



**46 CFR Part 530**

**[Docket No. 20-22]**

**RIN: 3072- AC84**

**Service Contracts**

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Federal Maritime Commission proposes to amend its service contract filing requirements to permit ocean common carriers to file original service contracts up to 30 days after the contract goes into effect.

**DATES:** Submit comments on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

In compliance with the Paperwork Reduction Act (PRA), the Commission is also seeking comment on revisions to an information collection. See the Paperwork Reduction Act section under Rulemaking Analyses and Notices below. Please submit all comments relating to the revised information collection requirements to the FMC and to the Office of Management and Budget (OMB) at the address listed below under ADDRESSES on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments to OMB are most useful if submitted within 30 days after publication.

**ADDRESSES:** You may submit comments, identified by Docket No. 20-22, by the following methods:

- *Email:* [secretary@fmc.gov](mailto:secretary@fmc.gov). For comments, include in the subject line: “Docket No. 20-22, Comments on Service Contract Rulemaking.” Comments should be attached to the email as a Microsoft Word or text-searchable PDF document.

Comments regarding the proposed revisions to the relevant information collection should be submitted to the FMC through one of the preceding methods and a copy should also be sent to

the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Maritime Commission, 725 17th Street NW., Washington, DC 20503; by Fax: (202) 395-5167; or by email: OIRA\_Submission@OMB.EOP.GOV.

*Instructions:* For detailed instructions on submitting comments, including requesting confidential treatment of comments, and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to the Commission’s website, unless the commenter has requested confidential treatment.

*Docket:* For access to the docket to read background documents or comments received, go to the Commission’s Electronic Reading Room at:

<https://www2.fmc.gov/readingroom/proceeding/20-22/>.

**FOR FURTHER INFORMATION CONTACT:** Rachel E. Dickon, Secretary; Phone: (202) 523-5725; Email: [secretary@fmc.gov](mailto:secretary@fmc.gov).

## **SUPPLEMENTARY INFORMATION:**

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## **I. EXECUTIVE SUMMARY**

The Shipping Act of 1984, as amended (46 U.S.C. 40101-41309) (Shipping Act or Act) permits ocean common carriers and shippers to enter into individual, confidential service contracts for the international transportation of cargo, and requires that these contracts be filed with the Federal Maritime Commission. Under the current regulations in 46 CFR part 530, original service contracts must be filed on or before their effective date, while service contract amendments must be filed within 30 days *after* they go into effect. The disparate treatment of original service contracts versus amendments was the result of a 2016-2017 rulemaking in which the Commission determined to allow delayed filing for amendments while retaining the requirement that original service contracts be filed on or before their effective date.

In response to the COVID-19 pandemic and its impact on service contract negotiation and filing, the Commission recently granted a temporary exemption permitting original service contracts, like amendments, to be filed up to 30 days after their effective date. Based on the Commission's experience during the exemption period and the perceived benefits of allowing delayed filing for original service contracts, the Commission has tentatively determined to make the status quo permanent. Accordingly, the Commission is proposing to revise its service contract regulations in part 530 to allow original service contracts, like amendments, to be filed up to 30 days after they go into effect. The Commission is also proposing several technical amendments to the service contract regulations.

The Commission requests comments on these proposed amendments and any other amendments necessary to implement delayed filing for original service contracts.

## **II. BACKGROUND**

### **A. Service Contract Requirements**

The Shipping Act permits ocean common carriers and shippers to enter into individual, confidential service contracts for the international transportation of cargo, and requires that these contracts be filed with the Federal Maritime Commission.<sup>1</sup> For many years, the Commission's

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<sup>1</sup> See 46 U.S.C. 40502.

implementing regulations required that ocean common carriers file all service contracts and amendments with the Commission before the contract or amendment could go into effect.<sup>2</sup>

