

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

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the information collection.

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 to exempt non-vessel-operating common carriers (NVOCCs) from the more stringent tariff rate publication requirements of the Shipping Act of 1984 and related provisions of the Commission’s regulations to permit them to enter into contracts with shippers similar to ocean common carrier service contracts. 69 FR 75850 (Dec. 20, 2004). The exemption was conditioned upon the filing of NVOCC service arrangements (NSAs) by the NVOCC offering the service; publication of the essential terms of NSAs; and confidential treatment of such NSAs. In addition, NVOCCs must maintain NSAs and associated records for 5 years in a format easily produced to the Commission and produce those records promptly upon request from the Commission.

By Final Rule published July 23, 2018, the Commission sought to further relieve regulatory burdens on NVOCCs, and make NSAs easier and more attractive to shippers, by removing the NSA filing and essential terms publication requirements. (83 FR 34780) The exemption was conditioned upon the licensed NVOCC including a prominent notice invoking the exemption in its electronically published rules tariff and indicating their intention to the Commission.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The tariff publication requirements are intended to permit shippers and other members of the public to obtain reliable and useful information concerning the rates and charges that will be assessed by common carriers (including NVOCCs) and conferences for their transportation services; and by the Commission to ensure that tariff publications are accurate and accessible and to protect the public from violations by common carriers of section 10 of the Shipping Act (46 U.S.C. 41101-41106). A tariff is a publication containing the actual rates, charges, classifications, rules, regulations and practices of a common carrier. The rules tariff (or portion

of a tariff) refers to those stated terms or conditions set by the carrier which affect, determine or change the transportation rates, charges or services provided by a common carrier, including those rules or practices applicable to shipments under NSAs.

The Commission uses filed NSAs and information published by an NVOCC in its associated rules tariff 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.

The Final Rule in FMC Docket No. 17-10 eliminates the requirement that NSAs be filed with the Commission and removes associated Form FMC-78. The Commission will use information published by an NVOCC in its publicly available rules tariff to determine whether an NVOCC has invoked the exemption for a particular shipment or shipments. Thereafter, NVOCCs receiving a written request for records from the Commission's Bureau of Enforcement, or in connection with formal administrative hearings conducted under Part 502 of the Commission's regulations, will have 30 days to respond to a request for an NSA or associated records. 46 CFR 531.12.

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.

The Final Rule in FMC Docket No. 17-10 eliminates the requirement that NSAs be filed with the Commission. The regulation allows licensed NVOCCs and foreign-based registered NVOCCs to invoke the exemption by adding a prominent notice to its electronically published rules tariff. NVOCCs employing the NSA exemption do not file with the Commission their NSAs nor are they required to electronically publish any NSA rates agreed with their shipper customers.

4. Describe efforts to identify duplication

The sole source of accurate information as to whether a particular shipment is exempt from the otherwise applicable statutory and regulatory requirements of the Shipping Act and the Commission's tariff regulations to file rates is the NVOCC. By employing the NSA exemption, the NVOCC eliminates the obligation to simultaneously publish in its publicly-accessible tariff those rates and charges agreed by the NVOCC with a particular shipper or shippers. Amendments approved in FMC Docket No. 17-10 remove the requirement to file with the Commission a copy of each NSA and amendment, or to publish a publicly-accessible summary of the essential terms of each NSA. As amended by the Final Rule in FMC Docket No. 17-10, the NSA exemption further reduces duplication of effort by the NVOCC and removes the attendant costs of essential term publication.

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

The Commission has historically recognized the NVOCC industry as composed primarily of small businesses, as that term is defined under the Regulatory Flexibility Act, 5 U.S.C. § 601. While use of NSAs is optional, NVOCCs are thereby exempted from the more stringent tariff rate publication requirements of the Shipping Act of 1984 and related provisions of the Commission's regulations at 46 CFR Part 520. NVOCCs invoking the exemption do not file with the Commission their NSAs nor are they required to electronically publish NSA rates or essential terms agreed with their shipper customers. Finally, NVOCCs who do not wish to avail themselves of the exemption are not subject to any new filing or information requirements.

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

Under the Final Rule in FMC Docket No. 17-10, NVOCCs seeking to invoke the NSA exemption will no longer be required to register in the Commission's SERVCON system. They need only publish, on a one-time basis, a prominent notice in their electronically published rules tariff. They may retract or eliminate use of NSAs in the same way, by modifying or removing the tariff notice. Application of the exemption is not subject to a periodic renewal or re-certification requirement, and thus the collection cannot be conducted less frequently.

If the collection requirement were to be removed, as by revoking the exemption granted as to NSAs, all rates negotiated by an NVOCC with a shipper would again be subject to the tariff publication requirements of the Shipping Act, 46 U.S.C. 40501, and related provisions of the Commission's tariff regulations, 46 CFR Part 520. The burden upon the NVOCC would thus be increased.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines. (a) requiring respondents to report information to the agency more often than quarterly; (b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; (c) requiring respondents to submit more than an original and two copies of any document; (d) requiring respondents to retain records, other than health, medical government contract, grant-in-aid, or tax records, for more than three years; (e) in connection with a statistical survey, that is not designed to product valid and reliable results that can be generalized to the universe of study; (f) requiring the use of statistical data classification that has not been reviewed and approved by OMB; (g) that includes a pledge of confidentiality that is not supported by authority established in stature of regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; (h) requiring respondents to submit proprietary trade secrets, or other confidential information unless the 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. The five-year recordkeeping requirement in 46 CFR part 531 is consistent with the statute of limitations provisions in section 13(f) of the Shipping Act of 1984, 46 U.S.C. § 41109(e). NVOCCs employing the NSA exemption are subject to the same five-year recordkeeping requirement applied to other ocean transportation intermediaries (NVOCCs and ocean freight forwarders) under 46 CFR Part 515.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the 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 in response to the comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside FMC to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or report.

