



FEDERAL MARITIME COMMISSION

46 CFR Part 530

[Docket No. 20-02]

RIN: 3072-AC80

Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (FMC or Commission) amends its regulations governing service contracts to eliminate the requirement that ocean carriers publish a concise statement of essential terms with each service contract. The rule will reduce regulatory burden.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Introduction

This rulemaking was initiated pursuant to the Commission's December 20, 2019 Order in FMC Docket No. P3-18, which granted in part and denied in part, a petition by the World Shipping Council (WSC) for regulatory relief. *Pet'n of the World Shipping Council for an Exemption from Certain Provisions of the Shipping Act of 1984, as amended, and for a*

Rulemaking Proceeding, Pet. No. P3-18, 1 F.M.C.2d 504 (FMC Dec. 20, 2019). Specifically, the Commission granted WSC's request for an exemption from the requirement in 46 U.S.C. 40502(d) that carriers publish a concise Statement of Essential Terms (ETs) with each service contract, determining that an exemption from section 40502(d) would not result in a substantial reduction in competition or be detrimental to commerce, and further determined to initiate a rulemaking to implement the ET publication exemption.

On February 14, 2020, the Commission issued a Notice of Proposed Rulemaking (NPRM) to obtain public comments regarding its proposal to implement the exemption by removing the ET publication requirements in 46 CFR part 530. 85 FR 8527 (Feb. 14, 2020). The Commission calculated that the proposed rule would reduce the regulatory burden associated with these requirements. The comment period for the NPRM expired April 14, 2020. Two comments were received, from the National Industrial Transportation League (NITL) and the World Shipping Council.

II. Discussion

As described in more detail below, the final rule adopts much of the proposed regulatory text without substantive change. The final rule eliminates the requirement in § 530.12 that carriers publish ETs for individual service contracts. Although the NPRM proposed replacing this requirement with a requirement that carriers publish general service contract rules and notices as a separate part of the individual carrier's automated tariff system, the Commission has determined to make this provision optional rather than mandatory. The final rule also adopts the following regulatory changes proposed in the NPRM: (1) changes to other sections in Part 530 to reflect the elimination of the ET publication requirements; (2) the correction of outdated

references to FMC bureaus and offices in Part 530; and (3) the correction of an outdated reference to a Department of Defense Command.

A. Removal of ET Publication Requirements

Commenters in the subject rulemaking did not identify a use for the publication of ETs corresponding to individual service contracts, and therefore, supported their elimination. NITL strongly supports the Commission’s NPRM. Agreeing with the Commission’s assessment that “the publication of Statements of Essential Terms corresponding to individual service contracts is of questionable value,” NITL believes that the current ET publication requirements “impose significant regulatory costs and burdens on ocean carriers, without providing any meaningful benefits to shippers that outweigh the costs.” WSC supports the NPRM to the extent it would eliminate the requirement to publish service contract essential terms.

Therefore, the Commission has determined to implement the exemption from section 40502(d) by revising the Commission’s regulations at 46 CFR 530.12, which currently require ocean carriers to publish ETs corresponding to their individual service contracts in tariff format.

Consistent with the purpose of the NPRM, WSC also recommends that the Commission change the heading of 46 CFR part 530 subpart C in the final rule to read “Publication of service contract rules and notices.” The Commission agrees that it is appropriate to revise the heading of part 530 subpart C to reflect the elimination of the publication requirements for ETs and to reflect and clarify the ongoing purpose of § 530.12 related to the optional publication of service contract rules and notices as a separate part of the individual carrier’s automated tariff system. The Commission has therefore made this change in the final rule.

B. Publication of Service Contract Rules and Notices

As the Commission noted in the NPRM, in addition to the required Statements of Essential Terms, most, if not all, ocean carriers include in their ET publications, the rules and notices that generally apply to all service contracts or to a particular subset of service contracts. Thus, an ocean carrier's ET publication may be comprised of two components: (1) the rules and notices that generally apply to all service contracts; and (2) the required ETs corresponding to individual service contracts.