## **B. 2016-2018 Rulemakings**

In 2016, the Commission published an advanced notice of proposed rulemaking (ANPRM) to revise its regulations governing service contracts and non-vessel-operating common carrier (NVOCC) negotiated service arrangements (NSAs).<sup>3</sup> The rulemaking was based on the Commission's retrospective review of its regulations and feedback from the industry and shippers. One suggestion from ocean common carriers was to allow service contract amendments to go into effect before filing with the Commission, provided that the amendment was filed within 30 days after the earlier of: (1) the date the parties agreed to the amendment; or (2) the date the carrier received cargo to which the amendment applied.<sup>4</sup> Beneficial cargo owners and NVOCCs that provided feedback to the Commission, however, indicated that filing amendments prior to the acceptance of cargo protected rate and contract commitments, and these shippers were confident ocean common carriers would honor the rates and contract commitments knowing that the contracts were filed with the Commission.<sup>5</sup> Notwithstanding these concerns, the Commission requested comment on the carriers' proposal.<sup>6</sup>

The Commission subsequently published an NPRM in 2016 that proposed, among other things, to allow service contract amendments to be filed up to 30 days after the effective date.<sup>7</sup> The Commission noted that the majority of commenters to the ANPRM supported the change and some advocated extending the same relief to the filing of original service contracts.<sup>8</sup> Responding to these comments, the Commission initially discussed how the existing requirements protected shipper interests by demonstrating agreement among the parties prior to

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<sup>2</sup> *See, e.g.*, 46 CFR 530.8(a) (2016).

<sup>3</sup> ANPRM: Service Contracts and NVOCC Service Arrangements, 81 FR 10198 (Feb. 29, 2016).

<sup>4</sup> *Id.* at 10201.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> NPRM: Amendments to Regulations Governing Service Contracts NVOCC Service Arrangements, 81 FR 56559 (Aug. 22, 2016).

<sup>8</sup> *Id.* at 56562.

the movement of cargo, and that shippers had expressed confidence in this process knowing that both the shipper and carrier would honor the commitment of their service contract filed with the Commission.<sup>9</sup> The Commission moved on to distinguish original service contracts from service contract amendments, describing an original service contract as “a comprehensive agreement between the parties that encompasses the commodities that are to be shipped, the origins and destinations between which cargo is to move, the rates for the transportation of that cargo, as well as terms and conditions governing the transportation of goods for the shipper.”<sup>10</sup> The Commission described service contract amendments, on the other hand, as “more limited in scope, generally adding new commodities and/or rates.”<sup>11</sup> The Commission therefore proposed to allow filing of service contract amendments up to 30 days after going into effect, but declined to propose extending the same treatment to original service contracts “given their nature and the Commission’s belief that doing so would diminish its oversight abilities.”<sup>12</sup>

The Commission published a final rule in 2017 adopting, among other changes, the proposed change to permit filing of service contract amendments up to 30 days after the effective date.<sup>13</sup> Carriers and shippers had asserted in their comments that the service contract effective date requirement was overly restrictive, particularly with respect to service contract amendments, and stated that the majority of amendments were for minor revisions to commercial terms, such as a revised rate or the addition of a new origin/destination or commodity.<sup>14</sup> The Commission also cited carrier claims that, in certain instances, parties had agreed to amend a service contract, but the cargo was received before the carrier filed the amendment with the Commission, meaning that the rates and terms in the amendment could not be applied to the cargo under the Commission’s regulations.<sup>15</sup> The Commission concluded that permitting delayed filing was

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Final Rule: Amendments to Regulations Governing Service Contracts NVOCC Service Arrangements, 82 FR 16288 (Apr. 4, 2017).

<sup>14</sup> *Id.* at 16290.

<sup>15</sup> *Id.*

warranted because: (1) it would reduce the filing burdens on the industry by allowing carriers to file multiple amendments made within a 30-day period at the same time rather than on a piecemeal basis; (2) it would avoid the commercial harm associated with failing to timely file an amendment and allow the parties to apply the agreed rates and terms to the intended shipments; and (3) the Commission would maintain the ability to protect the shipping public.<sup>16</sup>

In discussing a related proposal that the service contract correction process be amended to permit carriers to submit inadvertently unfiled original service contracts and amendments to the Commission within 180 days, the Commission determined that “[i]n the case of original service contracts, shipper protections at the time of contracting and for the ensuing contract term are best assured by requiring that the agreement be contemporaneously filed as the best evidence of the actual agreement between the parties when first reached.”<sup>17</sup> The Commission expressed concern that delayed filing of service contracts could negatively affect its ability to investigate and enforce the Shipping Act because “[u]nlike those limited and modest revisions to accommodate industry needs for correction of contract amendments, failure to file the original contract may conceal the very existence of a contractual arrangement in a given trade lane or lanes, avoiding early detection of market-distorting practices by individual carriers.”<sup>18</sup>

