

Recent Developments From the FMC

NOTICE OF HEARING ON VESSEL CAPACITY AND EQUIPMENT MATTERS

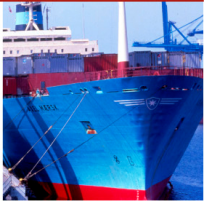
On March 17, the Federal Maritime Commission (FMC) issued an Order of Investigation in Fact Finding No. 26, Vessel Capacity and Equipment Availability in the United States Export and Import Liner Trades, which seeks to address allegations by importers and exporters of vessel capacity and equipment shortages for ocean liner services provided in the United States trades (Fact Finding Investigation). For more information, see www.ThompsonHine.com/publications/publication2057.html.

As part of the Fact Finding Investigation, the FMC recently issued a Notice of Hearing stating that Commissioner Rebecca Dye, the FMC's appointed Fact Finding Officer, will hold a hearing in New York from May 11-13, 2010. She will be available on those dates to take testimony and receive documents in evidence from interested parties. The notice directs parties interested in participating to contact Commissioner Dye at 202.523.5715 or factfinding@fmc.gov.

NOTICE OF PROPOSED RULEMAKING TO EXEMPT NVOCCs FROM TARIFF PUBLICATION OF RATES

On April 29, the FMC issued a Notice of Proposed Rulemaking and request for comments on a proposed regulation that would exempt licensed non-vessel operating common carriers (NVOCCs) from publishing their rates in tariffs to the extent that the NVOCC enters into a negotiated rate arrangement (NRA) with its shipper customers and complies with other proposed requirements. *See* FMC Docket No. 10-03, NVOCC Negotiated Rate Arrangements. Under the proposed rule, an NRA is defined as a "written and binding arrangement between a shipper and an eligible NVOCC to provide specific transportation service for a stated cargo quantity, from origin to destination." Key requirements in the proposed rule are that:

- The NRA
 - Is agreed to by the parties;
 - Is memorialized in writing;
 - Includes the applicable rate for each shipment;
 - Identifies the origins and destinations and specific quantity of cargo; and
 - Is memorialized on or before the date on which the cargo is received by the carrier (or originating carrier for through transportation).
- The NVOCC publishes the rules and terms governing its services in a rules tariff that is provided free of charge either electronically or during the negotiations of the NRA.
- The NVOCC must retain the NRA and associated records for five years.



In exchange for the NVOCC's compliance with the proposed NRA requirements, the FMC would exempt NVOCCs from the following statutory requirements:

- The rate publication requirements set forth in 46 U.S.C. § 40501(a);
- The time volume rate publication requirements set forth in 46 U.S.C. § 40501(d);
- The 30-day notice requirement for rate increases set forth in 46 U.S.C. § 50501(e);
- The requirement that an NVOCC obtain FMC authority to grant refunds set forth in 46 U.S.C. § 40503; and
- The requirement that an NVOCC adhere to its published tariff rate set forth in 46 U.S.C. § 41104(2)(A).

The FMC is seeking comments on the proposed rule. Written comments are due by June 4, 2010. However, the FMC has indicated that it will also entertain party requests to present oral comments, which must be received by the FMC no later than May 14, 2010. The FMC plans to hold a public meeting to hear comments on May 24, 2010.

FOR MORE INFORMATION

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