

would be disclosed, as available, to System institutions and to the general public 90 days after the end of a quarter or a fiscal year. For purposes of this policy, nonexempt CRS Reports are defined as reports produced from the CRS containing information that has been routinely disclosed in Farm Credit System (System) institutions' quarterly and annual financial reports and filed with the FCA.

**Objectives:** The FCA's mission is to facilitate the competitive delivery of financial services to agriculture while protecting the public, the taxpayer, and the investor. Consistent with that mission, the FCA endeavors to provide information to System institutions and to the public. Call Reports and other nonexempt CRS Reports contain information of value to the agency, the System, and the public that enables an evaluation of the financial condition of a System institution in comparison to its peers. Release of this information will provide institutions with a succinct assessment of performance, in addition to that provided in the examination process. The FCA believes that implementation of this policy statement will enhance the FCA's information management activities in an efficient, effective, and economical manner consistent with the objectives of OMB Circular A-130.

**Operating Principles:** Certain information reported to the agency in compliance with Call Report instructions, such as asset and liability repricing schedules or loan specific data, will continue to be exempt from disclosure and will not be made available under this policy statement. Nonexempt CRS Reports will be disclosed under a pricing schedule to be subsequently determined.

Certain nonexempt CRS Reports (such as the UPR and the UPPR) that contain Call Report information will be routinely forwarded free of charge to the institution that submitted the information or will be made available, upon request, to the general public for a fee. Upon request by a System institution, the FCA will make available free of charge any other nonexempt CRS Reports that contain Call Report information submitted by that institution, or, for a fee, will make available a copy of a nonexempt CRS Report containing Call Report information of another institution or computer diskettes containing nonexempt Call Report information of all System institutions. A determination on a special request (i.e., ad hoc report) for nonexempt CRS information and any fees assessed from any System institution or the general public will be

made on a case-by-case basis. Special requests will be granted only when the benefit to the FCA significantly outweighs the burden to the agency in complying with the request. All requests for release of CRS information should be directed to the Office of Resources Management, Information Resources Division, Customer Planning Team.

Any fees assessed under this policy for disclosing routine nonexempt CRS Reports will be sufficient to recover the cost of dissemination. Special requests will be subject to fees to recover the agency's cost of complying with the request, which will include the cost of collecting and processing, as well as disseminating the information. Requests for fee waivers may be granted to educational institutions, researchers, Governmental agencies, newspapers, and other parties, only when the agency determines that the benefit derived from releasing the information exceeds the fees being waived.

**Delegated Authority:** The Director, Office of Resources Management, in concurrence with the Director, Office of Examination, Director, Office of Special Supervision and Corporate Affairs, and General Counsel is responsible for implementing this policy statement, developing operating procedures, developing a pricing schedule for the fees to be charged for the reports, and developing specific guidelines for fee waivers when releasing reports to educational institutions, researchers, Governmental agencies, newspapers, and other parties, as determined to be appropriate. Any of these responsibilities may be delegated.

**Reporting Requirements:** The Director, Office of Resources Management, shall make a report annually concerning nonexempt CRS Report releases and the number of requests and fees received to the Chief Operating Officer.

Adopted this 20th day of March, 1995 by order of the Board.

Dated: March 22, 1995.

**Floyd Fithian,**

*Secretary, Farm Credit Administration Board.*

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### Intra-Agency Appellate Process

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of guidelines.

**SUMMARY:** On March 21, 1995, the Board of Directors (Board) of the Federal

Deposit Insurance Corporation (FDIC) adopted guidelines for the establishment of an independent intra-agency appellate process to review material supervisory determinations as required by the Riegle Community Development and Regulatory Improvement Act of 1994. The guidelines were effective upon adoption and supersede the FDIC's procedures for requesting review of supervisory determinations set forth in FIL-11-92, dated February 7, 1992. The guidelines are intended to clarify the types of determinations that are eligible for review and establish the process by which appeals will be considered and decided.

**DATES:** The guidelines were effective on March 21, 1995.

### FOR FURTHER INFORMATION CONTACT:

William G. Hrindac, Examination Specialist (202/898-6892), Division of Supervision; Ken A. Quincy, Section Chief (202/942-3088), Division of Compliance and Consumer Affairs; Gwen E. Factor, Counsel (202/898-8522), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

### SUPPLEMENTARY INFORMATION:

#### Background

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103-325, 108 Stat. 2160) (Act) requires the FDIC (as well as the other Federal banking agencies and the National Credit Union Administration Board) to establish an independent intra-agency appellate process to review material supervisory determinations. The process is to be established within 180 days after enactment of the Act (i.e., by March 22, 1995). The Act defines the term "independent appellate process" to mean a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review. In establishing the appeals process, the FDIC must ensure that: (1) any appeal of a material supervisory determination by an insured depository institution is heard and decided expeditiously; and (2) appropriate safeguards exist for protecting the appellant from retaliation by agency examiners.

Section 309(c) of the Act requires public notice and opportunity for comment on proposed guidelines for the establishment of the independent appellate process. On December 28, 1994, the FDIC published in the **Federal Register**, for a 30-day comment period, a notice of and request for comments on

proposed guidelines (59 *Fed. Reg.* 66965). The comment period closed on January 27, 1995.

#### **Discussion of Comments on Proposed Guidelines**

The FDIC received 24 comment letters on the proposed guidelines, including some after the close of the comment period. Fourteen were from depository institutions, four from trade associations, one from a State banking department, and five from other interested parties. The comments generally supported the proposed guidelines, although various suggestions and recommendations were made to revise the proposal. The following is a discussion of the comments received on the proposal, including those received after the close of the comment period.

