have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 11, 2018.

Michael L. Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.613:

■ a. In the table in paragraph (a)(1):

■ i. Remove the entry ''Brassica, head and stem, subgroup 5A'';

■ ii. Add alphabetically the commodity ''*Brassica,* leafy greens, subgroup 4–16B, except radish, tops'';

■ iii. Remove the entry ''Brassica, leafy greens, subgroup 5B'';

■ iv. Add alphabetically the commodities ''Celtuce'' and ''Cottonseed subgroup 20C'';

■ v. Remove the entry ''Cotton, undelinted seed'';

■ vi. Add alphabetically the commodities ''Florence fennel''; ''Kohlrabi''; ''Leaf petiole vegetable subgroup 22B''; and ''Leafy greens subgroup 4–16A, except spinach'';

■ vii. Revise the entry for ''Radish, tops'';

■ viii. Remove the entry ''Turnip, greens'';

■ ix. Add alphabetically the commodity ''Vegetable, *brassica,* head and stem, group 5–16''; and

■ x. Remove the entry ''Vegetable, leafy, except brassica, group 4, except spinach''.

■ b. Revise paragraph (c).

The additions and revisions read as follows:

§ 180.613 Flonicamid; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * * * *	
Brassica, leafy greens, subgroup 4–16B, except radish, tops	16
Celtuce	4.0
* * * * *	
Cottonseed subgroup 20C	0.60
Florence fennel	4.0
* * * * *	
Kohlrabi	1.5
Leaf petiole vegetable subgroup 22B	4.0
Leafy greens subgroup 4–16A, except spinach	4.0
* * * * *	
Radish, tops	20
* * * * *	
Vegetable, *brassica,* head and stem, group 5–16	1.5
* * * * *	

* * * * *

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined by § 180.1(1), are established for the residues of the insecticide flonicamid, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of flonicamid, *N*-(cyanomethyl)-4-(trifluoromethyl)-3-pyridinecarboxamide, and its metabolites, TFNA (4-trifluoromethylnicotinic acid), TFNA–AM (4-trifluoromethylnicotinamide), and TFNG (*N*-(4-trifluoromethylnicotinoyl)glycine), calculated as the stoichiometric equivalent of flonicamid, in or on the following commodities:

Commodity	Parts per million
Clover, forage	0.90
Clover, hay	5.0

* * * * *

[FR Doc. 2018–15449 Filed 7–20–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 531 and 532

[Docket No. 17–10]

RIN 3072–AC68

Amendments to Regulations Governing NVOCC Negotiated Rate Arrangements and NVOCC Service Arrangements

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (FMC or Commission) amends its rules governing Non-Vessel-Operating Common Carrier (NVOCC) Negotiated Rate Arrangements and NVOCC Service Arrangements. The regulatory changes modernize, update, and reduce regulatory burdens.

DATES: This final rule is effective August 22, 2018.

FOR FURTHER INFORMATION CONTACT: Rachel E. Dickon, Secretary. *Phone:* (202) 523–5725. *Email: secretary@fmc.gov*. For technical questions, contact Florence A. Carr, Director, Bureau of Trade Analysis. *Phone:* (202) 523–5796. *Email: tradeanalysis@fmc.gov*. For legal questions, contact Tyler J. Wood, General Counsel. *Phone:* (202) 523–5740. *Email: generalcounsel@fmc.gov*.

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I. Executive Summary

The Commission is amending its rules at 46 CFR part 531 governing NVOCC Service Arrangements (NSA) to remove the NSA filing and publication requirements. The Commission also is amending its rules at 46 CFR part 532 to permit NVOCC Negotiated Rate Arrangements (NRA) to be amended at any time and to allow the inclusion of non-rate economic terms. In addition, an NVOCC may provide for the shipper's acceptance of the NRA by booking a shipment thereunder, subject to the NVOCC incorporating a prominent written notice to such effect in each NRA or amendment. In addition, the Commission is including clarifying language in part 532 to reflect the current treatment of third-party, pass-through assessorial charges and the enforceability of NRAs.

II. Background

The Shipping Act of 1984 (the Shipping Act or the Act) expanded the options for pricing liner services by introducing the concept of carriage under service contracts filed with the Commission. Public Law 98–237, section 8(c). Liner services could be priced via negotiated contracts between ocean common carriers and their shipper customers, rather than solely by public tariffs. Per the Shipping Act and FMC regulations, ocean freight rates, surcharges, and assessorial charges had to be published in tariffs or agreed to via service contracts filed with the Commission. Contemporaneous with the filing of service contracts, ocean carriers were required to make publicly available statements of essential terms in tariff format.

The Ocean Shipping Reform Act of 1998 (OSRA) amended the Shipping Act of 1984 as it related to service contracts. Public Law 105–258, section 106. No longer did contract rates need to be published in the tariff publication, and the essential terms publication was limited to: origin and destination port ranges, commodities, minimum volume or portion, and duration. Nevertheless, though the Shipping Act and its amendments provided for more efficiency and flexibility for ocean common carriers through the use of service contracts, similar relief was not extended to NVOCCs, which were still required to publish tariffs and adhere to those tariffs when transporting cargo.

A. NVOCC Service Arrangements (NSAs)

In 2003, NCBFAA filed a petition seeking exemption from some of the tariff requirements of the Shipping Act of 1984. *See* Docket No. P5–03, *Petition of the National Customs Brokers and Forwarders Association of America. Inc. for Limited Exemption of Certain Tariff Requirements of the Shipping Act of 1984.* In response, the Commission issued a notice of proposed rulemaking (NPRM) to exempt NVOCCs from the tariff provisions of the Shipping Act and permit them to enter into contracts with shippers similar to ocean common carrier service contracts. NPRM: Non-Vessel Operating Service Arrangements, 69 FR 63981 (Nov. 3, 2004). The Commission determined that in order to ensure there was no substantial reduction in competition among NVOCCs, the exemption had to be available to all NVOCCs compliant with both section 19 of the Shipping Act and the conditions of the exemption. *Id.* The Commission proposed that ''the exemption be conditioned on the same statutory and regulatory requirements and protections applicable to VOCCs' service contracts: namely, filing of executed agreements; publication of essential terms of those agreements; and confidential treatment, similar to that set forth in 46 CFR part 530.'' *Id.* at 63986. The Commission also proposed the required publication of the essential terms of all NSAs in automated systems and the confidential filing of the text of those NSAs with the Commission. *Id.* at 63987. The Commission further proposed ''making applicable to carriage under an NSA, those provisions of the Shipping Act that would be applicable to service contracts.'' *Id.* The Commission's final rule provided a limited exemption and permitted NSAs, similar to service contracts, subject to filing and publication requirements in 46 CFR part 531. Final Rule: Non-Vessel-Operating Common Carrier Service Arrangements, 69 FR 75850 (Dec. 20, 2004). To ensure that the exemption as proposed would not result in a substantial reduction in competition, the Commission limited the exemption to individual NVOCCs acting in their capacity as carriers. *Id.* at 75851. The Commission also decided to allow affiliated NVOCCs to jointly offer NSAs. *Id.* at 75852.

B. NVOCC Negotiated Rate Arrangements (NRAs)

In 2008, the NCBFAA filed another petition with the Commission. This petition sought an exemption from mandatory rate tariff publication. *See* Docket No. P1–08, *Petition of the National Customs Brokers and Forwarders Association of America. Inc. for Exemption from Mandatory Rate Tariff Publication* (filed July 31, 2008). The proposal sought to exempt NVOCCs from the provisions of the Shipping Act of 1984 requiring them to publish and/or adhere to rate tariffs ''in those instances where they have individually negotiated rates with their shipping customers and memorialized those rates in writing.'' NCBFAA Pet. in Docket No. P1–08, at 10.

By NPRM issued May 7, 2010, the Commission proposed to permit the use of NRAs in lieu of publishing rates in tariffs, subject to conditions, including (1) a requirement for NVOCCs to continue publishing standard rules tariffs with contractual terms and conditions governing shipments, including any assessorial charges and surcharges, (2) a requirement to make available NVOCC rules tariffs to shippers free of charge; (3) a requirement that NRA rates be mutually agreed to and memorialized in writing by the date the cargo is received for shipment; and (4) a requirement that NVOCCs who use NRAs must retain, and make available upon request to the Commission, documentation confirming the terms, and agreed rate, for each shipment for a period of five years. NPRM: NVOCC Negotiated Rate Arrangements, 75 FR 25150, 25154 (May 7, 2010). In the NPRM, the Commission also determined that under 46 U.S.C. 40103, the exemption could be granted as doing so would not result in a substantial reduction in competition or be detrimental to commerce. 75 FR at 25153.

The Commission subsequently granted the exemption, relieving NVOCCs from the burden and costs of

tariff rate publication when using this new class of carrier rate arrangements. Final Rule: NVOCC Negotiated Rate Arrangements, 76 FR 11351 (Mar. 2, 2011). In determining whether to grant the exemption the Commission considered: Competition among NVOCCs; competition between NVOCCs and VOCCs; competition among vessel-operating common carriers (VOCCs); as well as competition among shippers. *Id.* at 11352. The Commission determined that granting the exemption would not result in a substantial reduction in competition in any of the above categories. *Id.* at 11352–11353. Analyzing whether granting the exemption would be detrimental to commerce, the Commission determined that such NRAs would be beneficial to commerce because the exemption would ''reduce NVOCC operating costs and increase competition in the U.S. trades.'' *Id.* at 11353. The Commission also determined that ''NVOCCs entering into NRAs continue to be subject to the applicable requirements and strictures of the Shipping Act, including oversight by the Commission.'' *Id.* at 11354.

