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INSTRUCTIONS FOR FORM FMC–83

Instructions

Line 1. Registration. Indicate whether this is the initial (first time) registration or an amendment to an existing Service Contract Registration.

Line 2. Registrant. This must be the full legal name of the firm or individual registering for the FMC's Service Contract Filing System and any trade names. The registrant name should match the corporate charter or business license, conference membership, etc. It should be noted that the registrant name cannot be changed by the registrant after the registration without submission of an amended registration fee.

Line 3. Address of Home Office. The complete street address should be shown in addition to the post office box. Also, provide the registrant's Federal Taxpayer Identification Number (''TIN'' Number).

Line 4. Billing Address if Different. This should be completed if the billing address differs from the home office address. Show the firm name (if different from the registrant), street address and post office box (if applicable).

Line 5. Organization Number. Complete if known. (Regulated Persons Index or ''RPI'' number.)

Line 6. Registrant Type. Indicate the type of organization. A registrant cannot be more than one type. This data cannot be changed by the registrant after registration without submission of an amended registration form.

Line 7. Permissions Requested and Person Granted These Permissions. Delegation of the authority to file should be noted here.

Maintenance of Organization Record—The person listed in line 8 is authorized to access the organization maintenance functions (i.e., modify organization information, assign publishers, affiliations, and d/b/as).

Service Contract Filing—The person listed in line 8 is authorized only to submit filings.

Line 8. Certified for Batch Filing. Indicate whether the registrant was registered with software certified to perform batch filings prior to May 1, 1999. Otherwise, the registrant must first be certified for batch filing as outlined in 46 CFR part 530. After certification, the registrant can submit an amended registration form to request permission for a person in their organization to perform the batch filing. If the person already has an existing log-on, the log-on (not the password) should be listed on the registration form. Also, the certification date received from the FMC should be listed on the registration form.

PART 531—NVOCC SERVICE ARRANGEMENTS

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AUTHORITY: 46 U.S.C. 40103.

SOURCE: 69 FR 75853, Dec. 20, 2004, unless otherwise noted.

Subpart A—General Provisions

§ 531.1 Purpose.

The purpose of this part is to facilitate NVOCC Service Arrangements (''NSAs'') as they are exempt from the otherwise applicable provisions of the Shipping Act of 1984 (''the Act'').

[83 FR 34791, July 23, 2018]

§ 531.2 Scope and applicability.

Only individual NVOCCs compliant with the requirements of section 19 of the Act (46 U.S.C. 40901–40904) and the Commission's regulations at 46 CFR part 515 may enter into an NSA with one or more NSA shippers subject to the requirements of these rules. Any NVOCC who has failed to maintain its bond or license or had its tariff suspended or cancelled by the Commission is ineligible to offer and file NSAs.

[69 FR 75853, Dec. 20, 2004, as amended at 74 FR 50724, Oct. 1, 2009]

§ 531.3 Definitions.

When used in this part:

(a) *Act* means the Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998;

(b) *Affiliate* means two or more entities which are under common ownership or control by reason of being parent and subsidiary or entities associated with, under common control with, or otherwise related to each other through common stock ownership or common directors or officers.

(c) *Amendment* means any change to an NSA which has prospective effect and which is mutually agreed upon by all parties to the NSA.

(d) *Commission* or *FMC* means the Federal Maritime Commission.

(e) *Common carrier* means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel tanker, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

(i) If the common carrier and the owner of those commodities are wholly owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities and

(ii) Only with respect to those commodities.

(f) *Effective date* means the date upon which an NSA or amendment is scheduled to go into effect by the parties to the NSA. An NSA or amendment becomes effective at 12:01 a.m. Eastern Standard Time on the beginning of the effective date. The effective date cannot be prior to the date of the NSA or amendment.

(g) *Expiration date* means the last day after which the entire NSA is no longer in effect.

(h) *NSA shipper* means a cargo owner, the person for whose account the ocean transportation is provided, the person to whom delivery is to be made, a shippers' association, or an ocean transportation intermediary, as defined in section 3(17)(B) of the Act (46 U.S.C. 40102(16)), that accepts responsibility for payment of all applicable charges under the NSA.

(i) *NVOCC Service Arrangement* (''NSA'') means a written contract, other than a bill of lading or receipt, between one or more NSA shippers and an individual NVOCC or two or more affiliated NVOCCs, in which the NSA shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the NVOCC commits to a certain rate or rate schedule and a defined service level. The NSA may also specify provisions in the event of nonperformance on the part of any party.

(j) *Rules tariff* means a tariff or the portion of a tariff, as defined by 46 CFR 520.2, containing the terms and conditions governing the charges, classifications, rules, regulations and practices of an NVOCC, but does not include a rate.

[83 FR 34791, July 23, 2018]

§ 531.4 NVOCC rules tariff.

(a) Before entering into NSAs under this part, an NVOCC must provide electronic access to its rules tariffs to the public free of charge.

