of the interim final rule, regarding an unfair competitive advantage, applied primarily to asset purchaser situations. Section 366.10(a)(3) of this rule is included to make this application clearer. Section 366.10(a)(4) of this rule is added to cover any other situation which could cause us to question the integrity of the services a contractor provided, is providing or offers to provide us.

Pattern or practice of defalcation. Section 366.4 of this rule explains pattern or practice of defalcation. Pattern or practice of defalcation in this rule does not include the foreclosure provision found in § 366.2(k)(2) of the March 11, 1996, interim final rule. That foreclosure provision states, "A loan or advance from an insured depository institution where there has been a failure to comply with the terms to such an extent that the collateral securing the loan or advance was foreclosed upon, resulting in a loss in excess of \$50,000 to the insured depository institution." This concept is incorporated, in part, in the term substantial loss at § 366.5. It does not apply to foreclosures at open institutions in this rule as it did in the interim final rule. Examples are added for clarity and guidance.

Substantial loss. Section 366.5 of this rule explains what it means to cause a substantial loss to a federal deposit insurance fund. It does not include the provision for obligations that have ever been delinquent found in § 366.2(o)(1) of the March 11, 1996, interim final rule. We believe 12 U.S.C. 1822(f)(4)(E)(iv) prohibits us from contracting with a contractor who is currently delinquent for ninety (90) days or more with us, because there is a perceived result of a loss to the fund. However, we do not believe it prohibits

us from contracting with a contractor who may have had a delinquent obligation to us that is now current.

2. This rule describes the term "person" more clearly. Section 366.2(l) of the March 11, 1996, interim final rule defines the term "person" to mean an individual or company. The word "person" used in this rule includes an individual, corporation, partnership, or other legally independent entity. We believe meaning of the word "person" in this rule is not a change from the meaning of the term used in the interim final rule.

C. Prohibition From Performing Services on Our Behalf

12 U.S.C. 1822(f)(4)(E) requires us to prohibit any person who is a convicted felon; who a federal banking agency removes or prohibits from participating in the affairs of any insured depository institution pursuant to any final enforcement action; who demonstrates a pattern or practice of defalcation regarding obligations to insured depository institutions; or who causes a substantial loss to federal deposit insurance funds from performing any service on our behalf. Section 366.3 of this rule sets forth the same provisions as those in § 366.4 of the March 11, 1996, interim final rule with the exception of their applicability to any person that owns or controls you, and any entity you own or control. We added to this rule the provision for the applicability of the prohibitions to any person that owns or controls you and any entity you own or control so that a prohibited contractor could not circumvent the prohibition by contracting through a non-prohibited entity. This rule makes no distinction with respect to those prohibitions that arise prior to award and those that arise or are discovered after contract award. We do not believe this distinction is necessary because the prohibitions are applicable, regardless of when they arise.

Section 366.6 of this rule explains ownership or control, which is unchanged from § 366.2(e) of the March 11, 1996, interim final rule. Examples are added for clarity and guidance.

Section 366.7 of this rule is a new provision that permits us to grant a waiver of the prohibitions found in § 366.3 to an entity other than an individual. This new provision is based upon our conclusion that the statutory requirement found at section 12 U.S.C. 1822(f)(4)(E) limits individuals from contracting with us when the prohibitions found in § 366.3 are shown to exist. The application of the prohibition to all persons requires us to

include a waiver provision for entities other than individuals for good cause shown.

Because this rule includes waiver provisions and allows the FDIC to establish policies independent of, in conjunction with, or in addition to the restrictions set forth in this rule, section 366.8 is included to delegate authority from the Board of Directors to the Chairman, or his designee, to issue waivers and implement procedures. This provides the FDIC the ability to specify the appropriate officials who will administer the provisions of the rule that were incorporated in section 366.3 of the March 11, 1996, interim final rule.

D. Contractor Responsibilities and Requirements

12 U.S.C. 1822(f)(3) requires us to prescribe regulations applicable to independent contractors governing conflicts of interest, ethical responsibilities, and use of confidential information. Sections 366.10 through 366.14 of this rule set forth the provisions for this requirement.

