

Dkt. No. 16-05

Submitter Info

Please Do Not Reply To This Email

Public Comments on Amendments to Regulations Governing Service Contracts and NVOCC Service Arrangements.=====

Title Amendments to Regulations Governing Service Contracts and NVOCC Service Arrangements  
FR Document Number 2016-04264  
RIN 3072-AC53  
Publish Date 2/29/2016 12 00 00 AM

FILED

MAR 29 2016

Submitter Info

First Name Duncan  
Last Name McGrath  
Mailing Address 15407 McGinty Road West, MS 78  
City Wayzata  
Country United States  
State or Province MN  
ZIP/Postal Code 55391  
Email Address duncan\_mcgrath@cargill.com

Federal Maritime Commission  
Office of the Secretary

Organization Name Cargill, Incorporated  
Comment Thank you for allowing the opportunity to comment Contract administration is resource-intensive for all parties, so we commend the FMC for attempting to streamline the process in partnership with stakeholders. Our comments relate to the definition of Affiliates and the timing of contract filing

In our view the definition of Affiliate in section 530 3 should be amended to reinforce the intent established in section 530 2, to wit An individual ocean common carrier or an agreement between or among ocean common carriers may enter into a service contract with one or more shippers subject to the requirements of the Act This section, along with the attached comments by former FMC Chairman Hon Harold Creel Jr. clearly show that the intent of the Act is to allow carriers and shippers without common ownership or control to contract separately or together Therefore the definition of affiliate in Section 530 3 should be clarified to confirm that shippers that are not under common control or ownership are allowed to contract together.

We support amending the regulations to allow the effective date of amendments to be before the filing date of the amendment and allowing any number of amendments to be consolidated into a single document filed within 30 days of the effective date of the earliest of all amendments consolidated The current amendment process does not move at the speed of modern commerce. We respectfully suggest the regulations require documented proof of prior agreement in electronic or paper form Furthermore, we respectfully request that the regulations provide for ad hoc adjustment of demurrage and detention free time for individual shipments to accommodate post-shipment incidents beyond shipper's control such as labor strife or severe weather incidents.

#### Submitter Info

Thank you for the opportunity to comment on these proposed changes to the regulations.

Thank you for allowing the opportunity to comment. Contract administration is resource-intensive for all parties, so we commend the FMC for attempting to streamline the process in partnership with stakeholders. Our comments relate to the definition of Affiliates and the timing of contract filing.

In our view the definition of Affiliate in section 530.3 should be amended to reinforce the intent established in section 530.2, to wit: An individual ocean common carrier or an agreement between or among ocean common carriers may enter into a service contract with one or more shippers subject to the requirements of the Act. This section, along with the attached comments by former FMC Chairman Hon Harold Creel Jr. clearly show that the intent of the Act is to allow carriers and shippers without common ownership or control to contract separately or together. Therefore the definition of affiliate in Section 530.3 should be clarified to confirm that shippers that are not under common control or ownership are allowed to contract together.

We support amending the regulations to allow the effective date of amendments to be before the filing date of the amendment and allowing any number of amendments to be consolidated into a single document filed within 30 days of the effective date of the earliest of all amendments consolidated. The current amendment process does not move at the speed of modern commerce. We respectfully suggest the regulations require documented proof of prior agreement in electronic or paper form. Furthermore, we respectfully request that the regulations provide for ad hoc adjustment of demurrage and detention free time for individual shipments to accommodate post-shipment incidents beyond shipper's control such as labor strife or severe weather incidents.

Thank you for the opportunity to comment on these proposed changes to the regulations.

Supplement to Cargill, Incorporated comments on FMC proposed rulemaking

Links with excerpts of comments where the Hon. Harold Creel Jr made clear that unaffiliated shippers may contract together without common ownership or control

[http://www.fmc.gov/news/default.aspx?F\\_All=y&Archive=y&ArticleId=453](http://www.fmc.gov/news/default.aspx?F_All=y&Archive=y&ArticleId=453)

“Almost all of these contracts were between one shipper party and one carrier party Although OSRA permits two or more unaffiliated shippers to enter service contracts, we have observed little or no use of this authority ”

[http://www.fmc.gov/news/default.aspx?CategoryId=3&F\\_All=y&Archive=y&ArticleId=459](http://www.fmc.gov/news/default.aspx?CategoryId=3&F_All=y&Archive=y&ArticleId=459)

“Individual carriers have the right to negotiate and enter into contracts with shippers or groups of shippers, regardless of whether the carrier belongs to an agreement.”

Furthermore, a comment as to why NVOCCs were intentionally regulated differently when NSA’s were established

<http://www.marinelink.com/news/article/creel-addresses-transportation-management/316765.aspx>

NVOCCs are precluded from entering into NSAs with other NVOCCs or with shippers' associations that have NVOCCs as members. And, two or more NVOCCs cannot offer joint NSAs, unless they are corporate affiliates. The Commission chose not to permit NVOCCs to enter into NSAs with other NVOCCs or with shippers' associations that have NVOCC members because of concerns that a court might interpret section 7(a)(2) of the Shipping Act in such a way as to provide antitrust immunity to such arrangements. This decision was influenced by a Ninth Circuit decision relying on section 7(a)(4) and a more recent decision now before the Fourth Circuit.