(b) An NVOCC wishing to invoke an exemption pursuant to this part must indicate that intention to the Commission and the public by a prominent notice in its rules tariff.

[83 FR 34791, July 23, 2018]

§ 531.5 [Reserved]

Subpart B—Requirements

§ 531.6 NVOCC Service Arrangements.

(a) Every NSA shall include the complete terms of the NSA including, but not limited to, the following:

(1) The origin port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements;

(2) The destination port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements;

(3) The commodity or commodities involved;

(4) The minimum volume or portion;

(5) The service commitments;

(6) The line-haul rate;

(7) Liquidated damages for non-performance (if any);

(8) Duration, including the

(i) Effective date; and

(ii) Expiration date;

(9) The legal names and business addresses of the NSA parties; the legal names of all affiliates of the NSA shipper entitled to access the NSA; the names, titles and addresses of the representatives signing the NSA for the parties, except that in the case of an NSA entered into by a shippers' association, individual members need not be named unless the contract includes or excludes specific members; and the date upon which the NSA was signed. Subsequent references in the NSA to the signatory parties shall be consistent with the first reference. An NVOCC party which enters into an NSA that includes affiliates must either:

(i) list the affiliates' business addresses; or

(ii) certify that this information will be provided to the Commission upon request within ten (10) business days of such request.

(10) A description of the shipment records which will be maintained to support the NSA and the address, telephone number, and title of the person who will respond to a request by making shipment records available to the Commission for inspection under § 531.12 of this part; and

(11) All other provisions of the NSA.

(b) *Certainty of terms.* The terms described in paragraph (b) of this section may not:

(1) Be uncertain, vague or ambiguous; or

(2) Make reference to terms not explicitly contained in the NSA itself unless those terms are readily available to the parties and the Commission. Reference may not be made to a tariff of a common carrier other than the NVOCC acting as carrier party to the NSA.

(3) Pursuant to § 531.12(b), the carrier party to the NSA must, upon written request by the Commission, provide the Commission with the associated records of the referenced terms. For the purpose of paragraph (c)(2) of this section, the referenced terms will be deemed readily available to the Commission if the carrier party to the NSA provides the Commission with the associated records of the terms within thirty (30) days of the Commission's written request.

(c) *Other requirements.* (1) For service pursuant to an NSA, no NVOCC may, either alone or in conjunction with any other person, directly or indirectly, provide service in the liner trade that is not in accordance with the rates, charges, classifications, rules and practices contained in an NSA.

(2) For service pursuant to an NSA, no NVOCC, may, either alone or in conjunction with any other person, directly or indirectly, engage in any unfair or unjustly discriminatory practice in the matter of rates or charges with respect to any port; and

(3) For service under an NSA, no NVOCC may, either alone or in conjunction with any other person, directly or indirectly, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any port.

(4) No NVOCC may knowingly and willfully enter into an NSA with an ocean transportation intermediary that does not have a tariff and a bond, insurance, or other surety as required by sections 8 (46 U.S.C. 40501–40503) and 19 (46 U.S.C. 40901–40904) of the Act.

(5) Except for the carrier party's rules tariff, the requirement in 46 U.S.C. 40501(a)–(c) that the NVOCC include its rates in a tariff open to public inspection in an automated tariff system and the Commission's corresponding regulations at 46 CFR part 520 shall not apply.

(d) *Format requirements.* Every NSA shall include:

(1) A unique NSA number of more than one (1) but less than ten (10) alphanumeric characters in length (''NSA Number''); and

(2) A consecutively numbered amendment number no more than three digits in length, with initial NSAs using ''0'' (''Amendment number'').

[69 FR 75853, Dec. 20, 2004, as amended at 70 FR 56580, Sept. 28, 2005; 74 FR 50724, Oct. 1, 2009; 77 FR 13510, Mar. 7, 2012; 82 FR 16297, Apr. 4, 2017; 83 FR 34792, July 23, 2018]

§ 531.7 [Reserved]

§ 531.8 Amendment.

(a) NSAs may be amended by mutual agreement of the parties.

(b) Where feasible, NSAs should be amended by amending only the affected specific term(s) or subterms.

(c) Each time any part of an NSA is amended, a consecutive amendment number (up to three digits), beginning with the number ''1'' shall be assigned.

(d) Each time any part of an NSA is amended, the ''Effective Date'' will be the date of the amendment or a future date agreed to by the parties.

[83 FR 34792, July 23, 2018]

Subpart C [Reserved]

Subpart D—Exceptions and Implementation

§ 531.10 Excepted and exempted commodities.

(a) *Statutory exceptions*. NSAs for the movement of the following, as defined in section 3 of the Act (46 U.S.C. 40102) and § 530.3 or § 520.2 of this chapter, are not subject to the conditions of this exemption:

(1) Bulk cargo;

(2) Forest products;

(3) Recycled metal scrap;

(4) New assembled motor vehicles; and

(5) Waste paper or paper waste.