##### ***A. Independent Appellate Process***

The Act requires the FDIC to establish an independent appellate process for the review of material supervisory determinations by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review. To satisfy this requirement, the FDIC proposed to establish a Supervision Appeals Review Committee consisting of the Vice Chairperson as chair of the Committee, the Director of the Division of Supervision, the Director of the Division of Compliance and Consumer Affairs, the Ombudsman, and the General Counsel (or their designees) to consider and decide appeals of material supervisory determinations.

Several commenters expressed concern regarding the composition of the Committee, suggesting that a committee composed only of senior regulators lacks balance and cannot be fair and unbiased. The FDIC does not share this view and points out that a majority of the members of the Committee are not directly responsible for the FDIC's supervision or compliance activities and do not report to the individuals responsible for those activities. Moreover, the Committee would include the Ombudsman (who reports on all matters to the Chairperson) and the Vice Chairperson. The FDIC believes, however, that the inclusion of individuals who are knowledgeable and experienced in matters relating to the FDIC's supervision and compliance activities—the Directors of the Division of Supervision and the Division of Compliance and Consumer Affairs—would bring to the Committee the necessary experience and judgment to make well-informed decisions

concerning determinations under review. The FDIC is confident that the members of the Committee can and will exercise their authority to review supervisory determinations in a responsible and unbiased manner. The FDIC believes that the long range interests of both the agency and the institutions it supervises are best served by assuring that all supervisory determinations (including appeals thereof) are as fair and accurate as possible.

Several commenters suggested including on the Committee individuals from outside the FDIC, such as representatives of the banking community and other governmental agencies. The FDIC believes that the addition of individuals from outside the FDIC not only is unnecessary to assure that the appeals process is fair and unbiased but also would be inappropriate. The addition of such individuals to the Committee would not be consistent with the statutory mandate to establish an "intra-agency" appeals process and could raise questions regarding the disclosure of records and other information contained in or related to examination, operating and other reports concerning an institution (which are generally exempt from public disclosure).

The FDIC requested specific comment on whether the Vice Chairperson should be included as a member of the Committee, even if it would mean that occasionally he might need to recuse himself from participation in a related enforcement action. Specific comment was also requested on how the Committee might be structured if the Vice Chairperson were not included. As discussed in the notice of proposed guidelines, the Vice Chairperson may be involved in the consideration and disposition of enforcement proceedings before the Board of Directors which, on occasion, may involve matters considered by the Committee. While the FDIC believes that the inclusion of the Vice Chairperson on the Committee should lend credibility, fairness and balance to the appeals process, it recognizes that the Vice Chairperson's participation in an appeal of certain material supervisory determinations could give the Vice Chairperson access to information which may not be part of the administrative record of a factually related enforcement proceeding. Although such a situation is unlikely to occur, if it does occur it may be prudent for the Vice Chairperson to recuse himself from participation in the related enforcement proceeding. Of the commenters that addressed this aspect of the proposal, all supported including

the Vice Chairperson on the Committee, even if it would mean that occasionally he might need to recuse himself from participation in a related enforcement action. Commenters generally agreed that inclusion of the Vice Chairperson on the Committee would lend credibility, fairness and balance to the process.

One commenter suggested that the Committee has too much "horsepower" and that its members may have other, more pressing matters to which they may need to attend. The FDIC is committed to establishing a fair and credible review process and believes that the proposed committee structure accomplishes that objective. The FDIC recognizes, however, that at times some members of the Committee may need to delegate their responsibility to serve on the Committee to a senior member of their staff but believes that this in no way should diminish the credibility, balance or fairness of the Committee or the process.

In addition, many commenters expressed support for the proposed composition and structure of the Committee. After considering all of the comments on this aspect of the proposal, the FDIC continues to believe that the proposed composition and structure of the Committee not only satisfies the requirement of the Act to establish an independent intra-agency appellate process but also lends credibility, fairness and balance to the process. The FDIC therefore believes that no change to this provision is necessary.

##### ***B. Institutions Eligible To Appeal***

The Act requires that the FDIC's appeals process be available to review material supervisory determinations made at insured depository institutions that it supervises. The FDIC proposed that its appeals process be available not only to the insured depository institutions that it supervises (i.e., insured State nonmember banks (except District banks) and insured branches of foreign banks) but also to other insured depository institutions with respect to which it makes material supervisory determinations. No commenters addressed this aspect of the proposal. The FDIC therefore believes that no change to this provision is necessary.

##### ***C. Material Supervisory Determinations***

The Act requires the FDIC to establish an appeals process to review material supervisory determinations. The term "material supervisory determinations" is defined in the Act to include determinations relating to: (1) examination ratings; (2) the adequacy of

loan loss reserve provisions; and (3) loan classifications on loans that are significant to an institution. The Act specifically excludes from the definition of "material supervisory determinations" a decision to appoint a conservator or receiver for an insured depository institution or to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o.

#### 1. Examination Ratings

The FDIC proposed to construe the reference to "examination ratings" to mean: (a) CAMEL ratings under the Uniform Financial Institutions Rating System; (b) EDP ratings under the Uniform Interagency Rating System for Data Processing Operations; (c) trust ratings under the Uniform Interagency Trust Rating System; (d) CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System; (e) consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System; (f) registered transfer agent examination ratings; (g) government securities dealer examination ratings; and (h) municipal securities dealer examination ratings.

