B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. What Action is EPA taking?

This document reopens the public comment period established in the **Federal Register** issued on June 1, 2005 (FRL–7712–7) (70 FR 31401). In that document, EPA sought comment on a proposed rule revoking 34 exemptions from the requirement of a tolerance that are associated with 31 inert ingredients because, according to Agency records, these substances are no longer contained in active FIFRA pesticide product registrations. EPA is hereby reopening the comment period, which ended on August 1, 2005. Comments are now due on or before August 31, 2005.

III. What is the Agency's Authority for Taking this Action?

The proposed rule is issued pursuant to section 408(d) of FFDCA (21 U.S.C. 346a(d)). Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or tolerance exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of FFDCA. If food containing pesticide residues is found to be adulterated, the food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342 (a)).

IV. Do Any Statutory and Executive Order Reviews Apply to this Action?

No. This action is not a rulemaking, it merely reopens the comment period by which public comments on a proposed rule must be submitted to EPA. For information about the applicability of the regulatory assessment requirements to the proposed rule, please refer to the discussion in Unit IV. of theJune 1, 2005 document (70 FR 31403).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 28, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 05–15606 Filed 8–4–05; 9:07 am]

BILLING CODE 6560–50–S

FEDERAL MARITIME COMMISSION

46 CFR Part 531

[Docket No. 05–05]

RIN 3072–AC31

Non-Vessel-Operating Common Carrier Service Arrangements

August 3, 2005.

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission is proposing changes to its exemption for non-vessel-operating common carriers (NVOCCs) from the tariff publication requirements of the Shipping Act of 1984. The proposed rule would revise the exemption to allow NVOCCs and shippers' associations with NVOCC members to act as shipper parties in NVOCC Service Arrangements.

DATES: Submit original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 10, Microsoft Word 2003, or earlier versions of these applications, no later than August 23, 2005.

ADDRESSES: Address all comments concerning this proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001, *Secretary@fmc.gov.*

FOR FURTHER INFORMATION CONTACT: Amy W. Larson, General Counsel, Federal Maritime Commission, 800 N. Capitol St., NW., Washington, DC 20573–0001, (202) 523–5740, *generalcounsel@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 19, 2005, a final rule of the Federal Maritime Commission (''FMC'' or ''Commission'') exempting non-vessel-operating common carriers (''NVOCCs'') from certain tariff publication requirements of the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* (''Shipping Act''), became effective. 69 FR 75850 (December 20, 2004). The rule was issued pursuant to the Commission's authority under section 16 of the Shipping Act, 46 U.S.C. app. 1715. The exemption enables individual NVOCCs to offer NVOCC Service Arrangements (''NSAs'') to NSA shippers, provided that such NSAs are filed with the Commission and their essential terms are published in the NVOCC's tariff. The rule defines an NSA as ''a written contract, other than a bill of lading or receipt, between one or more NSA shippers and an individual NVOCC in which the NSA shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the NVOCC commits to a certain rate or rate schedule and a defined service level.'' 46 CFR 531.3(p). The rule also defines an ''NSA shipper'' as a cargo owner, the person for whose account the ocean transportation is provided, the person to whom delivery is to be made, or a shippers' association. 46 CFR 531.3(o). This definition, however, specifically excludes NVOCCs and shippers' associations with NVOCC members. *Id.*

The Commission previously stated that it would continue to consider how it could remove the limitations on shipper participation while ensuring the criteria of section 16 were met. 69 FR at 75852. The Commission now proposes to remove those limitations.

II. Discussion

An NVOCC is defined by the Shipping Act as ''a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.'' 46 U.S.C. app. 1702(17)(B). An NVOCC simultaneously holds two transportation roles—as a carrier vis-á-vis the shipper to which it offers service, and as a shipper vis-á-vis the ocean common carrier from which it obtains service.

The Commission was concerned that a court could interpret section 7(a)(2) of the Shipping Act, 46 U.S.C. app. 1706(a)(2), to immunize NVOCCs acting under filed NSAs from the antitrust laws. *Cf. United States* v. *Tucor*, 189 F.3d 834 (9th Cir. 1999) (holding 46 U.S.C. app. 1706(a)(4) immunized a price-fixing arrangement among NVOCCs related to the foreign inland provision of services). Therefore, the exemption did not allow NVOCCs either individually or as members of shippers' associations to act as NSA shippers. 46 CFR 531.3(p).

