

**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.” On May 7, 2010, the Commission issued a notice of proposed rulemaking, Commission Docket No. 10-03, seeking comments on a proposed 46 CFR Part 532, which contained the rules under which licensed NVOCCs who entered into negotiated rate arrangements (NRAs) would be exempt from the rate publication requirements of the Shipping Act. [75 Fed. Reg. 25151]. After consideration of the comments received in response to the NPR, on March 2, 2011, the Commission issued a final rule, which became effective April 18, 2011, promulgating 46 C.F.R. Part 532. [76 Fed. Reg. 11357]. The exemption was 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. On April 5, 2011, the Commission issued a correction to its final rule, effective April 18, 2011, eliminating the requirement that NVOCCs indicate their intention to move cargo under negotiated rate arrangements on their Form FMC-1 on file with the Commission. On December 20, 2011, the Commission issued a Notice of Inquiry or NOI, Commission Docket 11-22, seeking comments on ways to make NRAs more useful. [76 Fed. Reg. 80866]. Some of the more specific suggestions included eliminating the requirement for the shipper’s title and address in their written assent to rates; eliminating the requirement that the bill of lading include a notice that a shipment is moving pursuant to an NRA; and eliminating the requirement to retain all associated records and written communications in addition to the written NRA. On May 16, 2012, the Commission determined to issue a direct final rule adopting those comments and removing some of the collection of information requirements contained in Part 532.

2. The Commission uses the information filed by NVOCCs in its rules tariff to determine whether an NVOCC has invoked the exemption for a particular shipment or shipments. Prior to the effective date of the final rule on April 18, 2011, the Commission corrected its final rule and eliminated the requirement that NVOCCs indicate their intention to invoke the exemption on its Form FMC-1. The Commission has also determined to modify other collection of information requirements: specifically, the requirement for the shipper’s title and address in their written assent to rates; the requirement that the bill of lading include a notice that a shipment is moving pursuant to an NRA; and the requirement to retain all associated records and written communications in addition to the written NRA. The Commission has used and will continue to

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 continues to allow 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 including a prominent notice invoking the exemption in its electronically published rules tariff and entering into an NRA with their shipper(s). Similarly, the only source of accurate information for NRAs 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.

6. NVOCCs invoke the exemption by including a prominent notice invoking the exemption in its electronically published rules tariff and by entering into NRAs with their shippers. NVOCCs must maintain all original NRAs 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 direct final rule was published in the Federal Register on _____, 2012, ____ F.R. _____, for public comments. Unless significant adverse comments are received by the

Commission by _____, the rule will become effective on _____. Should the Commission receive significant adverse comment, it will withdraw the 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 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 3,548. The total estimated hour burden for this information collection is 4,435 person-hours, as set forth below:

Requirements	Annual Respondents	Annual Instances	Average Person-hours Per Response	Total Person-hours
Modification of Tariff Invoking Exemption	3548	465	.25	887
Recordkeeping/Auditing Requirements	3548	465	1	3548
TOTALS		930		4435

The annual cost to respondents is estimated at \$ 340,921. 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 71.25 person-hours, at an estimated cost of \$6,074.

The annual salary calculations were formulated using the Federal Government’s January 2012 salary table (overhead of \$20.10 per hour and benefits of 24.23% per year were added to the basic salary).

The formula used was: annual salary + (annual salary x benefits rate) = adjusted annual salary/2,080 + overhead = adjusted hourly salary

The adjusted hourly salary of each employee is then multiplied by the number of hours annually that each employee spends on the information collection (see below chart). Once all of the calculations are done, the total number of person hours for the government is 71.25, and the total federal cost to the government is \$6,074.

Employee	Hourly Salary	Number of Hours	Total
Office Chief	\$87.13	56.25	\$4,901
Transportation Specialist	\$78.23	15	\$1,173
TOTALS		71.25	\$ 6,074

15. The Commission is removing several recordkeeping requirements associated with the use of negotiated rate arrangements including: the requirement that NVOCCs indicate their intention to move cargo under NRAs on their Form FMC-1 on file with the Commission; the requirement that the bill of lading include a notice that a shipment is moving pursuant to an NRA; and the requirement that an NVOCC retain all associated records and written communications pertaining to an NRA. The number of NVOCCs eligible to take advantage of the exemption and use negotiated rate arrangements has increased since the Commission originally issued its rulemaking establishing negotiated rate arrangements.

ICR Summary of Burden:

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses	930	0	-9,408*	612**	0	9,726
Annual Time Burden (Hr)	4,435	0	-648*	-10,154***	0	15,237
Annual Cost Burden (\$)	0	0	0	0	0	0

* These figures are the result of removing the requirement that NVOCCs amend Form FMC-1.

** This figure is the result of an adjustment to the estimated number of responses for the Modification of Tariff Invoking Exemption and Recordkeeping/Auditing Requirements ICs.

***This figure is a result of an adjustment to the estimated burden hours for the Modification of Tariff Invoking Exemption and Recordkeeping/Auditing Requirements ICs.

16. Not applicable – no information will be published.
17. Not applicable – OMB information is displayed in the direct 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.