

Good News for NVOCCs: Two Rate Methodologies May Change

by Rich Roche - Thursday, November 09, 2017



The following is from Rich Roche, Vice President, International Transportation for Mohawk Global Logistics. Rich serves as NVOCC Sub-Committee Chair of National Customs Brokers & Forwarders Association of America (NCBFAA).

The agenda at yesterday's open meeting of the Federal Maritime Commission (FMC)—held at their office in Washington, DC—included [Petition No. P2-15](#) authored by the National Customs Brokers and Forwarders of America Association (NCBFAA). This petition requests the easing of filing regulations for Ocean Transportation Intermediaries, specifically for Non-Vessel-Operating Common Carriers (NVOCCs). FMC staff gave a report and the commissioners advanced a Notice of Proposed Rulemaking (NPRM) in an unanimous vote to change regulations that impact two rate methodologies currently used for NVOCCs:

NVO Service Arrangements (NSAs) will no longer need to be filed with the FMC through SERVCON—the FMC's filing system—nor will the Essential Terms of these contracts need to be filed.

Negotiated Rate Arrangements (NRAs) will no longer require a signature of acceptance by the contracting party inasmuch as the tendering of cargo on or after the effective date will be construed as

acceptance of the rate, and that such arrangements can be amended as agreed by both parties.

The commissioners have gone further by offering a commentary period that they hope will facilitate the final rule to include additional changes to the NRA that incorporate commercial terms—which are not provided for under the proposed NPRM or the original rule.

Great News for NVOCCs

When the new regulations go into effect, NSAs—which are similar to ocean carrier service contracts—will remain a viable filing mechanism. These are particularly attractive for NVOCCs, who contract with large volume clients where a Minimum Volume Commitment and other essential terms are required to cover even larger contracts the NVOCC signs with ocean carriers. The mechanism will remain in place, but the filing requirement will be removed.

As for NRAs, the hope is that more NVOCCs will use this methodology for their more casual, yet still binding rate agreements. The more formal NSAs typically prove to be overkill for such low volume or one-off moves. Current speculation is that less than 30% of all NVOCCs use NRAs in lieu of tariff filing.

One of the most cited reasons for this method's lack of use is the current requirement to receive a signature for acceptance. Actual business practice, for more casual rate quotes in the spot market, frequently culminate with cargo showing up on the dock ahead of any signed agreement to the rate, if such signature comes at all. During the meeting, acting Chairman Khouri was clear in his remarks that cargo delivery is acceptable and binding under contract law. Therefore, per the new rulemaking for NRAs, this would be adopted by the FMC.

The comment period requested by Khouri will allow the FMC to evaluate more commercial needs that can be incorporated into the NRA rulemaking. This will make NRAs even more appealing in contrast to the archaic practice of tariff filing. With both NSAs and NRAs made easier to use, and more reflective of actual business practices, the FMC is providing two greatly improved alternatives to the ages-old and outdated practice of tariff filing.

I would encourage all NVOCCs to submit comments to the FMC on this NPRM, not only to support the newly simplified regulations, but also to support the NRA's incorporation of commercial terms.

[Comments submitted by Mohawk Global Logistics](#)

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