

Federal Maritime Commission

§ 531.1

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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APPENDIX A TO PART 531—INSTRUCTIONS FOR THE FILING OF NVOCC SERVICE ARRANGEMENTS

EXHIBIT 1 TO PART 531—NVOCC SERVICE ARRANGEMENT REGISTRATION [FORM FMC-78]

AUTHORITY: 46 U.S.C. 40103.

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

Subpart A—General Provisions

§ 531.1 Purpose.

This part exempts NVOCCs from certain provisions of the Shipping Act. The purpose of this part is to facilitate the filing of NVOCC Service Arrangements ("NSAs") and the publication of certain essential terms of those NSAs as they are exempt from the otherwise applicable provisions of the Shipping Act of 1984 ("the Act"). This part enables the Commission to review NSAs to ensure that they and the parties to them comport with the conditions of the exemption as set forth below.

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

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§ 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 a filed NSA which has prospective effect and which is mutually agreed upon by all parties to the NSA.

(d) *Authorized person* means an NVOCC or duly appointed agent who is authorized to file NSAs on behalf of the NVOCC and to publish the corresponding statement of essential terms and is registered by the Commission to file under § 531.5 and Appendix A to this part.

(e) *BTA* means the Commission's Bureau of Trade Analysis, or its successor bureau.

(f) *BCL* means the Commission's Bureau of Certification and Licensing, or its successor bureau.

(g) *Cancellation* means an event which is unanticipated by the NSA, in liquidated damages or otherwise, and is due to the failure of the NSA shipper to tender minimum cargo as set forth in the contract, unless such tender was made impossible by an action of the NVOCC.

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

(i) *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.

(j) *Correction* means any change to a filed NSA that has retroactive effect.

(k) *Effective date* means the date upon which an NSA or amendment is scheduled to go into effect by the parties to the contract. For an original NSA, the effective date cannot be prior to the filing date with the Commission. For an NSA amendment, the effective date can be no more than thirty (30) calendar days prior to the filing date with the Commission. An NSA or amendment thereto becomes effective at 12:01 a.m. Eastern Standard Time on the beginning of the effective date.

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

(m) *File* or *filing* (of NSAs or amendments thereto) means the use of the Commission's electronic filing system for receipt of an NSA or an amendment thereto by the Commission, consistent with the method set forth in Appendix A of this part, and the recording of its receipt by the Commission.

(n) *OIT* means the Commission's Office of Information Technology, or its successor office.

(o) *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.

(p) *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.

(q) *Statement of essential terms* means a concise statement of the essential terms of an NSA required to be published under this part.

[69 FR 75853, Dec. 20, 2004, as amended at 70 FR 56580, Sept. 28, 2005; 74 FR 50724, Oct. 1, 2009; 82 FR 16297, Apr. 4, 2017]

§ 531.4 Confidentiality.

(a) All NSAs and amendments to NSAs filed with the Commission shall, to the fullest extent permitted by law, be held in confidence by the Commission.

(b) Nothing contained in this part shall preclude the Commission from providing certain information from or access to NSAs to another agency of the Federal government of the United States.

(c) Parties to a filed NSA may agree to disclose information contained in it. Breach of any confidentiality agreement contained in an NSA by either party will not, on its own, be considered a violation of these rules.

§ 531.5 Duty to file.

(a) The duty under this part to file NSAs, amendments and notices, and to publish statements of essential terms, shall be upon the NVOCC acting as carrier party to the NSA.

(b) The Commission shall not order any person to pay the difference between the amount billed and agreed upon in writing with a common carrier

or its agent and the amount set forth in an NSA by that common carrier for the transportation service provided.

(c) Filing may be accomplished by any duly agreed-upon agent, as the parties to the NSA may designate, and subject to conditions as the parties may agree.

(d) *Registration*—(1) *Application*. Authority to file or delegate the authority to file must be requested by a responsible official of the NVOCC in writing by submitting to BTA, either by mail to 800 N. Capitol Street, NW., Washington, DC 20573, or by facsimile to (202) 523-5867, a completed NSA Registration Form (FMC-78)(Exhibit 1 to this part).

(2) *Approved registrations*. OIT shall provide approved Registrants a log-on ID and password for filing and amending NSAs and notify Registrants of such approval.

[69 FR 75853, Dec. 20, 2004, as amended at 70 FR 56580, Sept. 28, 2005; 76 FR 11680, Mar. 3, 2011]

Subpart B—Filing Requirements

§ 531.6 NVOCC Service Arrangements.

(a) Authorized persons shall file with BTA, in the manner set forth in appendix A of this part, a true and complete copy of:

(1) Every NSA before any cargo moves pursuant to that NSA; and

(2) Every amendment to a filed NSA no later than thirty (30) days after any cargo moves pursuant to that NSA amendment.

