

*Order and Further Notice of Inquiry (Report and Order)*, See *Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996*, Report and Order and Further Notice of Inquiry, WT Docket No. 96–198, FCC 99–181, 16 FCC Rcd 6417 (September 29, 1999) (*Report and Order*), that adopted regulations implementing Section 255, which requires telecommunications equipment manufacturers and service providers to ensure that their equipment and services are accessible to persons with disabilities, to the extent that it is readily achievable to do so. The regulations require, in part, that equipment manufacturers and service providers covered by Section 255 designate an agent for service of informal and formal complaints received by the Commission. See 47 CFR 6.18 and 7.18. The designation shall include a name or department designation, business address, telephone number, and, if available, TTY number, facsimile number, and Internet e-mail address.

Federal Communications Commission.

**Jay Keithley,**

*Deputy Chief, Consumer & Governmental Affairs Bureau.*

[FR Doc. 04–16607 Filed 7–20–04; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 011679–006.

*Title:* ASF/SERC Agreement.

*Parties:* American President Lines, Ltd.; ANL Singapore Pte Ltd.; APL Co. Pte Ltd.; China Shipping Container Lines, Co. Ltd.; COSCO Container Lines Co., Ltd.; Evergreen Marine Corp. (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Ltd.; Sinotrans Container Lines Co., Ltd.; Wan Hai Lines Ltd.; and Yang Ming Marine Transport Corp.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment adds ANL Singapore Pte Ltd. as a party to the agreement.

*Agreement No.:* 200563–011.

*Title:* Oakland/Trans Pacific Marine Terminal Agreement.

*Parties:* Port of Oakland and Trans Pacific Container Corporation.

*Filing Party:* Thomas D. Clark, Esq.; Assistant Port Attorney; Port of Oakland; 530 Water Street; Oakland, CA 94607.

*Synopsis:* The proposed amendment revises the assigned premises covered by the agreement.

*Agreement No.:* 201113–004.

*Title:* Oakland/SSA LLC Preferential Assignment Agreement.

*Parties:* Port of Oakland and SSA Terminals, LLC.

*Filing Party:* Thomas D. Clark, Esq.; Assistant Port Attorney; Port of Oakland; 530 Water Street; Oakland, CA 94607.

*Synopsis:* The amendment expands the assigned premises, provides for improvements, and adjusts the compensation payable under the agreement.

*Agreement No.:* 201158.

*Title:* Docking and Lease Agreement By and Between City of Portland, Maine, and Scotia Prince Cruises Limited.

*Parties:* City of Portland, Maine, and Scotia Prince Cruises Limited.

*Filing Party:* Judith H. Harris; Manager, Maritime Policy; Department of Transportation; City of Portland; 40 Commercial Street, Suite 100; Portland, Maine 04101.

*Synopsis:* This terminal lease agreement, in effect since October 3, 1986, outlines the terms and conditions under which Scotia Prince Cruises Limited may use the port facilities of the City of Portland, Maine. It also provides for an exclusive arrangement between the parties, whereby Scotia Prince agrees not to operate or participate in other passenger or passenger vehicle ferry services between other ports in New England and Nova Scotia and the City of Portland agrees not to grant to any other party the right to use the premises for any passenger or passenger vehicle ferry services without the prior written consent of Scotia Prince.

By Order of the Federal Maritime Commission.

Dated: July 16, 2004.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 04–16600 Filed 7–20–04; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier  
Ocean Transportation Intermediary  
Applicant:

Starlink Consolidation Service (New York), Inc., JFK Cargo Center Bldg. 75, Suite 230, Jamaica, NY 11430. Officers: Anne Wong Liu, Secretary, (Qualifying Individual), Patrick Chung, President.

Non-Vessel Operating Common Carrier  
and Ocean Freight Forwarder  
Transportation Intermediary  
Applicants:

Caribbean Logistic & Marketing Services, C/3 D–5 El Naranjal, Toa Baja, PR 00949, Iris V. Figueroa Colon, Sole Proprietor. Cargo Service Center, Inc., 440 McClellan Highway, East Boston, MA 02128. Officers: Kathleen G. Murphy, Vice President, (Qualifying Individual), Matthew Thoi, President.

Ocean Freight Forwarder—Ocean  
Transportation Intermediary  
Applicant:

Future Forwarding Company, 5673 Old Dixie Highway, Suite 140, Forest Park, GA 30297. Officers: Barbara L. Herring, Vice President, (Qualifying Individual), David W. Holland, Director/Chairman.

