

NORFOLK SOUTHERN RAILWAY COMPANY

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EFFECTIVE DECEMBER 23, 2008

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Issued By  
 C. J. ORNDORFF, DIRECTOR  
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 110 Franklin Road, S.E.  
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SECTION 1  
RULES

**RULE 510 – PRIVATE EQUIPMENT**

(1) Upon request, NS may from time to time assist its customers in developing the appropriate size and mix of the customer’s fleet of Private Equipment. In giving such assistance, NS does not warrant or guarantee the accuracy and results of such assistance. All determinations of size and mix of the customer’s fleet of Private Equipment are solely and ultimately the responsibility of the customer and are made at the sole risk and expense of customer.

(2) NS does not guarantee or promise that Private Equipment will make or will be available to make any particular Cycle Time (round-trip between two or more points) or any particular number of movements within any specified time period; regardless of whether NS had actual knowledge, or should have reasonably known, of shipper’s past or expected Cycle Times, the size of shipper’s Private Equipment fleet, or shipper’s and/or shipper’s customers commercial business.

(3) Shipper is solely responsible for determining the suitability of the Private Equipment to move the respective lading in issue. NS shall have no responsibility for the failure of Private Equipment to adequately protect the lading where the damage to the lading is not due to any act of NS but to the nature of the Private Equipment.

**RULE 520 – SECURITY SEALS**

NS neither inspects shipments for seals or security devices intended to prevent unauthorized access to a shipment nor determines when a security device is appropriate. In the event that a shipment requires special security measures (such as high security seals, shrink-wrap, paper coverings and the like), it is the duty of the Shipper to determine and take the appropriate security measures. Documentation of the application of security devices at shipment origin is the responsibility of the Shipper. In determining the extent, if any, of NS’s responsibility as a common carrier for loss, damage or liability to a shipment, the absence of or damage to a seal without physical evidence of contamination, loss or theft does not establish injury, loss or damage to a shipment.

**RULE 530 – NON-WAIVER**

Any waiver on the part of NS of any term or condition of these Conditions of Carriage shall not constitute a precedent, nor require NS to continue waiving such term or condition or to waive any succeeding breach of the same or any other of the terms and conditions of these Conditions of Carriage. No waiver or purported waiver on the part of NS shall be deemed to bind NS unless made in writing and signed by an authorized NS Marketing Officer.

**+ RULE 535 - BANKRUPTCY OR INSOLVENCY**

- A. In the event Shipper files or is the subject of a filed petition in bankruptcy and Shipper has a transportation contract or other agreement with NS (collectively “Agreement”), Shipper will, as soon as practicable:
  - (1) Identify NS as a “Critical Vendor” of essential services as that term is interpreted and understood within the context of a bankruptcy proceeding;
  - (2) Identify any Agreement with NS under which there remains continuing unperformed obligations; and,
  - (3) Choose to elect to either assume or reject such Agreements identified pursuant to paragraph (2) above within sixty (60) days of the date of the filing of the Shipper’s petition in bankruptcy.

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SECTION 1  
RULES

**RULE 535 - BANKRUPTCY OR INSOLVENCY** (concluded)

- B. In the context of a bankruptcy proceeding, no Agreement identified under paragraph (2) may be assigned without NS' consent, unless NS is given adequate assurance of future performance by the assignee. Such adequate assurance will include, but not necessarily be limited to, a deposit with NS as security for the timely payment of switching and linehaul charges an amount equal to the average thirty (30) day accrual for such charges as or security guarantees in form and substance satisfactory to NS from one or more persons who satisfy NS' standard of creditworthiness.

**RULE 540 – GOVERNING LAW**

To the extent not governed by Federal law, the laws of the Commonwealth of Virginia shall govern the construction and interpretation of these Conditions of Carriage and all rights and obligations of the parties under these Conditions of Carriage.

**RULE 550 – NO THIRD PARTY BENEFICIARIES**

The services provided by NS under these Conditions of Carriage are intended solely for the benefit of the shipper except to the extent expressly stated otherwise in these Conditions of Carriage and are not intended for the benefit of any third party. Any standards of service contained in these Contract of Terms of Carriage, any transportation contract or offering are solely for the benefit of the shipper or contracting party to the transportation contract or offering.

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