

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

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the information collection.

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 extended the tariff rate publication exemption contained in 46 CFR part 532 to foreign-based unlicensed NVOCCs as of July 19, 2013 and established a registration requirement as well. Therefore, we refer to those companies as registered NVOCCs, rather than by their former status as unlicensed NVOCCs. The foreign-based registered NVOCCs that enter into NRAs are subject to the same requirement as licensed NVOCCs to include a prominent notice invoking the exemption in its electronically published rules tariff and provide electronic access to its rules tariff free of charge. In addition, foreign-based registered 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. This requirement exists for licensed NVOCCs as well. Currently, there are approximately 1,405 foreign-based registered NVOCCs.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

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. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The regulation continues to allow licensed NVOCCs and foreign-based registered NVOCCs, to invoke the exemption by adding a prominent notice to its electronically published rules tariff.

4. Describe efforts to identify duplication.

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. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

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. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

NVOCCs invoke the exemption by including a prominent notice invoking the exemption in their electronically published rules tariffs 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. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines. (a) requiring respondents to report information to the agency more often than quarterly; (b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; (c) requiring respondents to submit more than an original and two copies of any document; (d) requiring respondents to retain records, other than health, medical government contract, grant-in-aid, or tax records, for more than three years; (e) in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study; (f) requiring the use of statistical data classification that has not been reviewed and approved by OMB; (g) that includes a pledge of confidentiality that is not supported by authority established in statute of regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; (h) requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

The five-year recordkeeping requirement is consistent with the statute of limitations provisions in section 13(f) of the Shipping Act of 1984, 46 U.S.C. § 41109(e). The Commission does not make any pledge of confidentiality with respect to any information or documents submitted to the Commission in response to this collection. The Commission will, however, seek to protect such information from disclosure to the fullest extent permitted by law.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5CFR 320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken in response to the comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside FMC to obtain their views on the availability of

data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or report.

The 60-day Federal Register notice regarding this extension was published on April 27, 2016, at 81 FR 24814. Respondents had 60 days to respond with their views regarding collection of information. No comments were received.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

Not applicable - the Commission does not provide any payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The Commission does not guarantee the confidentiality of any information or documents submitted to the Commission in response to this collection. None of the information contained in the NVOCC's electronically published tariff is intended to be 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. Although the Commission provides no assurance of confidentiality with respect to information submitted by an NVOCC concerning an NRA or any related documents, the Commission will seek to protect such information and documents from disclosure to the fullest extent permitted by law.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why FMC considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

Not applicable - there are no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, FMC should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample fewer than 10 potential respondents is desirable.

The estimated reporting respondent universe (licensed NVOCCs and foreign-based registered NVOCCs) is 5,272. The total estimated hour burden for this information collection is 1,365 person-hours, as set forth below:

| Requirements | Annual Respondents¹ | Annual Instances² | Average Person-hours Per Response | Total Person-hours |
|--|---------------------------------------|-------------------------------------|--|---------------------------|
| Modification of Tariff Invoking Exemption – using a combination of tariff rates and NRAs | 5272 | 247 | .25 | 62 |
| Modification of Tariff Invoking Exemption – using NRAs exclusively (3%) | 5272 | 8 | 1 | 8 |
| Recordkeeping/Auditing Requirements | 1295 | 1295 | 1 | 1295 |
| TOTALS | | 1,550 | | 1,365 |

The annual cost to respondents is estimated at \$138,436 (see attachment A). 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. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

*** The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**

*** If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic**

¹ The number of NVOCCs is approximately 5,272, however, only 1,295 NVOCCs thus far have invoked the exemption to use NRAs.

² On average, only 255 existing or new NVOCCs annually invoke the exemption to use NRAs by filing a rule or prominent notice in their rules tariff. The time estimate is greater for the 3% of NVOCCs that use NRAs exclusively because those NVOCCs self-publish their tariffs and do not have the efficiencies of tariff publishers in modifying tariffs.

or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

* Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

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

14. Provide estimates of annualized cost to the Federal government.

The annual salary calculations have been formulated using the Federal Government's January 2016 salary table (overhead of 114.89% has been added to the basic salary).