Following publication of the 2017 service contract/NSA final rule, the Commission initiated a separate rulemaking in 2017 to address regulatory revisions proposed by the National Customs Brokers and Forwarders Association of America in a 2015 petition.<sup>19</sup> Although this rulemaking focused on NSAs and NVOCC Negotiated Rate Arrangements (NRAs), the Commission discussed the World Shipping Council’s (WSC) comments on the 2015 petition regarding the implementation of similar changes to the service contract requirements.<sup>20</sup> The Commission noted that these comments predated the 2016-2017 service contract/NSA

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 16293.

<sup>18</sup> *Id.*

<sup>19</sup> NPRM: Amendments to Regulations Governing NVOCC Negotiated Rate Arrangements and NVOCC Service Arrangements, 82 FR 56781 (Nov. 30, 2017).

<sup>20</sup> *Id.* at 56785.

rulemaking, and with the publication of the final rule in that proceeding, the Commission had substantially met the WSC's request for regulatory relief for ocean common carriers.<sup>21</sup> The Commission stated that any further relief related to service contracts could be undertaken after the Commission had an opportunity to analyze the impact of the recent changes on carrier operations and shippers.<sup>22</sup>

### **C. 2018 World Shipping Council Petition for Exemption**

In 2018, the WSC petitioned the Commission for an exemption from the service contract filing and essential terms publication requirements.<sup>23</sup> The Commission denied the request for exemption from the service contract filing requirements but granted the request for exemption from the essential terms publication requirements.<sup>24</sup> Although the petition and subsequent Commission decision were focused on eliminating the service contract filing requirement entirely, delayed filing was discussed. For example, as part of the Commission's analysis of the potential economic harm that could result from eliminating the filing requirement, the Commission pointed to the shipper comments discussed in the 2016-2017 service contract/NSA rulemaking indicating that the filing requirement encouraged ocean common carriers to adhere to contract terms and deterred them from introducing unreasonable terms into service contract boilerplate language.<sup>25</sup> The Commission also stated that delayed filing for service contract amendments addressed a number of the issues raised by commenters.<sup>26</sup> Finally, in response to WSC's argument that maintaining the filing requirement would negatively impact the ability of NVOCCs to use the expedited contract acceptance and effective date provisions implemented by the Commission in the recent 2017-2018 NSA/NRA rulemaking, the Commission pointed out

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *See Pet. of World Shipping Council for an Exemption from Certain Provisions of the Shipping Act of 1984, as amended, for a Rulemaking Proceeding*, 1 F.M.C.2d 504 (FMC 2019).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 510 (citing ANPRM: Service Contracts and NVOCC Service Arrangements, 81 FR 10198, 10201 (Feb. 29, 2016)).

<sup>26</sup> *Id.* at 513.

that WSC's assertion was based on the premise that service contract filing delays the effectiveness of service contracts.<sup>27</sup> The Commission noted that WSC had not alleged that such a delay existed nor had Commission experience shown such a delay, and in the absence of such a showing, the Commission did not believe that granting WSC's petition was necessary to give full effect to the changes made in the 2018 NSA/NRA final rule.<sup>28</sup>

#### **D. 2020 Exemptions**

The spread of coronavirus disease 2019 (COVID-19) in 2020 had a significant effect on the global freight delivery system, including service contract negotiation and implementation.<sup>29</sup> Many businesses began working remotely because of social distancing guidance and stay-at-home orders.<sup>30</sup> For some entities, this situation, combined with other COVID-19-related disruptions to commercial operations, made complying with service contract filing requirements difficult.

To allow parties time to adapt to the increased pressures from COVID-19 and minimize disruptions to the contracting process, the Commission issued a temporary blanket exemption on April 27, 2020, extending the filing flexibilities for service contract amendments to original service contracts.<sup>31</sup> The exemption is conditioned on carriers continuing to file original service contracts, subject to the same delayed filing requirements as service contract amendments (i.e., original service contracts must be filed within 30 days after the effective date). The exemption was originally set to expire December 31, 2020, but the Commission recently extended it until June 1, 2021.<sup>32</sup>

On October 7, 2020, CMA CGM, S.A. and its corporate affiliates petitioned the Commission for an exemption from the service contract filing and tariff publishing requirements

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<sup>27</sup> *Id.* at 514-515 (referring to Final Rule: Amendments to Regulations Governing NVOCC Negotiated Rate Arrangements and NVOCC Service Arrangements, 83 FR 34780 (July 23, 2018)).

