*OMB Approval Number:* 3060–0414.

*Title:* Terrain Shielding Policy.

*Type of Review:* Reinstatement without change, of a previously approved collection for which approval has expired.

*Respondents:* Business or other for-profit; not-for-profit institutions; state, local, or tribal government.

*Number of Respondents:* 300.

*Estimated Time Per Response:* 10 hours.

*Cost to Respondents:* A consulting engineer would prepare the terrain shielding waiver request. This consulting engineer is estimated to have an average salary of $125/hour. Therefore, 300 waiver requests x 9 hours x @125/hour=$337,500.

*Total Annual Burden:* 300 hours.

*Needs and Uses:* The terrain shielding policy requires low power television applicants to submit: detailed terrain studies; or assent of potentially affected parties and graphic depiction of terrain when intervening terrain prevents a low power television applicant from interfering with other low power television or full-power television stations. The data are used by FCC staff to determine if adequate protection can be provided by terrain shielding and if waiver of rules is warranted.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97–19429 Filed 7–23–97; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

## Proposed Statement of Policy for Participation in the Conduct of the Affairs of an Insured Depository Institution by Persons Who Have Been Convicted or Have Entered Pretrial Diversion Programs Pursuant to Section 19 of the Federal Deposit Insurance Act

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Proposed policy statement.

**SUMMARY:** The FDIC seeks to update its statement of policy concerning the participation in banking of a person convicted of a crime of dishonesty or breach of trust or money laundering or who has entered a pretrial diversion or similar program in connection with the prosecution for such offense pursuant to section 19 of the Federal Deposit Insurance Act, 12 U.S.C. 1829. Section 19 was significantly expanded by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (''FIRREA''), Pub. L. 101–73, 103 Stat. 183 (1989), and the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 (''Crime Control Act''), Pub. L. 101–647, 104 Stat. 4789 (1990) and as a result the two existing statements of policy on this provision are outdated. The FDIC intends to adopt the new Statement of Policy and rescind the two existing ones. The FDIC is seeking comments on the proposed Statement of Policy by issuing this **Federal Register** notice.

**DATES:** Comments must be received on or before September 22, 1997.

**ADDRESSES:** Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. 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 7:00 a.m. and 5:00 p.m. (Fax number (202) 898–3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC 20429, between 9:00 a.m. and 4:30 p.m. on business days.

**FOR FURTHER INFORMATION CONTACT:** Jesse G. Snyder, Assistant Director, Division of Supervision, (202) 898–6915; or Nancy L. Alper, Counsel, Legal Division, (202) 736–0828, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

**SUPPLEMENTARY INFORMATION:**

### Background

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 significantly expanded the provisions of section 19 of the Federal Deposit Insurance Act, 12 U.S.C. 1829. As amended by FIRREA and the Crime Control Act, section 19 now prohibits, without the prior consent of the FDIC, a ''person'' convicted of a criminal offense involving dishonesty, breach of trust or money laundering, or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, from owning or controlling directly or indirectly an insured depository institution, becoming or continuing as an institution-affiliated party, or otherwise participating, directly or indirectly, in the conduct of the affairs of an insured depository institution. Further, section 19 now provides that conviction for certain enumerated violations of Title 18 of the United States Code pertaining to financial institution-related crimes precludes the FDIC for ten years from considering or consenting to an application filed by a person convicted of such an offense, unless an exception is granted by the sentencing court.

### Request for Comments.

The FDIC has received many inquiries regarding what constitutes ''participation'' and who is a ''person.'' This request for comments is intended to provide an opportunity to comment on the proposal. In general, the FDIC is interested in comments on the following: the scope of section 19, including what constitutes ''participation, directly or indirectly, in the conduct of the affairs,'' what comprises ''own or control, directly or indirectly, any insured depository institution;'' whether the current interpretations of ''dishonesty'' or ''breach of trust'' should be changed or clarified; criteria for determining what constitutes offenses involving dishonesty, money laundering or breach of trust; procedures for filing a section 19 application, including whether a section 19 application should be filed where there is a *de minimis* crime (*e.g.*, juvenile offense of theft) and what would constitute a *de minimis* crime; what duty to inquire should be imposed upon insured depository institutions, including what due diligence should be undertaken by insured depository institutions in determining what persons come within the parameters of section 19; and the standards for granting consent to a section 19 application.

