ADDRESSES: Copies of the Waste Analysis Guidance For Facilities That Burn Hazardous Wastes EPA/530/R–94/019 may be obtained by visiting the RCRA Information Center or by calling the RCRA Hotline. The public must send an original and two copies of their comments to: RCRA Information Center (5305), U.S. Environmental Protection Agency, 401 M Street, SW.,Washington, DC 20460. Place the docket number (#F–95–WAGA–FFFFF) on your comments. The RCRA Information Center is located in room M2616 at EPA Headquarters, 401 M Street S.W., Washington, DC 20460. It is open from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. The public must make an appointment to review docket materials. Call (202) 260–9327 for appointments. Copies cost 0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information and a copy of the document contact the RCRA Hotline at (800) 424–9346 toll-free or (703) 412–9810 in the Washington, DC, area. For information on specific aspects of the guidance manual, contact John Dombrowski at (202) 564–7036, Chemical, Commercial Services and Municipal Division (2224–A), Office of Compliance, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Dated: April 24, 1995.

Elaine G. Stanley,

Director, Office of Compliance.

[FR Doc. 95–11145 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 1, 1995.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Dorothy Conway, Federal Communications Commission, (202) 418–0217 or via internet at DConway@FCC.GOV. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: N/A.

Title: Construction of SMR Stations Request for Additional Information.

Form No.: FCC 800I.

Action: New collection.

Respondents: Individuals or households; Businesses or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 300 responses; 2.5 hours burden per response; 750 hours total annual burden.

Needs and Uses: FCC 800I is used as a method of verifying if licensee has placed station into operation and for notifying the Commission of actual number of mobile units placed in operation after license grant. The data collected ensures licensees are not authorized for more mobile units then they are actually using.

OMB Number: 3060–0360.

Title: Sec. 80.409(c) Public Coast Station Logs.

Form No.: N/A.

Action: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Frequency of Response: Recordkeeping Requirement.

Estimated Annual Burden: 316 recordkeepers; 95 hours burden per recordkeeper; 30,020 hours total annual burden.

Needs and Uses: This requirement is necessary to document the operation and public correspondence service of public coast radiotelegraph, public coast radio telephone stations and Alaska-public fixed stations. This information is used by FCC personnel during inspection and investigations to ensure compliance with applicable rules and to assist in accident investigations.

OMB Number: 3060–0364.

Title: Sec. 80.409(d) & (e) Ship Radiotelegraph Logs, Ship Radiotelephone Logs.

Form No.: N/A.

Action: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Frequency of Response: Recordkeeping Requirement.

Estimated Annual Burden: 10,950 recordkeepers; 47.3 hours burden per recordkeeper; 517,935 hours total annual burden.

Needs and Uses: This requirement is necessary to document that compulsory radio equipped vessels and high seas vessels maintain listening watches and logs as required by statutes and treaties. This information is used by FCC personnel during inspections and investigations to insure compliance with applicable rules and treaties and to assist in vessel distress and disaster investigations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–11117 Filed 5–4–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

[Docket No. 94–24]

Petition of South Carolina State Ports Authority for Declaratory Order; Order Granting Petition in Part and Denying Petition in Part

South Carolina State Ports Authority (''SCSPA'' or ''Petitioner'') has filed with the Federal Maritime Commission (''Commission'' or ''FMC'') a Petition For A Declaratory Order (''Petition'') pursuant to Rule 68 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.68 (1993), to allow it to act without peril in issuing in its FMC-filed tariff guidelines for the criteria it will apply to license stevedores and marine terminal operators (''MTOs'') operating at SCSPA facilities. SCSPA alleges that ''economic regulation'' of stevedores and MTOs doing business or seeking to do business at public port facilities is necessary to protect the public investment in the facilities.

Notice of the filing of the Petition was published in the **Federal Register** inviting interested parties to submit replies to the Petition.[1] Twelve parties filed replies to the Petition. Following receipt of all but two of the replies, SCSPA filed a Motion For Leave To File A Response (''Motion''). Six parties responded to the Motion.

The Petition

SCSPA represents that it seeks ''to remove uncertainty, to terminate a controversy, and to allow it to act without peril upon its view of the right to regulate the activity of persons seeking to perform stevedore and public marine terminal functions at [SCSPA] facilities.'' Petition at 1. SCSPA maintains that its Petition is an appropriate subject for exercise of the Commission's authority to entertain petitions for declaratory orders under

[1] Two parties subsequently requested and were granted a 30-day extension of time to file replies.

Rule 68.[2] The Petition is supported by the Declaration of W. Don Welch, Executive Director of SCSPA.

SCSPA describes itself as an operating port which provides public terminal facilities and performs terminal services, including stuffing and stripping containers for some shippers, at its facilities. SCSPA states that it ''has in its tariff a provision which gives it broad authority 'to control all services performed in connection with cargo moving through or over its facilities' and has used that authority to decide which entities may perform stevedore and related functions at Ports Authority facilities.'' Pet. at 5.

With respect to marine terminal services, SCSPA claims the authority to determine whether it will permit such services to be performed by others at its facilities and to establish both the terms under which it will allow such operations and the identity of firms which will be authorized to operate. SCSPA advises that it performs marine terminal services at its public facilities with about 250 employees. SCSPA states that it ''makes a profit on this operation, and does not desire to have third parties use its facilities to compete with it.'' Pet. at 10. Therefore, it ''has a rule that it will not permit *any* third party to hold itself out to the public to perform marine terminal container operations on Ports Authority facilities.'' *Id.* at 11.