Section 366.10 explains when you have a conflict of interest. It incorporates provisions of §§ 366.2(c) and 366.5 of the March 11, 1996, interim final rule. As discussed in II B.1 in this Supplementary Information section, the conflict of interest provision changes include (1) the removal of a suspended or excluded contractor as a conflict of interest, and (2) the addition of the provision to cover other situations which could cause us to question the integrity of the services a contractor provided, is providing or offers to provide. Examples are added for clarity and guidance.

Section 366.11 sets forth the provision for us to grant waivers of a conflict of interest, and it is similar to § 366.5(b) of the March 11, 1996, interim final rule. However, no distinction is made between conflicts that arise prior to award and those that are discovered after award. Examples are added for clarity and guidance.

Section 366.12 sets forth our minimum standards for your ethical responsibility. Section 366.12(a) is added to ensure that you and your employees are fair and objective. Section 366.12(b) replaces the verification provisions in §§ 366.6(a)(3) and (b)(1) of the March 11, 1996, interim final rule. Section 366.12(c) was added at the request of the Office of Inspector General to ensure that you are held to the same standard for reporting waste, fraud and abuse as any FDIC employee when conducting FDIC business. Section 366.12(d) incorporates the

provisions of § 366.7(a) of the interim final rule. Examples are added for clarity and guidance.

Section 366.13 sets forth your obligation to maintain confidential information, and it is consistent with § 366.8 of the March 11, 1996, interim final rule. The consequences for failure to comply with the provisions found at § 366.8(b) of the interim final rule are incorporated in § 366.17 of this rule. Examples of inappropriate use of confidential information are added for clarity and guidance.

Section 366.14 requires you to provide information to us, and it is similar to § 366.6(a) and (b) of the March 11, 1996, interim final rule. However, in this rule we do not make a distinction between information required prior to award and subsequent to award. In addition, we reduce the period of time from the preceding ten (10) years to the preceding five (5) years regarding the information about defaults that a contractor must report, consistent with section 12 U.S.C. 1822(f)(4)(C)(i).

E. Contractor's Expectations, Rights, and Obligations

Section 366.15 of this rule identifies what we will provide you with respect to advice and determinations. It simplifies the determination, corrective actions and waiver provisions found at §§ 366.4(c)(1), and 366.5(c) and (d) of the March 11, 1996, interim final rule.

Section 366.16 of this rule sets forth our requirements for reconsideration or review of our determinations. It includes the reconsideration and review provisions found at §§ 366.4(d), 366.5(e) and 366.5(c)(2) of the March 11, 1996, interim final rule.

Section 366.17 sets forth the sanctions you may be subject to if you do not comply with this rule. It consolidates the remedies and the contractor's liability provisions found at §§ 366.4(c)(2) and (3), 366.5(d)(2) and (3), 366.7(d), 366.8(b) and 366.9 of the March 11, 1996, interim final rule in one section.

III. Matters of Regulatory Procedure

A. Regulatory Flexibility Act

The Board of Directors certifies that this rule will 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. 605 (b)). This rulemaking will replace the interim final rule published on March 11, 1996. This rule imposes no new burden other than the minimal time required to read new descriptions of unique terms used in the rule. As discussed further in the

Paperwork Reduction Act section below, we are reducing the amount of information we currently require from contractors.

We are also taking this opportunity to engage in a periodic review of this rule consistent with our responsibilities under the Regulatory Flexibility Act (5 U.S.C. 610). The purpose of this review is to determine how we may minimize any significant economic impact of the rule on a substantial number of small entities consistent with the objectives of the law that requires us to have this rule. Your comments on how we may reduce burden on small contractors are welcome.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), we may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The collections of information contained in this rule were submitted to OMB for review.

Written comments on the collection of information should be sent to the FDIC desk officer: Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Alexander T. Hunt, New Executive Office Building, Room 3208, Washington, DC 20503.

Copies of comments should also be sent to: Federal Deposit Insurance Corporation, Office of the Executive Secretary, Attn: Thomas E. Nixon, 550 17th Street, NW., Washington, DC 20429, (202) 898-8766.

Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street) on business days between 8:30 a.m. and 5:00 p.m. [Fax number (202) 898-3838; Internet address: COMMENTS@FDIC.GOV]. For further information on the Paperwork Reduction Act aspect of this rule, contact Thomas E. Nixon at the above address.