One commenter suggested that the proposed guidelines should be clarified to specifically reference the composite CAMEL rating (which is the rating revealed to an institution) as the rating eligible for appeal since component CAMEL ratings are not revealed to an institution. The FDIC believes that no change to this provision of the proposed guidelines is necessary. Since component ratings are not revealed to an institution, such ratings cannot be appealed regardless of whether there is a specific reference in the guidelines to composite ratings. The FDIC believes that the language of this provision is consistent with its intent to permit any examination rating revealed to an institution to be appealed.

#### 2. Adequacy of Loan Loss Reserve Provisions

Since the Act defines material supervisory determinations to include the adequacy of loan loss reserve provisions, the FDIC proposed that such determinations be eligible for appeal. No commenters addressed this aspect of the proposal. The FDIC therefore believes that no change to this provision is necessary.

#### 3. Loan Classifications

The Act defines material supervisory determinations to include determinations relating to loan classifications on loans that are

significant to an institution. The FDIC proposed that classifications of other assets that are significant to an institution should also be eligible for appeal. In addition, the FDIC proposed that a classified loan or other asset could be regarded as significant to an institution if the amount of the loan or asset, individually or together with other classified loans or assets, equals or exceeds 10 percent of the institution's capital or 1 percent of its total assets.

A number of commenters suggested that the proposed guidelines were not clear as to how the 10 percent of capital or 1 percent of assets threshold may be reached on an aggregated basis. A few commenters noted that, while a particular percentage may be significant for one institution, it may not be significant for another institution depending on the totality of the circumstances. Another commenter suggested that there should be an ability to appeal not merely where there is a specified percentage of the portfolio classified, but where any classification has an adverse impact on the institution. In consideration of the concerns expressed with respect to this aspect of the proposal, the proposal has been revised to eliminate the 1 percent of assets threshold and clarify that loan or other asset classifications in dispute, individually or together with other classified loans or assets in dispute, that exceed 10 percent of an institution's total capital may be appealed. The FDIC believes that capital is the more sensitive and critical measure and that such measure should enable an institution to appeal classifications that materially affect the institution. The FDIC further believes that limiting loan and other asset classification appeals to those that involve a significant level of classification (*i.e.*, enough to be material) is necessary not only to discourage insignificant or unnecessary appeals but also to carry out the Act's intent that classifications that have a significant impact on an institution be eligible for appeal.

#### 4. Determinations Not Eligible for Appeal

As provided in the Act, the term "material supervisory determinations" does not include a decision to appoint a conservator or receiver for an insured depository institution or to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o. The FDIC proposed that the term "material supervisory determinations" also should not include: (a) determinations for which other appeals procedures exist (such as determinations relating to deposit

insurance assessment risk classifications); (b) decisions to initiate formal enforcement actions under section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818 (including assessment of civil money penalties); (c) decisions to initiate informal enforcement actions (such as memoranda of understanding); (d) determinations relating to a violation of a statute or regulation; and (e) any other determinations not specified in the Act as being eligible for appeal.

A number of commenters suggested that these limitations were too restrictive and pointed out that the statutory listing of material supervisory determinations was merely illustrative and not intended to be exhaustive. They also noted that the proposals of the other banking agencies were not as restrictive as the FDIC's proposal. Upon further consideration of the relevant statutory language, the FDIC now believes that the proposal was unnecessarily restrictive as to the scope of determinations eligible for appeal. Consequently, the FDIC has expanded the scope of determinations that are eligible for appeal in two significant respects.

First, determinations relating to a violation of a statute or regulation that may impact the capital, earnings, or operating flexibility of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution are eligible for appeal. The FDIC recognizes that interpretations of statutes or regulations frequently are the subject of differing views between examiners and the institution involved and such matters can have a material effect on the institution and the supervisory treatment accorded it. Review of such determinations is therefore consistent with the Act's goal of ensuring review of material supervisory determinations.

Second, instead of specifically excluding determinations not specified in the Act as being ineligible for appeal, the FDIC has created a catch-all category of other material supervisory determinations that may be appealed. Such category includes any determination (unless otherwise not eligible for appeal) that may impact the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution.

A number of commenters questioned the exclusion of decisions to initiate formal or informal enforcement actions from the scope of appealable determinations. A few commenters

recommended that at least decisions to initiate informal enforcement actions should be appealable. One commenter argued that, if a determination to initiate an informal enforcement action was eligible for appeal, an institution could avoid the cost and burden associated with such action while an appeal is pending that could be resolved in the institution's favor. While there is some merit to this view, the FDIC believes that the possible abuse of the appeals process to delay or otherwise impede well-founded enforcement actions outweighs the concerns expressed. Moreover, appeals will be processed and decided expeditiously which the FDIC believes should minimize any costs or other burdens to the institution associated with an informal enforcement action.

One commenter questioned the exclusion of determinations relating to deposit insurance assessment risk classifications. The FDIC recognizes that such determinations may have a material impact on an institution but points out that it has procedures in place (which are set forth as an attachment to FIL-27-94, dated April 26, 1994) for requesting review of deposit insurance assessment risk classifications. Since the FDIC's role as deposit insurer is separate and distinct from its role as supervisor, it believes that review of determinations relating to deposit insurance assessment risk classifications should be kept separate from review of supervisory determinations. The FDIC believes that the current procedures for requesting review of deposit insurance assessment risk classifications are sufficient and that allowing parallel rights of appeal for such determinations would be confusing, duplicative, and wasteful.

One commenter recommended that examiner criticisms of insider related matters should be eligible for appeal, even in those instances where small or no dollar amounts are involved. Since the appeals process is designed to allow institutions to appeal material supervisory determinations, the FDIC believes that insider related matters that qualify as material supervisory determinations should be eligible for appeal while those matters that do not qualify should not be eligible for appeal.