As explained in the NPRM, in the Commission's experience, there can be substantial benefits to both ocean carriers and shippers by publishing a "blanket" rule or notice in the carrier's ET tariff publication that applies to most, or all, service contracts, thereby eliminating the potential need to periodically amend hundreds of individual service contracts. Consequently, the Commission seeks to facilitate the ocean carriers' current practice of publishing generally applicable service contract tariff rules and notices in their ET tariff publications. The Commission therefore proposed to amend the existing requirement in § 530.12 that ocean carriers must publish ETs corresponding to individual service contracts and replace it with a requirement that ocean carriers publish general service contract rules and notices as a separate part of the individual ocean carrier's automated tariff system, thereby codifying existing ocean carrier practice.

NITL indicated its support for ocean carriers publishing general service contract rules and notices in their carrier automated tariff systems, as this latter requirement "will simply implement a current practice followed by most ocean carriers." NITL, at 2. As reflected in NITL's comments, the ability to publish such rules and notices benefits ocean carriers and shippers alike, by obviating the need to amend hundreds of service contracts, should unusual circumstances arise. NITL also cites with approval the Commission's estimate that the proposed

amendments “will significantly reduce administrative burdens” and “will benefit all industry stakeholders.” *Id.* at 3.

WSC’s comments suggest, however, that an ocean carrier’s service contract rules and notices can be published under the tariff regulations in 46 CFR part 520 and that any requirement to publish service contract rules and notices in a separate publication under 46 CFR part 530 reflects a new regulatory burden. The Commission’s intent in the NPRM was to retain the existing practice, favored by most ocean carriers, of allowing service contract rules and notices to be published in a separate document under 46 CFR part 530. The Commission has determined that this can be accomplished by making carrier publication of such rules and notices under 46 CFR 530.12 optional rather than mandatory, thereby eliminating any risk of additional regulatory burden on carriers. At the carrier’s discretion, such publication may be accomplished under the tariff regulations in part 520 or in a separate publication under 46 CFR 530.12.

The final rule therefore relieves ocean carriers of the regulatory burden of ET publication by eliminating individual Statements of Essential Terms, while retaining the ability of ocean carriers to publish service contract rules and notices in their ET tariff publications, should they wish to do so.

III. Regulatory Notices and Analysis

Effective Date

The Administrative Procedure Act generally requires a minimum of 30 days before a final rule can go into effect, but excepts from this requirement: (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretive rules and statements of policy; and (3) when an agency finds good cause for a shorter period of time and includes those findings with the rule. 5 U.S.C. 553(d).

The final rule implements the Commission’s determination to exempt ocean carriers from the requirement that they publish ETs with each service contract. The final rule also allows, but does not require, carriers to publish general service contract rules and notices as a separate part of the individual carrier’s automated tariff system. The remaining amendments are technical amendments to update the names of Commission bureaus and offices as well as those of other government entities. Because the final rule grants or recognizes an exemption, the Commission has determined to make the rule effective upon publication.

Congressional Review Act

The rule is not a “major rule” as defined by the Congressional Review Act, codified at 5 U.S.C. 801 *et seq.* The rule will not result in: (1) an annual effect on the economy of \$100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies. 5 U.S.C. 804(2).

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, provides that whenever an agency promulgates a final rule after being required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA), 5 U.S.C. 553, the agency must prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the rule on small entities, unless the head of the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604, 605.

Accordingly, the Chairman of the Federal Maritime Commission certifies that the final rule will not have a significant impact on a substantial number of small entities. The regulated business entities that would be impacted by the rule are vessel-operating common carriers. The

Commission has determined that VOCCs generally do not qualify as small entities under the guidelines of the Small Business Administration (SBA). *See FMC Policy and Procedures Regarding Proper Consideration of Small Entities in Rulemakings* (Feb. 7, 2003), available at https://www.fmc.gov/wp-content/uploads/2018/10/SBREFA_Guidelines_2003.pdf.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) (PRA) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11.

The information collection requirements in Part 530, Service Contracts, are currently authorized under OMB Control Number 3072-0065. In compliance with the PRA, the Commission submitted the proposed revised information collections to the Office of Management and Budget. Notice of the revised information collections was published in the Federal Register and public comments were invited. *See* 85 FR 8527 (February 14, 2020). Comments received regarding the proposed changes, as well as the Commission's responses, are discussed above. No comments specifically addressed the revised information collection in Part 530, with the exception of a reference by one commenter to the cost savings cited in the NPRM as a basis for its strong support.