SCSPA informs that the major carriers calling at Charleston have ''licensed'' facilities at which marine terminal services are performed by third parties under contract with the carriers and that SCSPA's public marine terminal services are utilized by the smaller lines calling at the port and approximately 25 shippers.

SCSPA indicates that stevedoring operations at the port have changed drastically over the past twenty years as a result of the effects of containerization, including the International Longshoremen's Association 50-mile Rules on Containers. Instead of just three locally-owned and operated stevedoring firms serving numerous carriers at the port, there are now said to be nine stevedore companies, most operating as units of large national companies, serving only a handful of carriers. These national concerns, says SCSPA, have little or no interest in advancing the economic well being of the port or attracting cargo to Charleston which they might handle at another port at which they operate.

SCSPA advises that it already requires stevedores seeking to operate at the port to ''register,'' but now wishes to implement procedures involving economic and financial standards for the licensing of stevedores. These standards would include an assessment of the applicant's financial resources, safety record, conformity with environmental requirements, and safety and substance abuse programs.[3] Applicants would also be required to demonstrate ability to ''promote and foster commerce through the ports of South Carolina.'' SCSPA reports that twenty of twenty-five deepwater ports it surveyed in the South Atlantic and Gulf Coast require that stevedores obtain a license to operate from the public port agency.

SCSPA believes its actions are lawful but wishes to remove doubt, created by stevedore interests, so that it will not be in peril for implementing new licensing procedures. The ''doubt'' to which SCSPA refers arises from a January, 1993, informal request by ''a national group of stevedore companies, the Independent Marine Terminal Operators Council (''IMTOC''),'' that the FMC investigate the practices of SCSPA and the port authorities of Georgia, North Carolina and Virginia to determine whether these ports violated the Shipping Act of 1984 (''1984 Act''), 46 U.S.C. app. § 1701, *et seq.*, by refusing to permit operations by third parties at their facilities. The FMC's Managing Director declined to recommend the initiation of such an investigation, stating that the matter would more appropriately be the subject of a complaint.[4] SCSPA indicates that the South Carolina Stevedores Association, as association of local stevedores, has since continued to seek clarification and modification of SCSPA's policy regarding reservation of public marine terminal services work at SCSPA facilities to itself.[5]

SCSPA maintains that the Commission has jurisdiction to determine the lawfulness of economic regulation of stevedores by public port agencies, citing *Baton Rouge Marine Contractors* v. *FMC*, 655 F.2d 1210 (D.C. Cir. 1981); *Cargill, Inc.* v. *FMC*, 530 F.2d 1062 (D.C. Cir.), *cert. denied*, 429 U.S. 868 (1976) (''*Cargill*''); and *Greater Baton Rouge Port Commission* v. *United States*, 287 F.2d 138 (5th Cir.), *cert. denied*, 368 U.S. 985 (1961). The guidelines SCSPA wishes to issue should be considered a reasonable exercise of its business judgment, to which the FMC should defer, says SCSPA. The Commission is said to have approved similar business-based actions, or at least deferred to the local authority to make such determinations, in *Petchem, Inc.* v. *Canaveral Port Authority*, _____ F.M.C. _____, 23 S.R.R. 974 (1986), *aff'd sub nom. Petchem, Inc.* v. *FMC*, 853 F.2d 958 (D.C. Cir. 1988) (''*Petchem''); and Seacon Terminals, Inc.* v. *Port of Seattle*, _____ F.M.C. _____, 26 S.R.R 886 (1993) (''*Seacon*'').

Similarly, SCSPA argues that its self-preference with respect to the performance of public marine terminal services at its facilities is not violative of the Shipping Acts' proscriptions against discrimination, in section 16 of the Shipping Act, 1916 (''1916 Act''), 46 U.S.C. app § 815 and sections 10(b) (11) and (12) of the 1984, Act, 46 U.S.C. app. § 1709(b) (11) and (12), because there is no triangular relationship involved in self-preference. In support of this proposition, SCSPA refers the Commission to *Puerto Rico Ports Authority* v. *FMC*, 642 F.2d 471 (D.C. Cir. 1980), as well as the decision of the Commission's predecessor in *Anglo Canadian Shipping Co., Ltd. v.* Mitsui Steamship Co., Ltd., 4 F.M.B. 535 (1955).

Replies to the Petition

A. Replies in Support

Replies in support of the Petition were filed by four Ports and one association. The American Association

[2] Rule 68 provides, *inter alia*, that ''the Commission may, in its discretion, issue a declaratory order to terminate a controversy or to remove uncertainty.'' Subsection (b) of the Rule provides further that:

> Petitions under this section shall be limited to matters involving conduct or activity regulated by the Commission under statutes administered by the Commission. The procedures of this section shall be invoked solely for the purpose of obtaining declaratory rulings which allow persons to act without peril upon their own view. Controversies involving an allegation of violation by another person of statutes administered by the Commission, for which coercive rulings such as payment of reparation or cease and desist orders are sought, are not proper subjects of petitions under this section. Such matters must be adjudicated either by filing of a complaint under section 22 of the Shipping Act, 1916 or section 11 of the Shipping Act of 1984 and § 502.62, or by filing a petition for investigation under § 502.69.