In particular, the FDIC would like comments on the following areas. First, the FDIC is requesting comments on its longstanding policy of requiring an insured depository institution to file a section 19 application on behalf of an individual. The rationale for this policy has been that in determining whether to approve a section 19 application, the FDIC must assess whether the person's participation in the insured institution constitutes a risk to the safety and soundness of the institution or whether the person's pariticipation in the institution threatens to impair public confidence in the institution or the banking system in general. In making its determination, the FDIC traditionally has considered the position which the person will occupy in the institution, the extent of the supervision of the person which the institution provides, the size and condition of the institution, and fidelity bond coverage of the person

by the institution's insurance company. Where an individual is filing a section 19 without the benefit of bank sponsorship, the FDIC may not have information concerning what institution may employ that individual when making its determination to approve the section 19 application. Further, the FDIC may be put in the position of processing section 19 applications filed by persons who either may have no prospect of employment with a financial institution or have no sincere interest in such employment but who are simply seeking certification from an agency of the federal government in order to gain employment elsewhere. In light of these issues, the FDIC is seeking comments specifically on the following: whether a non-bank applicant may file a Section 19 application and, if so, under what circumstances should it be permitted; what the scope of the approval granted in these situations should be; and how the FDIC should implement the new procedures in a manner to promote the safety and soundness of the insured institution.

Another area for which the FDIC seeks comments is whether the definitions of ''own'' or ''control'' are sufficient. Specifically, the FDIC has used the definition of ''control'' as set forth in the Change in Control Act, 12 CFR part 225. The FDIC is requesting comments on whether the use of this definition is appropriate or whether the definition should be expanded. Further, the FDIC seeks comments on how to distinguish ''control'' from the definition of ''own'' without leading to the absurd result of requiring a convicted person who owns one share or ten shares of stock in a large publicly traded insured institution from having to divest his or her ownership interest.

A third area for which the FDIC is requesting comments concerns what guidelines should be implemented to determine whether independent contractors come within the definitions of indirect participation. For example, some independent contractors provide data processing services and have access to extremely sensitive bank data but may perform such services offsite, while other contractors may be loan brokers who bring loans to a bank but do not have any decision making authority about obtaining bank approval. A related issue is whether officers and directors of a diversified holding company (that is, a company not solely involved in financial institution activities) should come within the parameters of section 19, and if so, what guidelines should be implemented to make such a determination. Elements of this issue may involve the relation between the size of the parent holding company and the insured depository institution (does the insured institution represent one percent of the holding company's business or 75% of the business) and where the insured institution fits into the overall structural organization of the holding company's business.

The FDIC recognizes that Section 19 and the proposed Policy Statement interpreting Section 19 would impose burdens upon insured depository institutions and those parties dealing with the institutions. For example, insured institutions would be required to determine the criminal backgrounds of temporary employees hired through a temporary employment service. The FDIC, however, believes that such burdens are compelled by the statutory language of section 19. The FDIC is interested in legal analyses which will assist it in devising policies which will reduce the burden upon insured depository institutions which the FDIC believes is imposed by the statute. The FDIC will use the comments and the legal analyses received to develop a final statement of policy.

The Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to revise its Statement of Policy regarding applications under section 19 of the FDI Act as follows:

**FDIC Statement of Policy for Section 19**

Section 19 of the Federal Deposit Insurance Act prohibits, without the prior written consent of the Federal Deposit Insurance Corporation (FDIC), a person convicted of any criminal offense involving dishonesty or breach of trust or money laundering (covered criminal offenses), or who has agreed to enter into a pretrial diversion or similar program (program entry) in connection with a prosecution for such offense from being an institution-affiliated party, owning or controlling directly or indirectly an insured depository institution, or otherwise participating, directly or indirectly, in the conduct of the affairs (collectively, participating in the affairs) of an insured depository institution (insured institution).