As a condition to offering NRAs, NVOCCs were required to provide their rules tariffs to the public free of charge. 76 FR at 11358. The Commission also determined not to allow for amendment of an NRA after receipt of the cargo by the carrier or its agent. *Id.* Consistent with the Petition's focus upon negotiated rates only, the Commission determined not to permit NRAs to include non-rate economic terms, such as rate methodology, credit and payment terms, forum selection or arbitration clauses, or minimum quantities. *Id.* at 11355.

C. Pre-Rulemaking Differences Between Tariffs, NSAs, and NRAs

The primary differences between NRAs and NSAs are the formality of the arrangement and the scope of terms covered. Currently, NRAs must be in writing, and shipper acceptance must be in writing, such as by email. *See* NPRM: Amendments to Regulations Governing NVOCC Negotiated Rate Arrangements and NVOCC Service Arrangements, 82 FR 56781, 56786 (Nov. 30, 2017). NRAs have a ''stated cargo quantity,'' with no minimum volume or quantity commitment. *See* 46 CFR 532.3(a). NRAs cover specific points of origin and destination and include rates effective on and after a stated date or within a defined time frame. *See* § 532.3(a)–(b). The rates and applicable shipments must be specified as well as the names of the parties. § 532.5(b). Non-rate economic terms, including liquidated damages, are not currently permitted in NRAs. *See* 76 FR at 11355. Instead, such terms are included in the NVOCC's ''rules tariff,'' which must be made available electronically and free of charge. *See* §§ 532.3(c) and 532.4. In addition, NRAs may not be modified after the time the initial shipment is received by the carrier or its agent (including originating carriers in the case of through transportation). § 532.5(e). NRAs are not required to be filed with the FMC, but they must be maintained for a 5-year period and made available to the Commission upon request. *See* § 532.7(a)–(b).

NSAs, on the other hand, must be signed by the parties. 46 CFR 531.6(b)(9). Unlike NRAs, NSAs contain a minimum volume or quantity commitment, as well as defined service level and a certain rate or rate schedule over a fixed period of time. § 531.3(p). NSAs also include port ranges (port to port) or geographic areas (intermodal) as opposed to specific points of origin and destination. *See* § 531.6(b)(1)–(2). NSAs are also broader in scope than NRAs, and may include non-rate economic terms, including liquidated damages in the event of nonperformance. *See* § 531.6(b)(7). In addition, NSAs may be modified at any time. *See* § 531.3(c).

The filing requirements for NSAs and NRAs also currently differ. NSAs and amendments must be filed with the Commission in SERVCON. *See* § 531.6(a). Like NRAs, however, NSAs and associated records must be maintained for a 5-year period and must be made available to the Commission upon request. § 531.12. Liquidated damages by way of ''provisions in the event of nonperformance'' may also be provided for. *See* 46 CFR part 531.

In comparison, carrier tariffs provide for port ranges (port to port) or geographic areas (intermodal), but also Tariff Rate Items (TRIs). *See* 46 CFR 520.4. A TRI is a single freight rate in effect on and after a specific date or for a specific time period, for the transportation of a stated cargo quantity, which may move from origin to destination under a single specified set of transportation conditions. § 520.4(f). TRIs have no minimum volume or quantity commitment like NSAs, and rate reductions can take effect immediately; however, rate increases must be published at least 30 days in advance. *See* § 520.8(a). There is no provision for liquidated damages for goods moving under tariffs, and unlike NSAs and NRAs, tariffs are available and applicable to all shippers. *See* § 520.12(e). No written signature is required. Tariff publication data is required to be maintained by carriers and conferences for 5 years and accessible on-line for 2 years. § 520.10. Tariffs must be made available to the public at a reasonable fee. *See id.*

D. NCBFAA Petition for Rulemaking and Overview of Comments

NCBFAA petitioned the FMC on April 16, 2015, to initiate a rulemaking to eliminate the NSA provisions in 46 CFR part 531 in their entirety, or alternatively, eliminate the filing and essential terms publication requirements for NSAs. Consolidated with that request, NCBFAA also asked the Commission to expand the NRA exemption in 46 CFR part 532 to include economic terms beyond rates, and to delete 46 CFR 532.5(e), which precludes any amendment or modification of an NRA after the initial shipment is received by the NVOCC or its agent. NCBFAA proposed expanding the NRA exemption in 46 CFR part 532 to allow modification of NRAs at any time upon mutual agreement between NVOCCs and their customers. NCBFAA Petition at 14.

NCBFAA argued that shippers and NVOCCs do not benefit from the current preclusion of amendments. NCBFAA Pet. at 10. NCBFAA also argued that shippers and NVOCCs regularly seek to negotiate on a broad range of service terms and that ''each of these terms are relevant to some extent to every rate and service negotiation between an NVOCC and an existing or prospective customer. Yet, none of the items . . . can properly be included in an NRA.'' *See id.* at 8–9. NCBFAA furthermore contended that as NSAs must be filed with the Commission, and essential terms of NSAs also need to be published in tariffs, NSAs are more burdensome than regular rate tariffs. *See id.* at 7–8. NCBFAA also argued that continuing the filing requirement for NSAs does not appear to provide any regulatory benefit. *See id.* at 12–13.

On April 28, 2015, the Commission published a Notice of Filing and Request for Comments on NCBFAA's petition. 80 FR 23549 (Apr. 28, 2015). Sixteen sets of comments were received from a broad cross-section of industry stakeholders, including licensed NVOCCs and freight forwarders, a major trade association representing beneficial cargo owners, and VOCCs.

The majority of the ocean transportation intermediary (OTI) comments expressed general support for the petition. Commenters supported either the elimination of 46 CFR Part 531 in its entirety, or eliminating the filing and essential terms publication requirements for NSAs. Many supported allowing economic terms beyond rates in NRAs, as well as the modification of

NRAs at any time, upon mutual agreement.

The World Shipping Counsel, whose comments were supported by Crowley, urged even-handed regulatory relief with respect to VOCCs as well. WSC cited prior requests that VOCCs have made for changes to the Commission's regulations governing service contract amendment filings. WSC proposed ''that service contract amendments be permitted to be filed within 90 days of the filing of the underlying commercial agreement.'' *See* WSC at 1.

The National Industrial Transportation League (NITL) did not support the elimination of Part 531 in its entirety. UPS also opposed any restrictions upon, or the elimination of, Part 531, expressing support for the continued use of NSAs.

DGR Logistics noted the potential for logistical and regulatory challenges to NVOCCs caused by the requirement at 46 CFR 532.5(c) that an NRA ''be agreed to'' by the shipper prior to receipt of cargo by the common carrier or its agent. *See* DGR at 2.

On August 2, 2016, the Commission granted NCBFAA's petition to ''initiate a rulemaking with respect to the revisions discussed in the petition.'' Because the Commission was in the process of a separate rulemaking to amend portions of Part 531 related to NSAs,[1] however, the Commission delayed initiating the requested rulemaking until after the rulemaking in Docket No. 16–05 was concluded.

E. Summary of November 29, 2017, Notice of Proposed Rulemaking

1. Removal of NSA Filing and Publication Requirements

The Commission noted in the NPRM that the majority of the NVOCC commenters supported the NCBFAA position on eliminating the NSA filing and publication requirements. *See* 82 FR at 56785. Furthermore, the NPRM stated that OTI commenters had made a substantial case that continuing the filing requirement for NSAs did not appear to offer any regulatory benefit. *Id.* The Commission therefore proposed to remove the requirement that NSAs be filed in SERVCON and the requirement that an NVOCC publish the essential terms of an NSA. *Id.* The Commission also explained that shippers, whom the Commission originally identified as the group to benefit from the requirement of essential terms publication in the original 2003 NSA rulemaking, had not since commented on the continuing utility of essential terms publications, and thus maintaining the requirement appeared to provide little regulatory benefit. *Id.* By way of removing the essential terms and NSA filing requirements, but keeping NSAs as an option, the Commission stated that it was seeking to preserve choice, but reduce costs. *Id.* The Commission noted that containing both service and rate provisions may be less than ideal for shippers or NVOCCs with low shipment volumes; however, considerable volumes of cargo are currently transported under the current contract model. *Id.* The NPRM stated that NVOCC members of NCBFAA would prefer the flexibility of including both service and rate-related items in their contract offerings if relieved of the filing and publication burdens of same. *Id.* at 56786.

The NPRM also addressed WSC's concerns regarding regulatory relief regarding service contracts by noting that the relief granted by the Commission in Docket 16–05 allowed amendments to service contracts, including multiple service contract amendments, to become effective during a 30-day period prior to being filed with the Commission. *Id.* at 56785. Furthermore, the Commission stated that further relief to VOCCs for service contracts may be undertaken by the Commission after it has had an opportunity to analyze the impact of the 30-day filing period on VOCC operations and shipper feedback. *Id.*

In order to readily determine which NVOCCs are using NSAs in the absence of the filing and publication requirements, the NPRM also proposed requiring NVOCCs to include a prominent notice in their rules tariffs indicating their intention to use NSAs, mirroring the requirement in § 532.6 for NVOCCs using NRAs. In addition, the Commission proposed requiring NVOCCs using NSAs to provide electronic access to their rules tariffs to the public free of charge, mirroring the requirement in § 532.4 for NVOCCs using NRAs.

2. Allowance of Non-Rate Economic Terms in NRAs

In the NPRM, the Commission addressed the allowance of non-rate economic terms in NRAs by reaffirming its intention to provide a new business model for NVOCCs who cannot use NSAs and inviting further comment, ''particularly from shippers currently using NRAs, on how expanding the NRA exemption to allow inclusion in NRAs of non-rate economic terms may impact their commercial business operations.'' *See* 82 FR at 56785.

