

Issued: April 27, 2020

**FEDERAL MARITIME COMMISSION**

**46 CFR Part 530**

**Docket No. 20-05**

**RIN: 3072-AC81**

**Procedures for Exemption from Service Contract Regulatory Requirements**

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Maritime Commission is revising its procedures for exemptions from the regulatory requirements for service contracts to allow such exemptions to be granted without providing an opportunity for a hearing.

**DATES:** This final rule is effective April 27, 2020.

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

**SUPPLEMENTARY INFORMATION:**

The Commission's service contract regulations in 46 CFR part 530 provide that exemptions from the requirements of that part are governed by 46 U.S.C. 40103 and the exemption procedures in 46 CFR part 502. *See* 46 CFR 530.13(b).<sup>1</sup> Section 40103 provides that the Commission may grant an exemption from statutory requirements if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce, and the Commission may attach conditions to an exemption. § 40103(a). Section 40103 also requires that a statutory exemption may be issued only if the Commission has

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<sup>1</sup> Section 530.13(b) includes an out-of-date cross-reference to 46 CFR 502.67, which formerly contained the Commission's exemption procedures. Those procedures are currently located at 46 CFR 502.92.

provided an opportunity for a hearing to interested persons and departments and agencies of the United States Government. The Commission's exemption procedures in 46 CFR part 502 include a similar hearing requirement and provide that the Commission will publish notice of the proposed statutory exemption in the Federal Register and will solicit comments. 46 CFR 502.92. Thus, although the Shipping Act only requires notice and opportunity for a hearing for exemptions from the statutory requirements in the Act, the Commission requires notice and opportunity for a hearing for exemptions from regulatory requirements by incorporating § 40103 and the part 502 exemption procedures in 46 CFR 530.13(b).

The current COVID-19 pandemic and its effect on the international supply chain and commercial operations has demonstrated a need for Commission flexibility to provide immediate regulatory relief in appropriate circumstances. This is particularly true in the case of service contracts given the challenges that the current situation presents to contract negotiation, formation, and filing by the carriers and their customers. To that end, the Commission is revising its exemption procedures for part 530 to allow for exemptions from the regulatory requirements in that part to be granted without notice and opportunity for a hearing. Specifically, the Commission is revising § 530.13(b) to state that exemptions from the requirements in part 530 are governed by 46 U.S.C. 40103(a), which provides the substantive criteria for granting exemptions, 46 CFR 502.92, which lays out the procedure for requesting exemptions and how exemptions are processed, and 46 CFR 502.10, which permits the Commission to waive the rules in part 502 in particular cases to prevent undue hardship, manifest injustice, or if the expeditious conduct of business so requires.

The Commission emphasizes that these changes only affect the procedures for granting exemptions from the regulatory requirements in part 530. The final rule does *not* affect the

procedures for exemptions from the statutory requirements of the Shipping Act, which will continue to be subject to notice and an opportunity for a hearing before issuance. *See* 46 U.S.C. 40103(b). In addition, these changes will not affect the substantive criteria for granting exemptions from the regulatory requirements in part 530. Such exemptions will continue to be granted when the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. And the Commission will, as a general matter, continue to provide notice and an opportunity for comment on proposed exemptions before issuing an exemption from requirements in part 530. Under the final rule, however, the Commission will have the ability to waive these procedural requirements under § 502.10 in appropriate circumstances.

## **RULEMAKING ANALYSES AND NOTICES**

### *Final Rule Justification and Effective Date*

Under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(A), rules of agency organization, procedure, or practice do not require notice and comment. This final rule relates to the Commission's organization, procedures, and practices; it revises the Commission's procedures for exempting regulated entities from the regulatory requirements in 46 CFR part 530. The Commission has also determined given the current challenges faced by the shipping industry due to the COVID-19 pandemic, the ability for regulated entities to seek prompt regulatory relief from the Commission is needed in the immediate future, notice and comment is impracticable and contrary to the public interest. *See* 5 U.S.C. 553(b)(B).

The Administrative Procedure Act also 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). For the same reasons as discussed above, good cause exists for making this final rule effective upon publication in the *Federal Register*, given the immediate need for regulated entities to have the ability to seek prompt regulatory relief from the Commission.

#### *Congressional Review Act*

The final rule is not a “rule” as defined by the Congressional Review Act (CRA), codified at 5 U.S.C. 801 *et seq.*, and is not subject to the provisions of the CRA. The CRA adopts the Administrative Procedure Act’s definition of a “rule” in 5 U.S.C. 551, subject to certain exclusions. *See* 5 U.S.C. 804(3). In particular, the CRA does not apply to rules relating to agency management and personnel and rules of agency organization, procedure, and practice that do not substantially affect the rights or obligations of non-agency parties. *Id.* This final rule relates to agency organization, procedures, and practices. Specifically, the final rule revises the Commission’s exemption procedures under part 530 to give the Commission flexibility to forgo notice and opportunity for hearing in certain circumstances before granting an exemption from the service contract regulatory requirements. Although the final rule will affect interested parties’ ability to comment on certain proposed regulatory exemptions before they are granted, the Commission does not believe the rule substantially affects their rights. Notice and comment will continue to be generally required before an exemption is granted. Only when necessary to prevent undue hardship, manifest injustice, or if the expeditious conduct of business so requires, will the Commission waive these requirements. Based on the foregoing, the final rule is not a “rule” under the CRA and is not subject to the CRA’s requirements.

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (codified as amended at 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 APA (5 U.S.C. 553), the agency must prepare and make available a final regulatory flexibility analysis (FRFA) describing the impact of the rule on small entities. 5 U.S.C. 604. An agency is not required to publish an FRFA, however, for the following types of rules, which are excluded from the APA’s notice-and-comment requirement: interpretative rules; general statements of policy; rules of agency organization, procedure, or practice; and rules for which the agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to public interest. See 5 U.S.C. 553(b).

As discussed above, this final rule is a rule of agency organization, procedure, or practice. Therefore, the APA does not require publication of a notice of proposed rulemaking in this instance, and the Commission is not required to prepare an FRFA.

### *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 final rule revises Commission regulations governing the exemption procedures for the service contract regulatory requirements in part 530. This rulemaking thus falls within the categorical exclusions for procedural rules pursuant to 46 CFR part 502 (§ 504.4(a)(4)), and related to the receipt 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 rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. This Direct Final Rule does not contain any collections of information as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

*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, available at

<http://www.reginfo.gov/public/do/eAgendaMain>.

**List of Subjects**

**46 CFR Part 530**

Freight, Maritime carriers, Report and recordkeeping requirements.

For the reasons set forth above, the Federal Maritime Commission is amending 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 § 530.13 by revising paragraph (b) introductory text to read as follows:

**§ 530.13 Exceptions and exemptions.**

\* \* \* \* \*

(b) *Commission exemptions.* Exemptions from the requirements of this part are governed by 46 U.S.C. 40103(a) and §§ 502.10 and 502.92 of this chapter. The following commodities and/or services are exempt from the requirements of this part:

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By the Commission.

Rachel E. Dickon,  
Secretary