

## **NVOCC Service Agreement (NSA) Handling Procedures**

The following is based on our experience in handling tens of thousands of FMC regulated service contracts and NSAs. We have updated these procedures many times to conform to revisions of [FMC regulations](#) and to take advantage of new technologies. We have recently made several adjustments we believe will enable your company to utilize NSAs and satisfy the FMC requirements for these in a professional and cost-effective manner.

In brief, we suggest your company use a template to prepare each NSA. We attach our suggestion of the template to be used, viz: DPI NSA Template. The wording of this template is concise and shortened because it relies on your tariff NSA rule. This rule provides all the definitions and terms required by FMC for NSAs. It also includes terms and conditions provided by a leading maritime attorney that help limit your liability and provide for arbitration if necessary.

Each of the terms to be customized in the NSA template is reviewed in detail below. Completed NSAs must be sent via email to DPI. We will confirm receipt and review your NSAs carefully and advise you on any changes required for FMC compliance. We will save your NSA in our secure database, which you have access to via your User ID and Password for [www.dpiusa.com](http://www.dpiusa.com) - access to your NSAs is provided to you alone; no public access is provided. When all goes well the procedure is just as easy as filing new rates in a tariff.

### **1. NSA Template**

The attached NSA template (DPI NSA Template) should be customized to include the NVOCC's full legal name, head office address, FMC organization number, governing tariff number(s), and the name and title of the representative of your company listed in your FMC tariff registration. To utilize this template the following actions will be necessary before this template can be used for an official NSA that satisfies FMC's requirements.

#### **a. NSA Number:**

Each NSA must include a unique number of no more than 9 characters. We suggest using the first 2 to 4 characters to identify the Carrier (NVOCC), the next 2 digits to identify the year (13 for the year 2013) and then 3 digits. For example: ABC05001.

#### **b. Carrier Authorized Official (Signatory):**

The name, title, and email address of the person who may sign NSAs on behalf of your company should be entered on the template. We recommend using the name and title of the person listed in your FMC tariff registration, or one of your company officers, however, any employee of your company who is authorized by your company officers may sign the NSA.

#### **c. Shipper Name & Address:**

The full legal name of the Shipper must be entered on the NSA form; abbreviations or trade names must not be used.

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**d. Shipper Authorized Official (Signatory):**

The name and title of the Authorized Official who signs the NSA for and on behalf of the Shipper must be entered here. An email address is also recommended in order to quickly accept NSA amendments via electronic signature. Any officer of the Shipper can sign the NSA. Other managers or representatives authorized by the Shipper's officers may also sign on behalf of the Shipper. A signature is required.

**e. Shipper Status and Certification and Affiliates:**

Complete this section to indicate whether the shipper is a cargo owner or consignee, NVOCC, or a shippers' association. The shipper must not be an ocean freight forwarder. If the shipper is an NVOCC, they must certify that it is registered as such with the FMC, and has a tariff published governing the trade covered by the contract. As the NSA Carrier, your company also has a responsibility to verify this information. The best way to do this is to visit [www.fmc.gov](http://www.fmc.gov) and confirm that the NVOCC in question is listed as an active OTI/NVOCC.

**f. Appendix A:**

Appendix A of the NSA template provides details of the origins and destinations (ports or inland points), the commodities, the minimum quantity, the duration (effective & expiry dates), as well as the rates and assessorial charges of the NSA that apply. These must not be vague or ambiguous; these must be clear and definite. The same standards applied by FMC for tariff filing apply here. Abbreviations can only be used if these are clearly defined in NSA, or in the NVOCC's governing tariff.

Please note, the EFFECTIVE DATE of the NSA cannot be prior to its signing date, and cargo may not move under NSA rates prior to signing by both your company and your Shipper customer. The date(s) the NSA is signed can be its effective date. This format is used in our template to help ensure compliance with this key FMC regulation:

Effective Dates:

From: \_\_\_\_\_, *or the date signed by Carrier and Shipper representatives, whichever is later*

To: \_\_\_\_\_

The expiration date for an NSA must be a fixed date. The NSA is still valid on its expiration date, and does not expire until 12:00am the following day. Prior to its expiration, an NSA may be amended to change its expiry date. After an NSA expires, it may not be amended or used for cargo movements.