A few commenters suggested that the provision in the proposed guidelines regarding determinations not eligible for appeal be revised to clarify that the underlying basis for a determination to take prompt corrective action or initiate a formal or informal enforcement action is appealable so long as it otherwise qualifies. The FDIC does not intend to exclude from the appeals process such

underlying determinations so long as they are eligible for appeal. Based on these comments, the FDIC has revised the proposal to clarify this issue.

#### *D. Authority To Initiate Appeal*

The FDIC proposed that an institution should not be permitted to initiate an appeal of a material supervisory determination unless its board of directors considered the merits of the appeal and authorized that it be filed. This requirement was intended to assure that an institution's board of directors not only had knowledge of a possible appeal but also had an opportunity to consider its merits. The FDIC noted in the proposed guidelines that such involvement by the board of directors in the decision to initiate an appeal is consistent with its responsibility to oversee the institution's management and may discourage insignificant or unnecessary appeals. No commenters were critical of this requirement. However, one commenter expressly stated that such requirement should eliminate any frivolous appeals brought because of a personality conflict between a senior officer and an examiner. The FDIC therefore believes that no change to this aspect of the proposal is necessary.

#### *E. Effect on Supervisory or Enforcement Actions*

Section 309(g) of the Act provides that "[n]othing in ... section [309] shall affect the authority of an appropriate Federal banking agency or the National Credit Administration Board to take enforcement or supervisory action." To reiterate this mandate as well as to discourage any possible abuse of the appeals process, the FDIC proposed that use of the appeals process by any institution should not affect, delay, or impede any formal or informal supervisory or enforcement action in progress or affect the FDIC's authority to take any supervisory or enforcement action against an institution.

No commenters directly addressed this aspect of the proposal. However, one commenter questioned whether there would be any adverse or prejudicial effect on an institution involved in a formal enforcement proceeding for failure to file an appeal of a related matter. That commenter also questioned the extent to which a final decision made by the Supervision Appeals Review Committee may be subject to collateral attack or review by an administrative law judge in an administrative enforcement action. The FDIC believes that the appeal process is not intended to affect the rights of

parties in connection with enforcement proceedings.

#### *F. Effect on Applications or Requests for Approval*

The FDIC proposed that any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination which relates to or could affect the approval of the application or request would not be considered until a final decision concerning the appeal was made unless otherwise requested by the institution. No commenters addressed this aspect of the proposal. The FDIC therefore believes that no change to this provision is necessary.

#### *G. Scope of Review*

The FDIC proposed that the appropriate scope of review of any material supervisory determination should be limited to the facts and circumstances as they existed prior to or at the time the material supervisory determination was made and that consideration should not be given to any facts or circumstances that occur or corrective action taken after the determination was made. No commenters questioned this limitation, although one commenter requested that the proposed guidelines be clarified to provide that the FDIC will consider facts and circumstances that existed at the time the determination was made but that may have been discovered or come to the attention of the FDIC or the institution after such determination. The FDIC believes that this is a useful clarification and has revised the proposed guidelines accordingly. However, the FDIC cautions institutions not to introduce or present information or arguments for the first time on appeal which could have been introduced or presented to the on-site examiner and/or appropriate Regional Office. While such information or arguments will be considered on appeal, the introduction of such information or arguments at a late date could impede the prompt and expeditious resolution of disputes.

#### *H. Review Procedures*

The FDIC proposed that an institution could appeal any material supervisory determination but it first should make a good faith effort to resolve the dispute concerning the determination with the on-site examiner and/or the appropriate Regional Office. The proposed guidelines would have required that the on-site examiner and the Regional Office promptly respond to any concerns raised by an institution regarding a material supervisory determination. Several commenters

incorrectly understood this provision to mean that an institution must first attempt to resolve any disputed determination with the on-site examiner and/or the appropriate Regional Office before it may file an appeal. While the proposed guidelines would have encouraged informal resolution of disputes, it was not intended to make informal resolution a condition to the filing of an appeal with the Washington Office. The FDIC therefore has revised the proposed guidelines to make this clear.

The FDIC reiterated in the proposed guidelines that codification of this appeals process was not intended to affect its longstanding practice of affording institutions opportunities to express their views and concerns throughout the examination/supervisory process. Institutions are encouraged to discuss examination findings, loan loss reserve provisions and classifications on loans and other assets during on-site examinations as well as express any concerns to senior staff of the appropriate Regional Office if a matter has not been resolved by the on-site examiner. The FDIC continues to believe that an institution is best served by raising questions or objections concerning an examination when they arise through these informal processes rather than after the close of an examination and the filing of an appeal.

The proposed guidelines would have required all appeals to the Washington Office to be initiated within 60 days following the institution's receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination. A few commenters suggested that the time period in which an institution could file an appeal should be shortened, while others suggested a longer period. However, one commenter stated that the proposed time period was appropriate. The FDIC has reconsidered this issue but, given the time necessary for an institution to review findings, prepare a written appeal and obtain board approval, continues to believe that the proposed time period is appropriate.

To initiate an appeal, the FDIC proposed that the institution would have to submit, in writing, to the Director of the Division of Supervision, if the dispute was with a Division of Supervision on-site examiner or Regional Office, or to the Director of the Division of Compliance and Consumer Affairs, if the dispute was with a Division of Compliance and Consumer Affairs on-site examiner or Regional Office, a request for review. The request for review would have been required to

include: (a) a detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position, and any good faith effort to resolve the dispute with the on-site examiner and the Regional Office and the results of that effort; and (b) a statement that the institution's board of directors has considered the merits of the appeal and authorized that it be filed. No commenters addressed this aspect of the proposal. The FDIC therefore believes that no change to this provision is necessary, other than to require that the request for review include (in addition to the information listed in the proposed guidelines) citation of any relevant statute, regulation, policy statement or other authority to support the institution's position regarding the dispute and how resolution of the dispute would impact the institution and why such impact would be material.

