

SUPPORTING STATEMENT

FEDERAL MARITIME COMMISSION 46 CFR PART 532 – NVOCC NEGOTIATED RATE ARRANGEMENTS (NRAs) (OMB No. 3072-0071)

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.

Under 46 U.S.C. § 40103 the Federal Maritime Commission (“Commission”) is authorized 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.” Pursuant to that authority, the Commission has exempted, with conditions, non-vessel-operating common carriers (NVOCCs) from the more stringent tariff rate publication requirements of the Shipping Act of 1984 and related provisions of the Commission’s regulations to permit them to enter into “Negotiated Rate Arrangements” (NRAs) with shippers, 46 CFR Part 532.

An NVOCC invoking the exemption must:

- Include its rates in a tariff open to public inspection (46 CFR 532.3(a)(1));
- Comply with 46 USC 40501(d) and (e) (46 CFR 532.3(b) and (c));
- Comply with 46 USC 40503 (46 CFR 532.3(d));
- Adhere to the prohibitions in 46 USC 41104(a)(2)(A) (46 CFR 532.3(e));
- Include its rates in a tariff open for public inspection in an automated tariff system (46 CFR 532.3(f));
- Comply with 46 CFR 520.4(a)(4), 520.4(f), 520.6(e), 520.7(c) and (d), 520.8(a), 520.12, and 520.14 (46 CFR 523.3(g));
- Ensure their NRA meets the requirements of 46 CFR 532.5;
- Indicate their intention to the Commission and the public to invoke the exemption by a prominent notice in its rules tariff (46 CFR 532.6);
- Maintain original NRAs in a readily accessible and retrievable manner for 5 years from the completion date of performance of the NRA (46 CFR 532.7); and
- Promptly respond to requests by the Commission for those records (46 CFR 532.7).

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. This also enables the Commission to ensure that common carrier tariff publications are accurate and accessible and to protect the public from violations by common carriers of 46 U.S.C. 40501. 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 may have properly invoked the NRA exemption for a particular shipment or shipments. The Commission uses 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 collection of information 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 NVOCC is 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. An NVOCC seeking to invoke the exemption includes a prominent 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 to Part 532 in 2018 removed 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. RIN 3072-AC68, *Amendments to Regulations Governing NVOCC Negotiated Rate Arrangements and NVOCC Service Arrangements*. 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.

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 the 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 statute or 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 exemptions 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, Investigations, and Compliance, 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 1320.8(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 November 20, 2024, at 89 FR 91749. Respondents had 60 days to respond with their views regarding the collection of information; no comments were received.

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.

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 approximately 8,700; an average of 500 annually over the last three years have added a prominent notice to its electronically published rules tariff indicating the intention to invoke the NRA exemption. Of the total respondent universe, 3,800 have thus far invoked the exemption to use NRAs. Based on the current number of NVOCCs that have evoked this exemption the total estimated hour burden for this information collection is 3,925 person-hours, as set forth below:

Requirement	Annual Respondents¹	Annual Instances	Average Hours Per Response	Total Hours
Modification of Tariff Invoking Exemption – using a combination of tariff rates and NRAs	3300	440	0.25	110
Modification of Tariff Invoking Exemption – using NRAs exclusively (3%)	500	15	1	15
Recordkeeping/Audit Requirements	3,800	3,800	1	3,800
TOTALS				3,925

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, 500 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 largely self-publish their tariffs.

Recordkeeping/Audit Requirements: NVOCCs create original NRAs, which are kept primarily in MS Word, 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

¹ The total number of NVOCCs is approximately 8,700. Of the total, 3,800 NVOCCs thus far have invoked the exemption to use NRAs.

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. The recordkeeping/audit processes used by NVOCCs invoking the NRA exemption result in an estimated burden of 3,800 hours for the recordkeeping function.

In aggregate, the annual cost to respondents is estimated at **\$533,737.63**. (see Attachment 1), 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 if requested, 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 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 additional cost burdens to respondents or recordkeepers other than those reported in item 12.

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 is 71.25 hours. Thus, the total estimated cost to the Federal Government, including overhead and operational expenses is **\$12,065.63** (See Attachment 2).

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.

The OMB control number for this collection of information is displayed at 46 CFR 532.91 in accordance with 5 CFR 1320.3(f) and 1320.5(b)(1). This display does not include the expiration date as it would be an inefficient use of agency resources to update this regulation every time the collection is renewed to reflect the new expiration period. There are no forms associated with the collection on which to display the expiration date. FMC, will, however, display such information on any request for information issued to an NVOCC under 46 CFR 532.7(b).

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 1

Estimated Burden and Costs, Including Overhead, to Respondents

3,800 hours (reporting and recordkeeping requirements) + 110 hours (Modification of Tariff Invoking Exemption – using a combination of tariff rates and NRAs) + 15 hours (Modification of Tariff Invoking Exemption – using NRAs exclusively) = 3,925 total hours

Pricing Manager/Operations Specialties Manager (3,533 hours)
Tariff Publisher/ Secretary and Administrative Assistant (392 hours)

Note: Occupation Codes “Operations Specialties Manager” and “Secretary and Administrative Assistant” are the closest analogous positions in the BLS tables to “Pricing Manager” and “Tariff Publisher”).

The annual salary calculations have been formulated using the U.S. Department of Labor’s U.S. Bureau of Labor Statistics’ May 2024 National Industry-Specific Occupational Employment and Wages Estimates for Water Transportation (NAICS 48300) (overhead of 102.93% has been added to the basic salary).

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

Pricing Manager
 $\$148,030/2087 = \70.93 (basic hourly rate) + $\$73.01$ (overhead) = $\$143.91$ (adjusted hourly salary)

Tariff Publisher
 $\$66,390/2087 = \31.81 (basic hourly rate) + $\$32.74$ (overhead) = $\$64.55$ (adjusted hourly salary)

Employee	Hourly Salary	Number of Hours	Total
Pricing Manager	\$143.91	3,533	\$ 508,434.03
Tariff Publisher	\$64.55	392	\$ 25,303.60
TOTALS		3,925	\$ 533,737.63

Attachment 2

Estimated Burden and Costs, Including Overhead, to Federal Government

The annual salary calculations have been formulated using the Federal Government's January 2025 salary table for the Washington D.C. metropolitan area (overhead of 102.93% has been added to the basic salary).

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

Supervisory Program Analyst, Director of Maritime Analytics (GS 15/5) – 56.25 hours
 $\$189,950/2087 = \91.02 (basic hourly rate) + $\$93.68$ (overhead) = $\$184.70$ adjusted hourly salary

Transportation Specialist (GS 12/5) – 15 hours
 $\$114,923/2087 = \55.07 (basic hourly rate) + $\$56.68$ (overhead) = $\$111.75$ adjusted hourly salary

Employee	Hourly Salary	Number of Hours	Total
Supervisory Program Analyst	\$184.70	56.25	\$10,389.38
Transportation Specialist	\$111.75	15	\$1,676.25
TOTALS		71.25	\$12,065.63