Dated: July 16, 2004.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 04–16601 Filed 7–20–04; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

**AGENCY:** Federal Trade Commission (“FTC” or “Commission”).

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA"). The FTC is seeking public comments on its proposal to extend through September 30, 2007 the current PRA clearance for information collection requirements contained in its Appliance Labeling Rule ("Rule"), promulgated pursuant to the Energy Policy and Conservation Act of 1975 ("EPCA"). The clearance expires on September 30, 2004.

**DATES:** Comments must be submitted on or before September 20, 2004.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to "Appliance Labeling Rule: Paperwork comment, R611004" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-159 (Annex U), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled "Confidential."<sup>1</sup> The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at [www.ftc.gov](http://www.ftc.gov). As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy

Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collection requirements should be addressed to Hampton Newsome, Attorney, Bureau of Consumer Protection, Division of Enforcement, Room 4616, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580 (202-326-2889).

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the Rule (OMB Control Number 3084-0069).

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The Appliance Labeling Rule (16 CFR Part 305) establishes testing, reporting, recordkeeping, and labeling requirements for manufacturers of major household appliances (refrigerators, refrigerator-freezers, freezers, water heaters, clothes washers, dishwashers, room air conditioners, furnaces, central air conditioners, heat pumps, pool heaters, certain lighting products, and certain plumbing products). The requirements relate specifically to the disclosure of information relating to energy consumption and water usage. The Rule's testing and disclosure requirements enable consumers purchasing appliances to compare the energy use or efficiency of competing

models. In addition, EPCA and the Rule require manufacturers to submit relevant data to the Commission regarding energy or water usage in connection with the products they manufacture. The Commission uses this data to compile ranges of comparability for covered appliances for publication in the **Federal Register**. These submissions, along with required records for testing data, may also be used in enforcement actions involving alleged misstatements on labels or in advertisements.

### Burden Statement

*Estimated annual hours burden:*  
445,000 hours.

The estimated hours burden imposed by Section 324 of EPCA and the Commission's Rule include burdens for testing (338,292 hours); reporting (1,324 hours); recordkeeping (767 hours); labeling (101,333 hours); and retail catalog disclosures (2,550 hours). The total burden for these activities is 445,000 hours (rounded to the nearest thousand), which is the same as staff's previous estimate in its 2001 submission to OMB.

The following estimates of the time needed to comply with the requirements of the Rule are based on census data, Department of Energy figures and estimates, general knowledge of manufacturing practices, and industry input and figures. Because compliance burden falls almost entirely on manufacturers and importers (with a *de minimis* burden for retailers), burden estimates are calculated on the basis of the number of domestic manufacturers and/or the number of units shipped domestically in the various product categories.

### A. Testing

Under the Rule, manufacturers of covered products must test each basic model they produce to determine energy usage (or, in the case of plumbing fixtures, water consumption). The burden imposed by this requirement is determined by the number of basic models produced, the average number of units tested per model, and the time required to conduct the applicable test.

Manufacturers need not subject each basic model to testing annually; they must retest only if the product design changes in such a way as to affect energy consumption. The staff estimates that the frequency with which models are tested every year ranges roughly between 10% and 50% and that the actual percentage of basic models tested varies by appliance category. In addition, it is likely that only a small portion of the tests conducted is

<sup>1</sup> Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

attributable to the Rule's requirements. Given the lack of specific data on this point, staff has conservatively assumed that all of the tests conducted are attributable to the Rule's requirements

and will use the high end of the range noted above. Accordingly, the burden estimates are based on the assumption that 50% of all basic models are tested annually. Thus, the estimated testing

burden for the various categories of products covered by the Rule is as follows <sup>2</sup>.