<sup>28</sup> *Id.* at 515.

<sup>29</sup> *Temporary Exemption from Certain Service Contract Requirements*, 2 F.M.C.2d 65 (FMC 2020).

<sup>30</sup> *Id.* at 65.

<sup>31</sup> *Id.* at 65-67.

<sup>32</sup> *Temporary Exemption from Certain Service Contract Requirements*, Docket No. 20-06, 2020 FMC LEXIS 206 (FMC Oct. 1, 2020).

to mitigate the effects of a cyberattack on their information systems.<sup>33</sup> While the carriers stated that they appreciated the flexibility afforded by the temporary exemption, they requested further exemption from the filing requirements with respect to original service contracts and amendments to permit them to be filed more than 30 days after they went into effect. The Commission granted the exemption on October 20, 2020, and the exemption expired on November 26, 2020.

### **III. PROPOSED CHANGES**

As discussed above, the Commission expressed concern during the 2016-2017 rulemaking about permitting original service contracts to be filed after their effective date, and decided to limit delayed filing to amendments. But the Commission did not permanently foreclose future changes to the service contract requirements, stating in the 2017 NSA/NRA NPRM that further relief related to service contracts could be undertaken after the Commission had an opportunity to analyze the impact of the 2017 final rule on carriers and shippers.<sup>34</sup> In line with this statement, the Commission has reexamined the issue of allowing delayed filing for original service contracts after considering both the agency's experience over the last three years with delayed filing of amendments and the recent experience with delayed filing of original service contracts under the current temporary exemption.

The Commission has tentatively concluded that permanently allowing delayed filing of original service contracts will provide the same type of benefits as delayed filing of service contract amendments, namely avoiding the commercial harm associated with situations in which cargo is received after the parties have agreed to a service contract but before the service contract is filed with the Commission. The need for this flexibility has been amply demonstrated by recent events, including the commercial disruption, social distancing, and stay-at-home orders stemming from COVID-19, which has impacted carriers' ability to file service contracts and

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<sup>33</sup> *Pet. of CMA CGM, S.A.*, Pet. No. P2-20, slip op. (Oct. 20, 2020).

<sup>34</sup> 82 FR at 56785.

prompted the Commission to grant a temporary exemption. And in CMA CGM's recent exemption petition in response to a cyberattack, the carrier cited with appreciation the flexibility afforded by the ability to file service contracts and amendments after their effective date. These recent events demonstrate that, in certain circumstances, requiring that service contracts be filed before they go into effect can potentially delay performance under the contract to the detriment of shippers.

The Commission has also tentatively concluded that allowing original service contracts to be filed up to 30 days after the effective date will not materially impact the agency's ability to provide oversight and protect the shipping public. Of particular importance, the Commission has not received any shipper complaints regarding delayed filing of amendments or the recent exemption allowing delayed filing of original service contracts. The Commission believes that the service contract filing requirement will continue to ensure adherence to service contract terms and deter the introduction of unreasonable terms, regardless of whether original service contracts are filed before, on, or after the effective date.<sup>35</sup> And the proposed amendments make clear that original service contracts and amendments will continue to be prospective in nature, ensuring that the parties have reached agreement *before* cargo moves under the contract.

Although the Commission continues to recognize that original service contracts are more comprehensive in scope than amendments, the Commission has tentatively concluded that this difference does not support different filing requirements. Under the proposed rule, the Commission would continue to monitor filed service contracts, and delayed filing would not negatively impact the Commission's ability to investigate potential Shipping Act violations given the relatively short filing period being proposed (30 days after the effective date).<sup>36</sup>

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<sup>35</sup> As discussed above, the Commission recently reaffirmed its commitment to retaining the service contract filing requirement in its decision to deny WSC's exemption request. *Pet. of World Shipping Council*, 1 F.M.C.2d 504.

