

**NARRATIVE SUPPORTING STATEMENT  
FOR 46 CFR 531 – NVOCC SERVICE ARRANGEMENTS (NSAs)**

**A. Justification**

1. Section 16 of the Shipping Act of 1984, 46 U.S.C. 40103, authorizes the Federal Maritime Commission to exempt by rule “any class of agreements between persons subject to this Act or any specified activity of those persons from any requirement of this Act if it finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission may attach conditions to any exemption and may, by order, revoke any exemption.”

The Commission added 46 CFR 531 in January 2005 to exempt non-vessel-operating common carriers (NVOCCs) from the otherwise applicable statutory and regulatory requirements of the Shipping Act and the Commission’s tariff regulations for service arrangements they reach with their shippers. The exemption is conditioned upon the filing of these service arrangements by the NVOCC offering the service. These regulations also ensure compliance with the licensing and financial responsibility requirements of the Shipping Act, 46 U.S.C. 40901-40904.

2. In order to meet the conditions as set forth by the Commission for use of the exemption, the Commission uses filed NSAs and associated data for monitoring and investigatory purposes, and in its proceedings, to adjudicate related issues raised by private parties. For Commission proceedings, as well as in any court case, the NSA on file at the Commission and in effect is considered official evidence of the applicable terms of carriage (including rate, charge or rule), when so certified by the Commission.

3. The regulation requires the electronic submission of NSAs through the agency’s Service Contract Filing System (SERVCON). Before filing in SERVCON, each NVOCC must file a Form FMC-78, NVOCC Service Arrangement Registration. Although the Commission anticipates electronic filing of Form FMC-78, it is not yet technically possible.

4. The only source of accurate information is the NVOCC party to the NSA (Respondent or Registrant). Information already available cannot be used by the Commission without long delays to the Registrants. The Commission anticipates that future technological advances will enable it to reduce the amount of information necessary for collection on Form FMC-78.

5. Because conformity and application of this regulation is at the option of the respondent, this rule does not appear to have significant impact on a substantial number of small businesses or entities. Although the respondents themselves may be primarily small businesses, as that term is defined under the Regulatory Flexibility Act, 5 U.S.C. § 605(b), because the filing is optional,

there will be no significant impact on them as those who do not wish to avail themselves of the exemption will not be subject to any new filing or information requirements. As described above, the Commission is using electronic filing for NSAs themselves to reduce the burdens on filers, and anticipates further reductions in burdens by allowing electronic filing for Form FMC-78.

6. The filing of NSAs is not assigned a specific time by the Commission; NSAs are filed as they may be entered into by private parties after the effectiveness of the exemption. The Commission's exemption authority, which includes the authority to impose conditions on the availability of exemptions as explained above, requires the filing of NSAs. If records of NSAs were not produced as requested within the time period specified, the Commission would not have the information it requires to perform its statutory responsibilities, which include the protection of shippers.

7. This information collection does not (1) require respondents to report information to the agency more often than quarterly; (2) require respondents to submit more than an original and two copies of any document; (3) include confidentiality pledges that are not supported by established statutory authority; or (4) require respondents to submit proprietary information without protecting such information to the full extent of the law. There is a requirement that filers resubmit NSAs within 20 days of a notice on intent to reject, which affords respondents the opportunity to remedy filings for technical deficiencies within a reasonable period of time. There is also a five-year recordkeeping requirement that is consistent with the statute of limitation provisions in section 13(f) of the Shipping Act of 1984, 46 U.S.C. 41109.

8. The 60-day Federal Register Notice regarding this extension was published May 13, 2008, at 73 FR 27537. Respondents had 60 days to respond with their views regarding the collection of information; no comments were received.

9. Not applicable – The Commission does not provide any payments or gifts to respondents.

10. 46 CFR 531.4 assures confidentiality for NSAs filed pursuant to that rule to the fullest extent of the law. The basis for this assurance is the Commission's policy, as expressed in 46 CFR 531, for allowing NVOCCs and their shippers to reach confidential service arrangements unavailable to the public generally and protected from routine disclosure to their competitors.

11. There are no questions of a sensitive nature.

12. The estimated reporting respondent universe is 533. The total estimated hour burden for this information collection is 13,082 person-hours, as set forth below:

<b>Requirements</b>	<b>Annual Respondents</b>	<b>Annual Instances</b>	<b>Average Person-hours Per Response</b>	<b>Total Person-hours</b>
NSAs/Format Requirements	533	2,810	1.5 <sup>1</sup>	4,215
Essential Terms Publication	533	2,810	.5 <sup>2</sup>	1,405
Notification/Filing Requirements	533	533	8	4,264
Form FMC-78 <sup>3</sup>	533	533	1	533
Disclosure/Third Party <sup>4</sup>	533	533	1	533
Recordkeeping/Auditing Requirements	533	533	4	2,132
<b>TOTALS</b>		<b>7,752</b>		<b>13,082</b>

<sup>1</sup>The format requirements for NSAs as specified under 46 CFR 531 and the format requirements for service contracts under 46 CFR 530 are similar in nature (see OMB Control No. 3072-0065). Therefore, the average person-hours per response for NSAs/Format Requirements are estimated to be the same as that for service contracts.