[3] The guidelines, attached to the Petition at Tab B, require each applicant for a stevedoring license to submit, *inter alia:* its articles of incorporation; a list of managerial employees, including supervisors, superintendents and foremen; resumes of its chairman, president, vice-president, chief financial officer and local business representative; a list of all equipment owned or leased to be used at SCSPA facilities; financial statements or other documents demonstrating credit-worthiness and resources, as well as credit references; a list of business licenses; a list of business locations and offices, describing the business done at each location; a list of actual or potential customers to be served at the port; and insurance certificates an copies of safety, training and substance abuse programs.

[4] The IMTOC letter is attached to the Petition at Tab C. The Managing Director's response appears at Tab D to the Petition.

[5] *See* Tabs E and F to the Petition.

of Port Authorities (''AAPA'') reports that public investment in port facilities, including those of operating ports as well as landlord ports, is enormous ($12.5 billion over 46 years) and must be protected by the public entities (ports) created for that purpose. AAPA states that:

> The goals that [SCSPA] seeks to achieve are laudatory, particularly in light of its status as a public agency and the duty that it shares with other port agencies to protect its investment of public funds.
>
> * * * * *
>
> It is the position of AAPA that public port authorities, because of their nature as governmental enterprises be given the widest discretion possible in controlling and regulating and marine terminal facilities under their jurisdiction.

AAPA Reply at 2–3. AAPA declares that public port authorities * * *.

> * * * charged with statutory responsibilities relating to the planning, development, financing and operation of marine terminal facilities * * * financed through the sale of bonds which pledge as security the revenues of the public agencies which offer them, * * * are motivated not simply by a profit motive but by a mandate from the people to stimulate economic growth and to protect the public's investment.

Id. at 3–4. AAPA maintains that port authorities are entitled to impose reasonable conditions on those who seek to do business within the port; to find otherwise would be to grant them less freedom to choose their business partners than is enjoyed by all other enterprises.

The Tampa Port Authority (''Tampa''), an operating port, supports SCSPA's right to reserve to itself the right to perform public MTO functions at its facilities and to apply economic criteria in granting permits or licenses for stevedores and MTOs to operate at its facilities. Tampa declares that the port provides major employment (in Tampa's case, 68,000 jobs), tax revenues, income and economic impact on its region. Tampa reports that it licenses stevedores and MTOs under its tariff. Presently, Tampa advises that it is defending a suit in state court challenging its right to reserve general cargo terminal operations for itself and is seeking to have the suit referred to the FMC under its primary jurisdiction. Tampa's arguments in favor of the port's right to regulate operations at or in connection with its facilities, and to reserve operations to itself, are said to be supported by the same cases cited by SCSPA.

The reply in support by the Virginia Port Authority refers to the responsibilities of public port authorities to enhance the long-term economic growth of their respective ports and to protect their public investors.

The Board of Trustees of the Galveston Wharves (''Galveston'') also supports SCSPA's proposal to license stevedores and the economic standard to be applied by SCSPA.[6] Galveston indicates that it presently licenses stevedores for operation at its facilities, but does not apply the specific economic criteria proposed by SCSPA.[7] Galveston states that it would amend its tariff to adopt the same proposal if SCSPA is successful. Galveston suggests, based on its own experience, tha it is necessary for the Commission to make clear in any ruling that port authorities may deny stevedore licenses if sufficient economic demand does not exist to support such services. Specifically, Galveston asserts that ports should be able to base stevedore licensing decisions on such criteria as: existing demand for stevedore services; an applicant's support by a vessel carrier; proof that an applicant will bring new business to a port; and proof that grant of an additional license will not result in duplicative services or destructive competition which will impair the quality of port services. In support of its arguments for the authority claimed by itself and SCSPA to regulate stevedores, Galveston cites the *Petchem, Seacon,* and *Cargill* cases relied on by SCSPA.

Lake Charles Harbor & Terminal District (''Lake Charles''), a political subdivision of the state of Louisiana, describes itself as a general and bulk cargo port, serving more than 800 ships and barges in 1992 and 1993. Much of the cargo is said to be P.L. 480 agricultural aid for the Department of Agriculture, which uses a sophisticated, computer analysis to determine the lowest landed cost to select the exit port for shipments. By keeping its charges to cargo low, Lake Charles states it has attracted this cargo and moved 1.1 million tons over facilities meant to handle annual volume of 600,000 tons. It allegedly has done so in part by having an exclusive contract with a single firm to load and unload cargo and to move and spot railcars on a continuous basis. Lake Charles advises that it requires stevedores to get a permit to work and states that it is considering tariff amendments to tie the grant of a permit to the economic interests of the port. Lake Charles suggests that the Commission give its blessing to these business-based decisions by granting the Petition.

B. Replies in Opposition

Carolina Marine Handling (''CMH'') suggests that the Commission deny or return the Petition unanswered. CMH says the matter is one for the SCSPA Board of Directors. CMH alleges that SCSPA is trying to monopolize local stevedoring functions of stuffing and stripping containers and flatracks, and fears that SCSPA may even attempt to reserve to itself deep-sea stevedoring if its revenues continue to decline. More specifically, CMH alleges that the proposed guidelines for licensing stevedores are ''overly broad, subjective and subject to abuse by the Executive Director.'' CMH Reply at 1. CMH objects particularly to the guidelines' requirements that applicants provide resumes, financial statements, customer lists and customers targets, as part of the licensing process.