Section 19 is a statutory bar to participation. The purpose of an application is to provide an opportunity to an applicant to demonstrate that, notwithstanding the bar, an individual is fit to participate in the conduct of the affairs of an insured institution without posing a risk to the safety or soundness of the insured institution or impairing public confidence therein. The burden is upon the applicant to establish that the application warrants approval. An application may be approved because the person will not be in a position to constitute a risk to the institution. A person who will occupy clerical, maintenance, or service positions, or in some instances, administrative or teller positions, generally falls into this category. Such an application will not normally require an extensive review. A more detailed analysis will be performed in the case of a person who would be in a position to control or influence the conduct of the affairs of the insured institution.

*A. Scope of Section 19*

(1) General

Upon conviction or program entry without the prior written consent of the FDIC, a person is automatically by operation of law prohibited from: (i) Becoming or continuing as an institution-affiliated party; (ii) owning or controlling directly or indirectly an insured institution; or (iii) participating, directly or indirectly, in the conduct of the affairs of an insured institution. Additionally, such a person employed by an insured institution's holding company or an affiliate, subsidiary or joint venture of an insured institution or of its holding company may be prohibited from continuing such employment without the prior written consent of the FDIC where such person is engaged in performing banking or banking related activities on a regular and material basis. Person, for purposes of section 19, means a natural person and does not include a corporation, firm, or other business entity.

(2) Controlling Shareholder or Control Group Member

A controlling shareholder or a member of a control group of an insured institution may not without the prior written consent of the FDIC engage in the following conduct: (i) Exercise any voting rights in any shares of stock of the insured institution or its holding company; (ii) own or control such shares of stock so as to result in owning or controlling, directly or indirectly, the largest percentage of shares in the insured institution; (iii) control such shares of stock so as to result in controlling the management or policies of an insured institution; (iv) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent or authorization with respect to any voting rights in any insured institution; or (v) modify or set aside any voting agreement previously approved by the appropriate federal banking agency.

(3) Independent Contractor

In determining whether an application is required for an independent contractor's participation in the conduct of the affairs of an insured institution, an analysis is required of the nature and scope of the person's proposed activity. Participation by an independent contractor, or an employee of an independent contractor, would occur where either is performing banking or banking related activities on behalf of, or for the benefit of, an insured institution on a regular and material basis so as to be involved in the ordinary course of operations of the institution or to be exercising control over such operations.

*B. Criteria for Evaluating Conduct Requiring a Section 19 Application*

The conviction of or program entry by any adult or minor treated as an adult by a court of competent jurisdiction will require an application to be submitted to the FDIC for prior written consent before engaging in banking activities.

(1) Convictions

There must be present a conviction of record. Arrests, pending cases not brought to trial, acquittals, or any conviction which has been reversed on appeal are excluded from the requirements of section 19. A conviction which is being appealed will require an application until or unless reversed. A conviction, which has been expunged or for which a pardon has been granted, requires an application.

(2) Pretrial Diversion or Similar Program

Program entry as determined by federal, state or local law, may be formal or informal in nature and is characterized by a suspension or eventual dismissal of charges or criminal prosecution upon agreement by the accused to treatment, rehabilitation, restitution or other noncriminal or nonpunitive alternatives. Included in this definition are programs where the accused agrees to authorize a corporate entity under his control to plead guilty and the accused may make some monetary payment.

