

**NARRATIVE SUPPORTING STATEMENT FOR
46 CFR PART 530 – SERVICE CONTRACTS AND RELATED FORM FMC-83**

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 8(c) of the Shipping Act of 1984 (1984 Act) (46 U.S.C. 40502), as amended by the Ocean Shipping Reform Act of 1998 (OSRA), requires ocean common carriers and agreements among such carriers to file their service contracts confidentially with the Commission and to publish certain essential terms of those service contracts. Service contracts are written contracts between one or more shippers or a shippers' association and an individual ocean common carrier or an agreement between or among ocean common carriers in which the shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed period, and the ocean common carrier or the agreement commits to a certain rate or rate schedule as well as defined service level, such as assured space, transit time, port rotation, etc. Authority to file or delegate the authority to file must be requested by a responsible official of the service contract carrier in writing by submitting the Form FMC-83, Service Contract Registration.

Utilizing the Commission's exemption authority to reduce unnecessary regulatory burdens, the rule being adopted as a final rule in Docket No. 20-02 would eliminate the requirement to publish certain essential terms of filed service contracts.

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 Commission uses the filed service contract data for monitoring and investigatory purposes and, in its proceedings, to adjudicate related statutory issues raised by private parties. For Commission proceedings, as well as in any court case, the service contract on file at the Commission and in effect is official evidence of the applicable rate, charge or rule, when so certified by the Commission. The collection of such information by the Commission is mandated by law.

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 regulations at Part 530 include procedures for filing service contracts using an electronic Internet-based system, SERVCON, to allow carriers and conferences to file their service contracts confidentially with the Commission. All carriers and conferences use the SERVCON system to file their service contracts electronically with the Commission. Before filing in SERVCON, each registrant must file a Form FMC-83, Service Contract Registration. Although the Commission anticipates electronic filing of Form FMC-83, it is not yet technically possible.

4. Describe efforts to identify duplication.

No duplication of effort is involved since similar information is not available from outside sources nor elsewhere in the Commission, and the only source of accurate information is the filing party to the service contract (respondent).

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

As the filing obligation rests upon the ocean common carrier, this collection of information does not have a significant impact on small businesses or other small entities.

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.

The filing of service contracts is not assigned a set, periodic filing date by the Commission; service contracts are filed as they are entered into by the parties. Amendments to service contracts may be filed up to 30 days after agreed to by the parties.¹ The 1984 Act, as amended by OSRA, requires the filing of service contracts. If records of service contracts were not produced as requested within the time period specified, the Commission would not have the information it requires to perform its statutory responsibilities.

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

¹ In order to address business disruptions caused by the COVID-19 pandemic, the Commission recently granted a temporary exemption through December 31, 2020 to permit the filing of original service contracts up to 30 days following the date agreed to by the parties (FMC Docket No. 20-06).

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 produce 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 statute or 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. There is 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 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 was included in the Notice of Proposed Rulemaking (NPRM) published February 14, 2020, at 85 FR 8527. No respondents commented on the estimated cost and hour burdens of the collection of information, except to generally cite the cost saving that would result from adoption of the final rule. Commenters supported the proposal to eliminate the requirement that vessel-operating common carriers (VOCCs) publish statements of essential terms for individual service contracts, which was adopted in the final rule. One commenter objected to the proposed requirement that VOCCs publish general service contract rules and notices as a separate part of the individual carrier's automated tariff system. The final rule allows this as an option, but does not require, such publication.

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.

All service contracts and their amendments filed with the Commission are to be confidential (section 8(c)(2) (46 U.S.C. § 40502(b)).

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.

The Commission estimates the actual respondent universe to be 87 and the total hour burden for the filing of service contracts, amendments, and notices to be 30,726 hours (see below). The Service Contract Registration, Form FMC-83, is required before filing of service contracts may be made. The Commission's previous estimates for annualized cost to respondents for information collection did not take into account that 74% of filers now utilize electronic web services to upload and file original service contracts or amendments, an integrated contract maintenance and filing format which takes just seconds to file. Furthermore, we previously allocated 3 minutes of time to upload and file contracts whereas a handful of manual filers indicated this takes 30 seconds or less. Therefore we have revised the burden estimate per filer response from .05 hours, on average, to just 1 minute or 0.0166 hour.