In the most comprehensive reply filed by any party, Ceres Corporation argues that the Petition is inappropriate for declaratory order disposition. Ceres states that it provides stevedore and marine terminal services at Charleston through an affiliate, Ceres Marine Terminals, Inc., which will be directly affected by the proposed tariff rules. Its Reply is supported by two affidavits: That of Lester Francis, former General Manager of Ceres Marine Terminal, Inc.'s stevedoring facility at Charleston, which describes operations at Charleston by Ceres and other stevedores; and that of James R. Bramson, an attorney, who reports that he examined 23 Atlantic and Gulf coast port tariffs and found no similar licensing provisions. Bramson reports that his survey of port tariffs uncovered a few license provisions but none requiring production of new business or a pledge of new business to permit operations.

According to Ceres, all container terminal facilities at the port of Charleston are owned by SCSPA; a few carriers with large volumes of traffic lease some of the container terminal facilities at which private stevedore companies, including Ceres, perform marine terminal services for the containerized cargo. Receipt and delivery of containerized cargo at the public terminal is allegedly reserved by SCSPA. In addition, all CFS cargo (cargo stuffed or stripped at the port) is said to

[6] Galveston's comments are supported by the Declaration of Ernest Connor, General Manager of Galveston Wharves.

[7] It reports that, because the number of companies exceeds demand, Galveston quit granting new licenses and, as a result, has been challenged in court and at the Commission on its right to withhold a license. Although these cases were ultimately dismissed at both the District Court and the FMC, it cost the port a great deal for attorney's fees to defend the suits.

be handled at the public facilities owned and operated by SCSPA; receipt and delivery of all such cargo is allegedly reserved by SCSPA for its own performance. Most of the cargo controlled by carriers (including but not limited to those with leased container facilities) is stuffed and stripped by private stevedores, reports Ceres; shipper-controlled cargo is stuffed and stripped by SCSPA.

Ceres argues that the tariff is unreasonable because it would extend the port's monopoly of cargo receiving and delivering and stripping and stuffing of containers from shipper-controlled cargo to all cargo except that of the few large carriers with leased facilities. Under the proposed guidelines, SCSPA would continue to reserve to itself the receiving and delivery of all CFS and containerized cargo at the public terminal; in addition, Ceres points out, SCSPA would reserve for itself the stripping and stuffing of CFS cargo under the control of carriers other than the few who lease terminal facilities, as well as the already-reserved shipper-controlled CFS cargo. Ceres points out that the Commission is asked to rule on the lawfulness of these practices without benefit of economic or financial analysis which shows the necessity for the practice, the effect on stevedores, or the amount of cargo served by the SCSPA or the stevedores to be affected by the rule.

With respect to the specific elements of the licensing guidelines, Ceres states that the past SCSPA practice of requiring annual ''registration'' of stevedores operating at the port involved only a one-page form identifying responsible persons and credit references, with proof of insurance coverage, which Ceres compares to the much more extensive and intrusive requirements of the proposed licensing guidelines. In addition to the information requirements noted at footnote 3, above, Ceres points out that the Executive Director is authorized to request additional information ''as he sees fit'' and is directed to consider, in addition to the financial and other factors specified and such other factors as he deems relevant, the ability of the applicant to ''promote and foster commerce through the Ports of South Carolina.''

Ceres takes issue with the lack of factual material offered in support of the Petition. Ceres notes for example that SCSPA has neither alleged nor shown that any stevedore at the Port of Charleston has ever diverted to another port traffic that would otherwise have moved through Charleston, although the likelihood of such behavior is offered as justification for requiring that stevedores demonstrate the ability to promote and foster commerce through South Carolina ports. Similarly lacking are said to be alleged instances of destructive competition among stevedoring companies, which, to the contrary, notes Ceres, have objected only to SCSPA's solicitation of their private customers in the past. Ceres points out that, according to SCSPA's Petition, a port formerly served by just three local stevedores now supports the operations of nine stevedoring companies and states that no stevedore has left the Port of Charleston in at least the past three years. Ceres Reply at 12.

Ceres notes that the Petition refers to various objections raised in the past by IMTOC, Stevedoring Services of America and CMH to its practice of reserving public marine terminal services to itself, and offers those objections as a basis for its need to secure a declaratory order to terminate a controversy and enable it to act on its proposed tariff guidelines without peril. Ceres argues that the objections raised related to the reservation of terminal services only, not the later-drafted proposal to license stevedores. Ceres also represents that the stevedores sought to resolve their differences with SCSPA concerning the division of operating rights between the private and public entities at the Port prior to SCSPA's promulgation of the guidelines and its request for advance approval by the Commission through the Petition. Ceres protests that SCSPA is here seeking FMC approval in advance of its actions on the basis of a very sketchy factual presentation.

Ceres alleges that SCSPA is seeking Commission approval for exclusive arrangements rarely found reasonable, and then only on fact-intensive records showing extraordinary circumstances not present at Charleston. This case, moreover, is said to involve a major container port, unlike the exclusive franchising cases involving individual terminals or small or start-up ports, such as *Petchem*, relied on by SCSPA.

Consideration of the Petition would require significant factual investigation and hearings on material issues of fact, including economic justification for the proposal and the impact on stevedores presently operating at the port, says Ceres. The Petition is therefore said to be unsuitable for disposition on declaratory order.