3. Authorize Amendments of NRAs and Shipper Acceptance Upon Booking

In the NPRM, the Commission noted the need for NRAs to respond to an ever-changing marketplace. 82 FR at 56786. The Commission also noted that the smaller cargo volume and commenters' statements demonstrate that NRAs tend to be short-term and transactional in nature. *Id.* The Commission expressed its desire to limit regulatory burden, and noted that NVOCCs and their customers should not be compelled to create a new NRA in every instance simply because the rules do not currently provide for amendment. *Id.* The Commission, furthermore, acknowledged that it was appropriate to permit NRAs to be extended or amended upon acceptance or agreement by the shipper customer. *Id.*

The Commission, noting DGR Logistics' comment on the potential for logistical and regulatory challenges to the NVOCC caused by the requirement at 46 CFR 532.5(c), also proposed to allow NRAs to be more flexibly created, or be amended, upon the shipper's acceptance in the form of a request for booking pursuant to the NRA. *Id.* The Commission noted that this practice would more closely correlate to the manner in which a shipper accepts a written rate quote under standard tariff rates and rules, *i.e.,* by communicating its agreement solely in terms of instructing the NVOCC to book the cargo for shipment thereunder. *Id.* In light of this new practice, the Commission proposed that each NVOCC seeking to allow recognition of shipper acceptance of an NRA through booking incorporate a prominent written notice on each NRA or amendment. *Id.*

The NPRM also pointed out that as this new practice was meant to be optional, the Commission would not eliminate the requirement that a shipper's agreement to an NRA should otherwise be in writing or by email. *Id.* The NPRM invited public comment on allowing NRA acceptance through booking, as well as on whether to require specific wording on the practice in NRAs and amendments in order to provide prominent notice to shippers, as the NPRM proposed. *Id.*

III. Overview of Comments

Thirty-nine sets of comments were received in response to the November 29, 2017, Notice of Proposed Rulemaking, which may be found at the Electronic Reading Room on the Commission's website at *https://www.fmc.gov/17-10/*. Comments were received from NCBFAA; ABS

[1] Docket No. 16–05, *Service Contracts and NVOCC Service Arrangements.*

Consulting (ABS); Mohawk Global Statistics (Mohawk); DJR Logistics, Inc. (DJR); New York New Jersey Foreign Freight Forwarders and Brokers Association, Inc. (NYNJFFF&BA); NITL; CaroTrans International, Inc., (CaroTrans); Vanguard Logistics Services (USA), Inc., (Vanguard); Serra International, Inc., (Serra); FedEx Trade Networks Transport & Brokerage, Inc. (FedEx); Florida Customs Brokers and Freight Forwarders Association (FCBF); Kelly Global Logistics, Inc.; North Atlantic International Ocean Carrier; ECU Worldwide; Mabel Olivera, Vice President of Operations for Clover Systems, LLC; IContainers (USA); A Customs Brokerage (ACB), Inc.; Omara Valles, Operations Manager of Clover Internacional, LLC; Hemisphere Cargo, Corp.; KCarlton International (dba KCI Shipping Line); Express Logistics Services, LLC; Geodis Freight Forwarding; Yusen Logistics (Yusen); Asia Shipping USA, Inc. (Asia); Parker & Company Worldwide (Parker); Quadrant Magnetics (Quadrant); Crescent Products USA LLC (Crescent); Geek Net Inc. (Geek Net); Connor Corporation (Connor); Bonney Forge Corporation (Bonney Forge); RBH Sound (RBH); Dart Maritime Service, Inc. (Dart); CJ International, Inc. (CJ International); Sefco Export Management Company, Inc. (Sefco); Eastman Chemical Company; Thunderbolt Global Logistics (Thunderbolt); Shipco Transport Inc. (Shipco); John S. Connor Global Logistics (Connor Global); Livingston International, Inc. (Livingston).

The comments represent a broad group of industry stakeholders, including licensed NVOCCs and freight forwarders, a tariff publishing vendor, and shippers.

No commenters, except Dart and NITL, were opposed to allowing acceptance of an NRA to be demonstrated by booking (some even supported allowing receipt of cargo prior to acceptance/booking). No commenters were expressly against allowing economic terms beyond rates in NRAs, the modification of NRAs at any time upon mutual agreement, or the elimination of the filing and essential terms publication requirements for NSAs. Some commenters also noted the benefits of NSAs, but sought more flexibility in the application of NSAs. Commenters also sought clarification on the role of pass-through and assessorial charges.

Regarding the Commission's requirement for prominent written notice in order to recognize acceptance of an NRA through booking, some commenters were in favor of the written notice along with specific wording for the notice, whereas some commenters were against any such requirement, as well as against any specific wording.

IV. Final Rule and Response to Comments

A. Remove the NSA Filing and Publication Requirements

1. Comments

NCBFAA favors exempting NSAs from both the filing and essential terms publication requirements and supports the Commission's proposal. NCBFAA at 3. A significant number of individual NCBFAA/FCBF members [2] also stated that ''[t]he FMC should repeal its existing requirement for NVOCCs to file negotiated service arrangements (NSAs) or to publish essential terms of NSAs in their tariffs as this process is extremely cumbersome and is not used by the trade in day-to-day business as it does not reflect the realities of international trade and commerce.'' NCBFAA/FBCF Member Comments. Yusen Logistics, an NVOCC, also ''agree[d] with the Commission's proposal to eliminate the necessity for NVOCCs to file NSAs.'' Yusen at 3. Connor Global, Mohawk, and Thunderbolt support eliminating the necessity for NVOCCs to file NSAs. Connor Global at 2; Mohawk at 2; Thunderbolt at 3. Serra supports eliminating the NSA filing requirement and publication requirement for essential terms and notes the reduction in administrative costs and the lack of any benefit provided by filing and publication. Serra at 2. ''Shipco [an NVOCC] agrees with the Commission's position that the NSA filing and essential terms publication requirements should be eliminated.'' Shipco at 4. Thunderbolt, another OTI, also agrees that the NSA filing requirement for NVOCCs should be eliminated. Thunderbolt at 3. Sefco, also an OTI, favors ending the requirement to file NSAs with the Commission and eliminating 46 CFR part 531 in its entirety. Sefco at 2–3. NITL agrees with the elimination of the NSA filing and essential terms publication requirements. NITL at 4. NYNJFFF&BA are also ''in favor of eliminating the NSA filing and publication requirements.'' NYNJFFF&BA at 4.

CJ International, customs broker/freight forwarder agrees with the Commission's proposal to remove the requirement to file NSAs with the Commission and publish essential terms in tariffs, stating that ''NSAs, like tariff rate filings, are burdensome and costly to file and maintain, yet it is unclear what the purpose is and who benefits from either of these items. Neither tariffs or NSAs are ever reviewed by clients.'' CJ International at 2. FedEx states that ''essential terms serve no purpose'' and supports removing the requirement to publish them as well as the definition of essential terms in § 531.3(q). FedEx at 2.

CaroTrans, an NVOCC, supports eliminating the NSA filing and publication of essential terms requirement, which it contends render NSAs unnecessarily burdensome and time consuming to use. Carotrans at 4–5. CaroTrans, however, still recognizes that NSAs can be a useful tool. *Id.* at 4. CaroTrans asserts that the Commission should ''amend the regulations authorizing and governing NSAs in order to make them more flexible. This would ensure that NSAs continue to be an option for NVOCCs and their customers that under some circumstances prefer the increased formality of the NSA.'' *Id.* at 5. CaroTrans states that ''the proposed reform would substantially improve the NSA process without compromising any protections intended by the regulations for shippers.'' *Id.* at 5.

Livingston International, Inc., an NVOCC, noted the benefits of NSAs, but asked the Commission ''to amend the regulations authorizing and governing NSAs in order to make them more flexible.'' Livingston at 5. Livingston contends that ''the filing and publication requirements in Part 531 should be eliminated, as they pose an unnecessary burden on NVOCCs and shippers. Nevertheless, it is Livingston's position that an NSA can serve as a useful tool to facilitate ocean transportation services for certain customers.'' *Id.* at 4. Livingston states, ''an NSA can provide a meaningful commitment of cargo from a shipper over a longer and specified period of time, and can be amended repeatedly to provide some ability to adjust to market conditions. Furthermore, an NSA can be made subject to charges published by an NVOCC in its tariff.'' *Id.* Livingston asserts that amending the regulations to

[2] The Florida Customs Brokers and Freight Forwarders Association (FCBF), along with a number of individual NCBFAA and FCBF members submitted identical comments. *See* Comments of FCBF, Kelly Global Logistics, Inc., North Atlantic International Ocean Carrier, ECU Worldwide (NVOCC) and Mabel Olivera, Vice President Operations for Clover Systems, LLC, IContainers (USA), A Customs Brokerage (ACB), Inc. Omara Valles, Operations Manager, of Clover International, LLC., Hemisphere Cargo, Corp., KCarlton International dba KCI Shipping Line, Geodis Freight Forwarding. One commenter, Express Logistics Services, LLC., submitted nearly identical comments but did not identify itself as a member of NCBFAA or FCBF. For ease of reference, we refer to these as ''NCBFAA/FCBF Member Comments'' throughout the final rule.

make them more flexible ''would ensure that NSAs continue to be an option for shippers and NVOCCs but with reduced regulatory burden.'' *Id.* at 5. NITL also ''believes that NSAs should remain an option for shippers and NVOCCs that prefer the increased formality of the NSA requirements.'' NITL at 4. ''The League also agrees with the Commission that the agency can remove any unnecessary or burdensome regulatory requirements without eliminating the NSA option entirely.'' *Id.*

Dart, a tariff publishing vendor, advised against removing NSA filing requirement. *See* Dart at 2. ''While many are calling for the removal of the NSA regulations, I agreed with the comments for its continued inclusion and usage, while pointing out the obvious that this instrument is OPTIONAL. It only effects the shippers and OTIs that choose to utilize them.'' *Id.* Dart advised that the Commission should not end the SERVCON system or stop requiring submission of Service Contracts and NSAs. *Id.* In particular, Dart asserted that the filing requirement is critical to the FMC's role as a neutral ''referee'' in trade disputes and assures independence from protective commercial interests. Dart also argued that the compliance costs of the requirement are no more than the cost of sending an email and that the requirement poses no economic burden. *Id.*

2. Discussion

Commenters overwhelmingly support the Commission's proposal to eliminate the requirement that NSAs be filed with the Commission in SERVCON, as well as to eliminate the requirement that an NVOCC publish the essential terms of an NSA. The majority, nevertheless, did not call for the complete removal of NSAs and part 531. Dart, arguing that the Commission should not end the filing requirement, was the only commenter who submitted any opposition to the Commission's proposal to maintain part 531—but to eliminate the filing and essential terms publication requirements. There was also clear support for the continued use of NSAs.