(b) Every NSA filed with the Commission 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);

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(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.

(c) *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 asso-

ciated records of the terms within thirty (30) days of the Commission's written request.

(d) *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 effective 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.

(e) *Format requirements.* Every NSA filed with BTA shall include, as set forth in Appendix A to this part:

(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"); and

(3) An indication of the method by which the statement of essential terms will be published.

(f) *Exception in case of malfunction of Commission electronic filing system.* (1) In the event that the Commission's electronic filing system is not functioning and cannot receive NSAs filings for twenty-four (24) continuous hours or more, affected parties will not be subject to the requirements of paragraph (a) of this section and § 531.11 that an NSA be filed before cargo is shipped under it.

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(2) However, NSAs which go into effect before they are filed due to a malfunction of the Commission's electronic filing system pursuant to paragraph (f)(1) of this section, must be filed within twenty-four (24) hours of the Commission's electronic filing system's return to service.

(3) For an NSA that is effective without filing due to a malfunction of the Commission's filing system, failure to file that NSA within twenty-four (24) hours of the Commission's electronic filing system's return to service will be considered a violation of these regulations.

(g) Failure to comply with the provisions of this section shall result in the application of the terms of the otherwise applicable tariff.

[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]

§ 531.7 Notices.

Within thirty (30) days of the occurrence of any event listed below, there shall be filed with the Commission, pursuant to the same procedures as those followed for the filing of an amendment pursuant to § 531.5 and Appendix A to this part, a detailed notice of:

- (a) Correction;
- (b) Cancellation;
- (c) Adjustment of accounts, by re-rating, liquidated damages, or otherwise;
- (d) Final settlement of any account adjusted as described in paragraph (c) of this section; and
- (e) Any change to the name, legal name and/or business address of any NSA party.

§ 531.8 Amendment, correction, cancellation, and electronic transmission errors.

(a) *Amendment.* (1) NSAs may be amended by mutual agreement of the parties. Amendments shall be filed electronically with the Commission in the manner set forth in § 531.5 and Appendix A to this part.

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

(ii) Each time any part of an NSA is amended, the filer shall assign a consecutive amendment number (up to three digits), beginning with the number "1."

(iii) Each time any part of a filed NSA is amended, the "Filing Date" will be the date of filing of the amendment.

(2) [Reserved]

(b) *Correction.* (1) Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within one-hundred eighty (180) days of the NSA's filing with the Commission, accompanied by remittance of a \$95 service fee.

(2) Requests shall include:

(i) A letter of transmittal explaining the purpose of the submission, and providing specific information to identify the initial or amended NSA to be corrected;

(ii) A paper copy of the proposed correct terms. Matter to be deleted shall be struck through and matter to be added shall immediately follow the language being deleted and underscored;

(iii) An affidavit from the filing party attesting with specificity to the factual circumstances surrounding the clerical or administrative error, with reference to any supporting documentation;

(iv) Documents supporting the clerical or administrative error; and

(v) A brief statement from the other party to the NSA concurring in the request for correction.

(3) If the request for correction is granted, the carrier party shall file the corrected provisions using a special case number as described in Appendix A to this part.

(c) *Electronic transmission errors.* An authorized person who experiences a purely technical electronic transmission error or a data conversion error in transmitting an NSA or an amendment thereto is permitted to file a Corrected Transmission ("CT") of that filing within 30 days of the date and time of receipt recorded in SERVCON. This time-limited permission to correct an initial defective NSA filing may not be used to make changes in the original NSA rates, terms or conditions that are otherwise provided

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for in § 531.6(b). The CT tab box in SERVCON must be checked at the time of resubmitting a previously filed NSA, and a description of the correction made must be stated at the beginning of the corrected NSA in a comment box. Failure to check the CT box and enter a description of the correction will result in the rejection of a file with the same name, since documents with duplicate file names or NSA and amendment numbers are not accepted by SERVCON.

(d) *Cancellation.* (1) An account may be adjusted for events and damages covered by the NSA. This shall include adjustment necessitated by either liability for liquidated damages appearing in the NSA as filed with the Commission under § 531.6(b)(7), or the occurrence of an event described below in paragraph (d)(2) of this section.

(2) In the event of cancellation as defined in § 531.3(g):

(i) Further or continued implementation of the NSA is prohibited; and

(ii) The cargo previously carried under the NSA shall be re-rated according to the otherwise applicable tariff provisions.

(e) If the amendment, correction or cancellation affects an essential term required to be published under § 531.9, the statement of essential terms shall be changed as soon as possible after the filing of the amendment to accurately reflect the change to the NSA terms.

[69 FR 75853, Dec. 20, 2004, as amended at 81 FR 59145, Aug. 29, 2016; 82 FR 16297, Apr. 4, 2017]

Subpart C—Publication of Essential Terms

§ 531.9 Publication.

