

**NARRATIVE SUPPORTING STATEMENT
FOR 46 CFR PART 531 – NVOCC SERVICE ARRANGEMENTS (NSAs)
AND RELATED FORM FMC-78**

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 written responses in fewer than 30 days; (3) require respondents to submit more than an original and two copies of any document; (4) include confidentiality pledges that are not supported by established statutory authority; or (5) require respondents to submit proprietary information without protecting such information to the full extent of the law. 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 3, 2011, at 76 FR 24881. 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 total respondent universe is 1,082; however, based upon recent actual filings, the total numbers of respondents expected to report under this information collection is 69. The estimated hour burden for this information collection is 1,270 hours, as set forth below:

Requirements	Annual Respondents	Annual Instances	Average Hours Per Response¹	Total Hours
NSAs/Format Requirements	69 ²	5,117 ³	.1	512
Essential Terms Publication	69	5,117	.1	512
Notification/Filing Requirements	69	69	.1	7
Form FMC-78	69	69	1	69
Disclosure/Third Party	69	5	.1	1
Recordkeeping/Auditing Requirements	69	5,117	.25	169
TOTALS		15,494		1,270

The annual cost to respondents is estimated at \$72,659 (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.

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

NSAs/Format Requirements: All NVOCCs are required by statute to file a true and complete copy of every NSA and amendment before any cargo moves pursuant to that NSA. There are essential terms as required by law that every NSA must contain. There are five commodities whereby the NVOCC is given a statutory exemption from filing those exempt NSAs with the FMC. Of the approximately 4,300 NVOCCs, only 69 annually file original NSAs or amendments. There were 5,117 new NSAs or amendments filed on average in the past three fiscal years in the contract filing system known as SERVCON. NVOCCs are only required to fill out 4 fields (Organization Number, NSA Number, Amendment Number, Effective Date) when uploading their NSAs into SERVCON. Most NSA are MS Word Doc, MS Excel files or Pdf format. NVOCCs can submit NSAs individually or in batches.

Essential Terms Publication: All NVOCCs are required by statute to file a publication of specific essential terms for each original NSA and amendment. Therefore the number of annual instances 5,117 will be the same as the number of new NSAs or amendments. Most NVOCCs have systems that link their filing into SERVCON with the update of the Essential Terms Publication. We conservatively allow for 6 minutes (.1 hour) for a manual process; however, it

¹ NSAs were introduced in 2005. The previous ICR submissions indicated it took significantly longer to prepare/perform the necessary stated requirements because it was a manual process. That process has now been automated, and NVOCCs have become more acclimated with the process. There was a learning curve, but NVOCCs are now more familiar with the requirements, and electronic processing makes it more efficient.

² This number represents the average number of NVOCCs who filed NSAs during the past three years.

³ This number represents the total volume of NSAs (initial and amendments) averaged over the past three years.

probably takes the majority of NVOCCs only 1 minute or less for their internal contracting system to electronically sync up with their Essential Terms Publication.

Notification/Filing Requirements: Since NSAs are subject to contract law as well as statutes and regulations, virtually all NSAs are settled and amended prior to the expiration date to comport with the requirements. For good order we estimate 1 instance for each of the 69 filers.

Form FMC-78: The universe of NVOCCs that have registered to file NSAs is now up to 1,082, as many tariff publishers acting on behalf of the NVOCC automatically register their clients as part of their services. Only a relatively small number of registered NSA filers, 69 on average, actually file NSAs. While there are an average of 76 new registrants per year, only about 5 of these will ultimately proceed to file NSAs. We allow 1 hour to complete the form, but as the majority of these are completed by tariff publishers on behalf of the NVOCCs, it should not take any more than 5 minutes to complete.

Disclosure/Third Party: Since every NVOCC has to update their Essential Terms Publication for each new NSA and amendment, this is redundant with Essential Terms Publication above. Only new filers who would be publishing their Essential Terms Publication for the first time would be affected by this. On average there are only 5 first time filers who will upload new NSAs, and we estimate it takes them no more than 6 minutes per filer for a total of .5 hour (30 minutes).