The 60-day Federal Register notice regarding the Notice of Proposed Rulemaking (NPRM) was published November 30, 2017, at 82 FR 56781. Respondents and the general public had 60 days to respond with their views regarding the collection of information. Although comments were received on the proposed changes to Part 532, no comments specifically addressed the associated information collection or the burden hour and cost estimates.

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

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

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

Similar to the filing and treatment accorded to ocean common carrier service contracts, 46 CFR 531.4 sought to assure that the Commission would maintain confidentiality for NSAs filed with the Commission pursuant to that rule to the fullest extent of the law. The final rule eliminates the requirement that NSAs be filed with the Commission and accordingly withdraws as unnecessary any assurances of confidentiality with respect to such information.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why FMC considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the 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. The statement should indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, FMC should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample fewer than 10 potential respondents is desirable.

Of the “total” respondent universe of approximately 5,513 active NVOCCs, an average of 79 annually file original NSAs or amendments. Therefore, based upon the actual filings of NSAs in the Commission’s SERVCON system, the total number of respondents expected to report under this information collection is 79. The estimated hour burden for this information collection is 127 hours, as set forth below. The annual cost to respondents in the initial year following the final rule is estimated at \$8,854.40 (see Attachment 1). The hourly burden for respondents, and therefore costs, in future years is anticipated to be less (see hourly burden table below).

Requirements	Annual Respondents	Annual Instances	Average Hours Per Response	Total Hours
Modification of Tariff Invoking Exemption to use NSAs	79	79 ¹	.25	20
Recordkeeping/Auditing Requirements	79	3,249 ²	.033	107
TOTALS				127

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

Modification of Tariff Invoking Exemption to use NSAs: An NVOCC publishes a prominent notice in its tariff to invoke the Commission uses the information filed by NVOCCs in its rules tariff to determine whether an NVOCC has invoked the exemption to use NSAs.

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 107 hours, or approximately 1.35 hrs. annually per respondent NVOCC..

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

*** 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. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**

¹ The number of NVOCCs is approximately 5,513, however, only 79 NVOCCs on average filed NSAs annually during the past three years. It is anticipated that initially upon issuance of this regulatory change, these 79 NVOCCs would modify their tariff to invoke the NSA exemption. In future years, we would expect on average approximately 10 NVOCCs to publish this notice. Therefore, the burden would be even less in future years.

² There were 3,249 new NSAs or amendments on average in the past three fiscal years.

*** If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**

*** Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

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

14. Provide estimates of annualized cost to the Federal government.

Annualized cost to the government primarily involves staff time in determining whether an NVOCC has invoked the exemption and currently maintains an accessible rules tariff, for recordkeeping and enforcement-related purposes. Total estimated burden to the Federal Government for this proposed rule is 96 hours. Thus, the total estimated cost to the Federal Government, including overhead and operational expenses is \$11,122.54. (See Attachment 2).

15. Explain the reasons for any program changes or adjustments reported in Items 13 (or 14) of OMB Form 83-I.

Given that the Final Rule in Docket No. 17-10 eliminates the NSA filing requirement in the Commission's SERVCON system (and related Form FMC-78) as well as the Essential Terms publication requirement, the burden estimate to respondents for this information collection has been significantly reduced from 831 hours (2016 estimate) to 127 hours, a difference of 704 hours. More specifically, the following information collection requirements have been eliminated: NSAs/Format Requirements, Essential Terms Publication, Notification/Filing Requirements and Form FMC-78. (See Attachment 1).

Similarly, a considerable reduction to the burden to the Federal government would be achieved under the proposed rule, i.e., from 1,795 hours to 96 hours.

16. For collections whose results will be published, outline the plans for tabulation and publication.

Not applicable – no information will be published.

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

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

18. Explain each exception to the certification statement identified in Item 19 of OMB Form 83-I.

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

127 hours

33% Pricing Manager (42 hours)

67% Tariff Publisher (85 hours)

The annual salary calculations have been formulated using the Federal Government’s January 2018 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.³

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

$\$109,900/2087 = \52.65 (basic hourly rate) + $\$60.50$ (overhead) = $\$113.15$ = Pricing Manager adjusted hourly salary

$\$46,882/2087 = \22.46 (basic hourly rate) + $\$25.80$ (overhead) = $\$48.26$ = Tariff Publisher adjusted hourly salary

Employee	Hourly Salary	Number of Hours	Total
Pricing Manager	\$113.15	42	\$4,752.30
Tariff Publisher	\$48.26	85	\$4,102.10
TOTALS		127	\$8,854.40

³ 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.

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

The annual salary calculations have been formulated using the Federal Government’s January 2018 salary table (overhead of 114.89% has been added to the basic salary).

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

Office Director GS-15 – 32 hours

$\$152,760/2087 = \73.19 (basic hourly rate) + $\$84.08$ (overhead) = $\$157.27$ adjusted hourly salary

Transportation Specialist GS-12 – 64 hours

$\$92,421/2087 = \44.28 (basic hourly rate) + $\$50.87$ (overhead) = $\$95.15$ adjusted hourly salary

Employee	Hourly Salary	Number of Hours	Total
Office Director	\$157.27	32	\$ 5,032.94
Transportation Specialist	\$ 95.15	64	\$ 6,089.60
TOTALS		96	\$11,122.54