The licensing standards, Ceres charges, are vague and subjective and therefore unreasonable. With respect to the reservation of MTO services, Ceres argues that, even if the antidiscrimination provisions of section 16 of the 1916 Act and sections 10(b)(11) and (12) of the 1984 Act do not apply to the proposal in the absence of a triangular relationship, as urged by SCSPA, the reasonableness standard of section 17 of the 1916 Act, 46 U.S.C. app. section 816, and section 10(d) of the 1984 Act, 46 U.S.C. app. section 1709(d), does apply, and that the practice is unreasonable under that standard. And, says Ceres, the unlawful preference sections probably do apply where, as here, the port authority wears two hats: MTO and stevedore, and acts in one capacity to favor the other.

The Carriers Container Council, Inc. (''CCCI''), claiming to represent carriers of 90 per cent of the containerized cargo moved through the Port of Charleston, states that, while SCSPA has a monopoly of MTO functions at Charleston, carriers now have a choice of nine stevedores to service their vessels. CCCI alleges that the proposed tariff guidelines would deprive the carriers of this choice. In addition, CCCI objects that the licensing standards are vague, subjective, and unconstitutionally delegate to the FMC a state function: review of the actions of the state port authority acting under state law. The stated standards are said to show bias in favor of local companies, which was found to violate the Shipping Act in *Plaquemines Port, Harbor and Terminal District* v. *FMC,* 838 F.2d 536 (D.C. Cir. 1988). CCCI argues that an evidentiary hearing is necessary to test the proffered economic justification for the licensing scheme, and that a triangular relationship is not necessary to find a violation of section 16 where the port authority wears two hats, as here, citing *Puerto Rico Ports Authority* v. *FMC,* 642 F.2d at 489.

Stevedoring Services of America (''SSA'') opposes the Petition and asserts that it seeks an inappropriate use of Rule 68: both an advance ruling that its implementation of its guidelines will not violate the Shipping Acts of 1916 and 1984 (quoting the Petition as seeking ''a Commission declaration that its prospective stevedore license judgments will be lawful.'' SSA Reply at 4, *quoting* Petition at 6) and a ruling as to past conduct which has already been alleged, by IMTOC, to be violative of the Acts. The latter request is said to be akin to an attempt to use the declaratory order procedure to defend against past or future complaint proceedings, ruled improper in *Petition of Yangming Marine Transport Corp. for Declaratory Order,* _____ F.M.C. _____, 24 S.R.R. 1057, 1058 n.3 (1988), says SSA.

SSA also objects to the stevedoring guidelines requirement that applicants

provide a customer list. SSA argues that the guidelines are objectionable because they would deprive stevedores of the right to operate, are vague and subjective, would impermissibly permit monopoly practices by SCSPA, and would deprive carriers of their right to a stevedore of their choice. With respect to the guidelines' requirement that stevedore license applicants demonstrate ability to promote and foster commerce through South Carolina ports, SSA points out that no similar requirement is placed on carriers who call the port, and that the carrier, rather than the stevedore, controls the choice of port to be served by a vessel. Finally, SSA alleges that the guidelines impermissibly seek to deprive stevedores of the right to redress in state and federal courts, through a provision that exclusive appeal of a license denial by the Executive Director and the Board of the Ports Authority is to the Federal Maritime Commission. This, says SSA, would deprive the applicant of rights to challenge the action under laws other than the Shipping Acts. SSA urges that the Petition be denied or investigated by the FMC through a fact-finding proceeding initiated by show cause.

Maritrend, Inc., a stevedoring company operating in two ports in the Gulf region, declares that the guidelines are too vague and subjective: licensing should be based solely on objective criteria such as insurance, bonding, etc., not whether the stevedore operates at competing ports, uses non-union labor or competes with existing licensees. The guidelines are said to reflect ''loyalty'' requirements and local favoritism which are inappropriate considerations according to Maritrend. Also allegedly inappropriate is the guidelines' requirement that applicants show that they will bring ''new business'' to the port, because carriers, not stevedores, control the cargo and selection of port calls.

IMTOC, among whose members are MTOs who perform stevedoring at SCSPA, claims that, with respect to the reservation to SCSPA of the right to perform all MTO operations at its facilities, the Petition is the mirror image of the IMTOC request for investigation refused by the FMC last year. IMTOC agrees with the FMC Managing Director's determination in his letter to IMTOC that the matter can be concluded only after a proceeding permitting receipt of evidence and legal arguments from all affected parties. IMTOC submits that a full investigatory proceeding is necessary; therefore, a declaratory order is not appropriate. Regarding the possible violation of section 16 of the 1916 Act by SCSPA's reservation of MTO functions at its facilities, IMTOC maintains that because some third party MTOs are permitted to operate the SCSPA facilities of licensed carriers, as SCSPA admits, the triangular relationship necessary to find a violation of section 16 does exist. Moreover, IMTOC claims, no justification under *Petchem* exists for the exclusionary nature of SCSPA's practices: its only stated reason is unwillingness to forgo profits from its MTO operations, which is not a proper public purpose.

The South Carolina Stevedoring Association (''SCSA''), an association of privately owned stevedoring companies, some of which are also MTOs, who do business at South Carolina Ports, notes that the Petition asks the Commission to rule on the legality of two separate matters: the proposal to license stevedores eligible to work at SCSPA facilities, and SCSPA's past and present practices of excluding certain third-party terminal operations on its facilities. Neither the licensing issue nor the MTO exclusion issue can be determined on this Petition, claims SCSA. The MTO exclusion issue allegedly involves past and present conduct as to which the Petition does not begin to meet its burden of proof that there are no violations of the Shipping Acts.

