

FEDERAL MARITIME COMMISSION

TEMPORARY EXEMPTION FROM
CERTAIN SERVICE CONTRACT
REQUIREMENTS

Docket No. 20-06

Served: October 1, 2020

BY THE COMMISSION: Michael A. KHOURI, *Chairman*,
Rebecca F. DYE, Daniel B. MAFFEI, Louis E. SOLA, Carl W.
BENTZEL, *Commissioners*.

ORDER GRANTING EXTENSION OF EXEMPTION

Under 46 C.F.R. § 530.8(a)(1) carriers must file original service contracts (as opposed to an amendment) with the Commission “before any cargo moves pursuant to that service contract.” In addition, § 530.8(b) requires that each original contract include, among other terms, an effective date that is no earlier than the filing date. *See* §§ 530.3(i) (defining “effective date” for original service contracts and amendments); 530.8(b)(8)(i) (requiring every service contract to include its effective date). Similarly, § 530.14(a) provides that “[p]erformance under an original service contract may not begin before the day it is effective and filed with the Commission.”¹

On April 27, 2020, the Federal Maritime Commission published an Order to temporarily allow parties to file service contracts up to 30 days after they take effect. The Order made the relief effective immediately and lasting through December 31, 2020. The Commission noted in its Order that it might consider extending

¹ In contrast, the Commission’s regulations provide more flexibility to service contract amendments, which can be filed within 30 days after the amendment’s effective date. *See* §§ 530.3(i); 530.8(a)(2); 530.8(b)(8)(i); 530.14(a).

this exemption, as necessary, to address the continuing effects of the COVID-19 pandemic. In the interest of providing certainty and stability to supply chain stakeholders, the Commission believes it is necessary to extend this exemption until June 1, 2021.

The temporary exemption was designed to help relieve coronavirus disease 2019 (COVID-19) impacts to the supply chain. COVID-19 has placed increased stresses and burdens on carriers and their customers. As noted in the Order of April 27, 2020, an increasing number of businesses have been working remotely as a result of social distancing guidance and stay-at-home orders. The Commission understands that for some entities, this situation, combined with other COVID-19-related disruptions to commercial operations, has made complying with service contract filing requirements difficult. This situation continues to exist and may continue to affect business operations.

The benefits of relief from service contract filing requirements were identified by the Fact Finding 29 Supply Chain Innovation Teams working under the direction of the Fact Finding Officer.² A unifying theme in the initial meetings of the Supply Chain Innovation Teams was that service contract negotiations are being disrupted for a variety of COVID-19 related causes. Teleworking arrangements complicate negotiations between carriers and shippers and that will continue to be true into the 2021 contract negotiation season. Additionally, some businesses continue to be technologically challenged to file service contracts from locations other than their offices. Individual shippers identified the importance for supply chain efficiency of relief from service contract filing and regulatory certainty upon which to make operational changes.

Based on Fact Finding 29's findings and recommendations, stakeholder interest, and in light of ongoing challenges presented by the pandemic and necessary changes to business operations, the Commission continues to believe that flexibility in service contract filing requirements provided by extension of the exemption will allow industry to continue adapting to market conditions, while still providing the Commission information necessary to assure competition and integrity for America's ocean supply chain.

This extension is also temporary and will remain in effect

² The Commission initiated Fact Finding No. 29, International Ocean Transportation Supply Chain Engagement, to identify operational solutions to cargo delivery system challenges related to Coronavirus-19.

only until June 1, 2021.

Exemptions from the requirements of Part 530 are governed by 46 C.F.R. § 530.13(b). Under this authority, the Commission may exempt any specified activity of persons subject to the Shipping Act from the requirements of Part 530 if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. § 530.13(b) (incorporating 46 U.S.C. § 40103(a) and 46 C.F.R. §§ 502.10, 502.92).

The Commission has previously allowed for exemptions from the service contract regulations in exigent circumstances where the exemption meets the criteria in 46 U.S.C. § 40103(a). *See Pet. of Maersk Line A/S for an Exemption from 46 C.F.R. § 530.8*, Pet. No. P1-17 (FMC July 19, 2017); *Petition of COSCO Container Lines Company Ltd.*, 34 S.R.R. 97 (FMC 2016); *Petition of Crowley Caribbean Servs., LLC*, 33 S.R.R. 1461 (FMC 2016); *Petition of Compañía Sud Americana de Vapores S.A.*, 33 S.R.R. 934 (FMC 2015); *Petition of Hanjin Shipping Co., Ltd.*, 31 S.R.R. 1080 (FMC 2009).

Based on experience with the temporary exemption currently in place, the Commission concludes that extending the temporary exemption from certain requirements for original service contracts in §§ 530.3, 530.8, and § 530.14 until June 1, 2021, subject to certain conditions, will continue to reduce the filing burdens on the industry and will not result in a substantial reduction in competition or be detrimental to commerce. This exemption extension remains subject to the condition that original service contracts continue to be filed with the Commission. As is the case for service contract amendments, however, that filing may now be delayed up to 30 days after the effective date. The Commission has determined that these conditions will minimize any potential negative effects on competition or commerce.

Although the Commission's Rules of Practice and Procedure normally require notice and an opportunity for a hearing be afforded to interested parties (including publication in the Federal Register of a notice of the proposed exemption and request for comments), *see* 46 C.F.R. § 502.92(c)-(d); 530.13(b) (cross-referencing § 502.92), the Commission may waive these requirements for regulatory exemptions to prevent undue hardship, manifest injustice, or if the expeditious conduct of business so requires. *See* 46 C.F.R. §§ 502.10; 530.13(b) (cross-referencing § 502.10). Given the immediate need for regulatory relief in light of the COVID-19 pandemic and its effects on commercial operations, the Commission

has determined that waiving the notice and hearing requirements in § 502.92 is necessary to prevent undue hardship and is required for the expeditious conduct of Commission business.

THEREFORE IT IS ORDERED, That an extension of the temporary exemption from the requirements of 46 C.F.R. §§ 530.3(i); 530.8(a)(1), (b)(8)(i); and 530.14(a) for original service contracts is GRANTED, provided that:

1. Authorized persons must file with the Commission, in the manner set forth in appendix A of 46 C.F.R. part 530, a true and complete copy of every original service contract no later than thirty (30) days after any cargo moves pursuant to that service contract;
2. Every original service contract filed with the Commission must include the effective date, which may be no more than thirty (30) calendar days prior to the filing date with the Commission; and
3. Performance under an original service contract may not begin until the day it is effective, provided that the service contract is filed with the Commission no later than thirty (30) calendar days after the effective date.

IT IS FURTHER ORDERED, That this temporary exemption will remain in effect until June 1, 2021.

By the Commission.

Rachel Dickon
Secretary