

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 16-05**

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**ADVANCE NOTICE OF PROPOSED RULEMAKING –  
SERVICE CONTRACTS AND NVOCC SERVICE ARRANGEMENTS**

**COMMENTS OF UPS**

In an Advanced Notice of Proposed Rulemaking (“ANPRM”) issued February 29, 2016, Federal Register Vol. 81, No. 39, p. 10198, the Federal Maritime Commission (“Commission”) seeks comments on proposed amendments to the Commission’s regulations governing Vessel Operating Common Carrier (“VOCC”) Service Contracts and Non-Vessel Operating Common Carrier (“NVOCC”) Service Arrangements (“NSAs”). UPS Ocean Freight Services, Inc., a licensed NVOCC (License No. 016871N) which has two registered foreign-based NVOCC affiliates, UPS Europe SPRL (Org. No. 021750) and UPS Asia Group Pte. Ltd. (Org. No. 023718), and a licensed ocean freight forwarder, UPS Supply Chain Solutions, Inc. (License 000275F) (collectively “UPS”), submit the following comments on specific proposed regulatory changes set forth in the ANPRM.

**I. BACKGROUND**

UPS is a global intermodal package delivery, freight and logistics services provider, with over 362,000 employees in the United States and some 82,000 more worldwide at 1,800

facilities. UPS makes over 4.7 billion annual deliveries of packages documents globally. UPS operates 104,398 vehicles and one of the world's largest airlines, with more than 650 owned and leased aircraft. UPS's forwarding and logistics business provides services in more than 220 countries and territories worldwide, and includes supply chain design, execution and management, global multimodal transportation, freight forwarding and distribution, customs brokerage and trade finance services.

UPS and its predecessor ocean forwarding and NVOCC companies have been in operation for many decades. UPS ocean volume is currently approximately 500,000 TEUs annually, including full marine containers and less-than-container load service, plus project cargo and heavy-lift items such as industrial vehicles and machinery. Most UPS ocean freight moves on a door-to-door, port-to-door or door-to-port intermodal basis with ocean/truck, ocean/rail or ocean/air interface to optimize delivery times and cost and meet customer needs.

UPS seeks to be an innovator in improving efficiency, customer service and value, streamlining operations and advocating regulatory policies that best serve and balance the needs of the shipping public, shipping industries and government. UPS was among the leaders in seeking the Shipping Act exemptions to permit NVOCCs to use NSAs, and participates in Commission rulemaking processes with the objective of improving the U.S. regulatory framework to benefit shippers and the economy in general.

## **II. UPS COMMENTS**

UPS believes the Commission's current regulations governing VOCC Service Contracts and NSAs are generally adequate, and urges that changes proposed in the ANPRM be narrowly and carefully focused on solving clearly-identified problems without creating unintended other effects. In this regard, UPS comments on specific ANPRM subjects:

**A. Definition of “Affiliate”**

There is no definition of “affiliate” in the VOCC Service Contract regulations at 46 CFR §530.3, but in the NVOCC NSA regulations at 46 CFR §531.3(b) and in the NVOCC Negotiated Rate Agreements (“NRA”) regulations at 46 CFR §532.3(e), “affiliate” for purposes of NSAs is defined as being a “corporate affiliate” under common ownership or control. The Commission’s regulations currently allow VOCCs to sign Service Contracts in which multiple shippers or consignees (e.g. various suppliers and end customers in a supply chain) can use the contract rates, subject to providing information about affiliates required under 46 CFR §530.8(b)(9). Conversely, NVOCCs using NSAs may only contract with shippers or consignees within a single corporate group, such as parent company and its majority-owned or controlled subsidiaries, subject to providing affiliate information required under 46 CFR §531.6(b)(9). The Commission asks for comments on whether the narrower NVOCC regulation definition should be applied to VOCCs and their Service Contracts.

UPS suggests the opposite course -- removing the corporate ownership and control restriction for both VOCC Service Contracts and NVOCC NSAs -- would be far more beneficial to commerce and competitiveness in the logistics industries. Modern supply chain arrangements have produced substantial efficiencies benefitting businesses at all levels, including both carriers and shippers. These arrangements include contracting with vendors supplying various articles for manufacturers, fulfillment services enabling arrangements for direct delivery from multiple suppliers to end customers, and large retailers sourcing from multiple vendors. These supply chain arrangements let all shippers in a supply chain use service contract rates made possible because of the large freight volumes the shipper can assemble, and the NVOCC’s large minimum volume commitments with the VOCCs. These agreements also require flexibility as to

which party may be responsible for paying freight and costs of transportation, depending upon the INCOTERMS price/delivery term selected. VOCCs can take advantage of this option now. The existing limitation preventing NVOCCs from entering NSAs with suppliers and buyers in a supply chain not under common ownership or control makes it more difficult to compete, even though typically the NVOCC is also contracting upstream with the VOCCs, benefitting them by feeding in substantial cargo volumes with low cost of sales.

