

**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, whereby licensed non-vessel-operating common carriers (NVOCCs) that enter into negotiated rate arrangements (NRAs) were exempted from the more stringent tariff rate publication requirements of the Shipping Act of 1984 and related provisions of the Commission’s regulations. 76 FR 11351 (Mar. 2, 2011). The Commission subsequently extended the tariff rate publication exemption contained in 46 CFR part 532 to foreign-based unlicensed NVOCCs as well. 78 FR 42886 (July 19, 2013). The exemption was conditioned upon the NVOCC including a prominent notice invoking the exemption in its electronically published rules tariff and indicating their intention to the Commission. In addition, NVOCCs must maintain original NRAs and associated records for 5 years in a format easily produced to the Commission and furnish those records promptly upon request from the Commission.

By Final Rule published July 23, 2018, the Commission sought to further relieve regulatory burdens on NVOCCs and provide shippers with greater choice and flexibility in their contractual arrangements by implementing key changes with respect to NRAs: allowing NRAs to be amended at any time; allowing inclusion of non-rate economic terms; and allowing an NVOCC to provide for shipper’s acceptance of the NRA by means of booking a shipment thereunder. (83 FR 34780)

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 tariff publication requirements are intended to permit shippers and other members of the public to obtain reliable and useful information concerning the rates and charges that will be assessed by common carriers (including NVOCCs) and conferences for their transportation

services; and by the Commission to ensure that common carrier tariff publications are accurate and accessible and to protect the public from violations by common carriers of section 10 of the Shipping Act (46 U.S.C. 41101-41106). A tariff is a publication containing the actual rates, charges, classifications, rules, regulations and practices of a common carrier. The rules tariff (or portion of a tariff) refers to those stated terms or conditions set by the carrier which affect, determine or change the transportation rates, charges or services provided by a common carrier, including those rules or practices applicable to shipments under NRAs.

The Commission uses the information published by an NVOCC 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 between private parties, to adjudicate alleged Shipping Act violations.

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 allows licensed NVOCCs and foreign-based registered NVOCCs to invoke the exemption by adding a prominent notice to its electronically published rules tariff. NVOCCs invoking the exemption do not file with the Commission their NRAs nor are they required to electronically publish any NRA rates agreed with their shipper customers.

4. Describe efforts to identify duplication.

The sole 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). By invoking the exemption, the NVOCC eliminates the obligation to simultaneously publish in its publicly-accessible NVOCC tariff those rates and charges agreed by the NVOCC with a particular shipper or shippers. Amendments approved in FMC Docket No. 17-10 remove the need to complete an entirely new NRA each time a rate or term needs to be amended, and permits acceptance of an NRA without mandating the formality of the shipper's agreement thereto. The exemption further reduces duplication of effort by the NVOCC, and removes the attendant costs of tariff rate publication.

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

The Commission has historically recognized the NVOCC industry as composed primarily of small businesses, as that term is defined under the Regulatory Flexibility Act, 5 U.S.C. § 601. While use of NRAs is optional, NVOCCs are thereby exempted from the more stringent tariff

rate publication requirements of the Shipping Act of 1984 and related provisions of the Commission's regulations at 46 CFR Part 520. NVOCCs invoking the exemption do not file with the Commission their NRAs nor are they required to electronically publish those NRA rates agreed with their shipper customers. Finally, NVOCCs who do not wish to avail themselves of the exemption are not 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.

Under the Final Rule in FMC Docket No. 17-10, NVOCCs seeking to invoke the exemption publish, on a one-time basis, a prominent notice in their electronically published rules tariff. They may retract or eliminate use of NRAs in the same way, by modifying or removing the tariff notice. Application of the exemption is not subject to a periodic renewal or re-certification requirement, and thus the collection cannot be conducted less frequently.

If the collection requirement were to be removed, as by revoking the exemption granted as to NRAs, all rates negotiated by an NVOCC with a shipper would again be subject to the tariff publication requirements of the Shipping Act, 46 U.S.C. 40501, and related provisions of the Commission's tariff regulations, 46 CFR Part 520. The burden upon the NVOCC would thus be increased.

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 stature 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.

NVOCCs are not required to furnish periodic reports of any kind to the Commission.

NVOCCs invoking exemption are subject to the same five-year recordkeeping requirement applied to other ocean transportation intermediaries (NVOCCs and ocean freight forwarders) under 46 CFR Part 515. 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). Upon written request for records from the Commission's Bureau of Enforcement, or in connection with formal administrative hearings conducted under Part 502 of the Commission's regulations, a responding party has 30 days to respond to a request for records.

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 as reflecting investigative records and/or containing proprietary commercial and financial information.

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 5 CFR 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 the Notice of Proposed Rulemaking (NPRM) was published November 30, 2017, at 82 FR 56781. Respondents and the general public had 60 days to respond with their views regarding the collection of information. Although comments were received on the proposed changes to Part 532, no comments specifically addressed the associated information collection or the burden hour and cost estimates.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration 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 provides no assurance of confidentiality with respect to information submitted by an NVOCC in response to this collection. Information contained in the NVOCC's electronically published tariff is required by statute to be available to the public. The purpose of the Commission's requirement is to inform the public of the NVOCC's intentions with regard to invocation of the exemption.