Assessorial Charges means all surcharges, handling fees, documentation fees, and terminal charges that apply in addition to the ocean freight rate for transportation from the origins to the destinations named in the NSA. NSA rates will be subject to all charges, surcharges and arbitraries / additional published in the NVOCC's governing tariff, except those that are specifically noted. For example, if the governing tariff includes a documentation fee, but the NSA rates include this fee, the NSA must note: Exception: Not Subject to Documentation Fee (Tariff Rule No. xxx).

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An NSA can provide freight rates that remain fixed for the term of the NSA but are subject to assessorial charges (surcharges) filed in your governing rules tariff that you can change and update as needed – without amending your NSA and without customer approval. In other words, “floating surcharges.” This is a unique feature of NSAs that is not allowed in NVOCC Negotiated Rate Arrangements (NRAs) or in FMC tariff rates.

**g. Appendix B / Shipper Affiliates:**

Appendix B of the NSA template is optional. It is used only if the NSA shipper provides details of its affiliate entities / companies. 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.

**h. Liquidated Damages:**

Term 7 of the NSA provides for liquidated damages (also called short-shipment penalties) that will apply if the Shipper fails to tender the Minimum Quantity Commitment specified in the NSA prior to its expiration. The amount of the penalty and basis must be inserted here, or appropriately referenced in the Carrier’s FMC tariff NSA rule. If the NSA provides for refunds paid to the shipper after a minimum volume requirement is satisfied the liquidated damages term may simply read “Not Applicable.” This is also true if the NSA provides for rates that are only accessible to the shipper after a minimum volume requirement has been satisfied.

**These are all the key parts of NSA that must be entered in the template to satisfy FMC regulations.** The other terms in the template are not intended to be revised with each NSA. For advice on the NSA rule, including liability, disputes, assignment and applicable law, you should consult with a qualified attorney. Based on our experience as tariff publishers and FMC Practitioners, we can confirm these terms have been widely used by ocean carriers and NVOCCs, however, we are not attorneys and we cannot give legal advice.

**2. NSA Review by DPI, New NSAs**

When all of the details specified in (1) are in good order, the NSA may be signed. Effective 22Aug2018 NSAs are no longer filed with the FMC. Instead, FMC has implemented an ‘honor system’ for NSAs. NVOCCs who use NSAs must continue to prepare these in the manner required by FMC’s regulations provided in 46 CFR Part 531, obtain Shipper approval in writing, and must keep careful records of each NSA and the shipper’s agreement for five (5) years for FMC review and audit. DPI provides a careful review for FMC compliance and handles the recording keeping required by FMC for each NSA sent to us.

Each NSA should be attached to an email and sent via email to [nsa@dpiusa.com](mailto:nsa@dpiusa.com) Our staff will confirm receipt and review it carefully. If we find anything missing or unclear, or anything that does not comply with FMC’s regulation we will advise in detail and recommend changes. Otherwise, we will enter into our database and confirm via email. NSAs received in good order by 2:00 pm our time (in Oakland, California) will normally be reviewed and confirmed the same business day. Our confirmation will include the NSA effective date.

### **3. NSA Review by DPI, Amendments**

The FMC rules allow for the amendment an NSA. Amendments to NSAs may include the complete NSA, with highlighting for amended terms, or just the amended terms; for example, just the origins or rates. We recommend including just the amended terms, and attach a template in this style, viz: DPI NSA Amendment Template. In most cases this will require only the filing of Appendix A or Appendix B of the NSA.

Amendments may also be used to change the expiration date of an NSA, or to adjust the minimum volume requirement. Amendments must be agreed by both the NVOCC and the Shipper. Amendments can never be effective prior to the date they are agreed in writing by your company and your customer. Each amended NSA must include the NSA number, the sequential amendment number, and dates.

The handling and review procedure for amended and approved NSAs via DPI is simple - send the amended NSA via email to [nsa@dpiusa.com](mailto:nsa@dpiusa.com) Our staff here at DPI will review and confirm. Our confirmation will include the effective date of the amendment.

