

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

1. Explain the circumstances that make the collection of information necessary.

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 Part 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. Indicate how, by whom, and for what purpose the information is to be used.

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. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e, g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

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. Describe efforts to identify duplication, Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Question 2.

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. If the collection of information impacts small businesses or other small entities describe any methods used to minimize burden.

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. Describe the consequence to Federal program or policy activities if the collection is not conducted, or is conducted less frequently, as was as any technical or legal obstacles to reducing burden.

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. Explain any specific circumstances that would cause information collection to be conducted in a manner:

- **Requiring requesters to report information to the agency more than quarterly;**
- **Requiring requesters to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**

- **Requiring requesters to submit more than an original and two copies of any document;**
- **Requiring requesters to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily**
- **Requiring requesters to submit proprietary trade secrets, or other confidential information unless that agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

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. If applicable, provide a copy and identify the date and page number of publication in the Federal Register or agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, to clarify of instructions and recordkeeping, disclosure, or reporting form (if any) and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years even if the collection information is the same as in prior years. There may be circumstances that may preclude consultation in a specific situation. These circumstances should not be explained.

The Notice of Proposed Rulemaking (NPRM) will be published in the Federal Register and respondents to the NPRM will have 30 days to respond with their views regarding the collection of information. The Commission will review and discuss any comments filed in response to the NPRM in the Final Rule.

9. Explain any decision to provide any payment or gift to requesters, other than remuneration of contactors or grantees.

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

10. Describe any assurance of confidentiality provided to requesters and the basis for the assurance in statute, regulation, or agency policy.

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 part 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. Provide additional justification for any questions of a sensitive nature such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. Indicate the number of requesters, frequency of response, annual hour burden, and an explanation of how the burden was estimated.

The total respondent universe is 895. Based upon recent actual filings, however, the total number of respondents expected to report under this information collection is 79. The estimated hour burden for this information collection is 839 hours, as set forth below: The annual cost to respondents is estimated at \$55,571 (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 part 531. It also includes clerical time as well as overhead and operational expenses.

Requirements	Annual Respondents	Annual Instances	Average Hours Per Response	Total Hours
NSAs/Format Requirements – all filings	79 ¹	3,249 ²	.05	162
NSAs/Format – additional field for NVOCC shippers and affiliates	79	325	.015	5
Essential Terms Publication	79	3,249	.1	325
Notification/Filing Requirements	79	79	.1	8
Form FMC-78	229	229	1	229
Recordkeeping/Auditing Requirements	79	3,249	.033	107
TOTALS		10,371		839

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

NSAs/Format Requirements:

All NVOCCs are required by regulation to file a true and complete copy of every NSA before any cargo moves pursuant to that NSA. Presently, amendments to NSAs are subject to the same filing requirement. The proposed rule would allow NVOCCs the flexibility of filing amendments to NSAs up to 30 days after the effective date of the agreement reached between the carrier NVOCC and the contract shipper. The Commission does not foresee a change in the associated filing burden as a result of the proposed delay in filing NSA amendments.

When filing NSAs into SERVCON, NVOCC filers (which are the “carrier” party to the NSA) are currently required to enter data into four fields (NVOCC filer Organization Number, Contract Number, Amendment Number, Effective Date). The proposed rule would add a fifth data field in which the NVOCC filer would enter the 6-digit FMC Organization Number of any contract shipper or affiliate that is also an NVOCC.³ Subsequently, the system would perform a check of

¹ This number represents the average number of NVOCCs who filed NSAs during the past three years.

² This number represents the total volume of NSAs (initial and amendments) averaged over the past three years.

³ As noted in the table above, approximately 10% of NSAs are entered into with NVOCC shippers, to which the proposed 6-digit organization number reporting requirement would apply. Consequently, of the 839 hours estimated annually for the Part 531 information collection, approximately 5 hours would be attributable to the new requirement proposed in this rulemaking

Commission databases and send a return message to the NSA filer if the NVOCC shipper or affiliate is not in good standing. The FMC is considering adding this feature to the SERVCON system in response to carrier requests that the Commission leverage its technology to automatically verify NVOCC shipper status upon filing, thereby eliminating the current research NVOCC carriers perform when contracting with NVOCC shippers.

To clarify, an NSA is an agreement for transportation of cargo between an NVOCC acting as the carrier, and a shipper of that cargo which, in some cases, may also be an NVOCC. Thus, for NSAs there is a distinction between a carrier NVOCC and a shipper NVOCC. Further, pursuant to the Commission's regulations at 46 CFR § 531.6(d)(4), NVOCC carriers are prohibited from entering into an NSA with an NVOCC shipper that does not have a tariff and a bond. NVOCC carriers presently visit the Commission's website and search the list of currently active NVOCCs to verify that the NVOCC shipper is in compliance with the tariff and bond requirements. The Commission also proposes to revise its rules to recognize that this database verification of the NVOCC's shipper status will be considered as fulfilling the NVOCC carrier's obligation under FMC regulations to obtain proof of the NVOCC shipper's compliant status. If the proposed rule is adopted, the Commission estimates that the average time needed to input and submit this additional data item when transmitting filings would be minimal, i.e., less than one minute per filing.

