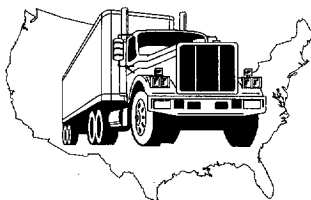


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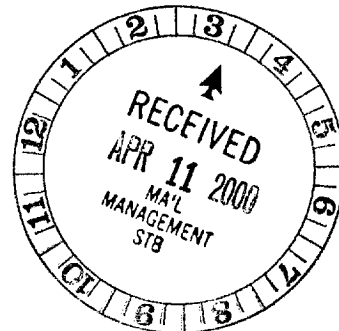
NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.

ENTERED
Office of the Secretary

APR 12 2000

Part of
Public Record

April 11, 2000



(Via Messenger)
Vernon A. Williams, Secretary
Office of the Secretary - Case Control Unit
Surface Transportation Board
1925 K Street - Room 711
Washington, DC 20423

Re: Section 5a Application No. 61 (Sub-No. 6)
National Classification Committee - Agreement

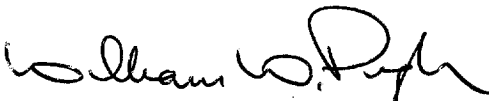
Dear Mr. Williams:

Transmitted herewith are an original and eleven copies of Volumes I and II comprising the comments submitted in the above styled proceeding by the National Classification Committee. Please date stamp and return to the undersigned.

Should there be any questions regarding our filing in this proceeding, please call me at (703) 838-1825 or co-counsel, John Bagileo at (202) 944-3734. We appreciate your assistance in this matter.

Very truly yours,

NATIONAL CLASSIFICATION COMMITTEE


William W. Pugh, General Counsel

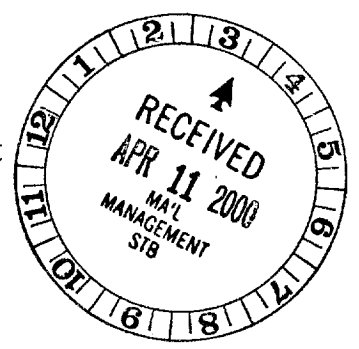
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Office of the Secretary
APR 12 2000
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Public Record

Before The
Surface Transportation Board

ORIGINAL

Section 5a Application No. 61 (Sub-No. 6)
National Classification Committee - Agreement



Comments
Of the
National Classification Committee

VOLUME I

William W. Pugh
2200 Mill Road
Alexandria, VA 22314-4654
(703) 838-1825

John R. Bagileo
Law Office of John R. Bagileo
1101 30th Street, NW #300
Washington, DC 20007
(202) 944-3734

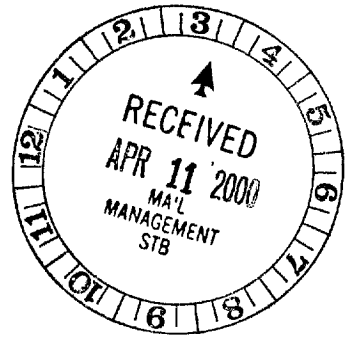
Counsel for the
National Classification Committee

Due and Dated: April 11, 2000

**Before The
Surface Transportation Board**

**Section 5a Application No. 61 (Sub-No. 6)
National Classification Committee - Agreement**

**Opening Comments
of the
National Classification Committee**



The member motor carriers of the National Classification Committee (NCC), through counsel, submit these comments in response to the Surface Transportation Board's (STB) decision served on February 11, 2000, instituting this proceeding requesting proposals and comments on suggested methodologies for increasing and facilitating shipper participation in the classification process, as required by the STB's decisions in National Classification Committee – Agreement, Section 5a Application No. 61 (served December 18, 1998, and February 11, 2000). In response to that request, the NCC respectfully submits the following comments and proposals:

**I.
Request for Official Notice**

As provided in Section 1114.6 of 49 Code of Federal Regulations, the NCC requests that official notice be taken of various statements that were submitted by shippers, shipper representatives, Congressman Nick J. Rahall, II, former Interstate Commerce Commission Commissioners and others regarding the accessibility and fairness of the classification process in National Classification Committee – Agreement, Section 5a No. 61, the prior related

proceeding which was initiated by the STB's November 13, 1997, Federal Register Notice. Those statements are corroborative of the comments presented herein regarding the measures already taken by the NCC in facilitating the participation of interested persons in the classification process, and will reflect on the added value of the proposals outlined in the statement of Martin E. Foley, the Executive Director of the National Motor Freight Traffic Association, Inc. (NMFTA) for promoting and facilitating even greater opportunities for public involvement in classification matters.