(3) Dishonesty or Breach of Trust

A conviction or program entry includes felonies, misdemeanors, and other criminal offenses as determined by federal, state or local law, wherein dishonesty or breach of trust or money laundering is involved. Dishonesty is defined to mean to directly or indirectly cheat or defraud; or to cheat or defraud for monetary gain or its equivalent; or to wrongfully take property lawfully belonging to another in violation of any criminal statute or code. Acts of dishonesty are further defined to include, but are not limited to, such acts which involve want of integrity, lack of probity, or involve a disposition to distort, defraud, cheat or to act deceitfully or fraudulently. Furthermore, dishonesty may also include crimes which by Federal, state, or local criminal statutes and codes are defined as dishonest. Breach of trust is defined to mean a wrongful act or use, misappropriation, omission with respect to any property or fund which has been lawfully committed to a person in a fiduciary or official capacity, or the abuse of one's official position or fiduciary relationship to engage in a wrongful act, use, or omission.

(4) Drug Offenses

All convictions for offenses concerning the illegal manufacture, sale, distribution of or trafficking in controlled substances shall require an application. A controlled substance shall mean those so defined by federal law whether the conviction is by a federal or state court. Conviction of or program entry by any adult or minor for use of a controlled substance does not per se constitute crimes involving dishonesty or breach of trust or money laundering. However, the circumstances of the offense may contain elements of dishonesty or breach of trust or money laundering as the FDIC traditionally has applied these terms to section 19. The FDIC will determine, on a case-by-case basis, whether an application is required and whether to withhold consent from a person convicted of such an offense.

(5) Youthful Offender Adjudgments

Adjudgment by a court against a person as a ''youthful offender'' under any youth offender law or adjudgment as a ''juvenile delinquent'' by any court having jurisdiction over minors as defined by state law does not require an application. Such adjudications are not considered convictions for criminal offenses.

*C. General Procedures To Be Followed By An Insured Institution and Person With Respect To A Section 19 Application*

Section 19 imposes a duty upon the insured institution to make a reasonable inquiry into whether a person has a conviction or program entry with respect to a covered criminal offense. Reasonable inquiry requires the insured institution to take steps appropriate under the circumstances, consistent with applicable law, to avoid hiring or permitting participation in its affairs by a person who has a conviction or program entry for a covered criminal offense. In certain circumstances, an insured institution may believe that undertaking a minimal inquiry is not necessary. The FDIC believes that at a minimum each insured institution should establish a screening process which provides the insured institution with information concerning any previous or present convictions or program entries that a job applicant may have.

For example, a reasonable inquiry that would satisfy the requirements of Section 19 and is consistent with industry practices includes the following: (1) The completion of a written employment application which requires listing any and all previous convictions or program entries; (2) the fingerprinting and processing of fingerprints of any person prior to his or her participation in the affairs of an insured institution; and (3) periodic inquiry to determine whether a person is the subject of a conviction or program entry. This is not a requirement imposed by the FDIC and alternatives may be employed. However, the FDIC will look at the circumstances of each situation to determine if the inquiry is reasonable. Upon notice of a previous or present conviction or program entry for a covered criminal offense, the insured institution must seek the consent of the FDIC prior to the person's participation, or the person's continued participation.

When an application is required, forms and instructions should be obtained from and the application filed with the appropriate FDIC Regional Director. The application must be filed by an insured institution on behalf of the person, except where the person is a shareholder seeking to exercise voting rights and the insured institution has refused to file an application on his behalf. If a person currently employed by an insured institution is discovered to have a conviction or program entry, upon request, the Regional Director may in his discretion grant a conditional approval pending the processing of the application.

*D. Criteria for Evaluation of Section 19 Applications*

The essential criteria in assessing an application for consent are: (1) Whether the person has demonstrated his or her fitness to participate in the conduct of the affairs of an insured institution; and (2)(i) whether the affiliation, ownership, control, or participation by the person in the conduct of the affairs of the insured institution may constitute a threat to the safety or soundness of the insured institution or the interest of its

depositors; or (ii) whether the affiliation, ownership, control, or participation may threaten to impair public confidence in the insured institution.