And despite SCSPA's characterization of it, SCSA claims that the licensing issue does not concern the general authority of SCSPA to set reasonable terms and conditions for use of its facilities, but the reasonableness of the terms proposed. Those terms are said to include too many vague and unspecified powers of the Executive Director to establish requirements for applicants, revoke or suspend licenses, and condition licenses which are unreasonable on their face. SCSA submits therefore that the matter is unsuitable for determination on a petition for a declaratory order.

The licensing provisions are also argued to be objectionable because they require a ''loyalty oath'' of stevedores by requiring promotion of the interests of the port, in addition to the inappropriate statements about lack of local ownership. This requirement that local interests be promoted and favored does not, in SCSA's opinion, appear to be required of carriers that call at the port, or the MTOs who work for licensed carriers at the port; there is, moreover, no indication of their loyalty or lack of loyalty to the port. SCSA charges that these attempts to favor local interests, or to recreate the days of local stevedoring firms, are an unconstitutional burden on interstate commerce. SCSA concludes that the FMC should deny the Petition and order a full-scale evidentiary hearing on an order to show cause.

SCSPA Motion for Leave To File a Response and Replies

SCSPA requests an opportunity, normally prohibited by the terms of Rule 68,[8] to address ''1) certain erroneous assumptions, and 2) misapprehensions of fact, made by parties responding to the petition * * *.'' SCSPA Motion at 1. SCSPA states that grant of its Motion will narrow some of the issues raised by opponents of the Petition and eliminate other issues.

SCSPA believes that opposition to the Petition stems in part from a misunderstanding of the purposes and goals of SCSPA's proposed regulation of stevedores and MTOs. Referring specifically to the concern of CCCI that the guidelines will deprive carriers of their choice of stevedores, SCSPA offers to add appropriate language to the guidelines to remove that issue if it is permitted to file a response; also to be addressed would be the ''loyalty oath issue,'' as raised by SCSA.

Stating that some opponents have misunderstood ''some of the facts underlying the * * * Petition,'' relying on ''facts which are demonstrably incorrect,'' SCSPA seeks the opportunity to ''sort out the incorrect fact assertions and * * * correct them'' in a response. Motion at 4. Nevertheless, SCSPA does not ''mean that there may not be some facts as to which there is a dispute * * *.'' *Id.*

SCSPA notes that the Commission permitted a response to replies in another declaratory order proceeding, *Matson Navigation Co., Inc.—Transportation of Cargoes Between Ports and Points Outside Hawaii and Islands Within the State of Hawaii,* _____ FMC _____, 25 S.R.R. 245 (1989), so that it could ''render a definitive verdict'' on the issue. SCSPA Motion at 5, *quoting Matson*, 25 S.R.R. at 245. Similar to the procedure used in that case, SCSPA suggests that it be permitted to file a response limited to 20 pages and that interested parties be permitted to make surrebuttal filings within 15 days.

Six parties filed Replies to the Motion. Maritrend claims that the Motion demonstrates the inappropriateness of proceeding by declaratory order in this matter. SSA reiterates its position that allegations of

[8] Rule 68(e) provides that ''No additional submissions will be permitted unless ordered or requested by the Commission.''

violation of the Shipping Acts are outside the scope of Rule 68 and maintains that declaratory orders are not suited to dispose of contested factual issues, citing *Petition for Declaratory Order of Seatrain International, S.A.,* 21 F.M.C. 187 (1978). IMTOC suggests that the Motion ''be denied or held in abeyance until the Commission decides what to do with the original Petition * * *.'' IMTOC Reply at 1. Ceres does not object to SCSPA's request ''so long as any response is *strictly limited* to a factual presentation that is *directly responsive* to specific factual assertions or assumptions made by others.'' Ceres Reply at 1 (emphases in original).

Ceres states that it does not believe that any factual supplementation of the record by SCSPA can cure the flaws in its Petition. For example, says Ceres, SCSPA wants to respond to questions Ceres raised about SCSPA's survey of licensing practices at other ports, but the real problem is not whether 20 or even all other South Atlantic and Gulf ports license stevedores, but the particular requirements and practices proposed by SCSPA. Ceres takes the position that SCSPA has not requested, nor should it be permitted, to respond to the legal arguments offered by those opposed to the Petition.

CCCI reads the Motion as indicating that ''the SCSPA confesses that it made an error in not telling the carriers that they have a right to appoint their own stevedore to work anywhere on the terminals.'' CCCI Reply at 1. CCCI suggests that SCSPA end the dispute and misunderstanding by withdrawing its Petition. Otherwise, CCCI opposes the Motion.

SCSA argues that because Rule 68 requires that a petition be accompanied by petitioner's complete legal and factual presentation, and does not provide for submission of additional evidence or argument by a petitioner, the Motion is in reality an amended petition. SCSA notes that the Motion addresses only factual questions related to the proposed stevedore licensing scheme, rather than past and present SCSPA practices concerning the exclusion of certain marine terminal operators. SCSA submits that the Motion should be denied, but that, if it is granted, at least 30 days be permitted for the filing of responses to SCSPA's submission.

Discussion

The replies to the Petition reflect a division of views between stevedores and non-port MTOs, who oppose the proposals, and public ports, who support the proposals. The level of interest and concern generated by the proposals is arguably an indication that application of the Commission's resources to resolution of the controversy is appropriate.