Comment is solicited on:

1. Whether the collections of information are necessary for the proper performance of our functions, including whether the information will have practical utility;

2. The accuracy of our estimates of burden of the proposed collections of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected;

4. Ways to minimize the burden of the information collections on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses; and

5. Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Title of the collection: This rule will modify an information collection previously approved by OMB titled "Acquisition Services Information Requirements" under control number 3064-0072.

Summary of the collection: Generally, the collection includes the submission of information on FDIC forms by contractors who wish to do business with us or are currently under contract with us.

Need and Use of the information: We use the information to ensure compliance with our contractor integrity and fitness regulation and to make contracting decisions.

Respondents: FDIC contractors and potential FDIC contractors.

Changes to the collection: This rule changes the definitions of terms used on OMB approved contracting forms (for example, the Integrity and Fitness Representations, the Contractor Application, and Background Investigation Questionnaire). The definition of "substantial loss" will no longer include loans that were formerly delinquent but which are now current or satisfied. "Pattern or practice of defalcation" deletes a concept regarding the foreclosure of collateral which has been and continues to be encompassed in the concept of "substantial loss." "Conflict of interest" will no longer include a prior suspension or exclusion from federal government contracting or certain terminations of our contracts. In addition, the time period for which contractors must disclose defaults on material obligations is shortened from 10 to 5 years.

Burden estimates: On September 12, 2001, OMB approved this collection for 12,546 responses with a total burden of 6,285 hours. The collection included nine forms with the estimated response time for each form varying between .05 hours to 1.0 hour. This rulemaking affects three of the nine forms. The estimated burdens for these three forms:

1. "Integrity and Fitness Representations", FDIC 3700/12. 2,312 responses x 20 minutes per response, or 771 hours annual burden.

2. "Contractor Application", FDIC 3700/13. 631 responses x 35 minutes per response, or 368 hours annual burden.

3. "Background Investigation Questionnaire", FDIC 1600/04. 2,330 responses x 20 minutes per response, or 776 hours annual burden.

Title of the collection: This rule will also modify the information collection previously approved by OMB titled "Forms Relating to FDIC Outside Counsel Services" under control number 3064-0122.

Summary of the collection: Generally, the collection includes the submission of information on forms by legal contractors who wish to do business with us or are currently under contract with us.

Need and Use of the information: We use the information to ensure compliance with our contractor integrity and fitness regulation, to make contracting decisions, and to control payments.

Respondents: Law firms and legal support service providers that contract with us or seek to do so.

Changes to the collection: The currently approved information collection includes 13 forms. This rulemaking affects one of the 13 forms, FDIC 5200/01, the title of which has been changed from "Representations and Certifications Qualifications of Applicants: Law Firms and Sole Practitioners" to "Representations and Certifications for Legal Contractors", reflecting that the respondent base has been expanded to include all legal support service providers. This rule also changes the definitions of certain terms. The definition of "substantial loss" will no longer include loans that were formerly delinquent but which are now current or satisfied. "Pattern or practice of defalcation" deletes a concept regarding the foreclosure of collateral which has been and continues to be encompassed in the concept of "substantial loss." "Conflict of interest" will no longer include a prior suspension or exclusion from federal government contracting or certain terminations of our contracts. In addition, the time period for which contractors must disclose defaults on material obligations is shortened from 10 to 5 years.

Burden estimates: On October 10, 2000, OMB approved this collection for a total burden of 2,028 hours based on 2,783 responses on 13 forms with the estimated response time for each form varying between .5 hour to 1.25 hours. This rulemaking affects one of the 13 forms, now titled "Representations and Certifications for Legal Contractors", FDIC 5200/01. The new burden estimate for FDIC 5200/01 is 500 responses x 1 hour, or 500 hours annual burden.

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

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

D. Congressional Review Act

OMB has determined that this rule is not a “major rule” within the meaning of the Congressional Review Act (5 U.S.C. 801 *et seq.*). The FDIC will file appropriate reports with Congress and the General Accounting Office so that this final rule can be reviewed.

List of Subjects in 12 CFR Part 366

Contractor conflicts of interest, Government contracts, Reporting and recordkeeping requirement.

For the reasons set forth in the preamble, we hereby revise part 366 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 366—MINIMUM STANDARDS OF INTEGRITY AND FITNESS FOR AN FDIC CONTRACTOR

Sec.

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Authority: 12 U.S.C. 1819(Tenth), 1822(f)(3) and (4); Sec. 19 of Pub. L. 103–204, 107 Stat. 2369.