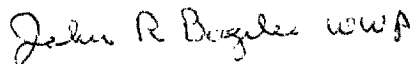
For convenient reference, those statements are designated as Appendix A and included in a separate volume (Volume II) that is submitted in conjunction with these comments.

II.

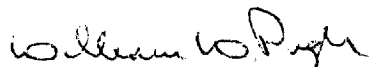
Notice of Intent to Participate

In response to the STB's notice served April 10, 2000, the NCC expects to participate fully in the remaining phases of this proceeding – including the filing of reply comments and rebuttal comments on the dates scheduled for those filings.

Respectfully submitted,



John R. Bagileo
1101 30th Street, Suite 300
Washington, DC 20007
(202) 944-3734



William W. Pugh
2200 Mill Road
Alexandria, VA 22314
(703) 838-1825

Counsel for the National Classification
Committee

DATED: April 11, 2000

STATEMENT
OF
MARTIN E. FOLEY

STATEMENT
OF
MARTIN E. FOLEY

My name is Martin E. Foley. Since December 1, 1985, I have been the Executive Director of the National Motor Freight Traffic Association, Inc. (NMFTA). Prior to that time, I was employed by the Interstate Commerce Commission (ICC) for nearly 31½ years. During the last 2½ years of my service at the ICC, I was Managing Director of the agency, and for the previous 12 years, I was the Director of its Bureau of Traffic. In the various capacities in which I have served at NMFTA and at the ICC, I have been directly involved with the National Motor Freight Classification (NMFC) and the procedures by which that publication is maintained by the motor carrier members of the National Classification Committee (NCC).

This statement, and the accompanying comments of NMFTA's staff members, are submitted in response to the Surface Transportation Board's February 11, 2000 Decision in Section 5a Application No. 61 (Sub-No. 6), National Classification Committee – Agreement instituting this proceeding seeking suggested methodologies for increasing shipper participation in the classification process. The joint statement of George M. Beck and Joel L. Ringer, Senior Classification Specialists for NMFTA, discuss all facets of the classification process and the opportunities for shipper participation in all stages of classification matters. Further, they identify what steps the NCC has taken to increase shipper input and participation in the classification process both before and after the STB's December 18,

1998, Decision in Section 5a Application No. 61, National Classification Committee – Agreement was served.

Matthew Welsh, NMFTA's Docket Coordinator for the NCC, submits his statement identifying his involvement and that of the other staff employees in informing the public and interested persons of classification matters and the process by which they are handled. In response to my request, he reviewed and reports on the substance of the classification proposals that have been considered and acted upon by the NCC over the past decade, pointing out the extent of shipper and public participation in the public meetings at which all those classification matters were discussed and decided.

Additionally, I requested that Kelly A. Powers, NMFTA's Legal Assistant, review all proposals that involved class increases which were protested over the past two decades and to show what the ICC and the STB's actions were in response to those challenges. The results of that survey are summarized in these comments.

After briefly discussing the Welsh statement and the Power's survey, I will address specific measures which the NCC has already taken or is prepared to take to broaden the avenues of shipper participation in the Classification. However, before turning to a brief summary of those statements and my experiences with the classification process, I am obliged to respond to two statements in the STB's February 11 Decisions which are incorrect and unfair.

In the February 11th Decision, in Section 5a No. 61, National Classification Committee – Agreement, the STB expresses "surprise at the [NCC's] unwillingness to entertain suggestions for improving the classification process." The STB further criticized the NCC stating that "to object categorically to any inquiry into the process, without even

knowing what proposals might be made, reflects a closed mind and in fact confirms our initial view that some changes may be appropriate.” (Decision, at page 3.) Those criticisms are unfounded and unfairly describe the position the NCC took in that proceeding.