On June 14, 2005, the U.S. Court of Appeals for the Fourth Circuit found, *inter alia*, that price fixing by two

NVOCCs was not immunized from the antitrust laws by section 7(a)(2). *United States of America* v. *The Pasha Group and Gosselin World Wide Moving, N.V.,* ____ F.3d. ____ 2005 WL 1389531, Slip Op. No. 04–4877 (4th Cir. June 14, 2005), *reh'g denied*, July 12, 2005 (''*Gosselin*''). Finding the case factually distinguishable from *Tucor*, the Fourth Circuit declined to decide whether conduct by NVOCCs could *ever* be immune from the antitrust laws under the Shipping Act, thus leaving the issue unsettled. *Gosselin*, Slip Op. at 11–12; 17 n.3.

We disagree with *Tucor*'s broader holding that the Shipping Act may be read to immunize any price-fixing agreement among NVOCCs from the antitrust laws. We continue to believe that the rationale of *Tucor* is incorrect, and that its precedential value is limited to section 7(a)(4).

With respect to the limitations the Commission placed on who may act as an NSA shipper, the agency was concerned that price fixing between NVOCCs acting as shippers and NVOCCs acting as carriers would adversely affect the price eventually paid by the end-user, *i.e.*, the beneficial cargo owner. However, unlike horizontal price fixing, collusion is not inherent in an arrangement between an NVOCC acting as a carrier and an NVOCC acting as a shipper. Instead, a reduction in competition or detriment to commerce would occur only if (1) two or more NVOCCs chose to collude in violation of the antitrust laws; and (2) in the event of prosecution, the antitrust laws were then deemed not to apply to those NVOCCs because of the *Tucor* analysis.

With regard to NVOCC coordination through shippers' associations, it may similarly be the case that ill effects on beneficial cargo interest shippers are unlikely. It appears that shippers' associations function only as buyers' collectives, and it is unlikely that shippers' associations with NVOCC members purchasing space pursuant to NSAs could effectively coordinate their resale of that space under the auspices of a shippers' association. Were they to do so, it is clear that they would no longer meet the U.S. Department of Justice's ''safe harbor'' provisions for joint purchasing agreements, and would likely be subject to enforcement action. *See* Antitrust Division Response to Request for Business Review Letter—Household Goods Forwarders Association of America, Inc., September 19, 1985, B.R.L. 85–21, 1985 WL 71889 (DOJ) (unopposed because there was no collective rate making or discussions and because the negotiation of rates for services in a market substantially controlled by the group expressly was not authorized).

On the basis of the above, it appears that amending the exemption to allow NVOCCs and shippers' associations with NVOCC members to act as shippers in NSAs may satisfy the dual criteria of section 16. The Commission seeks comment on whether the proposed rule would or would not result in a substantial reduction in competition or be detrimental to commerce.

III. The Proposed Revisions

For the foregoing reasons, the Commission proposes to make the following changes to 46 CFR part 531. First, the Commission proposes the deletion of the last sentence of 46 CFR 531.3(o), which currently reads: ''The term does not include NVOCCs or shippers' associations whose membership includes NVOCCs.'' The Commission proposes a revised definition that would mirror its definition of shipper in the Shipping Act. 46 U.S.C. app. 1702(21). The revised provision would thus read, ''*NSA shipper* means a cargo owner, the person for whose account the ocean transportation is provided, the person to whom delivery is to be made, a shippers' association, or an ocean transportation intermediary, as defined in section 3(17)(B) of the Act, that accepts responsibility for payment of all applicable charges under the NSA.''

Second, the Commission proposes to revise the final sentence of 46 CFR 531.6(c)(2) to insert the phrase ''acting as carrier'' to describe which tariff appropriately may be cross-referenced, to read thus:

> (c) Certainty of terms. The terms described in paragraph (b) of this section may not: [* * *]
>
> (2) Make reference to terms not explicitly contained in the NSA itself unless those terms are contained in a publication widely available to the public and well known within the industry. Reference may not be made to a tariff of a common carrier other than the NVOCC acting as carrier party to the NSA.

Third, for similar reasons the Commission proposes to insert the same phrase in 46 CFR 531.5 (a), as follows: ''(a) The duty under this part to file NSAs, amendments and notices, and to publish statements of essential terms, shall be upon the NVOCC acting as carrier party to the NSA.''

Finally, the Commission proposes a provision to mirror the prohibition of the Shipping Act from concluding contracts with NVOCCs who are not in compliance with the Shipping Act. 46 U.S.C. app. 1709(b)(12).

IV. Statutory Reviews and Requests for Comment

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman of the Federal Maritime Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Commission recognizes that the majority of businesses that would be affected by this rule qualify as small entities under the guidelines of the Small Business Administration. The proposed rule, however, would broaden the optional method for NVOCCs to carry cargo for their customers to be used at their discretion. The rule would pose no economic detriment to small business entities.

This regulatory action is not a ''major rule'' under 5 U.S.C. 804(2).