§ 366.0 Definitions.

As used in this part:

- (a) The word *person* refers to an individual, corporation, partnership, or other entity with a legally independent existence.
- (b) The terms *we*, *our*, and *us* refer to the Federal Deposit Insurance Corporation (FDIC), except when acting as conservator or operator of a bridge bank.
- (c) The terms *I*, *me*, *my*, *mine*, *you*, and *yourself* refer to a person who submits an offer to perform or performs, directly or indirectly, contractual services or functions on our behalf.
- (d) The phrase *insured depository institution* refers to any bank or savings association whose deposits are insured by the FDIC.

§ 366.1 What is the purpose of this part?

This part establishes the minimum standards of integrity and fitness that contractors, subcontractors, and employees of contractors and subcontractors must meet if they perform any service or function on our behalf. This part includes regulations governing conflicts of interest, ethical responsibility, and use of confidential information in accordance with 12 U.S.C. 1822(f)(3) and the prohibitions and the submission of information in accordance with 12 U.S.C. 1822(f)(4).

§ 366.2 What is the scope of this part?

- (a) This part applies to a person who submits an offer to perform or performs, directly or indirectly, a contractual service or function on our behalf.
- (b) This part does not apply to:
 - (1) An FDIC employee for the purposes of title 18, United States Code; or
 - (2) The FDIC when we operate an insured depository institution such as a bridge bank or conservatorship.

§ 366.3 Who cannot perform contractual services for the FDIC?

- We will not enter into a contract with you to perform a service or function on our behalf, if you or any person that owns or controls you, or any entity you own or control:
 - (a) Has a felony conviction;
 - (b) Was removed from or is prohibited from participating in the affairs of an insured depository institution as a result of a federal banking agency final enforcement action;
 - (c) Has a pattern or practice of defalcation; or
 - (d) Is responsible for a substantial loss to a federal deposit insurance fund.

§ 366.4 When is there a pattern or practice of defalcation?

(a) You have a pattern or practice of defalcation under § 366.3(c) when you, any person that owns or controls you, or any entity you own or control has a legal responsibility for the payment on at least two obligations that are:

- (1) To one or more insured depository institutions;
 - (2) More than 90 days delinquent in the payment of principal, interest, or a combination thereof; and
 - (3) More than \$50,000 each.
- (b) The following are examples of when you have or do not have a pattern or practice of defalcation. These examples are not inclusive.

(1) You have five loans at insured depository institutions. Three of them are 90 days past due. Two of the three loans have outstanding balances of more than \$50,000 each. You have a pattern or practice of defalcation.

(2) You have five loans at insured depository institutions. Two of them are 90 days past due. One of the two is with ABC Bank for \$170,000. The other one is with XYZ bank for \$60,000. You have a pattern or practice of defalcation.

(3) You have five loans at insured depository institutions. Three of them are 90 days past due. One of the three has an outstanding balance of more than \$50,000. The other two have outstanding balances of less than \$50,000. You do not have a pattern or practice of defalcation.

(4) You have five loans at insured depository institutions. Three of them have outstanding balances of more than \$50,000. Two of those three were 90 days past due but are now current. You do not have a pattern or practice of defalcation.

§ 366.5 What causes a substantial loss to a federal deposit insurance fund?

You cause a substantial loss to a federal deposit insurance fund under § 366.3(d) when you, or any person that owns or controls you, or any entity you own or control has:

- (a) An obligation to us that is delinquent for 90 days or more and on which there is an outstanding balance of principal, interest, or a combination thereof of more than \$50,000;
- (b) An unpaid final judgment in our favor that is in excess of \$50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding;
- (c) A deficiency balance following foreclosure of collateral on an obligation owed to us that is in excess of \$50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding; or

(d) A loss to us that is in excess of \$50,000 that we report on IRS Form 1099-C, Information Reporting for Discharge of Indebtedness.

§ 366.6 How is my ownership or control determined?

(a) Your ownership or control is determined on a case-by-case basis. Your ownership or control depends on the specific facts of your situation and the particular industry and legal entity involved. You must provide documentation to us to use in determining your ownership or control.

(b) The interest of a spouse or other family member in the same organization is imputed to you in determining your ownership or control.

(c) The following are examples of when your ownership or control may or may not exist. These examples are not inclusive.