| Category of manufacturer                                | Number of basic models | Percentage of models tested (FTC required) | Avg. number of units tested per model | Hours per unit tested | Total annual testing burden hours |
|---------------------------------------------------------|------------------------|--------------------------------------------|---------------------------------------|-----------------------|-----------------------------------|
| Refrigerators refrigerator-freezers, and freezers ..... | 3,075                  | 50                                         | 2                                     | 4                     | 12,300                            |
| Dishwashers .....                                       | 393                    | 50                                         | 2                                     | 1                     | 393                               |
| Clothes washers .....                                   | 500                    | 50                                         | 2                                     | 2                     | 1,000                             |
| Water heaters .....                                     | 650                    | 50                                         | 2                                     | 24                    | 15,600                            |
| Room air conditioners .....                             | 1,092                  | 50                                         | 2                                     | 8                     | 8,736                             |
| Furnaces .....                                          | 1,900                  | 50                                         | 2                                     | 8                     | 15,200                            |
| Central A/C .....                                       | 1,270                  | 50                                         | 2                                     | 24                    | 30,480                            |
| Heat pumps .....                                        | 903                    | 50                                         | 2                                     | 72                    | 65,016                            |
| Pool heaters .....                                      | 250                    | 50                                         | 2                                     | 12                    | 3,000                             |
| Fluorescent lamp ballasts .....                         | 975                    | 50                                         | 4                                     | 3                     | 5,850                             |
| Lamp products .....                                     | 2,100                  | 50                                         | 12                                    | 14                    | 176,400                           |
| Plumbing fittings .....                                 | 1,700                  | 50                                         | 2                                     | 2                     | 3,400                             |
| Plumbing fixtures .....                                 | 22,000                 | 50                                         | 1                                     | .0833                 | 917                               |
|                                                         |                        |                                            |                                       |                       | 338,292                           |

### B. Reporting

Reporting burden estimates are based on information from industry representatives. Manufacturers of some products, such as appliances and HVAC equipment (furnaces, central air conditioners, and heat pumps), indicate that, for them, the reporting burden is best measured by the estimated time required to report on each model manufactured, while others, such as makers of fluorescent lamp ballasts and lamp products, state that an estimated number of annual burden hours by manufacturer is a more meaningful way

to measure. The figures below reflect these different methodologies as well as the varied burden hour estimates provided by manufacturers of the different product categories that use the latter methodology.

#### Appliances, HVAC Equipment, and Pool Heaters

Staff estimates that the average reporting burden for these manufacturers is approximately two minutes per basic model. Based on this estimate, multiplied by a total of 10,033 basic models of these products, the annual reporting burden for the

appliance, HVAC equipment, and pool heater industry is an estimated 334 hours (2 minutes  $\times$  10,033 models  $\div$  60 minutes per hour).

#### Fluorescent Lamp Ballasts, Lamp Products, and Plumbing Products

The total annual reporting burden for manufacturers of fluorescent lamp ballasts, lamp products, and plumbing products is based on the estimated average annual burden for each category of manufacturers, multiplied by the number of manufacturers in each respective category, as shown below:

| Category of manufacturer        | Annual burden hours per manufacturer | Number of manufacturers | Total annual reporting burden hours |
|---------------------------------|--------------------------------------|-------------------------|-------------------------------------|
| Fluorescent lamp ballasts ..... | 6                                    | 20                      | 120                                 |
| Lamp products .....             | 15                                   | 50                      | 750                                 |
| Plumbing products .....         | 1                                    | 120                     | 120                                 |

### Total Reporting Burden Hours

The total reporting burden for industries covered by the Rule is 1,324 hours annually (334 + 120 + 750 + 120).

### C. Recordkeeping

EPCA and the Appliance Labeling Rule require manufacturers to keep records of the test data generated in performing the tests to derive information included on labels and required by the Rule. As with reporting,

burden is calculated by number of models for appliances, HVAC equipment, and pool heaters, and by number of manufacturers for fluorescent lamp ballasts, lamp products, and plumbing products.

#### Appliances, HVAC Equipment, and Pool Heaters

The recordkeeping burden for manufacturers of appliances, HVAC equipment, and pool heaters varies

directly with the number of tests performed. Staff estimates total recordkeeping burden to be approximately 167 hours for these manufacturers, based on an estimated average of one minute per record stored (whether in electronic or paper format), multiplied by 10,033 tests performed annually (1 minute  $\times$  10,033 basic models  $\div$  60 minutes per hour).<sup>3</sup>

<sup>2</sup> The following numbers reflect estimates of the basic models in the market. The actual numbers will vary from year to year. Since 2001, the Commission has not identified any changes in the number of basic models that would yield a significant increase in the total burden hours for

testing. The average number of units tested per model and the hours per unit tested are based on information from industry sources.

<sup>3</sup> The amount of annual tests performed is derived by multiplying the number of basic models within

the relevant product categories by the average number of units tested per model within each category (the underlying information may be drawn from the table in Section A.).

