

**NARRATIVE SUPPORTING STATEMENT  
FOR 46 CFR part 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 order or regulation “any class of agreements between persons subject to this [Act] or any specified activity of those persons from any requirement of this [Act] if the Commission 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 an exemption. On March 2, 2011, the Commission published a final rule promulgating 46 CFR part 532, Docket No. 10-03, Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements, which exempted licensed non-vessel-operating common carriers (NVOCCs) that enter into negotiated rate arrangements (NRAs) from the tariff rate publication requirements of the Shipping Act of 1984 and certain provisions and requirements of the Commission’s regulations. 76 FR 11351 (Mar. 2, 2011). The exemption was conditioned upon the licensed NVOCC including a prominent notice invoking the exemption in its electronically published rules tariff and indicating their intention to the Commission. In addition, licensed 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.

The Commission now proposes to extend the tariff rate publication exemption contained in 46 CFR part 532 to foreign-based unlicensed NVOCCs. Currently, there are approximately 1,227 foreign-based unlicensed NVOCCs. Under the proposed rule, these foreign-based unlicensed NVOCCs that enter into NRAs will be subject to the same requirement that they include a prominent notice invoking the exemption in its electronically published rules tariff and indicate their intention to the Commission. In addition, foreign-based unlicensed 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 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. 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 licensed NVOCCs, and proposes to allow foreign-based unlicensed NVOCCs, 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. § 601, 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, a Notice of Proposed Rulemaking (NPRM) was published in the Federal Register for public comment. 78 FR 13011 (February 26, 2013). The Commission received six comments, four of which support the NPRM. One comment objecting the NPRM was based upon misunderstanding of the Shipping Act and the Commission's regulations. The Commission will explain in the Final Rule why the objection is misinformed. Another comment suggested an alternative to renewal of foreign-based unlicensed NVOCCs. The Commission will address in the Final Rule the commenter's concerns by informing that the Commission is preparing to automate the registration and renewal procedure to reduce burdens to such NVOCCs.

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 and foreign-based unlicensed NVOCCs) is 4,775. The total estimated hour burden for this information collection is 5,970 person-hours, as set forth below:

<b>Requirements</b>	<b>Annual Respondents</b>	<b>Annual Instances</b>	<b>Average Person-hours Per Response</b>	<b>Total Person-hours</b>
Modification of Tariff Invoking Exemption	4775	626	.25	1194.75
Recordkeeping/Auditing Requirements	4775	626	1	4775
<b>TOTALS</b>		<b>1,252</b>		<b>5969.75</b>

The annual cost to respondents is estimated at \$422,536.45. 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 part 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. This estimated cost was derived as follows:

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

The formula used was: annual salary x (annual salary x benefits rate) = adjusted annual salary/2,080 + overhead of \$20.10 per hour and benefits of 24.23% per year were added to the basic 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.

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

15. The burden estimate for this collection has increased since it was last submitted. The Commission proposes to extend the tariff publication exemption contained in 46 CFR part 532 to foreign-based unlicensed NVOCCs, the number of which is currently approximately 1,227. Accordingly, NVOCCs eligible to take advantage of the exemption and use negotiated rate arrangements will be increased by 1,227 since the Commission issued its last rulemaking amending part 532. This action increased the burden reflected on the current OMB inventory of 4,435 person-hours to 5,970 person-hours.

16. Not applicable - no information will be published.

17. Not applicable - OMB information is displayed in the Commission’s rule, 46 C.F.R. part 532.

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.