(1) You have control if you are the president or chief executive officer of an organization.

(2) You have ownership or control if you are a partner in a small law firm. You might not have ownership or control if you are a partner in a large national law firm.

(3) You have control if you are a general partner of a limited partnership. You have ownership or control if you have a limited partnership interest of 25 percent or more.

(4) You have ownership or control if you have the:

- (i) Power to vote, directly or indirectly, 25% or more interest of any class of voting stock of a company;
- (ii) Ability to direct in any manner the election of a majority of a company's directors or trustees; or
- (iii) Ability to exercise a controlling influence over the company's management and policies.

§ 366.7 Will the FDIC waive the prohibitions under § 366.3?

We may waive the prohibitions for entities other than individuals for good cause shown at our discretion when our need to contract for your services outweighs all relevant factors. The statute does not allow us to waive the prohibitions for individuals.

§ 366.8 Who can grant a waiver of a prohibition or conflict of interest?

The FDIC's Board of Directors delegates to the Chairman, or his designee, authority to issue waivers and implement procedures for part 366.

§ 366.9 What other requirements could prevent me from performing contractual services for the FDIC?

You must avoid a conflict of interest, be ethically responsible, and maintain

confidential information as described in §§ 366.10 through 366.13. You must also provide us with the information we require in § 366.14. Failure to meet these requirements may prevent you from contracting with us.

§ 366.10 When would I have a conflict of interest?

(a) You have a conflict of interest when you, any person that owns or controls you, or any entity you own or control:

(1) Has a personal, business, or financial interest or relationship that relates to the services you perform under the contract;

(2) Is a party to litigation against us, or represents a party that is;

(3) Submits an offer to acquire an asset from us for which services were performed during the past three years, unless the contract allows for the acquisition; or

(4) Engages in an activity that would cause us to question the integrity of the service you provided, are providing or offer to provide us, or impairs your independence.

(b) The following are examples of a conflict of interest. These examples are not inclusive.

(1) You submit an offer to perform property management services for us and you own or manage a competing property.

(2) You audit a business under a contract with us and you or a partner in your firm has an ownership interest in that business.

(3) You perform loan services on a pool of loans we are selling, and you submit a bid to purchase one or more of the loans in the pool.

(4) You audit your own work or provide nonaudit services that are significant or material to the subject matter of the audit.

§ 366.11 Will the FDIC waive a conflict of interest?

(a) We may waive a conflict of interest for good cause shown at our discretion when our need to contract for your services outweighs all relevant factors.

(b) The following are examples of when we may grant you a waiver for a conflict of interest. These examples are not inclusive.

(1) We may grant a waiver to an outside counsel who has a representational conflict. We will weigh all relevant facts and circumstances in making our determination.

(2) We may grant a waiver to allow a contractor to acquire an asset from us who is providing or has provided services on that asset. We will consider whether granting the waiver will

adversely affect the fairness of the sale, the type of services provided, and other facts and circumstances relevant to the sale in making our determination.

§ 366.12 What are the FDIC's minimum standards of ethical responsibility?

(a) You and any person who performs services for us must not provide preferential treatment to any person in your dealings with the public on our behalf.

(b) You must ensure that any person you employ to perform services for us is informed about their responsibilities under this part.

(c) You must disclose to us waste, fraud, abuse or corruption.

(d) You and any person who performs contract services to us must not:

(1) Accept or solicit for yourself or others any favor, gift, or other item of monetary value from any person who you reasonably believe is seeking an official action from you on our behalf, or has an interest that the performance or nonperformance of your duties to us may substantially affect;

(2) Use or allow the use of our property, except as specified in the contract;

(3) Make an unauthorized promise or commitment on our behalf; or

(4) Provide impermissible gifts or entertainment to an FDIC employee.

(e) The following are examples of when you are engaging in unethical behavior. These examples are not inclusive.

(1) Using government resources, including our Internet connection, to conduct any business that is unrelated to the performance of your contract with us.

(2) Submitting false invoices or claims, or making misleading or false statements.

(3) Committing us to forgive or restructure a debt or portion of a debt, unless we provide you with written authority to do so.

§ 366.13 What is my obligation regarding confidential information?

(a) Neither you nor any person who performs services on your behalf may use or disclose information obtained from us or a third party in connection with an FDIC contract, unless:

(1) The contract allows or we authorize the use or disclosure;

(2) The information is generally available to the general public; or

(3) We make the information available to the general public.