The collection of information requirements contained in this proposed revision to 46 CFR part 531 have been submitted to the Office of Management and Budget (''AOMB'') for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The estimated total annual burden for the estimated 635 annual respondents is 190,252 manhours. This estimate includes, as applicable, the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information, search existing data sources, gather and maintain the data needed, and complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Derek O. Scarbrough, Deputy Director/Chief Information Officer, Office of Administration, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573 or by electronic mail to cio@fmc.gov; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Maritime Commission, Washington, DC 20503. Please reference the information collection's title and OMB number in your comments. A copy of the OMB submission may be obtained by contacting Jane Gregory by telephone

at (202) 523–5800 or by electronic mail at *jgregory@fmc.gov.*

List of Subjects for 46 CFR Part 531

Exports, Non-vessel-operating common carriers, Ocean transportation intermediaries.

For the reasons set forth in the preamble, the Federal Maritime Commission proposes to amend 46 CFR part 531 as follows:

PART 531—NVOCC SERVICE ARRANGEMENTS

1. The authority citation for part 531 continues to read as follows:

Authority: 46 U.S.C. app. 1715.

2. Revise paragraph (o) of § 531.3 to read as follows:

§ 531.3 Definitions.

* * * * *

(o) *NSA shipper* means a cargo owner, the person for whose account the ocean transportation is provided, the person to whom delivery is to be made, a shippers' association, or an ocean transportation intermediary, as defined in section 3(17)(B) of the Act, that accepts responsibility for payment of all applicable charges under the NSA.

* * * * *

3. Revise paragraph (a) of § 531.5 to read as follows:

§ 531.5 Duty to file.

(a) The duty under this part to file NSAs, amendments and notices, and to publish statements of essential terms, shall be upon the NVOCC acting as carrier party to the NSA.

* * * * *

4. Revise paragraph (c)(2) and add paragraph (d)(4) to § 531.6 to read as follows:

§ 531.6 NVOCC Service Arrangements.

* * * * *

(c) * * *

(2) Make reference to terms not explicitly contained in the NSA itself unless those terms are contained in a publication widely available to the public and well known within the industry. Reference may not be made to a tariff of a common carrier other than the NVOCC acting as carrier party to the NSA.

* * * * *

(d) * * *

(4) No NVOCC may knowingly and willfully enter into an NSA with an ocean transportation intermediary that does not have a tariff and a bond, insurance, or other surety as required by sections 8 and 19 of the Act.

* * * * *

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–15641 Filed 8–5–05; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.050520136–5136–01; I.D. 040705A]

RIN 0648–AS80

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Amendment 13 and Framework Adjustment 40–A

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: The final rule implementing Amendment 13 and the interim final rule implementing Framework Adjustment (Framework) 40–A to the Northeast (NE) Multispecies Fishery Management Plan (FMP) contained several inadvertent errors and omissions. The intent of this proposed rule is to correct these inadvertent errors and omissions, clarify specific regulations to maintain consistency with and accurately reflect the intent of Amendment 13 and Framework 40–A, and seek comment on these proposed corrections and clarifications. This action is being taken by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received on or before September 7, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: *MulA13Corr@NOAA.gov*. Include in the subject line the following: ''Comments on the Proposed Rule to Correct/Modify NE Multispecies Amendment 13.''
- Federal e-Rulemaking Portal: *http:/ www.regulations.gov*.
- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the Proposed Rule to Correct/Modify NE Multispecies Amendment 13.''
- Fax: (978) 281–9135.

Copies of the Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available upon request from the Regional Administrator at the above address. Copies of the Final Supplemental Environmental Impact Statement (FSEIS) prepared for Amendment 13 and the environmental assessment (EA) prepared for Framework 40–A may be obtained from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, phone (978) 281–9141, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

Amendment 13 was developed by the New England Fishery Management Council (Council) to end overfishing and rebuild NE multispecies stocks managed under the authority of the Magnuson-Stevens Act. NMFS proposed measures to implement Amendment 13 on January 29, 2004 (69 FR 4362). The proposed rule contained a detailed description of the development of Amendment 13. NMFS published final regulations to implement the approved measures in Amendment 13 in the **Federal Register** on April 27, 2004 (69 FR 22906). The majority of the measures in the final rule became effective on May 1, 2004.

However, the final rule implementing Amendment 13 contained several inadvertent errors and inconsistencies with the intent of Amendment 13, as specified below. This action proposes to correct these errors, and clarify or modify the current regulations to maintain consistency with Amendment 13 as proposed by the Council and partially approved by the Secretary of Commerce.

Framework 40–A was developed by the Council to provide additional opportunities for NE multispecies vessels to target healthy stocks in an effort to help achieve optimum yield from the fishery and to mitigate some of the economic impacts resulting from effort reductions implemented under Amendment 13. NMFS published a proposed rule to implement Framework 40–A on September 14, 2004 (69 FR 55388). The proposed rule contained a detailed description of the development