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Federal Maritime Commission Proposes New Rules Governing OTIs

On Friday, October 10, 2014, the Federal Maritime Commission (“FMC”) published its Notice of Proposed Rulemaking (“NPRM”) proposing an overhaul to its regulations governing Ocean Transportation Intermediaries (“OTI”), including Non-Vessel Operating Common Carriers (“NVOCCs”) and Ocean Freight Forwarders (“OFFs”). Comments regarding the new NPRM are due no later than December 12, 2014. As explained below, the proposal applies not only to OTIs, but also to any entity that advertises or holds itself out to provide OTI services.

The FMC previously published an Advanced Notice of Proposed Rulemaking (“ANPRM”) in this same matter in May of 2013. The ANPRM announced numerous proposals by the FMC that would increase regulatory burdens on OTIs and many OTIs objected to it notably in comments to the ANPRM. The NPRM represents the Commission’s proposal after considering those initial comments. The NPRM remains more restrictive, but, from the OTI’s perspective, it is an improvement over the earlier ANPRM.

The following proposals contained in the ANPRM have been removed from the NPRM:

1. Financial Responsibility: The FMC is no longer proposing any increases to financial security and had deleted the tiered claim process.
2. Agency Agreements: The FMC had previously proposed detailed documentation requirements regarding OTIs and agents acting on the OTI’s behalf have been stricken.
3. Advertising: The FMC is no longer proposing that OTI advertisements be required to include the OTI’s license and registration numbers or their principals’ names and addresses.

The above favorable changes notwithstanding, the FMC is still proposing to require that OTI’s renew their licenses. Rather than the two-year renewal period proposed by the ANPRM, the NPRM proposes a three-year renewal period. OTIs voiced concern in their comments to the ANPRM that the renewal would open the door to detailed investigations by the FMC, and in the NPRM, the FMC is careful to state that the renewal process “will not trigger a detailed Commission review or consideration of the character and eligibility of existing licensed OTIs”. The NPRM also includes a streamlined appeal process for denied license applications and revocation and suspension proceedings, which currently require a full evidentiary hearing process.

Relevant to non-OTIs is a proposal whereby it is illegal to “advertise or hold out to provide OTI services unless that person holds a valid OTI license or is registered under this part.” If this provision makes its way into the final rule, then non-OTIs that purport to offer, for instance, “air and ocean” services to clients, will need to consider whether they can continue to do so.

The rule also makes official various informal rules that the FMC has historically imposed on new applicants including documenting those matters that the FMC will consider in determining whether a qualifying individual has the necessary character to act in that capacity.

If you have any questions regarding the ANPRM, please contact Nathaniel Saylor at nsaylor@scopelitis.com.