The Commission concurs with the statement from Livingston that amending the regulations to make them more flexible ''would ensure that NSAs continue to be an option for shippers and NVOCCs but with reduced regulatory burden.'' *See* Livingston at 5. As the Commission has noted previously, there does not appear to be any regulatory benefit from continuing the filing requirement for NSAs, and the group intended to benefit from the original 2003 NSA rulemaking, shippers, have not argued for maintaining the requirement.

In response to Dart's concerns about the need for filed NSAs to permit the FMC to address commercial disputes, we believe that the recordkeeping requirements in § 531.12 will ensure adequate Commission oversight. NVOCCs must continue to retain NSAs, amendments, and associated records for five years from the termination of the NSA and must provide them Commission staff within 30 days of a request. These requirements will permit the Commission to investigate any disputes or issues with respect to particular NSAs. We also respectfully disagree with Dart's contention that the requirement imposes little to no regulatory burden. As discussed below in the Rulemaking Analysis section and in the Commission's information collection request filed with the Office of Management and Budget, removing the filing requirement will reduce the burden hours for NVOCCs by 162 hours, or approximately $10,728.37.[3] Eliminating these burdens will provide regulatory relief to NVOCCs.

By way of removing the essential terms and NSA filing requirements, but still allowing NSAs as an option, the Commission can reduce costs and preserve choice while allowing a vehicle, NSAs, to continue to serve those members of the industry that prefer the extra formality and options allowed by NSAs. The Commission believes that while rate and service provisions in NSAs may not be ideal for NVOCCs and shippers with lower shipment volumes, a considerable amount of cargo is currently transported under NSAs, and they have proven to be a valued contract model. As stated by CaroTrans, the Commission believes this rule will ''substantially improve the NSA process without compromising any protections intended by the regulations for shippers.'' *See* CaroTrans at 5.

Finally, we agree with FedEx that the definition of ''statement of essential terms'' in § 531.3 is unnecessary given the elimination of the publication requirement. Accordingly, this final rule deletes that definition.[4]

B. Allow Non-Rate Economic Terms in NRAs

1. Comments

NCBFAA has urged the Commission to ''specifically authorize NRAs to include non-rate economic terms.'' NCBFAA at 11. A number of individual NCBFAA/FCBF members provided support for ''including economic terms such as credit, minimum quantities, liquidated damages, etc.'' Commenters at 1. Yusen Logistics requests to include non-rate economic terms. Yusen at 2–3. Mohawk, an NVOCC, has called for the inclusion of ''economic terms, such as surcharges, credit terms, minimum volume commitments, demurrage, detention, per diem, free time, waiting time, penalties and/or incentives, service standards.'' Mohawk states: ''We often find that our clients are looking to incorporate more into our NRAs than the current regulations allow, therefore we are hopeful that these broader economic terms can be approved. In many cases these same clients do not want to ship under [an] NSA.'' *Id.* at 2. Connor Global, another NVOCC, would like to see the inclusion of credit terms, surcharges, free time, waiting time, demurrage, detention, and per diem, minimum volume commitments, and service standards. Connor Global at 2. Serra, an NVOCC, requests inclusion of ''any non-economic terms important to both the NVOCC and the shipper in the movement of the freight.'' Serra at 1. Parker & Company Worldwide, a Freight Forwarder, states that it would like to see the same terms allowed as stated above, and remarked that looking up terms online in tariffs is burdensome. Parker at 1.

A significant number of shipper commenters submitted nearly identical comments [5] that support allowing non-rate economic terms:

We do not rely on published tariffs when deciding which NVOCC or freight forwarder

[3] Specifically, following the promulgation of the 2017 final rule in Docket No. 16–05, the Commission estimated that the NSA filing requirement resulted in 162 burden hours to NVOCCs. *See* Narrative Supporting Statement for 46 CFR part 531 (Mar. 17, 2017), available at *https://www.reginfo.gov/public/do/DownloadDocument?objectID=72337101.* And as described below, this final rule eliminates those burden hours. The Commission estimates the cost of the NSA requirements based on assumptions regarding the percentage of burden hours attributable to various respondent employees and annual salary estimates for those employees. Using those estimates, the cost associated with the NSA filing requirements is $10,728.37.

[4] This final rule also clarifies the revised regulatory text in § 531.8. The proposed revisions to § 531.8 in the NPRM would have included the following provision, ''Each time any part of an NSA is amended, the 'Effective Date' will be the date of the amendment.'' By providing that the effective date for amendments would be the date of the amendment, however, this proposed change could have been misinterpreted as prohibiting parties from setting future effective dates for amendments. Accordingly, the final rule makes clear that the effective date of an amendment will be either the date of the amendment or a future date agreed to by the parties.

[5] *See* Comments of Quadrant, Crescent, Geek Net, Connor Corp. (a different entity than Connor Global), and Bonney Forge. We refer to these comments as ''Shipper Comments'' throughout the document.

to use. Furthermore, it is our preference to be able to negotiate these services, not just the rates, without being required to have a formal written contract that needs to be filed with the Federal Maritime Commission (FMC.) . . . filing negotiated contracts/rates are a regulatory requirement that serves no real purpose but simply adds time and administrative costs to process.

Shipper Comments.

In addition to the types of terms specified above, Vanguard, an NVOCC, asks that the following terms be permitted: EDI services, Time Volume Rates, Liquidated Damages, Freight Forwarder Compensation, General Rate Increases (GRIs) or other pass-through charges from Carriers or Ports, Dispute Resolution, Rate or Service Amendments, Service Guarantees and/or Service Benchmarks, Rate Amendment Processes; etc. Vanguard at 2.

NITL also supports expanding NRAs to include non-rate economic terms. NITL at 5. NITL states, ''allowing NVOCCs and shippers to negotiate terms different than those set forth in the NVOCC's rules tariff will likely lead to more competitive and efficient shipping arrangements that meet the shipper's commercial requirements and the demands of the market.'' *Id.* NYNJFFF&BA is also in favor of ''allowing NRAs to include non-rate economic terms.'' NYNJFFF&BA at 3–4.

Dart, a tariff publishing vendor, stated that there should be a clear distinction between what additional terms could be included in an NRA compared to an NSA. Dart at 3. ''There is no need to cross into this area by making the terms and conditions conflicting. Both can equally coexist and should be allowed to remain as viable instruments for use by the OTI in support of the shipping needs of its customer.'' *Id.* FedEx, an NVOCC and freight forwarder, calls for the rescission of the prohibition against NRAs being allowed to include non-rate economic terms, and noted the importance of the ability to include other terms such as credit terms. FedEx at 2.

2. Discussion

The Commission agrees with the many commenters, shippers and NVOCCs alike, who are calling for the expansion of NRAs to include non-rate economic terms. While the Commission recognizes the argument made by Dart for a clear distinction between what additional terms may be included in an NRA compared to an NSA, the Commission nevertheless believes that giving more choice to parties, as the majority of commenters support, will lead to greater efficiency and more competitive shipping arrangements. Dart at 3.

As stated above, commenters have called for a variety of new terms to be allowed in NRAs: Surcharges, credit terms, minimum volume commitments, demurrage, detention, per diem, free time, waiting time, penalties and/or incentives, service standards, EDI services, freight forwarder compensation, GRIs or other pass-through charges from Carriers or Ports, Dispute Resolution, and Rate Amendment Processes. The Commission recognizes the reduced administrative burden, greater efficiency, and increased competition that can be achieved by permitting the inclusion of such terms. While the Commission acknowledges the concern that allowing non-rate economic terms might increase the complexity of some NRAs, the Commission nevertheless favors removing outdated, unnecessary, or unduly burdensome regulations and restrictions to make way for more choice and options for NVOCCs and shippers. The Commission also believes that this increased flexibility for NRAs does not warrant a bright line distinction between NSAs and NRAs. Allowing the full range of non-rate economic terms in NRAs will clearly provide a benefit to members of the industry, and, therefore, the Commission is in favor of allowing for the inclusion of such terms in NRAs.[6] Moreover, the broadening of the terms allowed in NRAs will not diminish the ability of NVOCCs and shippers that wish to form more complex agreements through an NSA. NSAs will remain a viable commercial pricing instrument for shippers and NVOCCs alike.