## Fluorescent Lamp Ballasts, Lamp Products, and Plumbing Products

The total annual recordkeeping burden for manufacturers of fluorescent

lamp ballasts, lamp products, and plumbing products is based on the estimated average annual burden for each category of manufacturers (derived

from industry sources), multiplied by the number of manufacturers in each respective category, as shown below:

| Category of manufacturer        | Annual burden hours per manufacturer | Number of manufacturers | Total annual recordkeeping burden hours |
|---------------------------------|--------------------------------------|-------------------------|-----------------------------------------|
| Fluorescent lamp ballasts ..... | 2                                    | 20                      | 40                                      |
| Lamp products .....             | 10                                   | 50                      | 500                                     |
| Plumbing products .....         | .5                                   | 120                     | 60                                      |

### Total Recordkeeping Burden Hours

The total recordkeeping burden for industries covered by the Rule is 767 hours annually (167+40+500+60).

#### D. Labeling

EPCA and the Rule require that manufacturers of covered products provide certain information to consumers, through labels, fact sheets, or permanent markings on the products. The burden imposed by this requirement consists of (1) the time needed to prepare the information to be provided, and (2) the time needed to provide it, in whatever form, with the products. The applicable burden for each category of products is described below:

#### Appliances, HVAC Equipment, and Pool Heaters

EPCA and the Rule specify the content, format, and specifications for the required labels, so manufacturers need only add the energy consumption figures derived from testing. In addition, most larger companies use automation to generate labels, and the labels do not change from year to year. Given these considerations, staff estimate that the time to prepare labels for appliances, HVAC equipment, and pool heaters is no more than four minutes per basic model. Thus, for appliances, HVAC equipment, and pool heaters, the approximate annual drafting burden involved in preparing labels is 669 hours per year [10,033 (basic models) × 4 minutes (drafting time per basic model) ÷ 60 (minutes per hour)].

Industry representatives and trade associations have estimated that it takes between 4 and 8 seconds to affix each label to each product. Based on an average of 6 seconds per unit, the annual burden for affixing labels to appliances, HVAC equipment, and pool heaters is 83,522 hours [6 (seconds) × 50,113,098 (the number of total products shipped) ÷ 3,600 (seconds per hour)].

The Rule also requires that HVAC equipment manufacturers disclose energy usage information on a separate

fact sheet or in an approved industry-prepared directory of products. Staff has estimated the preparation of these fact sheets requires approximately 30 minutes per basic model. Manufacturers producing at least 95 percent of the affected equipment, however, are members of trade associations<sup>4</sup> that produce approved directories (in connection with their certification programs independent of the Rule) that satisfy the fact sheet requirement. Thus, the drafting burden for fact sheets for HVAC equipment is approximately 102 hours annually [4,073 (basic models) × .5 hours × .05 (proportion of equipment for which fact sheets are required)].

The Rule allows manufacturers to prepare a directory containing fact sheet information for each retail establishment as long as there is a fact sheet for each basic model sold. Assuming that six HVAC manufacturers (*i.e.*, approximately 5% of HVAC manufacturers), produce fact sheets instead of having required information shown in industry directories, and each spends approximately 16 hours per year distributing the fact sheets to retailers and in response to occasional consumer requests, the total time attributable to this activity would also be approximately 96 hours.

The total annual labeling burden for appliances, HVAC equipment, and pool heaters is 669 hours for preparation plus 83,522 hours for affixing, or 84,191 hours. The total annual fact sheet burden is 102 hours for preparation and 96 hours for distribution, or 198 hours. The total annual burden for labels and fact sheets for the appliance, HVAC, and pool heater industries is, therefore, estimated to be 84,389 hours (84,191 + 198).

#### Fluorescent Lamp Ballasts

The statute and the Rule require that labels for fluorescent lamp ballasts contain an "E" within a circle. Since manufacturers label these ballasts in the

ordinary course of business, the only impact of the Rule is to require manufactures to reformat their labels to include the "E" symbol. Thus, the burden imposed by the Rule for labeling fluorescent lamp ballasts is minimal.

#### Lamp Products

The burden attributable to labeling lamp products is also minimal, for similar reasons. The Rule requires certain disclosures on packaging for lamp products. Since manufacturers were already disclosing the substantive information required under the Rule prior to its implementation, the practical effect of the Rule was to require that manufactures redesign packaging materials to ensure they include the disclosures in the manner and form prescribed by the Rule. Because this effort is now complete, there is no ongoing labeling burden imposed by the Rule for lamp products.

