

FEDERAL MARITIME COMMISSION

Regulatory Reform Initiative

46 CFR Parts 515, 520, 525, 530, 531, 532, 535, 540 and 565

Docket No. 17-04

RIN: 3072-AC69

AGENCY: Federal Maritime Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Maritime Commission (FMC or Commission) is issuing this Inquiry to solicit information and comments in an effort to identify existing FMC regulations that are outdated, unnecessary, ineffective, eliminate jobs or inhibit job creation, impose costs that exceed benefits, or otherwise interfere with regulatory reform initiatives and policies. This action is taken in conjunction with Executive Order 13777, “Enforcing the Regulatory Reform Agenda.”

DATES: Comments are due July 5, 2017.

ADDRESSES: You may submit comments by either of the following methods:

- *E-mail:* secretary@fmc.gov. Include in the subject line: “Docket No. 17-04, Regulatory Reform Initiative.” Comments should be attached to the e-mail as a Microsoft Word or text-searchable PDF document. Only non-confidential comments and public versions of confidential comments should be submitted by e-mail. Comments containing confidential information should not be submitted by e-mail.
- *Mail:* Rachel E. Dickon, Assistant Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Ste. 1046 Washington, D.C. 20573-0001.

Docket: For access to the docket to read background documents and comments received, go to the Commission’s Electronic Reading Room at: <http://www.fmc.gov/17-04>.

Confidential Information: If your comments contain confidential information, you must submit the following:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked “Confidential-Restricted,” and the confidential material

clearly marked on each page. You should submit the confidential copy to the Commission by mail.

- A public version of your comments with the confidential information excluded. The public version must state “Public Version—confidential materials excluded” on the cover page and on each affected page, and must clearly indicate any information withheld. You may submit the public version to the Commission by e-mail or mail.

The Commission will provide confidential treatment for the identified confidential information to the extent allowed by law.

FOR FURTHER INFORMATION CONTACT: For questions regarding submitting comments or the treatment of confidential information, contact Rachel E. Dickon, Assistant Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Ste. 1046, Washington, D.C. 20573-0001. *Phone:* (202) 523-5725. *E-mail:* secretary@fmc.gov. For all other questions, contact Karen V. Gregory, Managing Director, Federal Maritime Commission, 800 North Capitol Street NW, Room 1018, Washington, DC 20573-0001. *Phone:* (202) 523-5800. *E-mail:* omd@fmc.gov.

SUPPLEMENTARY INFORMATION:

On February 24, 2017, President Trump issued Executive Order 13777, Enforcing the Regulatory Reform Agenda (E.O. or E.O. 13777). 82 FR 12285 (March 1, 2017). This E.O. follows closely upon the President’s previous E.O. concerning government regulations, E.O. 13771, Reducing Regulations and Controlling Regulatory Costs. 82 FR 9339 (February 3, 2017). Among other issues, E.O. 13777 directs the head of most Federal agencies to designate an agency official as its Regulatory Reform Officer (RRO), who will “oversee the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms.” Independent regulatory agencies such as the Commission are not subject to E.O. 13777, however they are encouraged to comply. OMB Memorandum M-17-23, Guidance on Regulatory Reform Accountability under Executive Order 13777, titled “Enforcing the Regulatory Reform Agenda,” issued April 28, 2017. On March 13, 2017, Acting Chairman Michael A. Khouri designated the agency’s Managing Director, Karen V. Gregory, to serve as Regulatory Reform Officer.

E.O. 13777 directs Federal agencies subject to the E.O. to establish a Regulatory Reform Task Force (Task Force), consisting of the Agency RRO and other designated agency officials, which will evaluate existing regulations and make recommendations to

the agency head concerning their repeal, replacement, or modification. The FMC's Task Force is charged with evaluating existing regulations to "make recommendations to the agency head regarding their repeal, replacement, or modification." Further, the E.O. directs each Task Force to attempt to identify regulations that:

- eliminate jobs, or inhibit job creation;
- are outdated, unnecessary, or ineffective;
- impose costs that exceed benefits; or
- create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.

Within 90 days of the E.O., the Task Force is directed to provide a report to the agency head detailing the agency's progress towards the goals of implementing regulatory reform and identifying regulations for repeal, replacement, or modification.