(a) *Contents.* All authorized persons who choose to file NSAs under this part are also required to make available to the public, contemporaneously with the filing of each NSA with the Commission, and in tariff format, a concise statement of the following essential terms:

(1) The port ranges:

(i) origin; and

(ii) destination;

(2) The commodity or commodities involved;

(3) The minimum volume or portion; and

(4) The duration.

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

(1) Be uncertain, vague or ambiguous; or

(2) Make reference to terms not explicitly detailed in the statement of essential terms, unless those terms are contained in a publication widely available to the public and well known within the industry. Reference may not be made to a tariff of a common carrier other than the NVOCC party to the NSA.

(c) *Location.* The statement of essential terms shall be published as a separate part of the individual NVOCC's automated tariff system.

(d) *References.* The statement of essential terms shall contain a reference to the "NSA Number" as described in § 531.6(e)(1).

(e) *Terms.* (1) The publication of the statement of essential terms shall accurately reflect the terms as filed with the Commission.

(2) If any of the published essential terms include information not required to be filed with the Commission but filed voluntarily, the statement of essential terms shall so note.

(f) *Commission listing.* The Commission will publish on its website, www.fmc.gov, a listing of the locations of all NSA essential terms publications.

(g) Updating statements of essential terms. To ensure that the information contained in a published statement of essential terms is current and accurate, the statement of essential terms publication shall include a prominent notice indicating the date of its most recent publication or revision. When the published statement of essential terms is affected by filed amendments, corrections, or cancellations, the current terms shall be changed and published as soon as possible in the relevant statement of essential terms.

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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.

(c) *Inclusion of excepted or exempted matter.* (1) The Commission will not accept for filing NSAs which exclusively concern the commodities or services listed in paragraph (a) or (b) of this section.

(2) NSAs filed with the Commission may include the commodities or services listed in paragraph (a) or (b) of this section only if:

(i) There is a tariff of general applicability for the transportation, which contains a specific commodity rate for the commodity or service in question; or

(ii) The NSA itself sets forth a rate or charge which will be applied if the NSA is canceled, as defined in § 531.3(e) and § 531.8(d).

(d) *Waiver.* Upon filing an NSA pursuant to paragraph (c) of this section, the NSA shall be subject to the same re-

quirements as those for NSAs generally.

[69 FR 75853, Dec. 20, 2004, as amended at 74 FR 50725, Oct. 1, 2009]

§ 531.11 Implementation.

Generally. Performance under an original NSA may not begin before the day it is effective and filed with the Commission. Performance under an NSA amendment may not begin until the day it is effective, provided that the amendment is filed no later than thirty (30) calendar days after the effective date.

[82 FR 16297, Apr. 4, 2017]

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

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3072-0070. The valid control number for form FMC-78 is 3072-0070.

[69 FR 75853, Dec. 20, 2004, as amended at 70 FR 31370, June 1, 2005]

APPENDIX A TO PART 531—INSTRUCTIONS FOR THE FILING OF NSAS

NSAs shall be filed in accordance with the instructions found on the Commission's home page, <http://www.fmc.gov>.

A. REGISTRATION, LOG-ON I.D. AND PASSWORD

To register for filing, an NVOCC or authorized agent must submit the NSA Registration Form (Form FMC-78) to BTA. A separate NSA Registration Form is required for each individual that will file NSAs. BTA will direct OIT to provide approved filers with a log-on identification number ("I.D.") and password. Filers who would like a third party (agent/publisher) to file their NSAs must so indicate on Form FMC-78. Authority for filing can be transferred by submitting an amended registration form requesting the

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assignment of a new log-on I.D. and password. The original log-on ID will be canceled when a replacement log-on I.D. is issued. Log-on I.D.s and passwords may not be shared with, loaned to or used by any individual other than the individual registrant. The Commission reserves the right to disable any log-on I.D. that is shared with, loaned to or used by parties other than the registrant.

B. FILING

After receiving a log-on I.D. and a password, a filer may log-on to the NSA filing area on the Commission's home page and file NSAs. The filing screen will request such information as: filer name, organization number ("Registered Persons Index" or "RPI" number); NSA and amendment number; effective date and file name. The filer will attach the entire NSA file and submit it into the system. When the NSA has been submitted for filing, the system will assign a filing date and an FMC control number, both of which will be included in the acknowledgment/confirmation message.

Instructions for Form FMC-78

Completed Form FMC-78 should be sent by mail or facsimile to:

**Federal Maritime Commission
Bureau of Trade Analysis
800 N. Capitol Street, NW
Washington, DC 20573-0001
Fax (202) 523-5867**

Line 1. Organization Number. This is the same as the Regulated Persons Index ("RPI") Number.

