

PART 532—NVOCC NEGOTIATED RATE ARRANGEMENTS

Subpart A—General Provisions

- Sec. 532.1 Purpose.
 Sec. 532.2 Scope and applicability.
 Sec. 532.3 Definitions.

Subpart B—Procedures Related to NVOCC Negotiated Rate Arrangements

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

Subpart C—Recordkeeping Requirements

- Sec. 532.7 Recordkeeping and audit.
 Sec. 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 licensed and bonded non-vessel-operating common carriers (NVOCCs) from the tariff rate publication and adherence requirements of the Shipping Act of 1984, as enumerated herein.

§ 532.2 Scope and applicability.

This Part exempts NVOCCs duly licensed pursuant to 46 CFR 515.3; holding adequate proof of financial responsibility pursuant to 46 CFR 515.21; and meeting the conditions 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 as set forth above, or who has had its tariff suspended by the Commission, shall not be eligible to invoke this exemption.

§ 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 through common stock ownership or common directors or officers.

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 section 532.2, an NRA must:

- (a) Be in writing;
- (b) Contain the legal name and address of the parties and any affiliates; and contain the names, title and addresses of the representatives of the parties agreeing to the NRA;
- (c) Be agreed to by both NRA shipper and NVOCC, prior to receipt of cargo by the common carrier or its agent (including originating carriers in the case of through transportation);
- (d) Clearly specify the rate and the shipment or shipments to which such rate will apply; and
- (e) May not be modified after the time the initial shipment is received by the carrier or its agent (including originating carriers in the case of through transportation).

[76 FR 11360, Mar. 2, 2011; 76 FR 19707, Apr. 8, 2011]

§ 532.6 Notices.

An NVOCC wishing to invoke an exemption pursuant to this part must indicate that intention to the Commission and to the public by a prominent notice in its rules tariff and bills of lading or equivalent shipping documents.

[76 FR 11360, Mar. 2, 2011; 76 FR 19707, Apr. 8, 2011]

Subpart C—Recordkeeping

§ 532.7 Recordkeeping and audit.

(a) An NVOCC invoking an exemption pursuant to this part must maintain original NRAs and all associated records, including written communications, 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 and all associated records and written communications are subject to inspection and reproduction requests under section 515.31(g) of this chapter. An NVOCC shall produce the requested NRAs and associated records, including written communications, 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 and associated records and written communications 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(1), 41104(2)(A) or other acts prohibited by the Shipping Act.

§ 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.

PART 535—OCEAN COMMON CARRIER AND MARINE TERMINAL OPERATOR AGREEMENTS SUBJECT TO THE SHIPPING ACT OF 1984

Subpart A—General Provisions

- Sec.
- 535.101 Authority.
- 535.102 Purpose.
- 535.103 Policies.
- 535.104 Definitions.

Subpart B—Scope

- 535.201 Subject agreements.
- 535.202 Non-subject agreements.