

(S E R V E D)
(JUNE 5, 2012)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

46 CFR Part 532

DOCKET NO. 11-22

RIN 3072-AC38

Non-Vessel-Operating Common Carriers Negotiated Rate Arrangements; Tariff Filing Exemption

AGENCY: Federal Maritime Commission.

ACTION: Direct final rule; request for comments.

SUMMARY: In this direct final rule, the Federal Maritime Commission is revising the regulations which govern negotiated rate arrangements. The rule eliminates some recordkeeping requirements to make them less burdensome.

DATES: This rule is effective September 10, 2012 without further action, unless significant adverse comment is received by August 10, 2012. If adverse comment is received, the Federal Maritime Commission will publish a timely withdrawal of the rule in the Federal Register.

ADDRESSES: Submit comments to:

Karen V. Gregory, Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573-0001

or e-mail non-confidential comments to: Secretary@fmc.gov
(e-mail comments as attachments preferably in Microsoft Word or PDF)

FOR FURTHER INFORMATION CONTACT:

Karen V. Gregory, Secretary
Federal Maritime Commission
800 N. Capitol Street, N.W.
Washington, D.C. 20573-0001
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SUPPLEMENTARY INFORMATION:

Background:

On March 2, 2011, the Federal Maritime Commission (Commission) issued a final rule, promulgating 46 CFR part 532, regulations which govern the exemption of licensed NVOCCs from their tariff rate publication obligations when entering into a “negotiated rate arrangement” (NRA). Commission Docket No. 10-03, 76 FR 11351, effective April 18, 2011.¹ On December 20, 2011, the Commission issued a Notice of Inquiry (NOI), Commission Docket No. 11-22, seeking comments on ways to make NRAs more useful, including the possible extension of the ability to offer NRAs to foreign-based NVOCCs not licensed by the Commission. December 27, 2011 at 76 FR 80866. The record in Commission Docket No. 10-03 was incorporated into Docket No. 11-22. Comments were due by March 26, 2012. The Commission received 23 comments. Of those 23 comments, 16 came from ocean transportation intermediaries;

¹ On April 5, 2011, the Commission published a correction to its final rule clarifying that NRAs must be agreed to prior to receipt of the cargo and removing the requirement that NVOCCs indicate their intention to move cargo under NRAs on their Form FMC-1 on file with the Commission. 76 FR 19706.

4 from U.S. trade associations; and 3 from foreign trade associations. A number of the commenters suggested eliminating some of the technical requirements of the rule. In particular, commenters suggested 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 that an NVOCC retain all associated records and written communications pertaining to an NRA. After consideration of these specific suggestions, the Commission has determined to adopt these suggestions and revise the regulation governing NRAs through a direct final rule. In a direct final rulemaking, an agency publishes a direct final rule in the Federal Register along with a statement that the rule will become effective unless the agency receives significant adverse comment within a specified period. The Commission is using a direct final rule for this rulemaking because it expects the rule to be noncontroversial and because the rule removes technical requirements and imposes no requirements or costs. The Commission will continue to consider other suggestions made by commenters and may further modify part 532 at a future date.

In accordance with the Paperwork Reduction Act of 1995, as amended, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072-0071. Revised estimated burdens of collection of information authorized by this direct final rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1995, as amended. The estimated annual burden for the estimated 3548 annual respondents is \$340,921. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to

Ronald D. Murphy, Managing Director, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, e-mail: OMD@fmc.gov, or fax: (202) 523-3646; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Maritime Commission, 17th Street and Pennsylvania Avenue, NW., Washington, DC 20503, e-mail: OIRASubmission@OMB.EOP.GOV, or fax: (202) 395-5806.

List of Subjects in 46 CFR Part 532

Exports, Non-vessel-operating common carriers, Ocean transportation intermediaries.

Accordingly, the Federal Maritime Commission amends 46 CFR Part 532 as follows:

PART 532 – NVOCC NEGOTIATED RATE ARRANGEMENTS

1. The authority citation for Part 532 continues to read as follows:

AUTHORITY: 46 U.S.C. 40103.

2. In § 532.5, revise paragraph (b) to read as follows:

§ 532.5 Requirements for NVOCC negotiated rate agreements.

* * * * *

(b) Contain the names of the parties and the names of the representatives agreeing to the NRA;

* * * * *

3. Revise § 532.6 to read as follows:

§ 532.6 Notices.

An NVOCC wishing to invoke an exemption pursuant to this part must indicate that intention to the Commission and the public by a prominent notice in its rules tariff.

4. Revise § 532.7 to read as follows:

§ 532.7 Recordkeeping and audit.

(a) An NVOCC invoking an exemption pursuant to this part must maintain original NRAs in an organized, readily accessible or retrievable manner for 5 years from the completion date of performance of the NRA by an NVOCC, in a format easily produced to the Commission.

(b) NRAs are subject to inspection and reproduction requests under § 515.31(g) of this chapter. An NVOCC shall produce the requested NRAs promptly in response to a Commission request. All records produced must be in English or be accompanied by a certified English translation.

(c) Failure to keep or timely produce original NRAs will disqualify an NVOCC from the operation of the exemption provided pursuant to this part, regardless of whether it has been invoked by notice as set forth above, and may result in a Commission finding of a violation of 46 U.S.C. 41104(1), 41104(2)(A) or other acts prohibited by the Shipping Act.

By the Commission.

Rachel E. Dickon
Assistant Secretary