Line 2. Registrant. Provide the full name of the firm or individual registering for the automated NSA filing system and any trade names. The Registrant's name should match the corporate charter or business license, etc. The Registrant's name cannot be changed without submission of an amended registration form.

Line 3. FMC License Number. Provide name of Registrant as licensed by the Commission and date of the effectiveness of that license. If Registrant is a bonded but unlicensed foreign-based NVOCC operating pursuant to Commission's regulations at 46 C.F.R. § 515.3, indicate the name and address of the agent for service of process as required by 46 C.F.R. § 515.24. The name and address of the agent for service of process must be the same as that appearing in the NVOCC's tariff, as provided by 46 C.F.R. § 520.11 (b).

Line 4. Registration. Indicate whether this is the initial (first time) registration or an amendment to an existing NSA registration.

Line 5. Address of Headquarters Office. The complete street address of the Registrant's principal place of business should be shown in addition to a post office box (if any). Post office box alone is insufficient. Provide the Registrant's Federal Taxpayer Identification Number, if any.

Line 6. Mailing Address (if different). Provide the mailing address only if it differs from the headquarters address listed in Line 5. Show the street address as well as any post office box. This is the address to which the Registrant's log-on I.D. and password will be mailed via U.S. mail. Also, if the log-on I.D. and password is to be mailed to a third party, indicate here.

Line 7. Persons to be granted registration. Provide the full name of the individual for whom the log-on I.D. and password is requested. If you wish to transfer a log-on I.D. from an existing registration to a new individual, indicate the name of the new registrant and the log-on I.D. to be assigned.

Line 8. Registration by Third Party. Indicate, by checking the applicable box, whether the person to be granted registration in Line 7 is a third party (publisher, agent, etc.) of the registrant named in Line 1. The registration must be accompanied by an indication that the NVOCC has authorized the third party to file NVOCC service arrangements and related documents on its behalf.

Line 9. Signature of Authorized Official. Indicate the date the registration was signed and title of authorized official.

Paperwork Reduction Act Notice.

The collection of this information is authorized generally by section 16 of the Shipping Act of 1984, 46 U.S.C. app. § 1715.

This is an optional form. Submission is completely voluntary. Failure to submit this form will in no way impact the Federal Maritime Commission's assessment of your firm's financial responsibility; however, you will not be able to use the exemption set forth in the Commission's rules at 46 C.F.R. part 531.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. The valid control number for this information collection is 3072-0070. Copies of this form will be maintained until the filer indicates s/he will no longer file NSAs into the electronic filing system.

The time needed to complete and file this form will vary depending on individual circumstances. The total estimated average time to complete this form is: Recordkeeping, 20 minutes; Learning about the form, 20 minutes; Preparing and sending the form to the FMC, 20 minutes.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001, or e-mail: secretary@fmc.gov.

EXHIBIT 1 – NVOCC SERVICE ARRANGEMENT REGISTRATION [FORM FMC-78]

OMB No. 3072-0070 (exp. date: 3/31/2008)

FORM FMC-78

PLEASE TYPE OR PRINT

NVOCC SERVICE ARRANGEMENT REGISTRATION

(SEE ATTACHED INSTRUCTIONS)

1. Organization No.

2. Registrant

Full Legal Name of firm (or individual, if not a firm)

(Doing Business As or Trade Name)

3. a. NVOCC OTI License No. Effective date: MM/DD/YYYY

OR b. If foreign-based unlicensed NVOCC, provide the following information for agent for service of process:

Name:

Address:

4. This Registration is: [] Initial [] Amendment (Specify change)

5. Headquarters Address

(Number and Street) Telephone ()
(Number and Street) Fax ()

(City/State/Zip/Country) (Federal TIN Number, if any) E-Mail (optional)

6. Mailing Address (if different)

c/o name

Address

Telephone ()

Fax ()

Email (optional)

7. Person(s) to be granted registration. Please list individual(s) for whom a log-on identifier is requested. If this is a transfer of log-on, please list the existing name and existing log-on ID: Name: Existing Log-on:

8. Is the person listed in question 7 a third party? (check one) [] Yes [] No. If yes, a letter of authority must be submitted with this form.

9. Signature of Authorized Official Print or type name of Authorized Official
date (MM/DD/YYYY) Title of Authorized Official

FMC USE ONLY

Logon ID Directory DateAsg / / AsgBy
11/04 (rev'd 12/04)(rev'd 3/05)

[69 FR 75853, Dec. 20, 2004, as amended at 70 FR 31370, June 1, 2005; 74 FR 50725, Oct. 1, 2009]

PART 532—NVOCC NEGOTIATED RATE ARRANGEMENTS

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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(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]

§ 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 carrier or its 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 conditions governing the charges, classifications, rules, regulations and practices of an NVOCC, but does not include a rate.

(d) “NRA 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 NRA.

(e) “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