Formula: Annual salary/2087 + overhead rate = adjusted hourly salary

Office Director GS-15 – 56.25 hours

$\$145,162/2087 = \69.56 (basic hourly rate) + $\$79.92$ (overhead) = $\$149.48$ adjusted hourly salary

Transportation Specialist GS-12 – 15 hours

$\$87,821/2087 = \42.08 (basic hourly rate) + $\$48.35$ (overhead) = $\$90.43$ adjusted hourly salary

| Employee | Hourly Salary | Number of Hours | Total |
|---------------------------|----------------------|------------------------|----------------|
| Office Director | \$149.48 | 56.25 | \$8,408 |
| Transportation Specialist | \$90.43 | 15 | \$1,356 |
| TOTALS | | 71.25 | \$9,764 |

15. Explain the reasons for any program changes or adjustments reported in Items 13 (or 14) of OMB Form 83-I.

The burden estimate for this collection has decreased substantially since it was last submitted. The Commission extended the tariff publication exemption contained in 46 CFR part 532 to foreign-based registered NVOCCs, the number of which is currently 1,405. Accordingly, NVOCCs eligible to take advantage of the exemption and use negotiated rate arrangements was increased by 1,405 since the Commission issued its last rulemaking amending part 532. It was expected that this additional group of NVOCCs, who were granted the ability to utilize this exemption, could raise the percentage of NVOCCs using it considerably; however, this has not been the case. In fact, although it was anticipated that the majority of all NVOCCs would use the exemption, only 25% of NVOCCs, which is 1,295 NVOCCs in total, both licensed and foreign registered, have published the requisite rule to use NRAs. In addition, of those 25%, only 3%

opted to use NRAs exclusively. The remaining 22% of NVOCCs utilize a combination of tariff rates and NRAs. The recordkeeping burden associated with tariff rates is already accounted for under the information collection in Part 520, *Carrier Automated Tariffs*, thus the prior burden estimate was higher than appropriate. For these reasons, the number of annual instances and thereby the respondent burden has been reduced from the previous 5,970 person-hours to 1,365 person-hours.

16. For collections whose results will be published, outline the plans for tabulation and publication.

Not applicable - no information will be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

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

18. Explain each exception to the certification statement identified in Item 19 of OMB Form 83-I.

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.

ATTACHMENT A

12. Estimated Burden and Costs, Including Overhead, to Respondents

1,365 person-hours (reporting and recordkeeping requirements)

Pricing Manager (1,229 person-hours)

Tariff Publisher (137 person-hours)

The annual salary calculations have been formulated using the Federal Government’s January 2016 salary table (overhead of 114.89% has been added to the basic salary). The salary for the pricing manager was calculated using the salary of a GS 13/5 Senior Transportation Specialist, and the salary for the tariff publisher was calculated using the salary of a GS 6/5 Transportation Specialist.

Formula: Annual salary/2087 + overhead rate = adjusted hourly salary

$\$104,433/2087 = \50.04 (basic hourly rate) + 114.89% = $\$107.53$ (Pricing Manager adjusted hourly salary)

$\$44,551/2087 = \21.34 (basic hourly rate) + 114.89% = $\$45.86$ (Tariff Publisher adjusted hourly salary)

| Employee | Hourly Salary | Number of Hours | Total |
|------------------|----------------------|------------------------|-------------------|
| Pricing Manager | \$107.53 | 1,229 | \$ 132,154 |
| Tariff Publisher | \$45.86 | 137 | \$ 6,282 |
| TOTALS | | 1,365 | \$ 138,436 |

Below is calculation of overhead rate:

| <u>Category</u> | <u>Total</u> | <u>Allocated by</u> <u>Percentage</u> | <u>Overhead</u> <u>Rate</u> <u>by</u> <u>Payroll</u> <u>Total</u> |
|-----------------|----------------|--|---|
| Overhead | \$6,893,439.73 | \$2,221,114.31 | 56.64% |
| Indirect Labor | \$2,677,306.70 | \$862,646.87 | 22.00% |
| | | Base Rate | 78.64% |
| | | Government Fringe | 36.25% |
| | | Overhead Rate | 114.89% |