(b) The following are examples of when your use of confidential information is inappropriate. These examples are not inclusive.

(1) Disclosing information about an asset, such as internal asset valuations, appraisals or environmental reports, except as part of authorized due diligence materials, to a prospective asset purchaser.

(2) Disclosing a borrower's or guarantor's personal or financial information, such as a financial statement to an unauthorized party.

§ 366.14 What information must I provide the FDIC?

You must:

(a) Certify in writing that you can perform services for us under § 366.3 and have no conflict of interest under § 366.10(a).

(b) Submit a list and description of any instance during the preceding five years in which you, any person that owns or controls you, or any entity you own or control, defaulted on a material obligation to an insured depository institution. A default on a material obligation occurs when a loan or advance with an outstanding balance of more than \$50,000 is or was delinquent for 90 days or more.

(c) Notify us within 10 business days after you become aware that you, or any person you employ to perform services for us, are not in compliance with this part. Your notice must include a detailed description of the facts of the situation and how you intend to resolve the matter.

(d) Agree in writing that you will employ only persons who meet the requirements of this part to perform services on our behalf.

(e) Comply with any request from us for information.

(f) Retain any information you rely upon regarding the provisions of this part for a period of three years following termination or expiration and final payment of the related contract for services.

§ 366.15 What advice or determinations will the FDIC provide me on the applicability of this part?

(a) We are available to you for consultation on those determinations you are responsible for making under this part, including those with respect to any person you employ or engage to perform services for us.

(b) We will determine if this part prohibits you from performing services for us prior to contract award, after contract award, and during the performance of a contract.

(c) We may determine what corrective action you must take.

(d) We may grant you a waiver for good cause shown where provided for under this part.

§ 366.16 When may I seek a reconsideration or review of an FDIC determination?

(a) You may seek reconsideration or review of our initial determination by sending a written request to the individual who issued you the initial decision.

(b) You must provide new information or explain a change in circumstances for our reconsideration of an initial decision. The individual who issued you the initial decision may either make a new determination or refer your request to a higher authority for review.

(c) You must provide an explanation of how you perceive that we misapplied this part that sets forth the legal or factual errors for our review of an initial decision.

§ 366.17 What are the possible consequences for violating this part?

Depending on the circumstances, violations of this part may result in rescission or termination of a contract, as well as administrative, civil, or criminal sanctions.

By order of the Board of Directors.

Dated in Washington, DC, this 7th day of May, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02-12020 Filed 5-14-02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-SW-39-AD; Amendment 39-12751; AD 2002-10-05]

RIN 2120-AA64

Airworthiness Directives; MD Helicopters Inc. Model MD-900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to MD Helicopters Inc. Model MD-900 helicopters, that currently requires inspecting the main rotor upper hub (hub) assembly drive plate attachment flange (flange), determining the torque of each flange nut (nut), and if a crack is found, before further flight, replacing the hub assembly. In addition to the current requirements, this action requires visually inspecting the outer

surface of the flange at specified intervals, removing the drive plate and visually inspecting the flange for a crack at specified intervals, and replacing any unairworthy hub assembly. This amendment is prompted by reports that cracks starting at the drive plate attachment holes were found in the hub. The actions specified by this AD are intended to detect a crack in the flange and to prevent failure of the hub assembly, loss of drive to the main rotor, and subsequent loss of control of the helicopter.

DATES: Effective June 19, 2002.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of May 1, 2001 (66 FR 19383, April 16, 2001).

ADDRESSES: The service information referenced in this AD may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615-GO48, Mesa, Arizona 85215-9734, telephone 1-800-388-3378, fax (480) 891-6782, or on the Web at www.mdhelicopters.com. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627-5322, fax (562) 627-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 by superseding AD 2001-07-09, Amendment 39-12175 (66 FR 19383, April 16, 2001), for MD Helicopters Inc. Model MD-900 helicopters, was published in the **Federal Register** on December 17, 2001 (66 FR 64931). That action proposed to require inspecting the flange, determining the torque of each nut, and if a crack is found, before further flight, replacing the hub assembly. That action also proposed to require visually inspecting the outer surface of the flange at specified intervals, removing the drive plate and visually inspecting the flange for a crack at specified intervals, and replacing any unairworthy hub assembly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of