

FEDERAL MARITIME COMMISSION

TEMPORARY EXEMPTION FROM
CERTAIN SERVICE CONTRACT
REQUIREMENTS

Docket No. 20-06

Served: April 27, 2020

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

ORDER GRANTING EXEMPTION

The coronavirus disease 2019 (COVID-19) has highlighted the economic significance of maintaining the effectiveness and reliability of the global freight delivery system and has placed increased stresses and burdens on carriers and their customers. The pandemic has also, in some instances, made continued compliance with certain Federal Maritime Commission regulations especially burdensome.

More specifically, 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.

In particular, 46 C.F.R. § 530.8(a)(1) requires that carriers 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.”

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).

The Commission believes that a temporary blanket exemption extending the current filing flexibilities for service contract amendments to original service contracts will allow parties time to adapt to the increased pressures that have been placed upon them by COVID-19 and minimize disruptions to the contracting process.

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).

The Commission similarly concludes that a temporary exemption from certain requirements for original service contracts in §§ 530.3, 530.8, and § 530.14, subject to certain conditions, will reduce the filing burdens on the industry and will not result in a substantial reduction in competition or be detrimental to commerce. This temporary exemption is limited to a small subset of the Commission's service contract regulations in order to allow the industry to meet the challenges that the global pandemic has placed upon it. This exemption is 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. This exemption is also temporary and will remain in effect only until December 31, 2020.¹ 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

¹ The Commission may consider extending this exemption as necessary to address the continuing effects of the COVID-19 pandemic.

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 a 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 amendment;
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 December 31, 2020.

By the Commission.

Rachel E. Dickon
Secretary