The FDIC further proposed that the appropriate Division Director could, in his or her discretion, promptly resolve the appeal in favor of the institution or, if he or she could not resolve the appeal in favor of the institution, must refer the appeal to the Supervision Appeals Review Committee, together with the institution's request for review and any other relevant information concerning the dispute. The Supervision Appeals Review Committee (which was proposed to be comprised of the Vice Chairperson, the Director of the Division of Supervision, the Director of the Division of Compliance and Consumer Affairs, the Ombudsman, and the General Counsel (or their designees)) would have reviewed the appeal for consistency with the policies, practices and mission of the FDIC, including those of the Division of Supervision or the Division of Compliance and Consumer Affairs, as appropriate, and the overall reasonableness of and support offered for the respective positions advanced, and notify the institution, in writing, of its decision concerning the disputed material supervisory determination within 60 days of receipt by the appropriate Division Director of the institution's request for review. The proposed guidelines would have required that the notice of decision contain at a minimum an explanation of the factual basis as well as the reason(s) for the decision and a statement that the decision constitutes the final supervisory decision of the FDIC.

A few commenters suggested that the time period in which the FDIC must consider and decide an appeal should

be shortened. However, given the time necessary to fully and fairly review an appeal and convene a meeting of the Supervision Appeals Review Committee, the FDIC continues to believe that the proposed time period is appropriate. One commenter suggested that the proposal be revised to provide an institution with the right to request an appearance before the Supervision Appeals Review Committee to present evidence or otherwise support its position. The FDIC agrees that an institution should have the right to request an appearance before the Committee to present evidence or otherwise support its position but believes that the Committee should have the discretion, depending on the facts and circumstances of the determination under appeal and whether such appearance would be productive, to determine whether to allow such appearance.

The proposed guidelines would have required that, if sufficient information was not provided to enable the Supervision Appeals Review Committee to make a decision concerning the disputed material supervisory determination, the 60-day period within which the Committee must notify the institution of its decision would be extended upon agreement of the institution for such additional time as it would take the institution to provide the information requested by the Committee. If the institution failed to provide the requested information, the Committee could (but would not have been required to) consider and decide the appeal on the information available. One commenter suggested that this provision was unclear. The FDIC believes that this provision is straightforward but explains that it was intended to allow the Committee to extend the time in which it must issue a decision in order to request and receive additional information from the institution. Under the proposal, the institution could refuse to agree to the delay or to provide the additional information, in which case the Committee could decide the appeal on the existing record or consider the appeal abandoned.

The FDIC proposed that the decision of the Supervision Appeals Review Committee would constitute the final supervisory decision of the FDIC and would not be eligible for further appeal pursuant to the FDIC's appeals process unless new information was submitted. In such case, the Committee could, in its discretion, reconsider the decision concerning the disputed material supervisory determination if good cause was shown why such new information

was material to the dispute. No commenters directly addressed this aspect of the proposal.

A few commenters suggested that an institution's position with respect to a determination under review should prevail if the FDIC fails to notify the institution of its decision within 60 days of receipt by the appropriate Division Director of the institution's request for review. The FDIC believes that appeals should be decided on their merits and not as a result of a failure to meet a time deadline. Nevertheless, the FDIC pledges to make every effort to decide an appeal and notify the institution of its decision within the 60-day time period. If, however, the institution believes that the FDIC has not acted in good faith to decide an appeal and notify the institution of its decision within this time period, it may request that the Ombudsman investigate or otherwise intervene in the matter.

One commenter suggested that the proposed guidelines be revised to address how records are to be expunged when a determination (that is part of an examination report or other written communication) is subsequently reversed through the appeals process. The FDIC is not convinced that a determination which is reversed through the appeals process needs to be expunged from the record. The FDIC believes that there is little risk that a subsequent reviewer of the institution's record will overlook the reversal and consider the determination as part of the record in its dealings with the institution.

#### *I. Limitation of Use of Agency Ombudsman*

Section 309(d) of the Act requires the FDIC to appoint an Ombudsman to act as a liaison with respect to any problem that any person may have in dealing with the FDIC resulting from its regulatory activities. The FDIC proposed that, in order to preserve the integrity of the appeals process, the merits of any material supervisory determination for which an appeal had been initiated or a final decision made should not be eligible for consideration by the Ombudsman. The FDIC also proposed, however, that the Ombudsman should not be prohibited from considering any other problems that an institution may have in dealing with the FDIC in connection with its appeals process, including consideration of the overall fairness, efficiency or effectiveness of the process.

A few commenters suggested that the Ombudsman should have the opportunity to consider and decide appeals outside the structure of the

Supervision Appeals Review Committee. The FDIC believes that a committee approach, which brings together the experience and judgment of a variety of individuals from different disciplines (including the Ombudsman), is more likely to produce fair and sound results for both the institution involved and the FDIC than a process in which a single individual (such as the Ombudsman) alone considers and decides appeals. Moreover, as a member of the Supervision Appeals Review Committee, the Ombudsman will consider and participate in all appeals.