<sup>2</sup>The NSA regulations require the filing of Essential Terms Publications. Therefore, the average person-hours per response for NSAs Essential Terms Publications are estimated to be the same as that for service contracts.

<sup>3</sup>In the 2005 initial OMB clearance package, Form FMC-78 was estimated within the overall statement. The 300 total person-hours was included in the overall total person-hours (300 + 189,952 = 190,252). For this burden estimate, Form FMC-78 has been broken out separately in an effort to clarify the figures.

<sup>4</sup>Disclosure/Third Party was not addressed in the 2005 initial OMB clearance package. However, since the filing of NSAs are similar in nature to the filing of service contracts, we believe that this heading should also be included in the above table. In addition, the average person-hours per response assigned to service contracts can also be used for NSAs.

The annual cost to respondents is estimated at \$682,222 (see Attachment 1). The cost has been calculated in consideration of the time to gather information and furnish it to the Commission, as well as comply with the requirements of 46 CFR 531. It also includes clerical time as well as overhead and operational expenses.

13. There are no additional cost burdens to respondents or recordkeepers other than those reported in item 12.

14. Total estimated annual cost to the Federal Government, including overhead and operational expenses, for this rule and form is 2,592 person-hours, at an estimated cost of \$173,619. Additionally, the Commission estimates that it will incur approximately \$22,000 in maintenance costs for the SERVCON filing system; 25 percent, or \$5,500 has been allocated to the NSAs information collection. Therefore, the total burden cost to the Federal Government totals approximately \$179,119.

15. The number of respondents and annual instances for NSAs was overestimated in the initial OMB clearance package filed in 2005. At that time, it was estimated the number of NSA filings would be on the same level as the number of service contracts filed annually. However, this has not happened, and the person-hours requested, based upon actual filings, are 177,170 person-hours less than that requested in 2005.

16. Not applicable – no information will be published.

17. Not applicable – OMB information will be displayed in the final rule.

18. Not applicable – there are no exceptions to the certification statement.

**B. Collections of Information Employing Statistical Methods**

This collection of information does not employ statistical methods.

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

12,549 person-hours (reporting and recordkeeping requirements) + 533 person-hours (Form FMC-78) = 13,082 total person-hours

33% Pricing Manager (4,317 person-hours)

67% Tariff Publisher (8,765 person-hours)

The annual salary calculations have been formulated using the Federal Government’s January 2008 salary table (overhead of \$17.72 per hour and benefits of 23.69% per year have been added to the basic salary). The salary for the pricing manager was calculated using the salary of a GS 13/5 Senior Transportation Specialist, and the salary for the tariff publisher was calculated using the salary of a GS 6/5 Transportation Specialist.

Formula: Annual salary + (annual salary X benefits rate) = adjusted annual salary/2,080 + overhead = adjusted hourly salary

$\$94,025 + (94,025 \times 23.69\%) = \$116,300/2,080 = \$55.91 + \$17.72 = \$73.63 =$  Pricing Manager adjusted hourly salary

$\$40,111 + (40,111 \times 23.69\%) = \$49,613/2,080 = \$23.85 + \$17.72 = \$41.57 =$  Tariff Publisher adjusted hourly salary

<b>Employee</b>	<b>Hourly Salary</b>	<b>Number of Hours</b>	<b>Total</b>
Pricing Manager	\$73.63	4,317	\$317,861
Tariff Publisher	\$41.57	8,765	\$364,361
<b>TOTALS</b>		<b>13,082</b>	<b>\$682,222</b>

**14. Estimated Burden and Costs, Including Overhead, to Federal Government**

The annual salary calculations have been formulated using the Federal Government's January 2008 salary table (overhead of \$17.72 per hour and benefits of 23.69% per year have been added to the basic salary).

**Office Director** 14/1 – 496 hours

$\$98,033 + (98,033 \times 23.69\%) = \$121,257/2,080 = \$58.30 + \$17.72 = \$76.02$  adjusted hourly salary

**Transportation Specialists (4)** 12/9 – 1,600 hours

$\$88,372 + (88,372 \times 23.69\%) = \$109,307/2,080 = \$52.55 + \$17.72 = \$70.27$  adjusted hourly salary

**Information Processing Assistant** 7/9 – 496 hours

$\$49,814 + (49,814 \times 23.69\%) = \$61,615/2,080 = \$29.62 + \$17.72 = \$47.34$  adjusted hourly salary

<b>Employee</b>	<b>Hourly Salary</b>	<b>Number of Hours</b>	<b>Total</b>
Office Director	\$76.02	496	\$ 37,706
Transportation Specialists (4)	\$70.27	1,600	\$112,432
Information Processing Assistant	\$47.34	496	\$ 23,481
<b>TOTALS</b>		<b>2,592</b>	<b>\$173,619</b>

**Estimated person-hour cost to the Federal Government:                    \$173,619**

Total Salary, Benefits, Overhead                    \$173,619  
Operational Costs for SERVCON System<sup>1</sup>    \$ 5,500

**Total Cost to Federal Government                    \$179,119**

<sup>1</sup> Maintenance costs for the SERVCON system in FY 2007 were \$22,000. We have allocated 25% of the costs to the NSAs information collection.