The new allocation of time more accurately reflects the actual time it takes filers to upload or file contracts or amendments. The Commission estimate an annualized cost to respondents for information collection as \$3,482,351. This includes overhead and benefits. (See Attachment 1.)

| Requirement | Annual Respondents | Annual Instances | Average Hours Per Response | Total Hours |
|---|---------------------------|--|-----------------------------------|--------------------|
| Service contracts/formats | 87 | 213,399 (820,765 less 74% of web service filers) ² | .0166 | 3,542 |
| Essential Terms Publication/Rules & Notices | 87 | 87 | 1 | 87 |
| Notification/Filing Requirements | 87 | 87 | .1 | 9 |
| Form FMC-83 | 87 | 20 | .1 | 2 |
| Disclosure/Third Party | 87 | 8 | .1 | 1 |
| Recordkeeping/Audit Requirements | 87 | 820,765 | .033 | 27,085 |
| TOTALS | | | | 30,726 |

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

Service Contracts/Formats: All vessel-operating common carriers (VOCCs) are required by statute to file a true and complete copy of every service contract before any cargo moves pursuant to that service contract. Of the “total” respondent universe of 155 active VOCCs, only 87 annually file service contracts and amendments in the Commission’s SERVCON system.

Amendments to service contracts must also be filed, but may be filed up to 30 days after the effective date of the agreement reached between the VOCC and the contract shipper. As noted in item 6, the Commission granted a temporary exemption through December 31, 2020 to the requirement that original contracts must be filed before cargo moves in order to mitigate business disruptions as a result of the COVID-19 pandemic (See FMC Docket No. 20-06).

Essential Terms Publication/Rules & Notices: Previously, all VOCCs utilizing service contracts were required by statute to file a publication of specific essential terms for each service contract or amendment. The final rule in Docket No. 20-02 eliminates this requirement of publishing essential terms of each service contract or amendment thereof. Under the final rule,

² This number represents the number of service contracts (initial and amendments) filed with the Commission during Fiscal Year 2018.

VOCCs will also optionally be permitted to publish rules and notices which apply to all, or a specified subset, of service contracts where that method would be more convenient to the carrier. The publication of a rule or notice typically is accomplished in one instance, and is rarely amended once initially published. Therefore, under the final rule, the number of annual instances will decrease from 820,765 to 87, equivalent to the number of carriers which currently utilize service contracts and publish essential terms. The Commission estimates one hour to publish a rule or notice, in those instances where the carrier elects to do so. The estimate is predicated on each carrier publishing one such rule or notice annually, although because it is optional, this burden may be overstated.

Notification/Filing Requirements: Since ocean service contracts are subject to contract law as well as FMC statutes and regulations, virtually all contracts are settled and amended prior to the expiration date to comport with the requirements. For good order, the Commission allowed one instance for each of the 87 filers.

Form FMC-83: The universe of filers is 87; however, only new VOCCs intending to file service contracts and existing VOCCs who want to amend their registration form are required to do so. On average, only 8 new and 12 existing filers, for a total of 20 instances, utilize the form annually. It is not an annual requirement, so the number of annual instances is based on the number of filings in FY 2018.

Disclosure/Third Party: Pursuant to 46 U.S.C. § 40502(e), the Shipping Act requires that an ocean common carrier that is a party to or is otherwise subject to a collective bargaining agreement with a labor organization shall, in response to a written request by the labor organization, state whether it is responsible for certain specific types of work at a dock area or within a port area in the United States with respect to cargo transportation under a service contract. As such requests are not required to be reported to the Commission, the FMC has no specific data regarding the frequency with which such requests occur, and the time required to respond. The Commission, therefore, has based its estimate on information it has received from organized labor regarding the usefulness of ocean common carriers' Essential Terms publications. Please refer to the table above.