C. Third-Party Pass-Through Assessorial Charges

1. Comments

As discussed above, a number of commenters requested that the Commission permit NVOCCs to include GRIs and other pass through charges from carriers and ports in NRAs. In addition, FedEx requested the Commission to clarify the role of third-party pass-through assessorial charges. FedEx at 2. FedEx requests ''that text clarifying the role of third-party pass-through assessorials, such as GRIs (General Rate Increases) be included in the regulations.'' *Id.* FedEx states that ''NVOCCs' ability to keep up with assessorial fees passed down by carriers is especially challenging. These rates sometimes change weekly in the most common lanes. Often ocean carriers announce the establishment and amount of an assessorial 30 days in advance, but the amount decreases over the 30 days, and is only finalized the day before the effective date.'' *Id.* FedEx notes that ''NVOCCs have very limited control over this process . . . assessorial costs are generally passed on to the shipper . . . [t]he NVOCC's process is labor-intensive.'' *Id.* FedEx proposes that NRAs be allowed ''to contain a clause stating that assessorial charges by third parties will be passed through to the customer'' without mark up or being discounted. *Id.* FedEx also proposes ''that NRAs also be permitted to contain a clause referring the user to the NVOCC's tariff, or other website location if/when tariffs are eliminated, for the assessorial amounts charged by third parties.'' *Id.*

Serra also requests allowance for ''pass through charges to be referenced in an NRA and applied with full shipper knowledge and understanding.'' Serra at 2. Serra states:

> Surcharges, notably GRIs have become a wild card factor in final rate costs. Since regulations require ocean carriers to announce increases in surcharges 30 days in advance, the industry routinely files and provides notice. Then when the market cannot sustain all or some of the increase, the surcharges are cancelled or rolled to a future date. This is destabilizing for all industry participants and particularly difficult for NVOCCs to manage.
>
> *Id.*

2. Discussion

The Commission already permits NVOCCs to pass along third-party assessorial charges to shippers under NRAs when certain conditions are met. Specifically, assessorial charges and other surcharges must be applied in accordance with the rules tariff and the NRA must inform the shipper of their applicability.[7] The Commission has not, however, traditionally allowed NRA rates to be increased via GRIs. Although part 532 does not expressly discuss assessorial charges, the preamble to the 2011 final rule establishing NRAs states:

> As is the case with respect to tariff rates, the rate stated in an NRA may specify the inclusion of all charges (an ''all-in'' rate) or specify the inclusion of only certain accessorials or surcharges. Without specifying otherwise, the NRA would only replace the base ocean freight rate or published tariff rate. If the rate contained in an NRA is not an all-in rate, the NRA must

[6] We discuss surcharges and pass-through assessorial charges in the next section.

[7] A rules tariff is defined as ''a tariff or the portion of a tariff . . . containing the terms and conditions governing the charges, classifications, rules, regulations and practices of an NVOCC, but does not include a rate.'' 46 CFR 532.3(c).

specify which surcharges and accessorials from the rules tariff will apply. To the extent surcharges or accessorials published in the NVOCC's rules tariff will apply, the NRA must state that the amount of such surcharges and accessorials is fixed once the first shipment has been received by the NVOCC, until the last shipment is delivered. Rates stated in an NRA may not be increased via a GRI.

76 FR at 11354.

Since issuance of the 2011 final rule, however, the Commission has clarified through case law the treatment of pass-through assessorial charges for which no specific amount is fixed in either the NRA or the rules tariff. Specifically, in *Gruenberg-Reisner* v. *Overseas Moving Specialists, Inc.,* 34 S.R.R. 613, 622–623 (FMC 2016), the Commission found that an NVOCC was entitled to collect pass-through assessorial charges without any markup, which it substantiated with invoices. The NVOCC described in its rules tariff the types of charges that were not included in the rate and provided that any of those charges assessed against the cargo would be for the account of the cargo, even if the NVOCC was responsible for the collection thereof. *Id.* The Commission found that Respondent was ''entitled to payment for . . . destination terminal handling charges and the additional floor fee, and . . . local port fees, customs fees, parking permit, and elevator fee because these were reasonable accessorial charges that Respondent passed through to the Claimants without any markup.'' *Id.* at 623. The Commission also stated that ''assessing pass-through charges with no markup is a just and reasonable practice, in accordance with [section] 41102(c).'' *Id* at 622.

The Commission has determined to incorporate the interpretations in *Gruenberg-Reisner,* subject to a few clarifications, into part 532. Specifically, pass-through assessorial charges need not be fixed at the time of receipt of the first shipment, in light of the Commission's decision in *Gruenberg-Reisner,* which found it permissible for an NVOCC to collect pass-through assessorial charges that were not fixed upon receipt.

In summary, the final rule adopts the following requirements. If the NRA rate is not an ''all-in rate'' the NRA must specify which surcharges or assessorial charges will apply by either including the specific additional charges in the NRA itself or referencing in the NRA the specific charges contained in the rules tariff. For applicable charges contained in the rules tariff, the charges and amounts for those charges (if the amounts are specified in the tariff) are fixed once the first shipment has been received by the NVOCC until the last shipment is delivered, subject to further amendment of the NRA by mutual agreement of the NVOCC and shipper. For pass-through charges and ocean carrier GRIs for which the NRA or rules tariff does not include a specified amount, the NVOCC may invoice the shipper for only those charges the NVOCC actually incurs, with no markup. The Commission is removing the prohibition on the pass-through of ocean carrier GRIs in order to increase efficiency and flexibility within the NRA framework.

D. Authorize Amendments and Shipper Acceptance Upon Booking

1. Comments

A number of individual NCBFAA/FCBF members proposed that the Commission authorize amendments to NRAs and allow acceptance and booking of cargo ''to suffice as acceptance of the rate, in lieu of a written agreement.'' NCBFAA/FCBF Member Comments at 1. Yusen also favors authorizing amendments and believes that ''acceptance of the NRA rate quote by either signing the document or otherwise having a written agreement'' is ''an irrelevant and repetitive requirement'' Yusen at 2. Connor Global asks for flexibility in amending NRAs and acceptance upon booking. Connor Global at 2. Mohawk supports allowing amendments and acceptance upon booking. Mohawk at 2. Serra argues that allowing NRAs ''to be amended would cut down on the re-issuance of new NRAs necessitated by the dynamic shipping environment.'' Serra at 2. Serra believes that ''this should extend even to freight that has been received.'' *Id.* Serra asks the Commission ''to recognize that tendering or booking of cargo constitutes acceptance of the rate and terms quoted in an NRA.'' *Id.* Thunderbolt also believes tender of the cargo by the shipper to the OTI should constitute acceptance of an NRA. Thunderbolt at 2. Sefco favors ''allowing the act of booking cargo to be considered acceptance of a rate under the terms of an NRA.'' Sefco at 3. Sefco argues that allowing modification and acceptance by booking ''is more in tune with market conditions and best business practices.'' Sefco at 2. NCBFAA states that ''modification of NRAs eliminates an unnecessary restriction, provides flexibility in a fluid marketplace, and allows [NVOCCs] to be responsive to their customers.'' NCBFAA at 7.

Livingston supports the proposal ''to eliminate [§ 532.5(e)] and to expand the NRA exemption in 46 CFR part 532 to allow for modification of NRAs at any time upon mutual agreement between an NVOCC and a shipper.'' Livingston at 3. ''Livingston also supports the further change proposed by the Commission to modify [§ 532.5(c)] to allow a booking request made pursuant to an NRA to constitute the required shipper acceptance of such NRA.'' *Id.* CaroTrans concurs. CaroTrans at 3. Shipco also concurs. Shipco at 2–3.

Several commenters disagreed, however, with the Commission's proposal to provide specific language for the notice to shippers that booking would constitute acceptance of the NRA terms. Livingston argues that ''requiring particular wording on an NRA regarding whether booking constitutes acceptance adds regulatory burden instead of removing it.'' *Id.* Shipco states that ''requiring specific wording would merely raise the risk of noncompliance for NVOCCs without providing any real benefit to shippers.'' Shipco at 2–3.

NYNJFFF&BA goes even further, arguing that ''the requirement for a 'prominent written notice' be removed and the wording of any such notice be left to the NVOCC to determine what works best for their system of communication.'' NYNJFFF&BA at 2. NYNJFFF&BA states that ''it is an excessive formulaic governmental requirement with no real business/regulatory/legal purpose to insist that an NRA rate offer is not accepted unless there is a prominent notice that a booking is an acceptance of the NRA.'' *Id.* at 3. NYNJFFF&BA are also in ''favor of allowing NRAs to be amended after the receipt of the initial shipment.'' *Id.* In addition, they favor allowing the shipper to agree in writing ''to accept a change in the NRA terms after the carrier or its agent has received the cargo.'' *Id.*

CJ International, a freight forwarder and customs broker, states:

> We believe that the Commission should eliminate the requirement that the shipper must indicate acceptance of the NRA rate by signing the document or memorializing acceptance in some other written format. Though we do request our clients indicate their approval by either signing our rate quote or by sending confirmation back via email, in many cases they simply tender cargo as acceptance of the NRA rate with the understanding that the agreed NRA rate will apply.

CJ International at 1.

Dart cautions that NRA amendments should be denoted with a date and time stamp, an amendment number, and a written response before the cargo is accepted.'' Dart at 3. Specifically, Dart states:

At the very least, a booking would have to be supported by a written acceptance of the NRA, contain the NRA number and specifically refer to the appropriate amendment number. If not, issues will arise with parties working on different ''versions'', only to find out later the final costs were not all specifically agreed to as supported by the many comments who noted the fluid and changing conditions of ocean shipments. Things can change hourly in some cases and the requirement of written acceptance and specific language compelling the NRA number and subsequent amendment number should be included to avoid confusion and needless disputes that could end up in court. *Id.*

NITL supports allowing amendments to NRAs and shipper acceptance upon booking, but with reservations. NITL at 6–7. ''NITL supports providing parties an ability to amend an NRA at any time but only to the extent that the amendment is based on a mutual agreement between the parties that is not in the form of the NVOCC's tariff, bill of lading or other shipping document not subject to mutual negotiation.'' NITL at 6. NITL believes ''[t]he mutual agreement could be in the form of an informal writing such as an email or other electronic exchange which reflects the mutuality of the agreement.'' *Id.* at 6.