#### Plumbing Products

The statute and the Rule require that manufacturers disclose the water flow rate for plumbing fixtures. Manufacturers may accomplish this disclosure by attaching a label to the product, through permanent markings imprinted on the product as part of the manufacturing process, or by including the required information on packaging material for the product. While some methods might impose little or no additional incremental time burden and cost on the manufacturer, other methods (such as affixing labels) could. Thus, staff estimate an overall blended average burden associated with this disclosure requirement of one second per unit sold. Staff also estimate that there are approximately 9,000,000 covered fixtures and 52,000,000 fittings sold annually in the country. Therefore, the estimated annual burden to label plumbing products is 16,944 hours [61,000,000 (units) × 1 (seconds) ÷ 3,600 (seconds per hour)].

### Total Burden for Labeling

The total labeling burden for all industries covered by the Rule is

<sup>4</sup> These associations include the Air-Conditioning and Refrigeration Institute, the Gas Appliance Manufacturers Association, and the Hydronics Institute.

101,333 hours (84,389 + 16,944) annually.

#### *E. Retail Sales Catalogs Disclosures*

The Rule requires that sellers offering covered products through retail sales catalogs (*i.e.*, those publications from which a consumer can actually order merchandise) disclose in the catalog energy (or water) consumption for each covered product. Because this information is supplied by the product manufacturers, the burden on the retailer consists of incorporating the information into the catalog presentation.

In the past, staff has estimated that there are 100 sellers who offer covered products through paper retail catalogs. While the Rule initially imposed a burden on catalog sellers by requiring that they draft disclosures and incorporate them into the layouts of their catalogs, paper catalog sellers now have substantial experience with the Rule and its requirements. Energy and water consumption information has obvious relevance to consumers, so sellers are likely to disclose much of the required information with or without the Rule. Accordingly, given the small number of catalog sellers, their experience with incorporating energy

and water consumption data into their catalogs, and the likelihood that many of the required disclosures would be made in the ordinary course of business, staff believe that any incremental burden the Rule imposes on these paper catalog sellers would be minimal.

Staff estimates that there are an additional 150 new online sellers of covered products who are subject to the Rule's catalog disclosure requirements. Many of these sellers may not have the experience the paper catalog sellers have in incorporating energy and water consumption data into their catalogs. Staff estimates that these online sellers each require approximately 17 hours per year to incorporate the data into their online catalogs. This estimate is based on the assumption that entry of the required information takes 1 minute per covered product and an assumption that the average online catalog contains approximately 1,000 covered products (based on a sampling of websites of affected retailers). Given that there is a great variety among sellers in the volume of products they offer online, it is very difficult to estimate such volume with precision. In addition, this analysis assumes that information for all 1,000 products is entered into the catalog.

This is a conservative assumption because the number of incremental additions to the catalog from year to year is likely to be much lower after initial start-up efforts have been completed. The total catalog disclosure burden for all industries covered by the Rule is 2,550 hours (150 sellers  $\times$  17 hours annually).

#### *Estimated annual cost burden:*

(\$7,906,857 in labor costs and \$3,519,422 in capital or other non-labor costs).

**Labor Costs:** Staff derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. In calculating the cost figures, staff assumes that test procedures are conducted by skilled technical personnel at an hourly rate of \$20.00, and that recordkeeping and reporting, and labeling, marking, and preparation of fact sheets, generally are performed by clerical personnel at an hourly rate of \$10.75.

Based on the above estimates and assumptions, the total annual labor costs for the five different categories of burden under the Rule, applied to all the products covered by it, is \$7,907,000 (rounded to the nearest thousand), derived as follows:

| Activity                                            | Burden hours per year | Wage category hourly rate    | Total annual labor cost |
|-----------------------------------------------------|-----------------------|------------------------------|-------------------------|
| Testing .....                                       | 338,292               | Skilled technical/\$20 ..... | \$6,765,840             |
| Reporting .....                                     | 1,324                 | Clerical/\$10.75 .....       | 14,233                  |
| Recordkeeping .....                                 | 767                   | Clerical/\$10.75 .....       | 8,245                   |
| Labeling, marking, and fact sheet preparation ..... | 101,333               | Clerical/\$10.75 .....       | 1,089,330               |
| Catalog disclosures .....                           | 2,550                 | Clerical/\$10.75 .....       | 27,413                  |
|                                                     |                       |                              | 7,905,061               |

**Capital or Other Non-Labor Costs:** \$3,519,000 (rounded), determined as follows:

Staff has examined the five distinct burdens imposed by EPCA through the Rule—testing, reporting, recordkeeping, labeling, and retail catalog disclosures—as they affect the 11 groups of products that the Rule covers. Staff has concluded that there are no current start-up costs associated with the Rule. Manufacturers have in place the capital equipment necessary—especially equipment to measure energy and/or water usage—to comply with the Rule.