The designation of a Regulatory Reform Officer and establishment of a Regulatory Reform Task Force is consistent with the intent of E.O. 13777 and E.O. 13771, the deregulatory spirit of the Shipping Act as amended by the Ocean Shipping Reform Act of 1998, and agency regulatory review initiatives ongoing since November 4, 2011. Building on Executive Orders of both the prior and current Administrations, the Commission is in the process of identifying those regulations that are the most ineffective, would be the easiest to repeal, and would lend themselves to a definitive timeline within the agency to move those items to a vote before the Commission.

Commission Action

The Commission invites comment and information from all members of the interested public, including ocean common carriers, marine terminal operators, ocean transportation intermediaries (OTIs), tariff publishers, surety companies, exporters, importers, and beneficial cargo owners, on ways to make the Commission's regulations less burdensome and more effective in achieving the objectives of the Shipping Act. The Commission specifically requests comments and current information or data on any (or all) of the following areas of FMC programs and regulations:

46 CFR Part 515 **Licensing, Financial Responsibility Requirements and General Duties For Ocean Transportation Intermediaries.**

Under this program, the Commission reviews all applications for OTI Non-Vessel Operating Common Carrier (NVOCC) and OTI Ocean Freight Forwarder licenses and, after investigation, may issue a license to qualified applicants. After approval, OTI licenses are issued to applicants upon receipt of acceptable proof of financial responsibility, usually in the form of a surety bond. When appropriate, the Office recommends denial.

The Commission also manages the Regulated Persons Index as to parties licensed or registered with the Commission, receives and processes all OTI bonds and bond riders, registers foreign-based unlicensed NVOCCs, and provides for renewal of OTI licenses and registrations every three years.

Interested parties may wish to review the record and Final Rule in FMC Docket No. 13-05, *Amendments to Regulations Governing Ocean Transportation Intermediary Licensing and Financial Responsibility Requirements, and General Duties*, (Final Rule published at 80 FR 68721 (Nov. 5, 2015), as corrected at 81 FR 4592 (Jan. 27, 2016); rulemaking record available at www.fmc.gov/13-05/).

46 CFR Part 520 **Carrier Automated Tariffs**

Under this program, the Commission reviews carrier-published tariff systems under the accessibility and accuracy standards of the Shipping Act of 1984, reviews published tariff material for compliance with the Shipping Act's requirements, and responds to inquiries or issues that arise concerning tariff rates, rules and practices. The Commission also acts upon applications for special permission to deviate from tariff publishing rules and regulations and recommends Commission action on specific problems and concerns regarding the publication of tariffs.

The Commission publishes the location of all VOCC and NVOCC tariffs online.

46 CFR Part 525 **Marine Terminal Operator Schedules**

The Commission's program under 46 CFR Part 525 provides that a Marine Terminal Operator (MTO) may make available a schedule of its rates, regulations, and practices to the public at its discretion. A complete and current set of

schedules of rates, regulations, and practices must be maintained for five years, and made available to the Commission upon request.

MTOs who currently publish a schedule are identified through Form FMC-1 and the RPI. The Commission separately publishes the location of those terminal schedules available to the public.

46 CFR Part 530 **Service Contracts**

The Shipping Act allows ocean common carriers, either individually or through agreements, to negotiate and execute service contracts with one or more shippers or shippers' associations. Under service contracts, shippers make a commitment to provide a certain volume or portion of cargo over a fixed period of time and carriers commit to a specified rate and a defined service level. These contracts are filed confidentially with the Commission, and are maintained in the Commission's SERVCON system. A concise statement of certain contract essential terms, i.e., commodity or commodities involved, minimum volume or portion, duration, and origin and destination port ranges, is required to be published in the carrier's tariffs.

The Commission monitors service contract filings for acts prohibited by the Shipping Act of 1984. Original signed service contracts, amendments, and associated records must be maintained for five years from the termination of the contract and be made available to the Commission for audit upon request. An FMC-developed Web Service allows VOCCs to incorporate the filing of service contracts into their own contract management systems.

Interested parties may wish to review the record and Final Rule in FMC Docket No. 16-05, *Amendments to Regulations Governing Service Contracts and NVOCC Service Arrangements* (Final Rule published at 82 FR 16288 (Apr. 4, 2017); rulemaking record available at <http://www.fmc.gov/16-05/>).

46 CFR Part 531 **NVOCC Service Arrangements**

NVOCCs that are in compliance with the Commission's licensing and financial responsibility requirements (46 CFR Part 515) may enter into an NVOCC Service

Arrangement (NSA) with one or more NSA Shippers. An NSA is the NVOCC functional equivalent to a service contract. NSAs are filed confidentially with the Commission, and maintained in the FMC's SERVCON system.

