

Federal Maritime Commission

§ 531.6

(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.

EFFECTIVE DATE NOTE: At 70 FR 56580, Sept. 28, 2005, § 531.3 was amended by revising paragraph (o), effective Oct. 28, 2005. For the convenience of the user, the revised text follows:

§ 531.3 Definitions.

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(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, that accepts responsibility for payment of all applicable charges under the NSA.

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§ 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 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 identification number (“I.D.”) and password for filing and amending NSAs, and notify Registrants of such approval via U.S. mail.

EFFECTIVE DATE NOTE: At 70 FR 56580, Sept. 28, 2005, § 531.5 was amended by revising paragraph (a), effective Oct. 28, 2005. For the convenience of the user, the revised text follows:

§ 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.

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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 every NSA or amendment before any cargo moves pursuant to that NSA or amendment.

§ 531.6

46 CFR Ch. IV (10–1–05 Edition)

(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);

(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 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.

(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 a filed 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.

(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.

Federal Maritime Commission

§ 531.8

(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.

EFFECTIVE DATE NOTE: At 70 FR 56580, Sept. 28, 2005, § 531.6 was amended by revising paragraph (c)(2) and adding paragraph (d)(4), effective Oct. 28, 2005. For the convenience of the user, the revised text follows:

§ 531.6 NVOCC Service Arrangements.

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(c) * * *

(2) Make reference to terms not explicitly contained in the NSA itself 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 acting as carrier party to the NSA.

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(d) * * *

(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 and 19 of the Act.

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§ 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 forty-five (45) days of the NSA's filing with the Commission, accompanied by remittance of a \$276 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