Under this analysis, testing, recordkeeping, and retail catalog disclosures are activities that incur no capital or other non-labor costs. As mentioned above, testing has been performed in these industries in the normal course of business for many years as has the associated

recordkeeping. The same is true regarding compliance applicable to the requirements for paper catalogs. Manufacturers and retailers who make required disclosures in catalogs already are producing catalogs in the ordinary course of their businesses; accordingly, capital cost associated with such disclosure would be minimal or nil. Staff recognizes that there may be initial costs associated with posting online disclosure, and it invites further comment to reasonably quantify such costs.

Manufacturers that submit required reports to the Commission directly (rather than through trade associations) incur some nominal costs for paper and postage. Staff estimates that these costs do not exceed \$2,500. Manufacturers must also incur the cost of procuring labels and fact sheets used in compliance with the Rule. Based on

estimates of 50,113,098 units shipped and 128,650 fact sheets prepared,<sup>5</sup> at an average cost of seven cents for each

<sup>5</sup> The units shipped total is based on combined actual or estimated industry figures across all of the product categories, except for fluorescent lamp ballasts, lamp products, and plumbing products. Staff has determined that, for those product categories, there are little or no costs associated with the labeling requirements. The fact sheet estimation is based on the previously noted assumption that five percent of HVAC manufacturers produce fact sheets on their own. Based on total HVAC units shipped (10,291,965), five percent amounts to 514,598 HVAC units. Because manufacturers generally list more than one unit on a fact sheet, staff has estimated that manufacturers independently preparing them will use one sheet for every four of these 514,598 units. Thus, staff estimates that HVAC manufacturers produce approximately 128,650 fact sheets.

label or fact sheet, the total (rounded) labeling cost is \$3,516,922.

**William E. Kovacic,**  
General Counsel.

[FR Doc. 04-16483 Filed 7-20-04; 8:45 am]

BILLING CODE 6750-01-P

## FEDERAL TRADE COMMISSION

[File No. 042 3002]

### Jonathan Barash; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before July 30, 2004.

**ADDRESSES:** Comments should refer to “Jonathan Barash, File No. 042 3002,” to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following email box: [consentagreement@ftc.gov](mailto:consentagreement@ftc.gov).

#### FOR FURTHER INFORMATION CONTACT:

Richard Cleland or Janet Evans, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-3088 or (202) 326-2125.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission’s Rules of Practice, 16 CFR

2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 16, 2004), on the World Wide Web, at “<http://www.ftc.gov/os/adipro/d9317/index.htm>.” A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before July 30, 2004. Comments should refer to “Jonathan Barash, File No. 042 3002,” to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled “Confidential.”<sup>1</sup> The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: [consentagreement@ftc.gov](mailto:consentagreement@ftc.gov).

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be

<sup>1</sup> Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at [www.ftc.gov](http://www.ftc.gov). As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Jonathan Barash (“proposed respondent”). Proposed respondent collaborated with others in the marketing of a purported children’s weight loss product called “Pedia Loss,” and a purported female libido enhancer called “Fabulously Feminine.”

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the agreement in light of any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement’s proposed order.

The Commission’s complaint charges that advertising for Pedia Loss made unsubstantiated claims that (1) Pedia Loss causes weight loss in overweight or obese children ages 6 and over, and (2) when taken by overweight or obese children ages 6 and over, Pedia Loss causes weight loss by suppressing appetite, increasing fat burning, and slowing carbohydrate absorption. The Commission’s complaint also charges that advertising for Fabulously Feminine falsely represented that clinical testing proves that Fabulously Feminine enhances a woman’s satisfaction with her sex life and level of sexual desire. In addition, the complaint challenges the unsubstantiated claim that Fabulously Feminine will increase a woman’s libido, sexual desire, and sexual satisfaction by stimulating blood flow and increasing sensitivity.

Part I A of the proposed order pertains to Pedia Loss. It requires that proposed respondent possess and rely on competent and reliable scientific evidence to support claims that Pedia Loss or any other covered product or service causes weight loss, suppresses