However, as many of the opponents point out, SCSPA's petition has two purposes: To secure the Commission's imprimatur of lawfulness of its present and continuing practice of reserving certain terminal functions at its public facilities for itself and to prospectively assure the lawfulness of its proposal to license stevedores under the criteria in its guidelines. These two areas of concern covered by the Petition differ to some extent as to their impact and eligibility for disposition on a petition for a declaratory order.

A distinction may be made between issues which appear to be appropriate for disposition under Rule 68 and those which are not. Thus, we would agree with those parties who regard the issue of SCSPA's reservation of terminal functions for itself as inappropriate for disposition on declaratory order because it involves past and present conduct which may entail violations of the Shipping Acts.

We are reluctant to undertake a proceeding on a declaratory order which, even implicitly, involves ruling on the lawfulness of Petitioner's past activities. The new policies governing reservation of functions are incorporated in the draft tariff rule attached at Tab B to SCSPA's Petition, while the policies applied in the past are reflected in the existing tariff rule attached to the Petition at Tab A. While the policies regarding reservation of certain MTO functions for future application are not co-extensive in coverage with the policies SCSPA has applied to its marine terminal operations for some time, they are, nevertheless, intertwined: they differ in scope, not kind. Ruling on the legal issue raised—the reservation of functions and exclusion of competing MTO's by the public owner of the facility—with respect to the future would necessarily determine the same issues raised with respect to SCSPA's past conduct. These practices, reflected in SCSPA's present tariff, were the subject of IMTOC's 1993 informal request for an FMC-initiated investigation of the practices of SCSPA and three other public ports, rejected by the Commission's Managing Director. We therefore find these issues procedurally inappropriate for determination under Rule 68. The declaratory order proceeding initiated herein will not address the merits of SCSPA's reservation of terminal functions for itself. SCSPA's reservation practices are neither found lawful nor prohibited by anything herein.

The proposed tariff rule for the licensing of stevedores, on the other hand, raises issues which are uniquely within the expertise of the Commission, do not involve possible past or present violations of the Shipping Acts, and, insofar as they arise under the Shipping Acts, are not issues which are or may be raised in another forum.[9] In *United States Lines, S.A.—Petition for Declaratory Order Re: The Brazil Agreements, order entertaining petition and referring matter to administrative law judge,* _____ F.M.C. _____, 24 S.R.R. 1034, 1040 (1988) (''*Brazil Agreements*''), the Commission discussed the factors to be assessed in determining whether to entertain a petition which is within the Commission's substantive jurisdiction. Analyzing cases in which declaratory orders had been granted or denied on the merits, the Commission explained that * * *

> * * * the following weigh heavily in favor of issuance of such orders (and their absence against it): (1) Presentation of clear-cut legal issues and non-disputed facts; (2) ability of the Commission to resolve all issues in a proceeding so as to terminate the controversy; (3) presence of issues of fact or law which require the Commission's expert knowledge or judgment; (4) non-pendency of other proceedings or absence of need to resort to other tribunals to resolve matters in dispute; (5) claim which is purely declaratory in nature as opposed to an action for reparation for violation of statutes or regulations.

In *Brazil Agreements,* the Commission concluded that the issues presented, which involved interpretation of a Commission-approved agreement, were clear-cut and appropriate for determination by the agency. Although some factual issues were also in dispute, the Commission determined that disposition of those issues through an evidentiary hearing would not be inconsistent with issuance of an otherwise appropriate declaratory order. 24 S.R.R. at 1040. It is, similarly, clear from the replies to the Petition, as well as from SCSPA's Motion and the replies thereto, that there are material issues of fact in this case which cannot be disposed of on the basis of the existing record.

Some of the parties in this proceeding make the point that these disputed

[9] SSA raises an issue regarding the guidelines provision which allegedly would deprive stevedores of right to redress in state and federal courts by making license denials appealable only to the FMC. The question of whether this provision is an ''unreasonable practice'' under the 1916 and 1984 Acts is one for the Commission's determination in the first instance.

factual issues, involving the economic and other justification for the proposed licensing guidelines, as well as the need for the specific information being requested, render the Petition inappropriate. This does not appear to be an insurmountable problem; questions of disputed fact may be referred to an administrative law judge (''ALJ'') for an evidentiary hearing. *Brazil Agreements; see also In the Matter of Rates Applicable to Ocean Shipments via American President Lines,* _____ F.M.C. _____, 21 S.R.R. 1168, 1169 (1982). Furthermore, the participation in this case of other public ports with an interest in similar actions, as well as national stevedoring companies with operations at several ports, make this a particularly appropriate proceeding in which to determine these issues.

Some parties opposing the Petition allege that it is an inappropriate effort by SCSPA to secure FMC approval in advance for specific decisions SCSPA will make in granting or denying licenses. Ceres, in particular, notes that SCSPA specifically ''seeks a Commission declaration that its prospective stevedore license judgments will be lawful.'' Ceres Reply at 30, *quoting* Petition at 6. We see no bar to consideration of the lawfulness of the guidelines themselves on the same basis that the Commission is frequently called upon to determine an allegation that a tariff provision is unlawful not in its execution but in its terms. We see nothing in SCSPA's Petition or the guidelines themselves that would prevent the filing of a complaint alleging unfair prejudice or disadvantage in an individual case based on denial of a license.