<sup>36</sup> The Commission's stated concerns in the 2017 service contract/NSA final rule regarding the impact of delayed filing on enforcement were made in response to comments stating that the correction process should allow carriers to submit inadvertently unfiled service contracts with the Commission within a much longer period (180 days).

Based on the foregoing, the Commission is proposing to revise its service contract regulations in part 530 to allow original service contracts, like amendments, to be filed up to 30 days after the effective date. The proposed revisions are also intended to clarify that the trigger for the 30-day filing period is the effective date of the service contract or amendment.

In addition, the Commission is proposing technical amendments to the service contract regulations following the Commission order and subsequent rulemaking to exempt ocean common carriers from the requirement to publish service contract essential terms.<sup>37</sup> These amendments would: (1) remove a reference to essential terms publication that was inadvertently retained; and (2) add language describing the exemption to ensure that ocean common carriers and other stakeholders that may not know the history of the matter are aware of the exemption.

The Commission requests comments on these proposed amendments and any other amendments necessary to implement delayed filing for original service contracts.

#### **A. Delayed Filing for Original Service Contracts**

##### **1. Definition of “Effective Date” (§ 530.3)**

The current definition of “Effective date” describes: (1) what an effective date is; (2) the relationship between the effective date and the filing date for both original service contracts and amendments (i.e., the effective date may not be before the filing date for original service contracts or more than 30 days prior to the filing date for amendments); and (3) the specific time on the effective date when an original service contract or amendment is effective (12:01 a.m. Eastern Standard Time).

The Commission is proposing to amend the definition of “Effective date” by removing the language tying the effective date to the filing date. As described above, the Commission is proposing to extend delayed filing to original service contracts and is therefore deleting the sentence stating that the effective date for original service contracts cannot be prior to the filing

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<sup>37</sup> *Pet. of World Shipping Council*, 1 F.M.C.2d at 515-516. See Final Rule: Service Contracts, 85 FR 38086 (June 25, 2020).

date. The Commission is also proposing to delete the sentence stating that the effective date of an amendment can be no more than 30 days prior to the filing date. This sentence, in essence, simply repeats the filing requirement in § 530.8(a)(2). As described below, § 530.8(a), as amended by the proposed revisions, would adequately describe the filing requirement and the deadline for filing, and repeating the requirement in § 530.3(i) is therefore unnecessary.

The Commission is also proposing to clarify the time on the effective date when a service contract or amendment goes into effect. Currently, § 530.3(i) provides that a service contract or amendment is effective at 12:01 a.m. Eastern Standard Time. The proposed revision would add the equivalent time zone relative to Coordinated Universal Time (UTC) for added clarity (i.e., UTC-05:00).

Finally, the Commission is proposing to add language to the definition to clarify that although service contracts and amendments may be filed after the effective date, the Commission is retaining the requirement that service contracts and amendments must be prospective in nature and cannot have retroactive effect. Under the current regulations, service contract amendments may only have prospective effect.<sup>38</sup> And, prior to the recent temporary exemption, original service contracts could not become effective prior to being filed with the Commission and were therefore also limited to having prospective effect. Because the Commission is proposing to allow original service contracts to be filed after they go into effect, the Commission is also adding language to the definition of “Effective date” to reflect the continuing requirement that service contracts and amendments may only have prospective effect. The added language specifies that the effective date cannot be earlier than the date on which all the parties have signed the service contract or amendment.

## **2. Service Contract Filing Requirements (§ 530.8)**

Section 530.8 sets forth the filing requirements for service contracts and amendments. Under the current regulations, amendments must be filed no later than 30 days after cargo moves

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<sup>38</sup> § 530.10(a)(1).

pursuant to the amendment, and, prior to the temporary exemption, original service contracts had to be filed before any cargo moved pursuant to the service contract.<sup>39</sup> The Commission is proposing to allow a 30-day filing period for both original service contracts and amendments and is therefore combining § 530.8(a)(1) and (2) into a single provision at § 530.8(a). The revised § 530.8(a) would require that ocean common carriers file service contracts and amendments no later than 30 days after the effective date.