There is no apparent benefit to anyone from restricting shipper “affiliates” in NSAs to entities under common ownership and control. There should be an equal playing field as between VOCCs and NVOCCs, but it makes no sense to impose a new restriction on VOCCs. It would be far better if the “corporate affiliate only” restriction were removed for both VOCCs and NVOCCs instead of being applied to both.

**B. Purpose**

With respect to NVOCC Service Arrangement Regulations at 46 CFR §531.1, the Commission notes that National Customs Brokers and Forwarders Association of America (“NCBFAA”) commented that with the advent of NRAs, NSAs are less likely to be used. NCBFAA appears to suggest that the provisions in the Commission’s regulations for NSAs filed with the Commission ought to be phased out in favor of exclusive use of unfiled NRAs. UPS strongly opposes this approach, which would do damage to larger volume NVOCCs that have built their core service arrangements around the NSA format. As UPS pointed out in previous comments on Docket No. 13-05, although the numbers of unfiled NRAs now in use are substantially larger than the number of NSAs filed annually, the NRAs are typically single-rate, single-lane, single-shipper arrangements, whereas NSAs often cover hundreds of rates on multiple global routes, as part of a multimodal master services arrangement for a shipper affiliate

group, often covering continuing shipments over a period time. NVOCCs such as UPS make substantial percentages of their ongoing bookings utilizing NSAs, especially for large retailers, industrial shippers and government shippers. The NRA regulation is designed for a simpler type of contract, frequently covering a single shipment. While overall UPS would favor greater flexibility in the NSA regulation (and other elements of this ANPRM are focused on that objective), NSAs cannot simply be scrapped in favor of forcing NVOCCs that have developed complex competitive arrangements to revert to use of NRAs that are not always suitable to meet the expectations of large-volume sophisticated shipper customers.

**C. Filing of Service Contracts and Effective Dates.**

Regarding Service Contract regulations at 46 CFR §530.8, and NSA regulations at 46 CFR §531.3(k) and 8, the Commission asks for comments on whether it should allow contracts and amendments to be filed up to 30 days after the effective date, so the parties can go ahead and commence service without waiting, and whether to allow other flexibility such as filing of multiple contract amendments in a single master document. FMC also asks for comments on technical filing issues, time for filing corrections and fees for VOCC filings.

UPS commends the Commission for examining possible approaches to increase efficiency in the industry. UPS supports the concept of allowing contracts and amendments to be filed and essential terms publication to be completed within a reasonable time after the effective date, rather than in advance. In many instances, shippers approach carriers with potential business opportunities that involve complex arrangements, including transactions covering multiple levels of a supply chain. It is critical to the shippers and carriers to be able to implement these arrangements rapidly, in order to assist the U.S. exporter or supply chain manager to meet competitive conditions or avoid port congestion. The few days it usually takes

to arrange for filing and publication tend to make U.S. supply chains and carriers that are regulated under the Shipping Act materially less competitive with foreign alternatives. Additionally, many shippers, including some sophisticated international companies, continue to be adverse to the concept of filing contracts even though carriers assure them of confidentiality. A reasonable allowance for filing and publication subsequent to the effective date of a contract or amendment will not deprive the Commission of any information necessary for effective regulation of the industry. The law does not require prior approval for these contracts or amendments. Allowing filing and publication within 30 days following implementation will facilitate transactions and encourage compliance, rather than incentivizing participants to try to structure transactions to avoid regulation.

### **III. CONCLUSION**

UPS thanks the Commission and staff for their painstaking efforts to understand the evolving ocean shipping industry, and to develop policies and regulations to serve the causes of efficiency and innovation, the needs of shippers and the U.S. economy.

Respectfully submitted,

UPS

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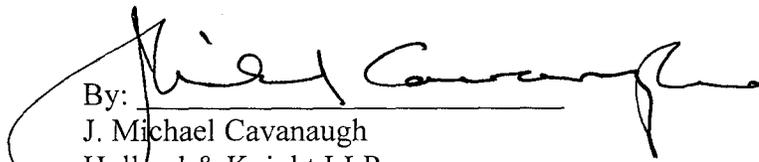
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A handwritten signature in black ink, appearing to read "J. Michael Cavanaugh", written over a horizontal line.

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