A review of the underlying record and the NCC’s statements shows that the NCC objected to allegations raised in the comments submitted on behalf of several shipper associations that were totally erroneous, such as the gross mischaracterization of the number of class increase as compared to class reduction proposals processed by the NCC. The NCC’s petition for reconsideration also questioned the correctness of the agency’s findings, apparently based solely on the views of several shipper organizations, that the record evidence established that changes in the NCC’s procedures would be required. The NCC contended that even a cursory examination of that record shows that there were numerous statements on the record contradicting those shipper association allegations views of which were never considered or discussed by the STB. Certainly, those statements supporting the classification process were entitled to equal weight by the STB when reaching the conclusions upon which this further proceeding is based.

Moreover, the statement in the STB’s February 11th Decision that its “initial view” was that “some changes may be appropriate” is vastly different from, and significantly less threatening than its finding in the December 18, 1998, Decision where the STB baldly stated that the NCC’s Section 5a Agreement “will be approved only if it is amended to provide for more effective participation.” (Emphasis added) (Decision, p. 1) Plainly, the substantive right of the NCC collectively to conduct classification activities with antitrust immunity was placed in jeopardy by the STB’s December 18, 1998, Decision. The NCC, in the belief that those findings were unsubstantiated and contradicted by substantial evidence in the record,

challenged those conclusions to protect its Section 5a Agreement. That exercise of the NCC's legal rights and responsibilities to the carrier members cannot fairly be interpreted as an indication of any "unwillingness" to modify its procedures nor of a "closed mind."

Therefore, I respectfully disagree with the Decision's statement that we will not entertain suggestions for improving the classification process. Nowhere in any of its statements submitted in the prior proceeding was any such position advanced or implied, or an argument made that "a further proceeding to attempt to improve the process should not be held." (Decision, p. 3) Rather, as its past and current actions demonstrate, the NCC has made very substantial changes in the classification process to increase and facilitate shipper participation, and it continues to do so.

Moreover, it is unfortunate that the STB, in addressing the NCC's motion for a procedural order in this proceeding permitting it to file a rebuttal statement attributed a motive to that request which is totally inappropriate and unwarranted when it stated that "we understand why NCC might want to open and close in order to seek to limit the debate to whatever proposal it decides to file at the outset." (February 11 Decision, p. 1, fn. 1.) I think it is clear that the NCC was only requesting that the STB extend to it the same procedural safeguards the ICC provided in other cited proceedings involving its Section 5a Agreement wherein the NCC was the respondent. Given the issues which were identified in the November 13, 1997, Notice instituting the Section 5a proceeding, and the shipper participation issue which evolved as determinative on the matter of the subsequent renewal of the NCC's antitrust immunity, the NCC properly and understandably was concerned about its right to close the record. As the STB indicated in its November 14, 1997, press release, describing that Notice:

In particular, the Board asked for comments on whether the NCC's activities require antitrust immunity, and, if so, whether an exemption from the antitrust laws would be in the public interest. Additionally, the Board sought comments about the relationship between the activities of the rate setting bureaus and those of the NCC, and, more specifically, whether it should grant continued immunity for the NCC even if it were to deny continued immunity for the rate setting bureaus.

In fact, in neither the press release nor the Notice was any indication given that shipper participation was a focal, or the central issue, under consideration. While the NCC responded to contentions raised in the opening comments of other parties regarding the accessibility of the classification process and the fairness of the proceedings, particularly the erroneous allegations regarding classification increases, it did not have any opportunity to respond to various contentions made in the reply comments of certain shipper groups. It was for the sole purpose of reasonably being able to respond to any incorrect or erroneous contentions about the classification process which might surface in reply comments in this proceeding that the NCC requested a procedural motion here and not, as the February 11th Decision disparagingly charges, without justification, for the purpose of limiting debate. Clearly, the Board's assertions, that the NCC has a closed mind and is unwilling to entertain suggestions, are unwarranted and unfair.

My testimony, and the following statements of Messrs. Welsh, Beck and Ringer are intended to provide the STB with a full and accurate depiction of the classification process and how classification changes occur. In particular, we have attempted to detail what services and procedures are available to shippers and other interested persons enabling them to become aware of and/or to participate in the classification process. We believe that the specificity provided is necessary to correct certain perceptions which may have arisen in the prior proceeding which are incorrect. In any event, it should be perfectly clear that the NCC

stands ready to adopt and implement reasonable and practical changes in its procedures designed to further facilitate shipper participation – an objective which it has long sought to achieve for the benefit of all.