Interested parties may wish to review the record and Final Rule in FMC Docket No. 16-05, *Amendments to Regulations Governing Service Contracts and NVOCC Service Arrangements* (Final Rule published at 82 FR 16288 (Apr. 4, 2017); rulemaking record available at <http://www.fmc.gov/16-05/>).

46 CFR Part 532 **NVOCC Negotiated Rate Arrangements**

NVOCCs may enter into an NVOCC Negotiated Rate Arrangement (NRA), which are exempt from certain tariff rate publication requirements. NRAs are written arrangements between a shipper and a licensed or registered NVOCC to provide specific transportation service for a stated cargo quantity, from origin to destination, on and after a stated date or within a defined time frame. If an NVOCC uses NRAs, it need not publish that rate in the tariff it makes available to the public. Unlike service contracts and NSAs, NRAs are not filed with the Commission, but are maintained in private electronic systems.

46 CFR Part 535 **Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984.**

The Commission reviews agreements involving ocean common carriers and marine terminal operators under the standards of the Shipping Act of 1984. More specifically, the Commission has responsibility for competition review and market analysis, focusing on activity that is substantially anticompetitive under the standards of section 6(g) of the Shipping Act of 1984. In this regard, the Commission administers a variety of monitoring programs and other research efforts, designed to track relevant competitive and economic activity in major U.S. trade lanes and apprise the Commission of emerging commercial trends and carrier pricing and service activities.

The Commission's agreement program activities consist of processing carrier and marine terminal operator agreement filings; making appropriate recommendations on the disposition of filed agreements, administering Monitoring Report filing

requirements, and reviewing agreement meeting minutes and reports; and maintaining an agreement database that contains pertinent information on each ocean common carrier and marine terminal operator agreement filed with the Commission.

A rulemaking proceeding is currently pending as to agreement filing requirements and processing. See FMC Docket No. 16-04, *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984*, (Notice of Proposed Rulemaking published at 81 FR 53986 (Aug. 15, 2016); rulemaking record available at www.fmc.gov/16-04/). Parties are encouraged to review that rulemaking proceeding before filing comments to this Notice of Inquiry.

46 CFR Part 540 **Passenger Vessel Financial Responsibility**

Under this program, the Commission issues certificates to operators of passenger vessels (PVOs) with berths for 50 or more passengers and that embark passengers from U.S. ports. The Certificate (Performance) evidences that the PVO has on file with the Commission acceptable coverage to satisfy any liability incurred for nonperformance of transportation, such as when a PVO declares bankruptcy and fails to complete the cruises booked. The coverage is used to reimburse passengers when the PVO fails to perform cruises as contracted and has taken no further actions to refund passengers. The Certificate (Casualty) evidences that the PVO has acceptable coverage on file with the Commission to satisfy any liability incurred for death or injury during a cruise.

For additional information, please see the record and Final Rule in FMC Docket No. 11-16, *Passenger Vessel Operator Financial Responsibility Requirements for Nonperformance of Transportation*, (Final Rule published at 78 FR 13268 (Feb. 27, 2013); rulemaking record available at www.fmc.gov/11-16/).

46 CFR Part 565 **Controlled Carriers**

The Commission maintains a program of reviewing the reasonableness of the rates of carriers operating in the U.S.-foreign trades that are owned or controlled

by foreign governments. Special regulatory oversight is exercised by the Commission to ensure that controlled carriers, whose marketplace decision-making can be influenced by foreign governmental priorities or by their access to non-market sources of capital, do not engage in unreasonable below-market pricing practices which could disrupt trade or harm privately-owned shipping companies.

The Commission periodically publishes an updated list of controlled carriers.

[Please see http://www.fmc.gov/about/controlled_carrier_list.aspx]

With respect to any Part of the Commission's regulations set forth above, any individual regulation thereunder, or any section or subsection of such regulations, interested parties are asked to submit written comments that: (1) identify the particular FMC regulation or program believed burdensome or ineffective; (2) provide details as to how the FMC program imposes unnecessary costs or burdens upon your business; and (3) indicate the manner by which the program or particular requirement should best be repealed, replaced, or modified. The FMC requests that comments be as specific as possible and include any supporting data or other helpful information in order to assist the Commission with its review.

By the Commission.

Rachel E. Dickon
Assistant Secretary