#### *J. Coordination With State Regulatory Authorities*

Two commenters suggested that the proposed guidelines should be revised to require that the FDIC coordinate with the appropriate State regulatory authority with respect to the appeal of a material supervisory determination that is the joint product of the FDIC and the State regulatory authority. These commenters also suggested that a representative of the appropriate State regulatory authority should sit on the Supervision Appeals Review Committee. The FDIC believes that such coordination is necessary but does not believe that a representative of the appropriate State regulatory authority should sit on the Committee. The FDIC believes that the inclusion of a representative of a State regulatory authority on the Committee would not be consistent with the statutory mandate to establish an "intra-agency" appeals process. However, to provide for coordination with State regulatory authorities with respect to the appeal of a joint material supervisory determination, the FDIC has revised the proposal to specifically require that the appropriate Division Director promptly notify the appropriate State regulatory authority of any appeal of a joint supervisory determination as well as to provide the regulatory authority with a copy of the institution's request for review and any other related materials and solicit the regulatory authority's views regarding the merits of the appeal before making a final decision. That Director will present the views of the regulatory authority (as well as his or her own views) before the Committee and attempt to reconcile the views of the regulatory authority with the views of the Committee. The Committee will notify the institution and the State regulatory authority of its decision and any differences remaining between the institution and the State authority will be left to those parties to resolve.

#### *K. Prohibition on Examiner Retaliation*

The FDIC proposed that any retaliation, abuse, or retribution by an agency examiner against an institution that appeals a material supervisory determination would constitute unprofessional conduct and should subject the examiner to appropriate disciplinary or remedial action by the appropriate Division Director. Under the proposed guidelines, such disciplinary or remedial action could have included oral or written warning or admonishment, reprimand, or suspension, or change in assigned duties or disqualification from a particular assignment or a particular matter, including prohibition from participating in any examination of the institution that was the subject of the retaliation, abuse, or retribution.

A few commenters suggested that the proposed guidelines be clarified to provide who an institution may contact in the event it believes or has any evidence that it has been subject to examiner retaliation. Other commenters suggested that the role of the Ombudsman should be expanded to include receiving, monitoring, and investigating complaints of examiner retaliation. The FDIC believes that the Ombudsman should be permitted to receive and investigate complaints of examiner retaliation as well as make recommendations to the appropriate Division Director for corrective action. The FDIC therefore has revised the proposed guidelines to provide that any institution that believes or has any evidence that it has been subject to examiner retaliation may file a complaint with the Ombudsman and/or the appropriate Division Director, Federal Deposit Insurance Corporation, 550 17th Street, Washington, D.C. 20429, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken.

Other commenters suggested that the FDIC should contact every institution that files an appeal at various intervals after the appeal to inquire as to whether the institution believes or has any evidence that it has been subject to examiner retaliation. The FDIC does not believe that routine follow-up inquiries would be useful or productive in every case in which an institution has filed an appeal. Consequently, the FDIC will rely on complaints of examiner retaliation that it receives from institutions to monitor and investigate such activity.

One commenter suggested that the prohibition against examiner retaliation should be extended to cover all Regional

Office personnel. The FDIC believes that retaliation by any employee at any level constitutes unprofessional conduct and should subject the employee to appropriate disciplinary or remedial action. Accordingly, the FDIC has revised the proposed guidelines to make clear that the prohibition on retaliation extends to all personnel, including Regional and Washington Office personnel.

For the reasons set out in the Preamble, the Board has adopted the Guidelines for Review of Material Supervisory Determinations as set forth below.

## **Guidelines for Appeals of Material Supervisory Determinations**

### **A. Introduction**

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103-325, 108 Stat. 2160) (Act) requires the Federal Deposit Insurance Corporation (FDIC) to establish an independent intra-agency appellate process to review material supervisory determinations made at insured depository institutions that it supervises. The FDIC has adopted these Guidelines for Appeals of Material Supervisory Determinations (Guidelines) in accordance with the Act. The Guidelines describe the types of determinations that are eligible for review and the process by which appeals will be considered and decided.

### **B. Independent Appellate Process**

The procedures set forth in these Guidelines establish an appeals process for the review of material supervisory determinations by a supervisory appeals review committee consisting of the Vice Chairperson, the Director of the Division of Supervision, the Director of the Division of Compliance and Consumer Affairs, the Ombudsman, and the General Counsel (or their designees).

### **C. Institutions Eligible to Appeal**

These Guidelines apply not only to the insured depository institutions that the FDIC supervises (i.e., insured State nonmember banks (except District banks) and insured branches of foreign banks) but also to other insured depository institutions with respect to which the FDIC makes material supervisory determinations.

### **D. Material Supervisory Determinations**

#### **1. Determinations Eligible for Appeal**

An institution may appeal any material supervisory determination pursuant to the procedures set forth in

these Guidelines. Material supervisory determinations mean:

- (a) CAMEL ratings under the Uniform Financial Institutions Rating System;
- (b) EDP ratings under the Uniform Interagency Rating System for Data Processing Operations;
- (c) trust ratings under the Uniform Interagency Trust Rating System;
- (d) CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System;
- (e) consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System;
- (f) registered transfer agent examination ratings;
- (g) government securities dealer examination ratings;
- (h) municipal securities dealer examination ratings;
- (i) determinations relating to the adequacy of loan loss reserve provisions;
- (j) classifications of loans and other assets in dispute the amount of which, individually or in the aggregate, exceed 10 percent of an institution's total capital;
- (k) determinations relating to violations of a statute or regulation that may impact the capital, earnings, or operating flexibility of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution; and
- (l) any other supervisory determination (unless otherwise not eligible for appeal) that may impact the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution.

#### **2. Determinations Not Eligible for Appeal**

Material supervisory determinations do not include: (a) decisions to appoint a conservator or receiver for an insured depository institution; (b) decisions to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o; (c) determinations for which other appeals procedures exist (such as determinations relating to deposit insurance assessment risk classifications); (d) decisions to initiate formal enforcement actions under section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818 (including assessment of civil money penalties) or under any other provisions of law or regulation; and (e) decisions to initiate informal enforcement actions (such as memoranda of understanding).