(b) *Commission exemptions*. The following commodities and/or services are not subject to the conditions of this exemption:

(1) *Mail in foreign commerce*. Transportation of mail between the United States and foreign countries.

(2) *Department of Defense cargo*. Transportation of U.S. Department of Defense cargo moving in foreign commerce under terms and conditions approved by the Military Transportation Management Command and published in a universal service contract. An exact copy of the universal service contract, including any amendments thereto, shall be filed with the Commission as soon as it becomes available.

[69 FR 75853, Dec. 20, 2004, as amended at 74 FR 50725, Oct. 1, 2009; 83 FR 34792, July 23, 2018]

§ 531.11 Implementation.

Generally. Performance under an NSA or amendment thereto may not begin before the day it is effective.

[83 FR 34792, July 23, 2018]

Subpart E—Recordkeeping and Audit

§ 531.12 Recordkeeping and audit.

(a) *Records retention for five years*. Every NVOCC shall maintain original signed NSAs, amendments, and their associated records in an organized, readily accessible or retrievable manner for a period of five (5) years from the termination of each NSA. These records must be kept in a form that is readily available and usable to the Commission; electronically maintained records shall be no less accessible than if they were maintained in paper form.

(b) *Production for audit within 30 days of request*. Every NVOCC shall, upon written request of the FMC's Director, Bureau of Enforcement, any Area Representative or the Director, Bureau of Trade Analysis, submit copies of requested original NSAs or their associated records within thirty (30) days of the date of the request.

§§ 531.13–531.98 [Reserved]

§ 531.99 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The Commission has received OMB approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072–0070.

[83 FR 34792, July 23, 2018]

PART 532—NVOCC NEGOTIATED RATE ARRANGEMENTS

Subpart A—General Provisions

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532.2 Scope and applicability.
532.3 Definitions.

Subpart B—Procedures Related to NVOCC Negotiated Rate Arrangements

532.4 Duties of the NVOCC rules tariff.
532.5 Requirements for NVOCC negotiated rate arrangements.
532.6 Notices.

Subpart C—Recordkeeping Requirements

532.7 Recordkeeping and audit.
532.91 OMB control number assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 46 U.S.C. 40103.

SOURCE: 76 FR 11360, Mar. 2, 2011, unless otherwise noted.

Subpart A—General Provisions

§ 532.1 Purpose.

The purpose of this part, pursuant to the Commission's statutory authority, is to exempt non-vessel-operating common carriers (NVOCCs) from the tariff rate publication and adherence requirements of the Shipping Act of 1984, as enumerated herein.

[78 FR 42888, July 18, 2013]

§ 532.2 Scope and applicability.

This part exempts NVOCCs duly licensed pursuant to 46 CFR 515.3 or registered pursuant to 46 CFR 515.19, holding adequate proof of financial responsibility pursuant to 46 CFR 515.21, and meeting the requirements of 46 CFR 532.4 through 532.7, from the following requirements and prohibitions of the Shipping Act and the Commission's regulations:

(a) The requirement in 46 U.S.C. 40501(a)–(c) that the NVOCC include its rates in a tariff open to public inspection in an automated tariff system;

(b) 46 U.S.C. 40501(d);

(c) 46 U.S.C. 40501(e)

(d) 46 U.S.C. 40503;

(e) The prohibition in 46 U.S.C. 41104(a)(2)(A);

(f) the Commission's corresponding regulation at 46 CFR 520.3(a) that the NVOCC include its rates in a tariff open for public inspection in an automated tariff system; and

(g) the Commission's corresponding regulations at 46 CFR 520.4(a)(4), 520.4(f), 520.6(e), 520.7(c), (d), 520.8(a), 520.12, and 520.14. Any NVOCC failing to maintain its bond or license or registration as set forth above, or who has had its tariff suspended by the Commission, shall not be eligible to invoke this exemption.

[76 FR 11360, Mar. 2, 2011, as amended at 78 FR 42888, July 18, 2013; 85 FR 9684, Feb. 20, 2020]

§ 532.3 Definitions.

When used in this part,

(a) ''NVOCC Negotiated Rate Arrangement'' or ''NRA'' means a written and binding arrangement between an NRA shipper and an eligible NVOCC to provide specific transportation service for a stated cargo quantity, from origin to destination, on and after receipt of the cargo by the NVOCC. For purposes of this part, ''receipt of cargo by the NVOCC'' includes receipt by the NVOCC's agent, or the originating carrier in the case of through transportation.

(b) ''Rate'' means a price stated for providing a specified level of transportation service for a stated cargo quantity, from origin to destination, on and after a stated date or within a defined time frame.

(c) ''Rules tariff'' means a tariff or the portion of a tariff, as defined by 46 CFR 520.2, containing the terms and