Recordkeeping/Audit Requirements: NVOCCs create original NSAs and amendments, which are kept primarily in MS Word Doc, MS Excel or Pdf formatted files and stored electronically in databases which are easily retrievable and produced. Most NVOCCs keep hard copy files with signatures, as we do not require NSAs or amendments to be uploaded into SERVCON showing an actual signature. Many NSAs and amendments today are handled by electronic signature. The annual instances would be 5,117. Conservatively allowing for 2 minutes (.033 hrs) per new NSA or amendment for recordkeeping/auditing purposes would encompass 169 hours. A NVOCC is required to collect signatures prior to filing an NSA or amendment therefore some of this burden could be offset into the NSAs/Format Requirements section above.

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 2,183 hours, at an estimated cost of \$161,812. Additionally, the Commission incurred approximately \$212,770 in maintenance costs in FY 2010 for its database systems; 10 percent⁴, or \$21,277 has been allocated to the NSAs

⁴ The database maintenance costs are based upon contractor costs for the fiscal year. The contractor handles several databases. We are unable to calculate exactly how much of the contractor's costs are attributed to each system. We can only estimate the approximate amount of time the contractor spends on each database. As databases are added or changed, the amount of time spent on each by the contractor changes. We have estimated that the contractor costs for this past fiscal year allocated to the NSAs information collection would be approximately 10% of the total contractor costs.

information collection. Therefore, the total burden cost to the Federal Government totals approximately \$183,089.

15. The FMC took a very close look at this information collection. Although the annual number of respondents increased by 7,742, the burden estimate for this information collection has been reduced significantly from the 2008 estimate of 13,082 hours, by 11,812 hours. We arrived at the estimate by using the actual respondent numbers for FY 2010. We also revised the average hours per response for two of the collections. It should take less time to perform/prepare the necessary stated requirements in Item 12 due to the advancements in technology. We feel that this estimate is a much more accurate picture of the annual time burden for this information collection. Therefore, the total number of annual hours requested is 1,270.

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

1,201 hours (reporting and recordkeeping requirements) + 69 hours (Form FMC-78) = 1,270 total hours

33% Pricing Manager (419 hours)

67% Tariff Publisher (851 hours)

The annual salary calculations have been formulated using the Federal Government’s March 2010 salary table (overhead of \$20.10 per hour and benefits of 24.23% 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

$\$100,904 + (100,904 \times 24.23\%) = \$125,353/2,080 = \$60.27 + \$20.10 = \$80.37 =$ Pricing Manager adjusted hourly salary

$\$43,046 + (43,046 \times 24.23\%) = \$53,476/2,080 = \$25.71 + \$20.10 = \$45.81 =$ Tariff Publisher adjusted hourly salary

Employee	Hourly Salary	Number of Hours	Total
Pricing Manager	\$80.37	419	\$33,675
Tariff Publisher	\$45.81	851	\$38,984
TOTALS		1,270	\$72,659

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

The annual salary calculations have been formulated using the Federal Government's March 2010 salary table (overhead of \$20.10 per hour and benefits of 24.23% per year have been added to the basic salary).

Office Director 14/3 – 499 hours (approximately 24% of time)

$\$112,224 + (112,224 \times 24.23\%) = \$139,416/2,080 = \$67.03 + \$20.10 = \$87.13$ adjusted hourly salary

Sr. Transportation Specialist 13/5 – 395 hours (approximately 19% of time)

$\$100,904 + (100,904 \times 24.23\%) = \$125,353/2,080 = \$60.27 + \$20.10 = \$80.37$ adjusted hourly salary

Transportation Specialists (2) 12/9 – 790 hours (approximately 19% of time)

$\$94,837 + (94,837 \times 24.23\%) = \$117,816/2,080 = \$56.64 + \$20.10 = \$76.74$ adjusted hourly salary

Information Processing Assistant 7/9 – 499 hours (approximately 24% of time)

$\$53,468 + (53,468 \times 24.23\%) = \$66,423/2,080 = \$31.93 + \$20.10 = \$52.03$ adjusted hourly salary

Employee	Hourly Salary	Number of Hours	Total
Office Director	\$87.13	499	\$ 43,478
Sr. Transportation Specialist	\$80.37	395	\$ 31,746
Transportation Specialists (2)	\$76.74	790	\$ 60,625
Information Processing Assistant	\$52.03	499	\$ 25,963
TOTALS		2,183	\$161,812

Total Salary, Benefits, Overhead \$161,812
 Plus Cost of System Maintenance⁵ \$ 21,277

Total Cost to Federal Government \$183,089

⁵ Maintenance costs for the FMC's database systems in FY 2010 were approximately \$212,770. We have allocated 10% of the costs to the NSAs information collection.