

**NARRATIVE SUPPORTING STATEMENT
FOR 46 CFR 532 – NVOCC NEGOTIATED RATE ARRANGEMENTS (NRAs)**

A. Justification

1. Section 16 of the Shipping Act of 1984, 46 U.S.C. § 40103, authorizes the Federal Maritime Commission (“Commission”) to exempt by rule “any class of agreements between persons subject to this Act or any specified activity of those persons from any requirement of this Act if it finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission may attach conditions to any exemption and may, by order, revoke any exemption.” The Commission is adding 46 CFR 532 to exempt non-vessel-operating common carriers (NVOCCs) from the otherwise applicable statutory and regulatory requirements of the Shipping Act and the Commission’s tariff regulations to file rates, for negotiated rate arrangements (NRAs) they reach with their shippers. The exemption is conditioned upon the NVOCC including a prominent notice invoking the exemption in its electronically published rules tariff or by indicating its intention to do so on its Form FMC-1 on file with the Commission. In addition, NVOCCs must maintain all original NRAs and associated records including written communications for 5 years in a format easily produced to the Commission and must produce those records promptly upon request from the Commission.

2. The Commission will use the information filed by NVOCCs on its Form FMC-1 or in its rules tariff to determine whether an NVOCC has invoked the exemption for a particular shipment or shipments. The Commission will use the information required to be maintained by NVOCCs for monitoring and investigatory purposes, and, in its proceedings, to adjudicate related issues raised by private parties.

3. The regulation allows an NVOCC to invoke the exemption by indicating its intention to do so through the agency’s FMC-1, which is filed electronically. Additionally, the regulation allows an NVOCC to invoke the exemption by adding a prominent notice to its electronically published rules tariff.

4. The only source of accurate information as to whether a particular shipment is exempt from the otherwise applicable statutory and regulatory requirements of the Shipping Act and the Commission’s tariff regulations to file rates is the NVOCC. An NVOCC invokes the exemption by either including a prominent notice invoking the exemption in its electronically published rules tariff or by indicating its intention to do so on its Form FMC-1 on file with the Commission and by entering into an NRA with their shipper(s). Similarly, the only source of accurate information for NRAs and associated records is the NVOCC party to the NRA. If these records were not available, the Commission would not have the information needed to perform its statutory responsibilities, which include the protection of shippers.

5. Because conformity and application of this regulation is at the option of the respondent, this rule does not appear to have significant impact on a substantial number of small businesses or entities. Although the respondents themselves may be primarily small businesses, as that term is defined under the Regulatory Flexibility Act, 5 U.S.C. § 605(b), because the filing is optional, there will be no significant impact on them as those who do not wish to avail themselves of the exemption will not be subject to any new filing or information requirements. As described above, the Commission is using electronic filing to allow NVOCCs to indicate their intention to invoke the exemption for a particular shipment or shipments.

6. NVOCCs invoke the exemption by either including a prominent notice invoking the exemption in its electronically published rules tariff or by indicating its intention to do so on its Form FMC-1 on file with the Commission and by entering into NRAs with their shippers. NVOCCs must maintain all original NRAs and associated records including written communications for 5 years in a format easily produced to the Commission. The Commission's exemption authority, which includes the authority to impose conditions on the availability of exemptions as explained above, requires an NVOCC to provide notice of its intention to invoke the exemption and further requires that NVOCCs maintain records for a period of 5 years. If such records were not produced as requested within the time period specified, the Commission would not have the information it requires to perform its statutory responsibilities, which include the protection of shippers.

7. The five-year recordkeeping requirement is consistent with the statute of limitation provisions in section 13(f) of the Shipping Act of 1984, 46 U.S.C. § 41109(e). The Commission will protect the confidentiality of information submitted to it to the full extent permitted by law. The Commission has taken steps to ensure the security of its electronic filing system.

8. In accordance with the requirements of the Administrative Procedure Act, 5 U.S.C. § 553, this notice of proposed rulemaking was published in the Federal Register on _____, 2010, ___ F.R. _____, for public comments. The extent of such comments will be addressed in the preamble to the final rule.

9. Not applicable – The Commission does not provide any payments or gifts to respondents.

10. None of the information contained in the NVOCC's electronically published tariff or on the Form FMC-1 filed with the Commission is confidential. The purpose of the Commission's requirements is to inform the public of the NVOCC's intentions with regard to invocation of the exemption. Any information requested by the Commission from the NVOCC concerning an NRA or any related documents is subject to the limitations on release contained in the Freedom of Information Act and the Privacy Act. The Commission will protect the confidentiality of information provided to the full extent permitted by law.

11. Not applicable -- There are no questions of a sensitive nature.

12. The estimated reporting respondent universe (licensed NVOCCs) is 3242. The total estimated hour burden for this information collection is 15,237 person-hours, as set forth below:

Requirements	Annual Respondents	Annual Instances	Average Person-hours Per Response	Total Person-hours
Filing of FMC-1 Invoking Exemption	3242 ¹	3242	.2	648
Modification of Tariff Invoking Exemption	3242	3242	.5	1621
Recordkeeping/Auditing Requirements	3242	3242	4	12968
TOTALS		9726		15237

¹The proposed rule states the Commission will consider comments on whether the exemption should be extended to registered NVOCCs. As currently proposed, only licensed NVOCCs may invoke the exemption.

The annual cost to respondents is estimated at \$865,343. The cost has been calculated in consideration of the time to gather information and furnish it to the Commission, as well as comply with the requirements of 46 CFR 532. It also includes clerical time as well as overhead and operational expenses.

13. There are no capital or start-up costs associated with this regulation, nor are there any operational, maintenance, or purchase of service components.

14. Total estimated annual cost to the Federal Government, including overhead and operational expenses, for this rule is 225 person-hours, at an estimated cost of \$16,641.

15. Not applicable – this is a new rule.

16. Not applicable – no information will be published.

17. Not applicable – OMB information will be displayed in the final rule.

18. Not applicable – there are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

This collection of information does not employ statistical methods.

