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## **Title 46 – Shipping**

### **Chapter IV – Federal Maritime Commission**

#### **Subchapter B – Regulations Affecting Ocean Shipping in Foreign Commerce**

##### **Part 532 NVOCC Negotiated Rate Arrangements**

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## **PART 532—NVOCC NEGOTIATED RATE ARRANGEMENTS**

**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 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 through common stock ownership or common directors or officers.

*[76 FR 11360, Mar. 2, 2011, as amended at 83 FR 34792, July 23, 2018]*

### Subpart B—Procedures Related to NVOCC Negotiated Rate Arrangements

## § 532.4 NVOCC rules tariff.

Before entering into NRAs under this Part, an NVOCC must provide electronic access to its rules tariffs to the public free of charge.

## § 532.5 Requirements for NVOCC negotiated rate arrangements.

In order to qualify for the exemptions to the general rate publication requirement as set forth in § 532.2, an NRA must meet the following requirements:

- (a) **Writing.** The NRA must be in writing.
- (b) **Parties.** The NRA must contain the names of the parties and the names of the representatives agreeing to the NRA.
- (c) **Agreement.** The terms of the NRA must be agreed to by both NRA shipper and NVOCC, prior to receipt of cargo by the NVOCC. The shipper is considered to have agreed to the terms of the NRA if the shipper:
  - (1) Provides the NVOCC with a signed agreement;
  - (2) Sends the NVOCC a written communication, including an email, indicating acceptance of the NRA terms; or
  - (3) Books a shipment after receiving the NRA terms from the NVOCC, if the NVOCC incorporates in the NRA terms the following text in bold font and all uppercase letters: "THE SHIPPER'S BOOKING OF CARGO AFTER RECEIVING THE TERMS OF THIS NRA OR NRA AMENDMENT CONSTITUTES ACCEPTANCE OF THE RATES AND TERMS OF THIS NRA OR NRA AMENDMENT."
- (d) **Rates and terms –**
  - (1) **General.** The NRA must clearly specify the rate and terms, as well as the shipment or shipments to which such rate will apply.
  - (2) **Surcharges, assessorial charges, and GRIs.**
    - (i) If the rate is not an "all-in rate," the NRA must specify whether additional surcharges, additional assessorial charges, or ocean common carrier general rate increases ("GRIs") will apply.
    - (ii) The NRA may list the additional surcharges or assessorial charges, including pass-through charges, or reference specific surcharges or assessorial charges in the NVOCC's rules tariff.
    - (iii) If the additional surcharges or assessorial charges are included in the NVOCC's rules tariff, those additional surcharges or assessorial charges and the corresponding amounts specified in the rules tariff must be fixed once the first shipment has been received by the NVOCC until the last shipment is delivered, subject to an amendment of the NRA.
    - (iv) For any pass-through charge for which a specific amount is not included in the NRA or the rules tariff, the NVOCC may only invoice the shipper for charges the NVOCC incurs, with no markup.
  - (3) **Non-rate economic terms.** The NRA may include non-rate economic terms.
- (e) **Amendment.** The NRA may be amended after the time the initial shipment is received by the NVOCC, but such changes may only apply prospectively to shipments not yet received by the NVOCC.

[83 FR 34792, July 23, 2018]

## § 532.6 Notices.

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.

*[77 FR 33972, June 8, 2012]*

## Subpart C—Recordkeeping

### § 532.7 Recordkeeping and audit.

- (a) An NVOCC invoking an exemption pursuant to this part must maintain original NRAs in an organized, readily accessible or retrievable manner for 5 years from the completion date of performance of the NRA by an NVOCC, in a format easily produced to the Commission.
- (b) NRAs are subject to inspection and reproduction requests by the Commission. An NVOCC shall produce the requested NRAs promptly in response to a Commission request. All records produced must be in English or be accompanied by a certified English translation.
- (c) Failure to keep or timely produce original NRAs will disqualify an NVOCC from the operation of the exemption provided pursuant to this part, regardless of whether it has been invoked by notice as set forth above, and may result in a Commission finding of a violation of 46 U.S.C. 41104(a)(1), 41104(a)(2)(A) or other acts prohibited by the Shipping Act.

*[77 FR 33972, June 8, 2012, as amended at 78 FR 42889, July 18, 2013; 85 FR 9684, Feb. 20, 2020]*

### § 532.91 OMB control number issued 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 3072-0071.