The FDIC recognizes that, although determinations to take prompt corrective action or initiate formal or informal enforcement actions are not appealable, the determinations upon which such actions may be based (e.g., loan classifications) are appealable provided they otherwise qualify.

### **E. Authority to Initiate Appeals**

An institution may not initiate an appeal of a material supervisory determination pursuant to the procedures set forth in these Guidelines unless its board of directors has considered the merits of the appeal and authorized that it be filed.

### **F. Effect on Supervisory or Enforcement Actions**

The use of the procedures set forth in these Guidelines by any institution will not affect, delay, or impede any formal or informal supervisory or enforcement action in progress or affect the FDIC's authority to take any supervisory or enforcement action against that institution.

### **G. Effect on Applications or Requests for Approval**

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination which relates to or could affect the approval of the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

### **H. Scope of Review**

The scope of review of any material supervisory determination pursuant to the procedures set forth in these Guidelines is limited to the facts and circumstances as they existed prior to or at the time the material supervisory determination was made and no consideration will be given to any facts or circumstances that occur or corrective action taken after the determination was made. However, the FDIC will consider any facts or circumstances that existed prior to or at the time the determination was made but that may have been discovered or come to the attention of the FDIC or the institution after such determination.

### **I. Review Procedures**

An institution may appeal any material supervisory determination but it first should make a good faith effort to resolve the dispute concerning the determination with the on-site examiner and/or the appropriate Regional Office. The on-site examiner and the Regional Office are expected to promptly respond



to any concerns raised by an institution regarding a material supervisory determination. If an institution is unable to resolve the dispute with the on-site examiner or the Regional Office, it may appeal the determination to the Washington Office. While informal resolution of disputes is encouraged, it is not a condition to the filing of an appeal with the Washington Office.

All appeals to the Washington Office must be initiated within 60 days following the institution's receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination. To initiate an appeal, the institution must submit, in writing, to the Director of the Division of Supervision, if the institution was unable to resolve the dispute with a Division of Supervision on-site examiner or Regional Office, or to the Director of the Division of Compliance and Consumer Affairs, if the institution was unable to resolve the dispute with a Division of Compliance and Consumer Affairs on-site examiner or Regional Office, a request for review. The request for review should include: (a) a detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position (including citation of any relevant statute, regulation, policy statement or other authority), how resolution of the dispute would impact the institution and why such impact would be material, and the good faith effort to resolve the dispute with the on-site examiner and the Regional Office and the results of that effort; and (b) a statement that the institution's board of directors has considered the merits of the appeal and authorized that it be filed.

The appropriate Division Director may, in his or her discretion, promptly resolve the appeal in favor of the institution or, if he or she cannot resolve the appeal in favor of the institution, will refer the appeal to the Supervision Appeals Review Committee, together with the institution's request for review and any other relevant information concerning the dispute. The Supervision Appeals Review Committee (which is comprised of the Vice Chairperson, the Director of the Division of Supervision, the Director of the Division of Compliance and Consumer Affairs, the Ombudsman, and the General Counsel (or their designees)) will review the appeal for consistency with the policies, practices and mission of the FDIC, including those of the Division of Supervision or the Division

of Compliance and Consumer Affairs, as appropriate, and the overall reasonableness of and the support offered for the respective positions advanced, and notify the institution, in writing, of its decision concerning the disputed material supervisory determination within 60 days of receipt by the appropriate Division Director of the institution's request for review. The notice of decision must contain at a minimum an explanation of the factual basis as well as the reason(s) for the decision and a statement that the decision constitutes the final supervisory decision of the FDIC.

The institution may request an appearance before the Supervision Appeals Review Committee to present evidence or otherwise support its position. The Committee may in its discretion, depending on the facts and circumstances of the determination under appeal and whether such appearance would be productive, determine whether to allow such appearance.

If sufficient information is not provided to enable the Supervision Appeals Review Committee to make a decision concerning the disputed material supervisory determination, the 60-day period within which the Committee must notify the institution of the decision will be extended upon agreement of the institution for such additional time as it takes the institution to provide the information requested by the Committee. If the institution fails to provide the requested information, the Committee may but will not be required to consider and decide the appeal. Moreover, if the FDIC fails to notify the institution of its decision within 60 days of receipt by the appropriate Division Director of the institution's request for review, the institution may request that the Ombudsman investigate or otherwise intervene in the matter.

The decision of the Supervision Appeals Review Committee will constitute the final supervisory decision of the FDIC and will not be eligible for further appeal pursuant to the procedures set forth in these Guidelines unless new information is submitted. In such case, the Committee may, in its discretion, reconsider the decision concerning the disputed material supervisory determination if good cause is shown why such new information is material to the dispute.

#### *J. Limitation on Use of Agency Ombudsman*

The merits of any material supervisory determination for which an appeal has been initiated or a final decision made will not be eligible for

consideration by the Ombudsman (except in his or her capacity as a member of the Supervision Appeals Review Committee). Any other problems, however, that an institution may have in dealing with the FDIC in connection with the procedures set forth in these Guidelines are eligible for consideration by the Ombudsman, including consideration of the overall fairness, efficiency or effectiveness of the process.