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 potential reporting respondent universe (licensed NVOCCs and foreign-based registered NVOCCs) is 5,513. However, in the 7 years since the Commission provided regulatory relief from the more cumbersome tariff publication requirements, only 1,572 NVOCCs have thus far invoked the exemption to use NRAs. This number is projected to further increase in response to the Commission’s action in Docket No. 17-10 to expand regulatory relief. Based on the current number of NVOCCs evoking this exemption and using NRAs, the total estimated hour burden for this information collection is 1,641 person-hours, as set forth below:

Requirements	Annual Respondents¹	Annual Instances	Average Person-hours Per Response	Total Person-hours
Modification of Tariff Invoking Exemption – using a combination of tariff rates and NRAs	1,572	236	.25	59
Modification of Tariff Invoking Exemption – using NRAs exclusively (4%)	1,572	10	1	10
Recordkeeping/Auditing Requirements	1,572	1,572	1	1,572
TOTALS				1,641

The FMC offers the following descriptions of the information collection requirements shown in the above table:

Modification of Tariff Invoking Exemption to use NRAs: An NVOCC publishes a prominent notice in its tariff to invoke the exemption. The Commission uses the information filed by NVOCCs in its rules tariff to determine whether an NVOCC has invoked the exemption to use NSAs. On average, 246 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 4% of NVOCCs that use NRAs exclusively because those NVOCCs largely self-publish their tariffs.

¹ The total number of NVOCCs is approximately 5,513. 1,572 NVOCCs thus far have invoked the exemption to use NRAs.

Recordkeeping/Audit Requirements: NVOCCs create original NRAs, which are kept primarily in MS Word Doc, MS Excel or Pdf formatted files and stored electronically in their internal databases/contract management systems which are easily retrievable and produced. Many NRAs are executed by electronic signature or by an email acceptance. Based on consultation with a major tariff publisher who provides NRA contract management software, their NVOCC clients incur, on average, one hour to manage and organize their electronic portfolio of NRAs to file/store for recordkeeping and auditing requirements. For smaller NVOCCs that opt to self-publish their tariffs and use NRAs, we likewise estimate one hour annually for recordkeeping and storage management. Combined, these two recordkeeping/audit processes used by NVOCCs invoking the NRA exemption result in an overall burden of 1,572 hours for the recordkeeping function.

In aggregate, the annual cost to respondents is estimated at \$175,037.19 (see attachment A), reflecting the increasing number of NVOCCs transitioning to NRAs from the more burdensome and costly tariff requirements. 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.

The regulatory changes adopted in FMC Docket No. 17-10 eliminate the present prohibition on amendments to NRAs and would establish an optional method for shippers to indicate acceptance of an NRA. Consequently, the regulatory burden on NVOCCs would be reduced by removing the need to complete an entirely new NRA each time a rate or term needs to be amended and permitting acceptance of an NRA without mandating the formality of the shipper's agreement thereto. Rulemaking comments received by the Commission on behalf of the NVOCC industry did not, however, quantify the reductions in burden hour or costs. Until the industry is able to use these additional flexibilities for NRAs, we are unable to accurately predict the full extent of the cost savings that may be attributed to this regulatory change.

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 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.

Annualized cost to the government primarily involves staff time in determining whether an NVOCC has invoked the exemption and currently maintains an accessible rules tariff, for recordkeeping and enforcement-related purposes. Total estimated burden to the Federal Government for this Final Rule is 71.25 hours. Thus, the total estimated cost to the Federal Government, including overhead and operational expenses is \$10,273.68.

The annual salary calculations have been formulated using the Federal Government’s January 2018 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

$\$152,760/2087 = \73.19 (basic hourly rate) + $\$84.08$ (overhead) = $\$157.27$ adjusted hourly salary

Transportation Specialist GS-12 – 15 hours

$\$92,421/2087 = \44.28 (basic hourly rate) + $\$50.87$ (overhead) = $\$95.15$ adjusted hourly salary.

Employee	Hourly Salary	Number of Hours	Total
Office Director	\$157.27	56.25	\$8,846.43
Transportation Specialist	\$ 95.15	15	\$1,427.25
TOTALS		71.25	\$10,273.68

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

There have been no program changes or adjustments in Items 13 or 14 that require explanation. The respondent universe fluctuates annually, as new NVOCCs are licensed and existing NVOCCs go out of business.

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

1,641 person-hours (reporting and recordkeeping requirements)

Pricing Manager (1,477 person-hours)

Tariff Publisher (164 person-hours)

The annual salary calculations have been formulated using the Federal Government’s January 2018 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

$\$109,900/2087 = \52.65 (basic hourly rate) + 60.50 (overhead) = $\$113.15$ (Pricing Manager adjusted hourly salary)

$\$46,882/2087 = \22.46 (basic hourly rate) + 25.80 (overhead) = $\$48.26$ (Tariff Publisher adjusted hourly salary)

Employee	Hourly Salary	Number of Hours	Total
Pricing Manager	\$113.15	1,477	\$ 167,122.55
Tariff Publisher	\$48.26	164	\$ 7,914.64
TOTALS		1,641	\$ 175,037.19

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%

Dated: July 23, 2018