NITL believes that the proposal to allow acceptance of an NRA through the act of booking in addition to the current method of acceptance which allows acceptance through memorialization in an email or writing, has the potential to create confusion over the enforceability of an NRA. *Id.* at 6. NITL believes this could also cause confusion with ''the ability of a shipper to cancel a booking if commercial circumstances change prior to the tender of the cargo.'' *Id.* NITL, therefore, ''with respect to a shipper's ''acceptance'' of an NRA, the League prefers the current regulations which require a ''meeting of the minds'' between the parties to be reflected in a formal or informal writing, such as an email.'' *Id.* at 6. Nevertheless, NITL recommends that ''if the FMC were still to decide to provide greater flexibility for ''acceptance'' of NRAs,'' then ''acceptance of the NRA should be tied to the shipper's tender of the cargo,'' as acceptance through tendering of cargo ''is more consistent with existing transportation practices and broader commercial contract principles.'' *Id.* at 7. ''NITL strongly supports the Commission's proposed requirement that each NVOCC seeking to recognize the alternate form of acceptance must incorporate a prominent written notice to that effect on each applicable NRA or amendment to avoid any risk of surprise and potential disputes.'' *Id.* at 7. RBH, a shipper, states that all that should be necessary for acceptance of an NRA is ''the preparation of a good quotation and acceptance of the charges associated with a shipment.'' RBH at 1.

Vanguard, who favors requiring prominent written notice, suggested the following language: ''Your booking and/or tendering of cargo is considered acceptance of the NRA rates and terms that were negotiated with you for the shipment of the cargo.'' Vanguard at 2. Vanguard also believes that NRAs should be allowed ''to be amended at any time before, upon or after cargo receipt,'' as well as ''extended, expired, or cancelled.'' *Id.* at 2. Shipco, however, ''does not believe that the Commission should require any particular wording on an NRA regarding whether booking constitutes acceptance.'' Shipco at 3. CaroTrans also does not believe any specific wording should be required to constitute acceptance. CaroTrans at 3. ''Requiring specific wording would merely raise the risk of noncompliance for NVOCCs without providing any real benefit to shippers.'' *Id.* at 4. Serra is not of the opinion ''that it is necessary for an NVOCC to have a prominent notice that booking is considered an acceptance of the NRA.'' Serra at 2. Serra also does not ''believe that the form and wording of such a notice should be a matter worthy of government interest and regulation.'' *Id.*

ABS Consulting stated: ''Further providing the shippers[']' acceptance by making a booking with the NVOCC also aligns nicely with other shipping modes and how shippers and forwarders (carriers) interact today.'' ABS at 1. ''I would recommend that the FMC go even one step further, to allowing the NVOCC to receive the cargo prior to the acceptance (booking) of the cargo by the customer.'' *Id.* Asia Shipping also states that they ''would recommend that the FMC allow[] the NVOCC to receive the cargo prior to the acceptance (booking) of the cargo by the customer.'' Asia at 2.

FedEx states that ''[a]llowing acceptance to be demonstrated by the shipper's booking with the NVOCC after receipt of the NRA (with explanatory text) conforms with the current shipping environment.'' FedEx at 2. FedEx, moreover, states that ''[a]llowing NVOCCs and shippers to modify existing NRAs with mutual agreement, instead of establishing a new NRA, reduces bureaucracy.'' *Id.*

DJR Logistics states that ''the lifting of the requirement of having our customers formally agree to the NRA and allow for the acceptance of a booking of cargo to confirm their agreement to be in the interest of the shipping public.'' DJR at 1. DJR also believes NRAs should be allowed to be amended ''as market conditions change.'' *Id.* ''The ability to adjust the NRA as the market conditions change would eliminate[] hours of work and would benefit the Shipping Public by allowing us to reduce the rate being offered earlier than when the NRA expires under the current system.'' *Id.*

2. Discussion

The Commission recognized in the NPRM that NVOCCs and their customers ''should not be compelled to create a new NRA in every instance simply because the rules do not currently provide for amendment.'' 82 FR at 56786. The Commission has also acknowledged that it is appropriate to ''permit NRAs to be extended or amended upon acceptance or agreement by the shipper customer.'' *Id.* Acknowledging the utility of acceptance by booking, the Commission, furthermore, requested input on the practice—as well as whether prominent written notice should be required. The Commission also sought input on whether or not specific wording should be required. *Id.*

There were no commenters who opposed allowing amendments. The Commission recognizes that the smaller cargo volume of NRAs as well as the short term and transactional nature of NRAs merit greater flexibility and the benefits of allowing amendments to NRAs are recognized by the industry and the Commission alike. Some commenters, like Serra and NYNJFFF&BA, disagreed with the proposal to limit the applicability of NRA amendments to prospective shipments and urged the Commission to allow for ''a change in the NRA terms after the carrier or its agent has received the cargo.'' NYNJFFF&BA at 3. The Commission is denying this request and moving forward with the proposed language limiting amendments to prospective shipments. Allowing such ''retroactive'' amendments would be a drastic departure from the current regulatory regime governing the ocean transportation of goods. No matter the specific means of contracting for such services, *i.e.,* tariff, service contract, NSA, or NRA, the Commission has consistently limited the applicability of amendments to prospective shipments, and the commenters have not presented a compelling reason to make such a dramatic change. NRAs, in particular, may be established and amended with little formality. Thus, retroactive amendments in the NRA context present an increased risk of error and disagreement over the applicable terms. In addition, the Commission believes

that if the NVOCC already has the cargo at the time of the amendment, there would be an imbalance in bargaining power between the NVOCC and shipper and an increased possibility that a shipper would feel pressured to submit to amended terms with which they might not otherwise agree. In order to avoid this situation and ensure that any amendments truly reflect mutual agreement by the parties, the applicability of amendments is limited to prospective shipments.

The process for the parties reaching agreement for NRAs and amendments presents another area of disagreement. The majority of commenters support acceptance upon booking with no writing required. NITL and Dart both argue, however, that having a formal writing will help to avoid confusion.

The Commission does not share NITL's concerns and, under the final rule, an NRA may become binding and enforceable when the terms of an NRA are agreed to by both NRA shipper and NVOCC. The Commission is adding language to § 532.5 to clarify this point. The shipper is considered to have agreed to the terms of the NRA when: (1) The shipper provides the NVOCC with a signed agreement; (2) sends the NVOCC written communication indicating agreement to the NRA terms; or (3) books a shipment after receiving prominent notice that booking constitutes acceptance.

The Commission believes that prominent written notice, with fixed language stating that a booking constitutes acceptance, will negate the potential confusion about which Dart is concerned. The requirement that Dart calls for, specifically that a booking would need written acceptance, with the NRA number and an amendment number, would be overly burdensome for both shippers and NVOCCs.

The Commission also recognizes the request of ABS Consulting and Asia to allow ''the NVOCC to receive the cargo prior to the acceptance (booking) of the cargo by the customer.'' The Commission believes, however, that to allow tender prior to agreement would create the potential for an unfair environment for shippers and an increase in transactional confusion. In a situation where an NVOCC is sending multiple rate quotes during a short period of time, allowing tender to constitute shipper acceptance would substantially increase the likelihood of disagreement over which quoted terms constitute the NRA. In order to avoid such disputes, the Commission is retaining the requirement that the NRA be agreed to by both the shipper and NVOCC prior to the receipt of cargo by the NVOCC and including ''prior to the receipt of cargo'' in the text of § 532.5(c).

Prominent written notice will alert shippers that booking will constitute acceptance of the NRA and avoid confusion between shippers and NVOCCs. Though Serra and NYNJFFF&BA argue against the requirement of prominent written notice, the Commission believes without such notice the potential for confusion and disputes is too high. A number of commenters, including Serra, CaroTrans, NYNJFFF&BA, and Shipco also argue against requiring specific fixed language in the prominent written notice. The requirement for specific language, they argue, serves no purpose and raises the risk of noncompliance. The Commission disagrees with these contentions. Without specific language, the burden and risk of noncompliance for NVOCCs would increase, as they would be required to craft statements that qualify as ''prominent written notice'' an arguably ambiguous standard. In contrast, specific fixed language provides necessary clarity and certainty.

As discussed, above, Vanguard suggested the following alternative language for the prominent written notice: ''Your booking and/or tendering of cargo is considered acceptance of the NRA rates and terms that were negotiated with you for the shipment of the cargo.'' The Commission believes that revising the proposed notice language to incorporate certain aspects of Vanguard's suggested language will improve the language. In particular, the Commission's proposed language noted that the shipper may agree to the NRA by booking. This could be read as allowing the shipper to determine whether booking constitutes acceptance and lead to confusion. Vanguard's suggested language, on the other hand, makes clear the booking will be considered acceptance of the NRA. Accordingly, this final rule adopts the following notice language: ''THE SHIPPER'S BOOKING OF CARGO AFTER RECEIVING THE TERMS OF THIS NRA OR NRA AMENDMENT CONSTITUTES ACCEPTANCE OF THE RATES AND TERMS OF THIS NRA OR NRA AMENDMENT.'' [8] We also view the language ''acceptance of the NRA rates and terms that were negotiated with you for the shipment of the cargo,'' as suggesting that the required language be included somewhere other than the NRA terms transmitted to the shipper. To ensure that the shipper is aware of this notice, the final rule retains the proposed rule's requirement that the notice be included in the NRA terms, and includes clarifying language to that effect.