Shortly after I became NMFTA's Executive Director, new procedures were instituted for handling classification matters. The first open meeting conducted by a carrier member Classification Panel was held on December 10, 1985. There the NCC, in response to the Motor Carrier Act of 1980, specifically 49 U.S.C. §10706(b) dealing with requirements for rate bureaus, then initiated its new freight classification procedures whereby the entire decision-making process was placed in the control of the carrier member Classification Panels and the carrier member NCC. The new procedures included expanded notice provisions and established a process which adopted many of the features of the modified and oral hearing procedures which had been successfully utilized by the Interstate Commerce Commission in its administrative proceedings with which I was well familiar. A number of other provisions implementing specific requirements in the Motor Carrier Act also were incorporated.

Provisional approval of the NCC's amended Agreement which was initially filed with the ICC on October 29, 1980, was granted in the agency's Decision served in Section 5a Application No. 61, National Classification Committee – Agreement, on May 18, 1987 (not published). Amendments incorporating additional matters identified in the ICC's Decision were resubmitted to the agency and final approval of the NCC's Section 5a Agreement and revised procedures for processing classification matters was granted in the ICC's Decision in Section 5a Application No. 61, National Classification Committee – Agreement, served on May 9, 1988 (not published). Those ICC-approved procedures continue to govern the

classification process, except that the NCC, through its staff, has since added a number of administrative and other services to facilitate shipper participation.

The accompanying joint statement of George M. Beck and Joel L. Ringer discusses in considerable detail the involvement of shippers and their representatives in the classification process, and the steps the NCC, through NMFTA's staff, has taken to educate the public through classification workshops held around the country and to keep the public informed of the NCC's classification activities. As pertains to notice, not only are all classification activities listed in the NCC's Docket Bulletin, which is available on a subscription basis, but also various classification activities are publicized in *Transport Topics*, the trucking industry's weekly newspaper with a circulation of 32,000. Beyond those traditional means of notice via publications, commencing in 1997, the NMFTA's website was established, and since that time the information provided through that medium has been greatly expanded. Today that website not only provides substantial information on the classification system and the procedures by which it is implemented, but also displays the classification proposal form, identifies the policies and directives by which classification activities are conducted, and informs the public of the density and value guidelines, the other transportation characteristics considered in assessing the merits of classification proposals, as well as a listing of all pending or upcoming research projects.

From the inception of a commodity review to the docketing of a proposal, NMFTA's staff attempts to contact as many shippers as might have an interest in that classification matter. As noted, one source used is the *Thomas Register of American Manufacturers*, which lists over 150,000 American and Canadian companies. As the staff indicates, in the course of conducting research on a product over a hundred shippers of that product may be

contacted for the purposes of notifying them of the classification activity and to request information. In addition, trade associations which have participated in matters before the NCC and its Panels normally are contacted as a matter of course when the products of their members are involved. Recently, a CD version of the National Trade and Professional Associations Directory has been purchased to facilitate the identification and contact of associations the members of which may have an interest in upcoming classification activities. This publication lists some 7,600 trade associations, professional societies, and similar national groups.

Any shipper who participates in an NCC research project and furnishes information is notified directly by mail prior to any public meeting where the involved commodity is to be considered. For many years shippers and interested parties have been provided, upon request, summaries identifying the information on which proposed class assignments are based. That information is provided, free of charge, solely as a service to the interested persons. In response to criticism of several shipper organizations that the summaries did not supply all the information they wanted, beginning with Docket 2000-1 (February 2000), copies of all written classification reports and analyses are available upon request and free of charge. The material now made available includes all of the written materials that are prepared by the staff for consideration by the carrier members of the NCC and its Classification Panels in their decisions on classification review matters, proposals and appeals. Notice is given as to the availability of those documents on the web page and in the Docket Bulletin.