The trigger for the filing period under the proposed revisions thus differs from the current requirement for service contract amendments in § 530.8(a)(2). The current regulations include two trigger events. Current § 530.3(i) requires that the effective date for the amendment be no more than 30 days prior to the filing date, while current § 530.8(a)(2) requires that an amendment be filed no later than 30 days after cargo moves pursuant to the amendment. In accordance with § 530.14(a), performance under an original service contract or amendment may not begin until the effective date, and therefore the effective date will always be earlier than the date cargo moves under the contract or amendment. Accordingly, in order to comply with both §§ 530.3(i) and 530.8(a)(2), ocean common carriers must file service contract amendments no later than 30 days after the effective date. Based on this interpretation, the Commission published guidance on its website shortly after the 2017 final rule was issued to make clear that service contract amendments must be filed no later than 30 days after their effective date.<sup>40</sup> The Commission is thus proposing a single trigger (effective date) for the 30-day filing period for both original service contract and amendments. This will make clear when service contracts must be filed and allow the Commission to readily assess compliance.

The Commission is also proposing amendments to § 530.8(e) to reflect the 30-day filing period for original service contracts. Section 530.8(e) currently provides that if the Commission's service contract filing system is unable to receive filings for 24 hours or more,

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<sup>39</sup> § 530.8(a)(1), (2).

<sup>40</sup> [https://web.archive.org/web/20190321030253/https://www.fmc.gov/resources/amended\\_service\\_contract\\_nsas\\_rule.aspx](https://web.archive.org/web/20190321030253/https://www.fmc.gov/resources/amended_service_contract_nsas_rule.aspx) (last visited Nov. 24, 2020).

affected parties are not subject to the requirements in §§ 530.8(a) and 530.14(a) that a service contract must be filed before cargo is shipped under the contract. This exception is conditioned on the affected service contracts being filed within 24 hours after the Commission filing system returns to service.

The proposed amendments to §§ 530.8(a) and 530.14(a) require corresponding changes to § 530.8(e). The proposed changes to § 530.8(e) would provide that if the Commission's service contract filing system is down for 24 hours or more, any service contract or amendment that must be filed during that period (i.e., because the 30-day filing period concludes while the system is down) will be considered timely filed so long as the contract or amendment is filed no later than 24 hours after the Commission filing system returns to service. As explained below, the Commission is proposing to remove references to the filing date in § 530.14(a), and therefore the proposed revisions to § 530.8(e) also delete the reference to § 530.14(a).

### **3. Service Contract Implementation Requirements (§ 530.14)**

Section 530.14 provides that performance under a service contract or amendment may not begin until the effective date and conditions performance on compliance with the relevant filing requirements, i.e., performance under an original service contract may not begin until the contract is filed while performance under an amendment may begin on the effective date provided that the amendment is filed no later than 30 days after the effective date.

Given the proposed changes to § 530.8(a) would prescribe the same filing period for original service contracts and amendments (30 days after the effective date), the Commission is proposing to replace the separate requirements for original service contracts and amendments in § 530.14(a) with a single requirement that performance under either may not begin until the effective date. The Commission is also proposing to remove the language tying performance to the filing date as it simply repeats the filing requirement in § 530.8(a). As described above, § 530.8(a), as amended by the proposed revisions, would adequately describe the filing

requirement and the deadline for filing, and repeating the requirement in § 530.14(a) is therefore unnecessary.

The Commission is also proposing to add an additional sentence to § 530.14(a) to clarify that original service contracts and amendments may apply only to cargo received by the carrier on or after the effective date. This is implied by the current language of §§ 530.8(a) (describing when a service contract or amendment must be filed in relation to when cargo moves under the contract) and 530.14(a) (prohibiting performance under a service contract or amendment until the effective date) and has been stated in previous rulemakings.<sup>41</sup> Because the Commission is proposing to amend § 530.8(a) so that the filing period is tied to the effective date rather than the date cargo moves, the Commission is proposing to include language in § 530.14(a) clearly stating that service contracts and amendments may only apply to cargo received on or after the effective date.

## **B. Technical Amendments**

In order to implement the Commission's December 2019 decision to grant in part WSC's petition and exempt ocean common carriers from the essential terms publication requirements,<sup>42</sup> the Commission recently issued a final rule removing those requirements from part 530.<sup>43</sup> Since then, the Commission has tentatively determined that additional minor technical amendments are warranted.