E. Elimination of all Tariff Publishing Requirements

1. Comments

A number of individual NCBFAA/FCBF members submitted the same request that the Commission ''entirely exempt NVOCCs from publishing negotiated rate arrangements (NRAs) and filing requirements.'' NCBFAA/FCBF Member Comments at 1. Parker, a freight forwarder, argues that tariff filing has become outdated. Parker at 1. Parker states that ''as a customer we never look at the tariffs we rely on the written quotations.'' *Id.* Mohawk ''strongly urge[s] the Commission to eliminate the need for NVOCCs to file Rate Tariffs.'' Mohawk at 3. Mohawk states that ''no shippers ever shop for rates in any of the remaining Rate Tariffs. Instead they ask for quotes via email or through web-based rate sourcing that have long ago stopped the need to look elsewhere. Tariffs are an archaic throwback to a time long gone . . . .'' *Id.*

Thunderbolt supports the ''elimination of the need for NVOCC's to file Rate Tariffs.'' Thunderbolt at 3. RBH states ''the publishing of tariffs is an outdated way of providing information that is no longer used and adds to additional expenses for our carriers that could be better served by offering more competitive rates without this clerical burden.'' RBH at 1. Vanguard states that ''tariffs are not used by shippers,'' and requests that the Commission, ''remove the requirement to provide public access to shippers to NVOCC Rules tariff.'' Vanguard at 2. Serra has asked the Commission to ''seriously study the possibility of using its exemption authority to remove the tariff publishing requirements for NVOCCs.'' Serra at 2. Serra states that ''the removal of the requirement to publish tariffs will not be detrimental to the shipping public and actually lead to a reduction in costs that will assist economic growth.'' *Id.* Serra supports ''the elimination of tariff publishing regulations both for OTI NVOCCs and ocean common carriers as they are simply not used and thus provide no benefit to the shipping public.'' *Id.* at 3. NYNJFFF&BA supports ''removal of OTI NVOCCs Tariff and Tariff Publishing Requirements.'' NYNJFFF&BA at 5.

Lastly, Connor Global also ''urges the Commission to eliminate the requirement for NVOCCs to file rate

[8] The proposed rule required that this notice be in bold *or* uppercase letters. To help ensure that shippers see the notice, the final rule requires that the notice be in bold *and* uppercase letters.

tariffs.'' Connor Global at 3. Connor Global argues that ''they are an archaic method of pursuing rates when in today's market rates are requested by email or accessed via web portals.'' *Id.* at 3. Connor Global also argues that it is a burden to file tariffs, nobody accesses them, and they provide no benefit. *Id.* at 3.

2. Discussion

The Commission has considered the request to eliminate all tariff publishing requirements. Clearly a number of commenters have argued that rate tariffs are archaic and not utilized.

As an initial matter, the Commission did not propose or consider the elimination of all tariff filing requirements for NVOCCs in the NPRM and such a change is outside the scope of this rulemaking. Moreover, data from the Commission's Bureau of Trade and Analysis demonstrates that 71 percent of NVOCCs still publish tariff rates exclusively. With such widespread use, the Commission does not believe that rate tariffs are outdated, not used, or of no benefit. Rate tariffs provide shippers access to ocean freight shipping in a non-discriminatory way. Rate tariffs are a useful tool for the shipping public and their demise would not be consistent with the Commission's approach to enhancing flexibility and choice.

F. Summary of Post Final Rule NSA/NRA Differences

To summarize the key differences between NSAs and NRAs in light of the changes made by this final rule, the Commission has prepared the following table:

	NSA	NRA
Rates and Terms	• Must include terms listed in 46 CFR 531.6(a). • May include any other terms.	• Must include the rate and any applicable non-rate economic terms. • Must include any applicable surcharges and assessorial charges not included in the rate, including pass-through charges.
Acceptance	• Must be signed by NVOCC and shipper.	Shipper may accept terms by: • Signing agreement. • Communicating acceptance by writing, including by email. • Booking a shipment after receipt of NRA terms, if NVOCC has included required notice.
Enforceability	• Binding upon signature of the parties.	• Binding upon shipper: (1) Providing NVOCC with signed agreement; (2) sending written communication accepting NRA terms; or (3) booking shipment after receiving prominent notice.
Filing	• No filing requirement	• No filing requirement.
Publication	• No publication requirement	• No publication requirement.

V. Rulemaking Analyses and Notices

Congressional Review Act

The rule is not a ''major rule'' as defined by the Congressional Review Act, codified at 5 U.S.C. 801 *et seq.* The rule will not result in: (1) An annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies. 5 U.S.C. 804(2).

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency promulgates a final rule after being required to publish a proposed rulemaking under the Administrative Procedure Act (APA) (5 U.S.C. 553), the agency must prepare and make available a final regulatory flexibility analysis (FRFA) describing the impact of the rule on small entities, unless the head of the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604–605. The Chairman of the Federal Maritime Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The Commission recognizes that the majority of businesses affected by these rules qualify as small entities under the guidelines of the Small Business Administration. The rule as to part 531 (NSAs) poses no economic detriment to small businesses. In this regard, the rule pertains to an NSA entered into between a NVOCC and a shipper, which is an optional pricing arrangement that benefits the shipping public and relieves NVOCCs from the burden of the statutory tariff filing requirements in 46 U.S.C. 40501. In that the rule eliminates the requirements that NVOCCs file NSAs with the Commission and publish essential terms of such NSAs, the regulatory burden on NVOCCs utilizing NSAs is reduced. The rule as to part 532 (NRAs) establishes an optional method for NVOCCs to amend an NRA, permits additional terms to be included in NRAs, and expands the ways a shipper may accept the terms of an NRA or amendment thereto, to be used at the NVOCC's discretion. In that the rule eliminates the prohibition on amendments to NRAs after an initial shipment is received by the carrier and permits NVOCCs to more flexibly create and amend such NRAs, the regulatory burden on NVOCCs utilizing NRAs is reduced.

National Environmental Policy Act

Upon completion of an environmental assessment, the Commission issued a Finding of No Significant Impact (FONSI) in conjunction with the NPRM, determining that this rulemaking would not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.,* and that preparation of an environmental impact statement was not required. No petitions for review were filed, and the FONSI became final on December 10, 2017. The FONSI and environmental assessment are available for inspection at the Commission's Electronic Reading Room at: *http://www.fmc.gov/17-10,* and at the Docket Activity Library at 800 North Capitol Street NW, Washington, DC 20573, between 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Telephone: (202) 523–5725.

Executive Order 12988 (Civil Justice Reform)

This final rule meets the applicable standards in E.O. 12988 titled, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C.

3507. The agency must submit collections of information in rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. The information collection requirements for part 531, NVOCC Service Arrangements, and Part 532 NVOCC Negotiated Rate Arrangements are currently authorized under OMB Control Numbers 3072–0070: 46 CFR part 531, NVOCC Service Arrangements, and 3072–0071: 46 CFR part 532—NVOCC Negotiated Rate Arrangements, respectively. In compliance with the PRA, the Commission submitted the proposed revised information collections to the Office of Management and Budget. Notice of the revised information collections was published in the NRPM and public comments were invited. 82 FR at 56781, 56787. Comments received regarding the proposed changes, as well as the Commission's responses, are addressed above. No comments specifically addressed the revised information collections in parts 531 and 532.

As discussed above, the final rule eliminates the requirement that NVOCCs file NSAs with the Commission and the requirement that NVOCCs publish the essential terms of NSAs. Public burden for the collection of information pursuant to part 531, NVOCC Service Arrangements, as revised, would comprise 79 likely respondents and an estimated 3,328 annual instances. The final rule will significantly reduce the burden estimate from 831 hours to 127 hours, a difference of 704 hours.

The final rule also: (1) Permits NRAs to be modified after the receipt of the initial shipment by the NVOCC; (2) permits NVOCCs to incorporate non-rate economic terms; (3) permits shipper acceptance of the NRA or amendment by booking a shipment thereunder, subject to the NVOCC incorporating in each NRA or amendment a prominent written notice that booking constitutes acceptance, the text of which is specified in part 532. Accordingly, the final rule will result in no changes to the information collection for part 532, NVOCC Negotiated Rate Arrangements.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at *http://www.reginfo.gov/public/do/eAgendaMain*.

List of Subjects

46 CFR Part 531

Freight, Maritime carriers, Report and recordkeeping requirements.

46 CFR Part 532

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

For the reasons stated in the supplementary information, the Federal Maritime Commission amends 46 CFR parts 531 and 532 as follows:

PART 531—NVOCC SERVICE ARRANGEMENTS

■ 1. The authority citation for part 531 continues to read as:

Authority: 46 U.S.C. 40103.

■ 2. Revise § 531.1 to read as follows:

§ 531.1 Purpose.

The purpose of this part is to facilitate NVOCC Service Arrangements (''NSAs'') as they are exempt from the otherwise applicable provisions of the Shipping Act of 1984 (''the Act'').

■ 3. Revise § 531.3 to read as follows:

§ 531.3 Definitions.

When used in this part:

(a) *Act* means the Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998;

(b) *Affiliate* means two or more entities which are under common ownership or control by reason of being parent and subsidiary or entities associated with, under common control with, or otherwise related to each other through common stock ownership or common directors or officers.

(c) *Amendment* means any change to an NSA which has prospective effect and which is mutually agreed upon by all parties to the NSA.

(d) *Commission* or *FMC* means the Federal Maritime Commission.

(e) *Common carrier* means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel tanker, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

(i) If the common carrier and the owner of those commodities are wholly owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities and

(ii) Only with respect to those commodities.

(f) *Effective date* means the date upon which an NSA or amendment is scheduled to go into effect by the parties to the NSA. An NSA or amendment becomes effective at 12:01 a.m. Eastern Standard Time on the beginning of the effective date. The effective date cannot be prior to the date of the NSA or amendment.

(g) *Expiration date* means the last day after which the entire NSA is no longer in effect.

(h) *NSA shipper* means a cargo owner, the person for whose account the ocean transportation is provided, the person to whom delivery is to be made, a shippers' association, or an ocean transportation intermediary, as defined in section 3(17)(B) of the Act (46 U.S.C. 40102(16)), that accepts responsibility for payment of all applicable charges under the NSA.

(i) *NVOCC Service Arrangement* (''NSA'') means a written contract, other than a bill of lading or receipt, between one or more NSA shippers and an individual NVOCC or two or more affiliated NVOCCs, in which the NSA shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the NVOCC commits to a certain rate or rate schedule and a defined service level. The NSA may also specify provisions in the event of nonperformance on the part of any party.