#### *K. Coordination With State Regulatory Authorities*

In the event that a material supervisory determination under appeal is the joint product of the FDIC and a State regulatory authority, the appropriate Division Director will promptly notify the appropriate State regulatory authority of the appeal, provide to the regulatory authority a copy of the institution's request for review and any other related materials, and solicit the regulatory authority's views regarding the merits of the appeal before making a final decision. That Director will present the views of the regulatory authority (as well as his or her own views) before the Supervision Appeals Review Committee and attempt to reconcile the views of the regulatory authority with the views of the Supervision Appeals Review Committee. The Supervision Appeals Review Committee will notify the institution and the State regulatory authority of its decision and any differences remaining between the institution and the State authority will be left to those parties to resolve.

#### *L. Prohibition on Examiner Retaliation*

Any retaliation, abuse, or retribution by an agency examiner or any FDIC personnel against an institution that appeals a material supervisory determination constitutes unprofessional conduct and will subject the examiner or other personnel to appropriate disciplinary or remedial action by the appropriate Division Director. Such disciplinary or remedial action may include oral or written warning or admonishment, reprimand, or suspension, or change in assigned duties or disqualification from a particular assignment or a particular matter, including prohibition from participating in any examination of the institution that was the subject of the retaliation, abuse, or retribution. Any institution that believes or has any evidence that it has been subject to retaliation may file a complaint with the Ombudsman and/or the appropriate Division Director, Federal Deposit Insurance Corporation, 550 17th Street,



Washington, D.C. 20429, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken.

By order of the Board of Directors.

Dated at Washington, D.C. this 21st day of March, 1995.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Acting Executive Secretary.*

[FR Doc. 95-7523 Filed 3-27-95; 8:45 am]

BILLING CODE 6714-01-P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Availability of FEMA-REP-11, Revision

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice of availability.

**SUMMARY:** FEMA announces the availability of the document "A Guide to Preparing Public Information Materials and Emergency Alert System Instructions for Radiological Emergencies," FEMA-REP-11, Revision, and requests comments on the document.

**DATES:** Comments and responses should be sent no later than June 26, 1994.

**ADDRESSES:** Comments on "FEMA-REP-11, Revision" should be sent to the Rules Docket Clerk, Office of the General Counsel, room 840, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (facsimile) (202) 646-4536.

**FOR FURTHER INFORMATION CONTACT:** William F. McNutt, Senior Policy Advisor, Preparedness and Policy Branch, Preparedness, Training and Exercises Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2857.

**SUPPLEMENTARY INFORMATION:** FEMA-REP-11 was first published in June 1987. This document provided assistance to State and local governments and Nuclear Regulatory Commission (NRC) licensees in the development of emergency public information materials. This revision continues to provide such assistance, and provides additional guidance on the development, review, and evaluation of emergency broadcast messages for the public. Our intent is to help responsible organizations to alert the public and to provide emergency instructions and information on the classification of an emergency, the populations and areas potentially affected, and the protective

measures that may be necessary. We welcome your comments on this document.

Dated: March 20, 1995.

**Kay C. Goss,**

*Associate Director for Preparedness, Training, and Exercises.*

[FR Doc. 95-7578 Filed 3-27-95; 8:45 am]

BILLING CODE 6718-20-P

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor.

Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

**Agreement No.:** 202-009648A-068

**Title:** Inter-American Freight Conference

**Parties:**

A.P. Moller-Maersk Line  
Empresa de Navegacao Alianca, S.A.  
Frota Amazonica S.A.  
Columbus Line  
Transroll/Sea-Land Joint Service  
Crowley American Transport, Inc.  
A/S Ivarans Rederi d/b/a Ivaran Lines  
Companhia Maritima Nacional  
Companhia de Navegacao Lloyd Brasileiro  
Empresa Lineas Maritimas Argentinas

**Synopsis:** The proposed amendment adds a new Article 14.04—Service Contracts, which establishes rules for any new member that joins the conference with respect to that member's independent service contracts.

**Agreement No.:** 203-011492

**Title:** TWRA/8900 Discussion Agreement

**Parties:**

American President Lines, Ltd.  
Transpacific Westbound Rate Agreement  
Croatia Line  
Hapag Lloyd AG  
The "8900" Lines Agreement  
A.P. Moller-Maersk Line

DSR-Senator Joint Service  
Kawasaki Kisen Kaisha, Ltd.  
Mitsui O.S.K. Lines, Ltd.  
Nippon Yusen Kaisha, Ltd.  
P&O Containers, Ltd.  
United Arab Shipping Company (S.A.G.)

Neptune Orient Lines, Ltd.  
Orient Overseas Container Line, Inc.  
Sea-Land Service, Inc.  
The National Shipping Company of Saudi Arabia

**Synopsis:** The proposed Agreement authorizes the parties to meet and discuss tariffs, service contracts, service items, rates, charges, classifications, practices, terms, conditions, rules, regulations, and other matters of mutual concern in the trade from U.S. ports and points to ports and points in India, Pakistan, Bangladesh, Sri Lanka and Myanmar. Adherence to any agreement reached is voluntary.

**Agreement No.:** 203-011493

**Title:** Cool Carriers AB/Dammers

Chartering NV Discussion Agreement

**Parties:**

Cool Carriers AB  
Dammers Chartering NV

**Synopsis:** The proposed Agreement authorizes the parties to meet and discuss, tariffs, service contracts, service items, general rate levels (including general rate increases and decreases), specific rates, charges, classifications, practices, terms, conditions, rules, regulations, and other matters of mutual concern in the trade between ports and points in Australia to ports and points in the U.S. Adherence to any agreement reached is voluntary.

Dated: March 22, 1995.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**  
*Secretary.*

[FR Doc. 95-7529 Filed 3-27-95; 8:45 am]

BILLING CODE 6730-01-M

## Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 3599

Name: Fari International, Inc.

Address: 8550 N.W. 66th Street, Miami, FL 33166