### **1. Definition of "Authorized Person" (§ 530.3)**

The definition of "Authorized person" in § 530.3(c) includes a reference to publishing statements of essential terms. The definition also cross-references a nonexistent paragraph

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<sup>41</sup> See, e.g., 82 FR at 16290 (noting that because of the previous requirement that amendments had to be filed before cargo could move under the terms of the amendment, "[c]arriers have cited instances in which the parties have agreed to amend the contract, however, due to unavoidable circumstances, the cargo was received before the carrier filed the amendment with the Commission" and "[i]n such cases, the amendment's rates and terms may not be applied to that cargo pursuant to the Commission's rules.").

<sup>42</sup> *Pet. of World Shipping Council*, 1 F.M.C.2d at 515-516.

<sup>43</sup> See Final Rule: Service Contracts, 85 FR 38086 (June 25, 2020).

(§ 530.5(d)) when referring to the registration requirements for filing service contracts. The Commission is proposing to amend the definition by removing the reference to essential terms publication and including the correct citation for the registration requirements (§ 530.5(c)).

## **2. Exceptions and Exemptions (§ 530.13)**

The Commission is proposing to add a new paragraph (e) to § 530.13 to reflect the exemption granted by the Commission from the essential terms publication requirements. Although the Commission recently eliminated the essential terms publication requirements in part 530, ocean common carriers that are not aware of the exemption may be confused as to whether the statutory requirement in 46 U.S.C. 40502(d) continues to apply. Accordingly, the Commission has tentatively determined to include a new provision reflecting the exemption from section 40502(d).

## **IV. PUBLIC PARTICIPATION**

### *How do I prepare and submit comments?*

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

You may submit your comments via email to the email address listed above under ADDRESSES. Please include the docket number associated with this document and the subject matter in the subject line of the email. Comments should be attached to the email as a Microsoft Word or text-searchable PDF document.

### *How do I submit confidential business information?*

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following by email to the address listed above under ADDRESSES:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the

information is a trade secret or other confidential research, development, or commercial information.

- A confidential copy of your comments, consisting of the complete filing with a cover page marked “Confidential-Restricted,” and the confidential material clearly marked on each page.
- A public version of your comments with the confidential information excluded. The public version must state “Public Version—confidential materials excluded” on the cover page and on each affected page, and must clearly indicate any information withheld.

*Will the Commission consider late comments?*

The Commission will consider all comments received before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments received after that date.

*How can I read comments submitted by other people?*

You may read the comments received by the Commission at the Commission’s Electronic Reading Room at the addresses listed above under ADDRESSES.

## **V. RULEMAKING ANALYSES AND NOTICES**

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency is 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 an initial regulatory flexibility analysis (IRFA) describing the impact of the proposed 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. 603, 605. Based on the analysis below, the Chairman of the Federal Maritime Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The regulated business entities that would be impacted by

the rule are ocean common carriers (i.e., vessel-operating common carriers). The Commission has determined that ocean common carriers 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](https://www.fmc.gov/wp-content/uploads/2018/10/SBREFA_Guidelines_2003.pdf).

#### *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 would allow ocean common carriers to file original service contracts up to 30 days after their effective date. This rulemaking thus falls within the categorical exclusion for actions related to the receipt of service contracts (§ 504.4(a)(5)). Therefore, no environmental assessment or environmental impact statement is required.

#### *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 associated with the service contract filing requirements in part 530 are currently authorized under OMB Control Number 3072-0065. In compliance with the PRA, the Commission has submitted the proposed revised information collection to the Office of Management and Budget and is requesting comment on the proposed revision.

*Title: 46 CFR Part 530—Service Contracts and Related Form FMC-83.*

*OMB Control Number:* 3072-0065.

*Abstract:* 46 U.S.C. 40502 and 46 CFR part 530 require ocean common carriers to file certain service contracts confidentially with the Commission.

*Current Action:* The proposed rule would amend the service contract filing requirements and allow ocean common carriers to file original service contracts up to 30 days after the effective date. Currently, part 530 requires that ocean common carriers file original service contracts on or before the effective date, while amendments must be filed within 30 days after the effective date.

*Type of Request:* Revision of a previously approved collection.