As noted above, this final rule will eliminate a substantial and unnecessary regulatory burden on ocean carriers by removing the requirement to publish Statements of Essential Terms corresponding to individual service contract filings. The final rule also includes an option allowing, but not requiring, carriers to publish general service contract rules and notices, which

most VOCCs currently include in their ET tariffs, thereby avoiding the need to amend hundreds of individual service contracts, should circumstances so warrant. As background, of the 147 VOCCs currently serving the U.S. trades, 71 do not file service contracts with the Commission, and thus would not be impacted by this rulemaking. Of the 76 VOCC that file service contracts, 25 filed less than ten original contracts thus far in FY 2020, with seven of those only filing one contract this fiscal year. Among VOCCs that utilize service contracts more extensively as a pricing mechanism, only 20 filed over 100 original contracts thus far in FY 2020.

With respect to the cost savings associated with eliminating the publication of Statements of Essential Terms corresponding to original service contracts and amendments, the Commission estimates the savings to VOCCs as roughly 41,048 man-hours, for an approximate savings of \$1,987,133 annually.¹ Service contract rules and notices in carrier automated tariff systems, on the other hand, are rarely published or revised, inasmuch as they govern a broad swath of carrier contracts, and many times are intended to quickly and efficiently address an *ad hoc* industry situation.² Thus, in any given year, there may be no new service contract rules or notices published in a carrier's automated tariff system. The Commission observes that there are

¹ The Commission's previous service contract rulemaking in Docket No. 16-05 estimated the time associated with preparation of an individual ET publication as 3 minutes. No commenters opposed that estimate. More recently, the Commission informally interviewed two major tariff publishers that file service contracts and publish ETs for multiple VOCCs. These tariff publishers estimated the time required to prepare an ETs to be 3 to 6 minutes. The larger of the two tariff publishers reported that their 3-minute preparation time was due to its proprietary technological efficiencies. The above-referenced savings are based on the 3-minute preparation time estimate, using the Commission's most recent fiscal year's filing statistics for new contracts and amendments. In FY 2018, 47,962 new service contracts and 772,803 amendments were filed.

² As one example, a major ocean carrier published a blanket notice in its ET tariff applying to hundreds of its service contracts when it deployed an extra loader vessel to meet unexpected shipper demand. This notice allowed existing contract rates applying to a specifically named service string to also apply to cargo moving on the extra loader vessel, thereby eliminating the VOCC's burden of amending hundreds of service contracts.

potential benefits associated with ensuring that carriers have the option to continue to publish these rules and notices as a separate part of the individual carrier's automated tariff system, thereby allowing a carrier to avoid revising hundreds of service contracts.

Regarding the burden associated with the filing of service contracts with the Commission, a substantial majority of filers, 74 percent, have recognized greater efficiencies by automating their service contract filing processes using the Commission's "web services" automated filing system. Using FY 2018 figures, the Commission estimates the remaining burden associated with service contract filing to be roughly 3,542 man-hours, or \$402,088 annually.³ Inclusive of the burden associated with the optional publication of service contract rules under § 530.12,⁴ the entire burden associated with this information collection is calculated as \$3,482,351 for contract filers, a substantial reduction.

National Environmental Policy Act

The Commission's regulations categorically exclude certain rulemakings from any requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. The proposed rule amends the requirements related to the publication of Essential Terms associated with service contracts. This rulemaking thus falls

³ In the Commission's previous service contract rulemaking in Docket No. 16-05, each service contract filing (new or amendment) was estimated to take 3 minutes. Since that rulemaking, carriers and tariff publishers comprising the highest volume service contract filers have continued automating their filing processes. Filers that implemented the Commission's "web services" automated filing process have advised that minimal software programming was required to facilitate the automated upload of service contracts and amendments. Once automated, contract data can be transmitted into SERVCON in a matter of seconds, without need for human intervention.

⁴ In our OMB filing related to this Information Collection, the burden of maintaining service contract rules and notices is estimated at 87 hours.

within the categorical exclusion for actions related to the receipt service contracts (§ 504.4(a)(5)). Therefore, no environmental assessment or environmental impact statement is required.

Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards in E.O. 12988 titled, “Civil Justice Reform,” to minimize litigation, eliminate ambiguity, and reduce burden.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, at <http://www.reginfo.gov/public/do/eAgendaMain>.

List of Subjects in 46 CFR Part 530

Freight, Maritime carriers, Report and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Maritime Commission amends 46 CFR part 530 as follows:

Part 530-SERVICE CONTRACTS

1. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40301-40306, 40501-40503, 41307.

2. Amend § 530.1 by revising the first sentence to read as follows:

§ 530.1 Purpose

The purpose of this part is to facilitate the filing of service contracts as required by section 8(c) of the Shipping Act of 1984 (“the Act”) (46 U.S.C. 40502). * * *

3. Amend § 530.3 by revising paragraphs (d) and (o) and removing paragraph (s) to read as follows:

§ 530.3 Definitions.

* * * * *

(d) *BTA* means the Commission’s Bureau of Trade Analysis or its successor bureau.

* * * * *

(o) *OIT* means the Commission’s Office of Information Technology.

* * * * *

4. Amend § 530.5 by revising paragraphs (a) and (c)(1) to read as follows:

§ 530.5 Duty to file.

(a) The duty under this part to file service contracts, amendments, and notices shall be upon the individual carrier party or parties participating or eligible to participate in the service contract.

* * * * *

(c) * * *

(1) *Application.* Authority to file or delegate the authority to file must be requested by a responsible official of the service contract carrier in writing by submitting to BTA the Registration Form (FMC-83) in Exhibit 1 to this part.

* * * * *

5. Amend § 530.8 by revising paragraph (d) introductory text and removing paragraph (d)(4) to read as follows:

§ 530.8 Service contracts.

* * * * *

(d) *Other requirements.* Every service contract filed with BTA shall include, as set forth in appendix A to this part:

* * * * *

§ 530.10 [Amended]

6. Amend § 530.10 by removing paragraph (f).

7. Revise subpart C heading to read as follows:

Subpart C-Publication of service contract rules and notices.

8. Revise § 530.12 to read as follows:

§ 530.12 Rules and notices.

(a) *Location-*(1) *Generally.* A statement of service contract rules and notices may be published as a separate part of the individual ocean common carrier's automated tariff system.

(2) *Multi-party service contracts.* For service contracts in which more than one carrier participates or is eligible to participate, a statement of service contract rules and notices may be published:

(i) If the service contract is entered into under the authority of a conference agreement, then in that conference's automated tariff system;

(ii) If the service contract is entered into under the authority of a non-conference agreement, then in each of the participating or eligible-to-participate carriers' individual automated tariff systems, clearly indicating the relevant FMC-assigned agreement number.

(b) *Certainty of terms.* A statement of service contract rules and notices described in paragraph (a) of this section may not:

(1) Be uncertain, vague, or ambiguous; or

(2) Make reference to terms not explicitly detailed in the statement of service contract rules and notices, unless those terms are contained in a publication widely available to the public and well known within the industry.

(c) *Agents.* Common carriers, conferences, or agreements may use agents to meet their publication requirements under this part.

(d) *Commission listing.* The Commission will publish on its website, www.fmc.gov, a listing of the locations of all service contract rules and notices.

9. Amend § 530.13 by revising paragraph (b)(2) to read as follows:

§ 530.13 Exceptions and exemptions.

* * * * *

(b) * * *

(2) *Department of Defense cargo.* Transportation of U.S. Department of Defense cargo moving in foreign commerce under terms and conditions negotiated and approved by the Surface Deployment and Distribution Command and published in a universal service contract. An exact

copy of the universal service contract, including any amendments thereto, shall be filed with the Commission as soon as it becomes available.

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10. Amend § 530.15 by revising paragraph (c) to read as follows:

§ 530.15 Recordkeeping and audit.

* * * * *

(c) *Production for audit within 30 days of request.* Every carrier or agreement shall, upon written request of the FMC’s Director, Bureau of Enforcement, any Area Representative or the Director, Bureau of Trade Analysis, submit copies of requested original service contracts or their associated records within thirty (30) days of the date of the request.

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Appendix A to Part 530 [Amended]

11. In Appendix A revise all references to “BTCL” to read “BTA” and revise all references to “OIRM” to read “OIT”.

By the Commission.

Rachel E. Dickon,
Secretary

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