Recordkeeping/Audit Requirements: VOCCs create original service contracts and amendments which are created primarily in MS Word Doc, MS Excel or Pdf formatted files and stored electronically in databases which are easily retrievable and produced. Most VOCCs keep hard copy files with signatures, although many contracts and amendments today are agreed to by electronic or digital signature. The number of annual instances of new contracts and amendments is 820,765, and conservatively allowing for 2 minutes (.033 hours) per new contract or amendment for recordkeeping/auditing purposes would encompass 27,085 hours (equivalent to 311.3 hours on average per carrier utilizing service contracts on an annual basis). A VOCC is required to collect signatures prior to filing a contract or amendment or in addressing customer disputes relating thereto; therefore, some of this burden could be offset into the service contracts/formats section above.

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.**

*** 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 record keepers other than those reported in item 12.

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

Total estimated costs to the Federal Government, including overhead and operational expenses, for this collection are 1,700 hours, at an estimated cost of \$241,642. The significant savings in the burden to the Federal government can be attributed to the deployment in 2018 of a new SERVCON filing system which automated a largely manual process and eliminated an outdated database for the verification of authorized SERVCON filers. Further, the greater adoption by the industry of the Commission's "web services" automated filing process led to a substantial reduction in the number of filing errors resulting from manual data entry by external filers. These filing errors required extensive staff time to resolve for external filers. As a result, the Commission was able to reallocate staff time to other program areas. (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 the increased use of web services' automated filing capabilities (accounting for 74% of all service contract filings), the respondent burden estimate for this information collection has decreased for Service Contracts/Formats from 32,115 hours (2017 estimate) to 3,542 hours, a reduction of 28,573 hours.

Without the regulatory relief granted in the proposed rule, the Essential Terms Publication burden would be 41,038 hours. With the relief provided in this rule, the Essential Terms Publication burden estimate would decrease from 32,115 hours (2017 estimate) to 87 hours (See Attachment 1).

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 – The Commission is not seeking approval to exclude the display of the expiration date for OMB approval of this information collection.

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

Not applicable -- The Commission proposes no exception to the certification statement on OMB Form 83-I.

B. Collections of Information Employing Statistical Methods

This collection of information does not employ statistical methods.

Attachment 1

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

30,724 hours (reporting and recordkeeping requirements) + 2 hours (Form FMC-83) = 30,726 total hours

Pricing Manager (30,639 hours)

Tariff Publisher (87 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/2080 + overhead rate = adjusted hourly salary

$\$109,900/2080 = \52.83 (basic hourly rate) + $\$60.69$ (overhead) = $\$113.52$ = Pricing Manager adjusted hourly salary

$\$46,882/2080 = \22.53 (basic hourly rate) + $\$25.88$ (overhead) = $\$48.41$ = Tariff Publisher adjusted hourly salary

| Employee | Hourly Salary | Number of Hours | Total |
|------------------|----------------------|------------------------|--------------------|
| Pricing Manager | \$113.52 | 30,639 | \$3,478,139 |
| Tariff Publisher | \$48.41 | 87 | \$4,212 |
| TOTALS | | 30,726 | \$3,482,351 |

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.

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 2018 salary table (overhead of 114.89% has been added to the basic salary).

Formula: Annual salary/2080 + overhead rate = adjusted hourly salary

Office Director GS-15 – 900 hours

$\$152,760/2080 = \73.44 (basic hourly rate) + $\$84.38$ (overhead) = $\$157.82$ adjusted hourly salary

Transportation Specialist GS-12 – 200 hours

$\$92,421/2080 = \44.43 (basic hourly rate) + $\$51.05$ (overhead) = $\$95.48$ adjusted hourly salary

Senior Transportation Advisor GS-14 – 600 hours

$\$129,869/2080 = \62.44 (basic hourly rate) + $\$71.74$ (overhead) = $\$134.18$ adjusted hourly salary

| Employee | Hourly Salary | Number of Hours | Total |
|-------------------------------|----------------------|------------------------|------------------|
| Office Director | \$157.82 | 900 | \$142,038 |
| Transportation Specialist | \$95.48 | 200 | \$19,096 |
| Senior Transportation Advisor | \$134.18 | 600 | \$80,508 |
| TOTALS | | 1,700 | \$241,642 |