*Needs and Uses:* The Commission monitors service contract filings to ensure compliance with the Shipping Act of 1984.

*Frequency:* Frequency of filings is determined by the ocean common carrier and its customers. When parties enter into a service contract or amend the contract, the service contract or amendment must be filed with the Commission.

*Type of Respondents:* Ocean common carriers or their duly appointed agents are required to file service contracts and amendments with the Commission.

*Number of Annual Respondents:* The Commission does not anticipate that the proposed revisions would affect the number of respondents. As a general matter, however, the number of respondents has decreased since the last revision to the information collection. The Commission estimates an annual respondent universe of 86 ocean common carriers.

*Estimated Time per Response:* The Commission does not anticipate that the proposed revisions would affect the estimated time per response, which would continue to range from 0.0166 to 1 person-hours for reporting and recordkeeping requirements contained in the regulations, and 0.1 person-hours for completing Form FMC-83.

*Total Annual Burden:* The Commission does not anticipate that the proposed revisions would affect the number of service contracts filed or the burden associated with each filing and,

therefore, would not affect the total annual burden. Due to the decrease in the number of respondents since the last revision, however, the Commission expects that the total annual burden will decrease. The Commission estimates the total person-hour burden at 30,448 person-hours.

Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Whether the Commission's estimate for the burden of the information collection is accurate;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Please submit any comments, identified by the docket number in the heading of this document, by the methods described in the ADDRESSES section of this document.

*Executive Order 12988 (Civil Justice Reform)*

This proposed rule meets the applicable standards in E.O. 12988 titled, "Civil Justice Reform," to minimize litigation, eliminate ambiguity, and reduce burden. Section 3(b) of E.O. 12988 requires agencies to make every reasonable effort to ensure that each new regulation: (1) clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

*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, available 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 set forth above, the Federal Maritime Commission is proposing to amend 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 § 530.3 by revising paragraphs (c) and (i) to read as follows:

#### **§ 530.3 Definitions.**

\* \* \* \* \*

(c) *Authorized person* means a carrier or a duly appointed agent who is authorized to file service contracts on behalf of the carrier party to a service contract and is registered by the Commission to file under § 530.5(c) and appendix A to this part.

\* \* \* \* \*

(i) *Effective date* means the date upon which a service contract or amendment is scheduled to go into effect by the parties to the contract. A service contract or amendment becomes effective at 12:01 a.m. Eastern Standard Time (Coordinated Universal Time (UTC)-05:00) on the effective date. The effective date may not be earlier than the date on which all parties have signed the service contract or amendment.

\* \* \* \* \*

3. Amend § 530.8 by:
  - a. Revising paragraph (a);
  - b. Adding a subject heading to paragraph (b); and
  - c. Revising paragraph (e).

The revisions and addition read as follows:

**§ 530.8 Service Contracts.**

(a) *Filing.* Authorized persons shall file with BTA, in the manner set forth in appendix A of this part, a true and complete copy of every service contract and every amendment to a service contract no later than thirty (30) days after the effective date.

(b) *Required terms.* \* \* \*

\* \* \* \* \*

(e) *Exception in case of malfunction of Commission filing system.* In the event that the Commission's filing systems are not functioning and cannot receive service contract filings for twenty-four (24) continuous hours or more, an original service contract or amendment that must be filed during that period in accordance with paragraph (a) of this section will be considered timely filed so long as the service contract or amendment is filed no later than twenty-four (24) hours after the Commission's filing systems return to service.

4. Amend § 530.13 by adding paragraph (e) to read as follows:

**§ 530.13 Exceptions and exemptions.**

\* \* \* \* \*

(e) *Essential terms publication exemption.* Ocean common carriers are exempt from the requirement in 46 U.S.C. 40502(d) to publish and make available to the general public in tariff format a concise statement of certain essential terms when a service contract is filed with the Commission.

5. Amend § 530.14 by revising paragraph (a) to read as follows:

**§ 530.14 Implementation.**

(a) *Generally.* Performance under an original service contract or amendment may not begin until the effective date. An original service contract or amendment may apply only to cargo received on or after the effective date by the ocean common carrier or its agent, including originating carriers in the case of through transportation.

\* \* \* \* \*

By the Commission.

Rachel E. Dickon  
Secretary

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