If we find any problem with an NSA amendment we will notify you promptly and advise exactly how to correct the NSA to meet FMC regulations. Please be reminded the effective date of the NSA or amendment cannot be prior to the date it is agreed in writing. Signatures are not required on NSA amendments if the amendment is agreed via emails exchanged by the NVOCC and NSA shipper representatives as named in the NSA.

### **4. NSA Database**

On the same day a new or amended NSA is reviewed by DPI and confirmed in good order the following is entered into our database:

1. **NSA Shipper Name:** provided in the NSA title
2. **Origin** ports, and inland points if intermodal service is provided
3. **Destination** ports, and inland points if intermodal service is provided
4. **Commodity** or commodities involved
5. **Minimum** volume or portion (MQC)
6. **Liquidated Damages for Non-Performance (if any)**
7. **Duration**, including the exact effective date, expiration date, and last amendment date
8. **Appendix A**, including freight rates and assessorials/surcharges
9. **All Other NSA terms and conditions**, including the NSA signature page

The NSA database maintained by DPI provides a key part of the recording keeping required by FMC for its review and audit. Access to this database is provided to your company via your User ID and Password for [www.dpiusa.com](http://www.dpiusa.com) No public access is allowed; your NSA is kept confidential by DPI; effective 22Aug2018 the FMC eliminated the public access requirement for NSA essential terms. Your on-line private and confidential access to your NSAs also provides a useful tool for internal auditing of your NSAs by your company, and may be used to help you prepare new and amended NSAs.

## **5. NSA Record Keeping and Audit**

The record keeping requirements for NSAs are substantial. According to [Section 531.12 of the FMC regulations](#) NSA records, including original signed NSAs and amendments, must be maintained by the NVOCC, or agents acting on its behalf, for five (5) years after the termination dates of each NSA. NSA records also include copies of bills of lading, and copies of written communications between the Carrier and Shipper regarding the NSA. B/Ls would be required to provide proof that the Shipper satisfied the minimum volume requirement of the NSA. Each HB/L must show the NSA number.

DPI will maintain copies of NSA signature pages and/or copies of emails from NSA Shippers that provide agreement/acceptance of NSA amendments for the required five (5) years if/when these are provided to us via email. We do not require a signed NSA to complete our NSA review. If a copy of the signed NSA or agreement via email are not provided to us we will assume the NVOCC is maintaining this, however, without the signed agreement or email exchange an NSA is not effective, therefore, the NSA effective date is unknown.

## **6. NSA Handling Fees**

NSAs received by DPI via email that comply with FMC regulations and conform to DPI system standards will be entered into our database and confirmed timely. Effective 22Aug2018 our handling fees for NSAs are as follows:

- a. NSA Handling:** \$28.00 per new NSA; \$18.00 per NSA amendment
- b. Database Entry:** Included in NSA handling fee
- c. Maintenance of NSA records** included in NSA filing fee: NSA records include electronic copies of NSAs and DPI confirmation reports, and copies of NSA signature pages or email acceptance.
- d. Consultation on NSA terms & conditions** beyond our standard service: \$60 per hour

We are not attorneys here at DPI and we cannot give legal advice, but in our capacity as tariff publishers and FMC Practitioners we offer our assistance in preparing NSAs that provide for a wide variety of creative pricing and service options. For example, an NSA can include far more detailed service commitments and guarantees than those provided in the attached template. Also, an NSA is not required to include liquidated damages penalties if it includes a volume discount that is refunded to the shipper after the minimum volume commitment is satisfied.

We have over 40 years of experience handling a wide variety of transportation service contracts. Notice will be given before any fees for optional consultation service apply. If your question goes beyond our expertise and requires legal advice we will let you know. If you have any questions about the NSA handling procedure please do not hesitate to contact us. One good way to get your NSAs started is to prepare a first draft for one of your customers using the attached NSA template. Send this to us for a pre-review before you present it to the shipper for signing. Please send it via e-mail Ms. Naihin SAEPHAN of this office via email: [nsa@dpiusa.com](mailto:nsa@dpiusa.com) and to James DEVINE, email: [jdevine@dpiusa.com](mailto:jdevine@dpiusa.com). We look forward to hearing from you.

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