Section 5(d) of the Administrative Procedure Act, 5 U.S.C. 554(e), authorizes each agency to issue declaratory orders ''* * * in its sound discretion * * *.'' Similarly, FMC Rule 68 provides, *inter alia*, that ''[t]he Commission *may, in its discretion,* issue a declaratory order to terminate a controversy or to remove uncertainty'' (emphasis added). In exercising its discretion, the Commission is entitled to assess the advantages and disadvantages associated with declaratory relief. Advantages include the opportunity to efficiently terminate a controversy or remove uncertainty, while disadvantages include both the administrative burden imposed by a policy of issuing advisory opinions and the familiar problems surrounding the adjudication of abstract controversies. *Climax Molybdenum Co. v. Secretary of Labor,* 703 F.2d 447, 452 (10th Cir. 1983). *See also Yale Broadcasting Co. v. FCC,* 478 F.2d 594, 602 (D.C. Cir.), *cert. denied,* 414 U.S. 914 (1973).

In this case, the issues with respect to the licensing guidelines do not appear to be abstract or lacking in sufficient factual context for determination upon a more complete record. We also note, as several parties have pointed out, that the burden of proof in commission proceedings falls on the proponent of a rule or order, 46 CFR 502.155, in this case SCSPA. *See, e.g.,* Ceres Reply at 15.

Therefore, we find that portion of the Petition which relates to the guidelines for licensing stevedores appropriate for declaratory relief and refer the matter to an administrative law judge for determination of critical facts and issuance of an initial decision. This approach will enable the Commission to fully resolve the questions raised in the Petition which are appropriate for declaratory relief, without addressing questions of past practices of SCSPA which the parties were free to raise by way of a complaint at any time.

All filings made to date with respect to the Petition will be incorporated into the record herein, for such purpose and weight as may be appropriate. In addition, we specify in our referral particular issues of fact and law to be resolved. SCSPA's Motion to Supplement the Record is denied as moot, because it will have an opportunity to supplement the record in the proceedings before the ALJ.

Therefore, it is ordered, That SCSPA's Petition for a Declaratory Order is granted to the extent that proposed tariff Rule 34–051 relates to the licensing of stevedores and it is referred to the Chief Administrative Law Judge, for assignment and issuance of an initial decision;

It is further ordered, That the administrative law judge to whom this proceeding is assigned shall exercise his discretion to insure that the issues are resolved in the most expeditious means consistent with due process and a sufficient record upon which to render a decision;

It is further ordered, That in reaching the ultimate issue of the lawfulness of the proposed tariff Rule No. 34–051 in this proceeding, attention shall be devoted to resolution of the following issues:

1. Whether SCSPA, a public marine terminal operator, engages in an unreasonable practice or acts in an unfairly prejudicial manner when it allows some stevedoring companies access to its facilities and denies such access to other companies on the basis of the public marine terminal operator's assessment of demand for services by carriers and shippers using its terminals, or similar economic criteria not related to an individual applicant for a license.

2. Whether any of the specific provisions of the proposed tariff Rule No. 34–051 are unduly prejudicial or are likely to unfairly discriminate against individual applicants for stevedoring licenses.

3. Whether the powers granted the Executive Director to require additional information or to place conditions on licenses granted constitute an unreasonable practice under the Shipping Acts.

4. Whether the provision of draft tariff Rule No. 34–051 restricting appeals of license denials or other actions to the Federal Maritime Commission constitutes an unreasonable practice or is otherwise unlawful under the Shipping Acts.

It is further ordered, That SCSPA's Petition for a Declaratory Order is denied in all other respects;

It is further ordered, That SCSPA's Motion For Leave to Supplement the Record is denied;

It is further ordered, That pursuant to Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the initial decision of the Administrative Law Judge shall be issued by May 1, 1996 and the final decision of the Commission shall be issued by September 2, 1996;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, That each person who filed a reply to the Petition herein is designated a party to this proceeding;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rule of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record; and

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on all parties of record.

By the Commission.*

Joseph C. Polking,

Secretary.

[FR Doc. 95–10993 Filed 5–4–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Citizens Investment Company, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than May 30, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Citizens Investment Company, Inc., Glenville, Minnesota; to acquire 100 percent of the voting shares of Twin Lakes State Bank, Twin Lakes, Minnesota.

Board of Governors of the Federal Reserve System, May 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–11140 Filed 5–4–95; 8:45 am]

BILLING CODE 6210–01–F

*Commissioner Scroggins did not participate in this proceeding.

Premier Financial Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 19, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Premier Financial Bancorp, Inc., Vanceburg, Kentucky; to engage *denovo* through its subsidiary, Premier Data Services, Inc., Vanceburg, Kentucky, in providing data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation, and operating personnel) and data bases to its existing and subsidiaries and other financial institutions, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–11141 Filed 5–4–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 534]

National Institute for Occupational Safety and Health; Worker Exposure Assessment and Hazard and Medical Surveillance Programs; Notice of Availability of Funds for Fiscal Year 1995

Introduction

The Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH) announces the availability of fiscal year (FY) 1995 funds for a grant program for worker hazard and medical surveillance projects associated with occupational exposures to radiation and other hazardous agents at nuclear facilities and other energy-related industries. Studies conducted in the nuclear power industry and deliberate exposure of human subjects in radiation experiments are outside the scope of this announcement.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of ''Healthy People 2000,'' see section ''Where to Obtain Additional Information.'')

Authority

This program is authorized under the Occupational Safety and Health Act of 1970, Section 20(a) and 22(e)(7), [29 U.S.C. 669(a) and 671(e)(7)]. The applicable grant program regulations are in 42 CFR Part 52.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care,