The Commission is also proposing to add a requirement that the shipper party to an NSA certify its status as either a cargo owner, an NVOCC, a Shipper's Association, or specific other designation. This requirement presently exists for service contracts, and the Commission is seeking consistency with NSAs in this regard. The Commission estimates that approximately 90% of all NSA shippers are cargo owners and 10% are NVOCCs. As NVOCCs have the same prohibition from entering into an NSA with an NVOCC that is not in good standing, as discussed in detail above, the Commission considers that the burden associated with this requirement is offset by technology advances that would allow the NSA carrier to automatically verify an NVOCC's status at the time of filing through the input of the shipper's 6-digit NVOCC Organization number into SERVCON. The bulk of NSAs are entered into with beneficial cargo owners and indicating "cargo owner" after the shipper's name, or in any such format as the filer wishes, the Commission believe can be included in the above format requirements burden.

Of the "total" respondent universe of approximately 5,272 active NVOCCs, only 79 annually file original NSAs or amendments. There were 3,249 new NSAs or amendments filed on average in the past three fiscal years in the contract filing system known as SERVCON.

Essential Terms Publication: All NVOCCs are required by regulation to file a publication of specific essential terms for each original NSA and amendment. Therefore the number of annual instances 3,249 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 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 79 filers.

Form FMC-78: The universe of active NVOCCs that have registered to file NSAs is presently 895, as many tariff publishers acting on behalf of the NVOCCs automatically register their clients as part of their services. Only a relatively small number of registered NSA filers however, 79 on average, actually file NSAs. While there are an average of 229 new registrants per year, only about 5 of these will ultimately proceed to file NSAs. Typically, this form is only filed once, when an NVOCC initially registers to file NSAs in the SERVCON system. 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.

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 3,249. Conservatively allowing for 2 minutes (.033 hrs) per new NSA or amendment for recordkeeping/auditing purposes would encompass 162 hours. An NVOCC is required to collect signatures prior to filing an NSA or amendment, and therefore some of this burden could be offset into the NSAs/Format Requirements section above.

13. Provide estimates of the total annual cost burden to requesters or record-keepers resulting from the collection of information (do not include the cost of any burden shown in questions 12 and 14). The cost estimate should be split into two components (a) a total capital and start-up cost component annualized over its expected useful life; and (b) a total operation and maintenance and purchase of services component.

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

14. Provide estimates of annualized costs to the Federal government. Provide a description of the method used to estimate cost and any other expense that would not have been incurred without this collection of information.

Total estimated annual cost to the Federal Government, including overhead and operational expenses, for this rule and form is 1,795 hours, at an estimated cost of \$174,881. The Commission included, in a previous estimate of its burden, the cost of an outside contractor hired to perform database system maintenance. Since that time, the Commission has shifted its approach to maintaining its line of business applications and no longer uses an outside contractor for database system maintenance. Thus, the total estimated cost to the Federal Government is \$174,881. (See Attachment 2).

15. Explain the reasons for any program changes or adjustments.

Given the decline in the average annual number of NSA filings over the past three years, offset by the increased burden from the proposed requirements in the NPRM, the burden estimate for this information collection has been reduced from 895 hours (2013 estimate) to 839 hours, a difference of 56 hours. (See Attachment 1).

16. For collections of information whose results are planned to be published, outline plans for tabulation and publication.

Not applicable – no information will be published by the Commission.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

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

18. Explain each exception to the certification statement.

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.

March 9, 2017

Attachment 1

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

610 hours (reporting and recordkeeping requirements) + 229 hours (Form FMC-78) = 839 total hours

33% Pricing Manager (277 hours)

67% Tariff Publisher (562 hours)

The annual salary calculations have been formulated using the Federal Government's January 2016 salary table (overhead of 114.89% has 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.⁴

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

$\$104,433/2087 = \50.04 (basic hourly rate) + $\$57.49$ (overhead) = $\$107.53$ = Pricing Manager adjusted hourly salary

$\$44,551/2087 = \21.35 (basic hourly rate) + $\$24.53$ (overhead) = $\$45.88$ = Tariff Publisher adjusted hourly salary

Employee	Hourly Salary	Number of Hours	Total
Pricing Manager	\$107.53	277	\$29,786
Tariff Publisher	\$45.88	562	\$25,785
TOTALS		839	\$55,571

⁴ Given the small number of tariff publishers which maintain Carrier Automated Tariffs for common carriers (less than two dozen) and the lack of an appropriate Bureau of Labor Statistics occupation category, the Commission uses GS schedule equivalents to estimate the burden costs.

Attachment 2

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

The annual salary calculations have been formulated using the Federal Government's January 2016 salary table (overhead of 114.09.70% has been added to the basic salary).

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

Office Director GS-15 – 501 hours (approximately 24% of time)

$\$145,162/2087 = \69.56 (basic hourly rate) + $\$79.92$ (overhead) = $\$149.48$ adjusted hourly salary

Transportation Specialist GS-12 – 793 hours (approximately 19% of time of 2 employees)

$\$87,821/2087 = \42.08 (basic hourly rate) + $\$48.35$ (overhead) = $\$90.43$ adjusted hourly salary

Information Processing Assistant GS-7 – 501 hours (approximately 24% of time)

$\$54,827/2087 = \26.27 (basic hourly rate) + $\$30.18$ (overhead) = $\$56.45$ adjusted hourly salary

Employee	Hourly Salary	Number of Hours	Total
Office Director	\$149.48	501	\$ 74,889
Transportation Specialists (2)	\$ 90.43	793	\$ 71,711
Information Processing Assistant	\$56.45	501	\$ 28,281
TOTALS		1,795	\$174,881