

FMC Final Rule Updates Shipping Rate Regulation

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The Federal Maritime Commission (“FMC”) issued a Final Rule in FMC Docket No. 21-03 amending its Carrier Automated Tariffs regulations under 46 CFR Part 520, effective on February 1, 2024. (89 FR 25). The amendments aim to manage certain pricing practices of vessel-operating common carriers (“VOCCs”) and non-vessel operating common carriers (“NVOCCs”) by making broad changes to carrier automated tariff requirements. The FMC also made targeted changes to address NVOCC pass-through surcharges, accessorial charges, and VOCC general rate increases (“GRI”), as well as NVOCC co-loading arrangements.

Here is a quick summary:

Changes to Carrier Automated Tariffs

- VOCCs and NVOCCs will no longer be able to charge public access fees to view their tariffs. (46 CFR 520.9(e)(3)).
- VOCCs and NVOCCs must provide an email address to the FMC prior to providing common carrier services that are subject to tariff. (46 CFR 520.3)
- If a NVOCC fails to maintain a tariff, it will result in the revocation of its license or suspension of a foreign-based unlicensed NVOCC registration. (46 CFR 520.3).

Changes to NVOCC Pass-Through Charges

- NVOCCs may pass through VOCC GRIs to their shippers. (46 CFR 520.7(a)(3)(iv)).
- NVOCC tariffs must make general references to their VOCC’s tariffs to identify any surcharges, accessorial charges, or GRI that they intend to pass-through at cost. (46 CFR 520.7(a)(3)(iv)). Importantly, NVOCC tariffs only need to refer to broad categories of pass-through charges pursuant to the VOCC’s governing tariff, rather than citing specific VOCC names and tariff rules.
- NVOCCs must keep their own rates and fees separate from any charges it intends to pass through to its shippers, while also ensuring that its own rates and fees are identified for the particular service provided. (46 CFR 520.7(a)(3)(iv)).
- NVOCCs are not prohibited from offering special co-loading rates, as published rates will be accessible to all shippers. (46 CFR 520.11).

Changes to Co-Loading Arrangements

- NVOCCs are not required to note in their tariffs whether their tender of cargo involves a co-loading arrangement with another NVOCC. (46 CFR 520.11).
- Under a shipper-carrier co-loading arrangement, the cargoes may include less-than-container-load (“LCL”) shipments or full-container-load (“FCL”) shipments. (46 CFR 520.11(c)(2)). The receiving NVOCC assumes liability for all of the cargoes as the common carrier upon issuing its house bill of lading.
- Under a carrier-carrier co-loading arrangement, the cargoes can only be for LCL shipments. (46 CFR 520.11(c)(2)). Where cargoes are consolidated, each NVOCC will issue its own house bill of lading for its portion of the cargo and will be the common carrier for its respective shipper.

Practical Take Away

The net effect of this Final Rule should yield greater visibility to service-related charges and fees so market participants do not have to build out robust contingency plans or face unforeseen cost escalation. However, the FMC still has authority under the Shipping Act to grant special permission for service providers to implement immediate increases or decreases in rates or charges under 46 CFR 520.14.

The team at Benesch is well-versed in all aspects of the ocean transportation market and global supply chains. We are available to assist in developing pragmatic approaches to address the commercial and regulatory impact that the FMC’s changes on tariff terms, pass-through charges, and co-loading arrangements may have across the spectrum of ocean market participants.

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