Important considerations in determining the risk to the insured institution are the following factors: (i) The conviction or program entry for a covered criminal offense and the specific nature of the offense involved and the circumstances surrounding it; (ii) the evidence of rehabilitation since the date of the conviction, parole, or suspension of sentence, including the reputation of the person since the conviction, the age of the person at the time of the conviction, and the time elapsed since the conviction; (iii) the position to be held by the person in the insured institution and/or the type of participation to be engaged in directly or indirectly in the conduct of the affairs of the insured institution by the person; (iv) the amount of influence and control the person will be able to exercise over the affairs and operations of the insured institution; (v) the ability of management at the insured institution to supervise and control the activities of the person; (vi) the level of ownership which the person will have at the insured institution; (vii) the applicability of the insured institution's fidelity bond coverage to the person; (viii) the opinion or position of the primary Federal and/or state regulatory agency; and (ix) any additional factors in the specific case that appear relevant.

These criteria will also be applied by the FDIC to determine whether the interests of justice are served in seeking an exception in the appropriate court when an application is made to terminate the ten-year ban prior to the expiration date for a person convicted for the commission of, or the conspiracy to commit, one of the enumerated violations of Title 18 set forth in section 19.

Approval orders in section 19 cases will generally be subject to the condition that the person shall be bonded to the same extent as others in similar positions. When deemed appropriate, approval orders may also be made subject to the condition that the prior consent of the FDIC shall be required for any proposed significant changes in the duties and/or responsibilities of the person. Such proposed changes may in the discretion of the Regional Director require a new application. In situations where a person has been approved under a section 19 action for participation in one insured institution and subsequently seeks to participate in another insured institution, approval does not automatically follow. In such cases, another application must be submitted to the FDIC to determine whether approval should be granted.

By order of the Board of Directors.

Dated at Washington, DC, this 24th day of June 1997.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 97–19550 Filed 7–23–97; 8:45 am]

BILLING CODE 6714–01–P

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**AGENCY:** Federal Election Commission.

**DATE & TIME:** Tuesday, July 29, 1997, at 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26 U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

**DATE & TIME:** Thursday, July 31, 1997 at 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C. (ninth floor).

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.

Report of the Audit Division on Pete Wilson for President Committee (originally scheduled for the meeting of July 17, 1997).

Advisory Opinion 1997–10: Hoke for Congress Committee by counsel, Patrick J. Alcox.

Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Ron Harris, Press Officer. Telephone: (202) 219–4155.

**Majorie W. Emmons,**

*Secretary of the Commission.*

[FR Doc. 97–19612 Filed 7–22–97; 10:33 am]

BILLING CODE 6715–01–M

## FEDERAL MARITIME COMMISSION

### Request for Additional Information

*Agreement No.:* 202–011579.

*Title:* The Inland Shipping Service Association.

*Parties:*

Crowley American Transport, Inc.,
Dole Ocean Liner Express.,
King Ocean,
A.P. Moller-Maersk Line,
Sea-Land Service, Inc.,
Seaboard Marine, Ltd.

*Synopsis:* Notice is hereby given that the Federal Maritime Commission, pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1701–1720), has requested additional information from the parties to the Agreement in order to complete its required statutory review of the Agreement. This action extends the review period as provided in section 6(c) of the Act.

By Order of the Federal Maritime Commission.

Dated: July 18, 1997.

**Ronald D. Murphy,**

*Assistant Secretary.*

[FR Doc. 97–19443 Filed 7–23–97; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL MARITIME COMMISSION

### Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

American Cargo Express, Inc., 435 Division Street, Elizabeth, NJ 07201, Officers: Christina Trizano, President, Richard Trizano, Vice President

First USA R.E., Inc. d/b/a USA Trade, 2172 Dupont Drive, Suite 3, Irvine, CA 92612, Officer: Nicholas AbouFadel, Owner

CAP Worldwide, Inc., 3126 Airfreight Road, Bldg. 2, Suite 200, Houston, TX 77032, Officers: Gayle Dendinger, Leanne Moore, Vice President

Gulf Shipping & Trading Group, 5881 Leesburg Pike, Suite #301, Falls Church, VA 22041, M Ahmed M. Hossain, Sole Proprietor