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Legal Lookout

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FMC overhauls regs governing service contract and NSA filing.

The evolution of ocean shipping requires periodic tune-ups to its management, and the U.S. Federal Maritime Commission (FMC) recently worked with industry (though its various trade associations) to adjust the cogs of regulatory machinery that facilitates the process. FMC regs at 49 CFR Parts 530-31 provide specifics as to what ocean carrier and non-vessel operating common carrier (NVOCC) documentation must be filed with the agency, when, and in coordination with what activity.

These regs in their current form were promulgated pursuant to deregulation legislation which moved us away from mandatory common carriage and opened the door to market-driven contract shipping. They have been revised periodically since the Ocean Shipping Reform Act changed that landscape in 1998 (can you believe it's been nearly 20 years?), and for NVOCCs in 2005 when FMC granted NVOCCs broader contract freedom through NVOCC Service Arrangements ("NSAs").

Primary aims of the new regs, which take effect May 5, 2017, are accommodation of the modification service providers make, sometimes fluidly, to service contracts and NSAs they file with FMC through the agency's electronic filing system; and correction of erroneously filed data. The new regs recognize that the needs and circumstances of parties to ocean transportation relationships change, often pretty quickly, and getting new points documented and filed before operations may commence isn't always efficient or practical. The new provisions allow sequential amendments to ocean carrier service contracts, filed within 30 days of their effective date, thereby allowing parties to adjust their agreements based on business and operational circumstances without having to wait a 30-day period. Sequential filing works better within FMC's system than "batches" of amendments filed together. NVOCCs can now get underway with business up to 30 days before filing their NSAs. Most amendments and revisions NVOCCs and carriers present are minor and don't impact regulatory concerns.

Technical data transmission errors by service providers must be corrected within 30 days, up substantially from the 48 hours earlier allowed (errors frequently aren't caught that soon); and service contract correction requests can be submitted within 180 days, up from 45 days (more realistic in view of current volumes and practices). This latitude should avoid errors and administrative difficulties.

FMC and industry considered whether publication of "essential terms" within NSAs should be continued, but FMC deferred issuing a new rule.

Since 2006, FMC's SERVCON filing system has been accessible for web-based usage right from a service provider's contract management system, relieving the burden of manual processing. FMC appears interested in upgrading SERVCON to allow confirmation of a licensed entity's good standing, for example, when a carrier wants to be sure an NVOCC holds proper licensing before issuing it bills of lading.

By and large, industry and FMC seem to agree the new regs will benefit all concerned in the context of evolving practices and technology.

Ref: Amendments to Regulations Governing Service Contracts and NVOCC Service Arrangements, available at http://www.fmc.gov/assets/1/Documents/16-05_Fnl_iss.pdf

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