(j) *Rules tariff* means a tariff or the portion of a tariff, as defined by 46 CFR 520.2, containing the terms and conditions governing the charges, classifications, rules, regulations and practices of an NVOCC, but does not include a rate.

■ 4. Revise § 531.4 to read as follows:

§ 531.4 NVOCC rules tariff.

(a) Before entering into NSAs under this part, an NVOCC must provide electronic access to its rules tariffs to the public free of charge.

(b) 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.

§ 531.5 [Removed and Reserved]

■ 5. Remove and reserve § 531.5

Subpart B—Requirements

■ 6. Revise the subpart B heading to read as set forth above.

■ 7. Amend § 531.6 by:

■ a. Removing paragraphs (a), (f), and (g):

■ b. Redesignating paragraphs (b) through (e) as paragraphs (a) through (d), respectively;

■ c. Revising the introductory text of newly redesignated paragraph (a);

■ d. Revising newly redesignated paragraph (c)(1) and adding paragraph (c)(5);

■ e. Revising newly redesignated paragraph (d).

The revisions read as follows:

§ 531.6 NVOCC Service Arrangements.

(a) Every NSA shall include the complete terms of the NSA including, but not limited to, the following:

* * * * *

(c) * * *

(1) For service pursuant to an NSA, no NVOCC may, either alone or in conjunction with any other person, directly or indirectly, provide service in the liner trade that is not in accordance with the rates, charges, classifications, rules and practices contained in an NSA.

* * * * *

(5) Except for the carrier party's rules tariff, the requirement in 46 U.S.C. 40501(a)–(c) that the NVOCC include its rates in a tariff open to public inspection in an automated tariff system and the Commission's corresponding regulations at 46 CFR part 520 shall not apply.

(d) *Format requirements.* Every NSA shall include:

(1) A unique NSA number of more than one (1) but less than ten (10) alphanumeric characters in length (''NSA Number''); and

(2) A consecutively numbered amendment number no more than three digits in length, with initial NSAs using ''0'' (''Amendment number'').

§ 531.7 [Removed and Reserved]

■ 8. Remove and reserve § 531.7

■ 9. Revise § 531.8 to read as follows:

§ 531.8 Amendment.

(a) NSAs may be amended by mutual agreement of the parties.

(b) Where feasible, NSAs should be amended by amending only the affected specific term(s) or subterms.

(c) Each time any part of an NSA is amended, a consecutive amendment number (up to three digits), beginning with the number ''1'' shall be assigned.

(d) Each time any part of an NSA is amended, the ''Effective Date'' will be the date of the amendment or a future date agreed to by the parties.

Subpart C—[Removed and Reserved]

■ 10. Remove and reserve subpart C, consisting of § 531.9.

§ 531.10 [Amended].

■ 11. Amend § 531.10 by removing paragraphs (c) and (d).

■ 12. Revise § 531.11 to read as follows:

§ 531.11 Implementation.

Generally. Performance under an NSA or amendment thereto may not begin before the day it is effective.

■ 13. Revise § 531.99 to read as follows:

§ 531.99 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The Commission has received OMB approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072–0070.

Appendix A to Part 531 [Removed]

■ 14. Remove Appendix A to part 531.

PART 532—NVOCC NEGOTIATED RATE ARRANGEMENTS

■ 15. The authority citation for part 532 continues to read as:

Authority: 46 U.S.C. 40103.

■ 16. Amend § 532.3 by revising paragraph (a) to read as follows:

§ 532.3 Definitions.

(a) ''NVOCC Negotiated Rate Arrangement'' or ''NRA'' means a written and binding arrangement between an NRA shipper and an eligible NVOCC to provide specific transportation service for a stated cargo quantity, from origin to destination, on and after receipt of the cargo by the NVOCC. For purposes of this part, ''receipt of cargo by the NVOCC'' includes receipt by the NVOCC's agent, or the originating carrier in the case of through transportation.

* * * * *

■ 17. Revise § 532.5 to read as follows:

§ 532.5 Requirements for NVOCC negotiated rate arrangements.

In order to qualify for the exemptions to the general rate publication requirement as set forth in § 532.2, an NRA must meet the following requirements:

(a) *Writing.* The NRA must be in writing.

(b) *Parties.* The NRA must contain the names of the parties and the names of the representatives agreeing to the NRA.

(c) *Agreement.* The terms of the NRA must be agreed to by both NRA shipper and NVOCC, prior to receipt of cargo by the NVOCC. The shipper is considered to have agreed to the terms of the NRA if the shipper:

(1) Provides the NVOCC with a signed agreement;

(2) Sends the NVOCC a written communication, including an email, indicating acceptance of the NRA terms; or

(3) Books a shipment after receiving the NRA terms from the NVOCC, if the NVOCC incorporates in the NRA terms the following text in bold font and all uppercase letters: ''THE SHIPPER'S BOOKING OF CARGO AFTER RECEIVING THE TERMS OF THIS NRA OR NRA AMENDMENT CONSTITUTES ACCEPTANCE OF THE RATES AND TERMS OF THIS NRA OR NRA AMENDMENT.''

(d) *Rates and terms*—(1) *General.* The NRA must clearly specify the rate and terms, as well as the shipment or shipments to which such rate will apply.

(2) *Surcharges, assessorial charges, and GRIs.* (i) If the rate is not an ''all-in rate,'' the NRA must specify whether additional surcharges, additional assessorial charges, or ocean common carrier general rate increases (''GRIs'') will apply.

(ii) The NRA may list the additional surcharges or assessorial charges, including pass-through charges, or reference specific surcharges or assessorial charges in the NVOCC's rules tariff.

(iii) If the additional surcharges or assessorial charges are included in the NVOCC's rules tariff, those additional surcharges or assessorial charges and the corresponding amounts specified in the rules tariff must be fixed once the first shipment has been received by the NVOCC until the last shipment is delivered, subject to an amendment of the NRA.

(iv) For any pass-through charge for which a specific amount is not included in the NRA or the rules tariff, the NVOCC may only invoice the shipper for charges the NVOCC incurs, with no markup.

(3) *Non-rate economic terms.* The NRA may include non-rate economic terms.

(e) *Amendment.* The NRA may be amended after the time the initial shipment is received by the NVOCC, but such changes may only apply prospectively to shipments not yet received by the NVOCC.

By the Commission.

Rachel E. Dickon,

Secretary.

[FR Doc. 2018–15496 Filed 7–20–18; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[WC Docket Nos. 16–143, 05–25, GN Docket No. 13–5 and RM–10593; FCC 17–43]

Business Data Services in an Internet Protocol Environment; Technology Transitions; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking To Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, an information collection associated with the Commission's *Business Data Services Report and Order,* FCC 17–43, which, among other things, required that by August 1, 2020, price cap incumbent LECs must remove all business data services that are no longer subject to price cap regulation from their interstate tariffs. The *Order* also required that, by the same deadline, competitive LECs must remove all business data services from their interstate tariffs. This document is consistent with the *Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of these rules.

DATES: The amendments to 47 CFR 61.201 and 61.203, published at June 2, 2017, 82 FR 25660, are effective July 23, 2018.

FOR FURTHER INFORMATION CONTACT: William Kehoe, Pricing Policy Division, Wireline Competition Bureau, at (202) 418–7122, or email: *william.kehoe@fcc.gov*.

SUPPLEMENTARY INFORMATION: This document announces that, on June 19, 2018, OMB approved, for a period of three years, the information collection requirement relating to sections 61.201 and 61.203 of the Commission's rules, as contained in the Commission's *Business Data Services Report and Order,* FCC 17–43, published at 82 FR 25660, June 2, 2017. The OMB Control Number is 3060–0298. The Commission publishes this document as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, Room 1–A620, 445 12th Street SW, Washington, DC 20554. Please include the OMB Control Number, 3060–0400, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov*.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on June 19, 2018, for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR part 61. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0298.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0298.

OMB Approval Date: June 19, 2018.

OMB Expiration Date: June 30, 2021.

Title: Part 61, Tariffs (Other than the Tariff Review Plan).

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2,840 respondents; 5,543 responses.

Estimated Time per Response: 30–50 hours.

Frequency of Response: On occasion, annual, biennial, and one-time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection (IC) is contained in 47 U.S.C. 151–155, 201–205, 208, 251–271, 403, 502, and 503 of the Communications Act of 1934, as amended.

Total Annual Burden: 195,890 hours.

Total Annual Cost: $1,369,000.

Nature and Extent of Confidentiality: Respondents are not being asked to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe are confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Privacy Act: No impact(s).

Needs and Uses: On April 20, 2017, the Commission adopted the *Business Data Services Report and Order,* FCC 17–43, which establishes a new regulatory framework for business data services. Under this framework, price cap incumbent LECs are no longer subject to price cap regulation of their: (a) packet-based business data services; (b) time-division multiplexing (TDM) transport business data services; (c) TDM business data services with bandwidth in excess of a DS3; and (d) DS1 and DS3 end user channel terminations, and other lower-bandwidth TDM business data services, to the extent a price cap incumbent LEC provides them in counties deemed competitive under the Commission's competitive market test or in counties for which the price cap incumbent LEC had obtained Phase II pricing flexibility under the Commission's prior regulatory regime. The *Business Data Services Report and Order* required that, within 36 months of its effective date (*i.e.,* by August 1, 2020), price cap incumbent LECs must remove all business data services that are no longer subject to price cap regulation from their interstate tariffs. The Order also required that, by that same deadline, competitive LECs must remove all business data services from their interstate tariffs.

The information collected through the carriers' tariffs is used by the Commission and state commissions to determine whether services offered are just and reasonable, as the Act requires. The tariffs and any supporting documentation are examined in order to