Messrs. Beck and Ringer also address the STB's misconception stated in Footnote 6 of the February 11th Decision that shipper requests for classification study may be "arbitrarily

denied.” Here, the STB has misconstrued certain language in the NCC’s Reply Statement in 1998, where it intended to clarify the plain fact that the staff does not undertake the initiation of a research project without specific direction from the NCC, a Classification Panel or an individual member carrier. In compliance with the NCC’s Section 5a Agreement, the classification matters which are reviewed or studied by the staff are not initiated or chosen by them.

The record in that proceeding, as here, demonstrates that rather than arbitrarily denying assistance to shippers, the staff works closely with shippers and/or their representatives whenever cooperative efforts are possible. As the examples presented by Messrs. Beck and Ringer show, such joint shipper/staff research or study efforts have resulted in shipper favorable actions such as: across-the-board reductions in classes for shippers; the disapproval of proposed increases with the concomitant initiation of further joint carrier/shipper efforts to develop additional information; the redocketing of proposals with lower classes; and the resolution of interpretation conflicts with the creation of a new classification provision which aided the shipper.

One of the very recent examples provided of the carriers and staff seeking to work with shippers involved tobacco products. Carrier research indicated that because of the value characteristics of those articles an increase from Class 85 to Class 100 might be warranted. Although requested, no data had been received from the shippers. When a Classification Panel voted to docket a proposal, 38 shippers of tobacco products were notified. Four shippers submitted written statements, and representatives of two of the companies appeared at the public meeting. At the meeting the shippers indicated that more time was needed to develop representative information. A willingness was expressed by the parties attending the

Classification Panel to work with the NMFTA's staff to develop that data. Based on that pledge of a cooperative effort the pending classification proposal was disapproved by the Classification Panel. In time, another proposal was to be docketed, reflecting the results of the anticipated collaborative joint study by tobacco interests and NCC staff.

In order for the STB to have a better understanding of what sometimes happens to an anticipated cooperative effort, I have included as an attachment documents brought to my attention which apparently were sent by Transportation Solutions, Inc. (TSI), to tobacco shippers on March 7, 2000. Unfortunately, from a reading of these documents, it would seem that any prospect of a successful cooperative effort on this subject is dim. Apparently, the shipper's entire thrust in the information gathering effort by TSI will be to oppose any effort to properly reclassify tobacco products irrespective of the merits of any such proposal. Initially, it should be noted that the title of the document sent by TSI, "The Motor Carriers' Proposal to Increase Your Truck Rates by 15%," is misleading and inflammatory. As is well recognized, classification ratings and class rates are entirely separate and distinct. Thus, a so-called 15 percent increase in class, i.e., from Class 85 to Class 100, does not "result in a 15% increase in your transportation costs if we do not succeed in opposing it," as TSI incorrectly claims. Further misleading is the allegation that there is a "proposal before the National Classification Committee" or a "pending proposal" which must be opposed. As noted, the Classification Panel disapproved that proposal. It is apparent that the thrust of TSI's approach is opposition, and not cooperation—even though an appropriate reclassification could have no effect on their rates, given the independent pricing decisions of their carriers in today's very competitive market.

The extent of shipper participation in the classification process has been and continues to be substantial. As Messrs. Beck and Ringer point out, since 1989 over 65 trade associations have appeared or submitted written materials concerning proposals regarding their members' products. So too, as pointed out in the statement of Matthew Welsh, more than 1,200 individuals have attended the 75 Classification Panel meetings held over the past decade, representing in excess of 400 individual companies. Of course, considering the representation by trade associations, literally thousands of shippers have been represented.

The various classification-related services offered to the shippers and interested persons by the NMFTA staff are free of charge. Carriers finance their participation in the classification and all the expenses of maintaining and updating the classification through the fees they pay annually to NMFTA. The NCC carrier members bear their own hotel expenses and although their discounted airfare is reimbursed based on a 7- or 14-day advance purchase with a Saturday night stay, the entire economic burden is borne by the carrier members. Shippers do not pay to initiate a proposal or for the assistance of the NMFTA's staff in preparing a proposal for them. All documents and material are provided to shippers and interested persons without charge. While expenses may be incurred by a shipper and/or its representative in attending a meeting, alternatives to personal appearances exist whereby written presentations can be made. Moreover, as indicated below, the NCC would consider making available telephone conference calls at the public meeting to handle classification matters to facilitate participation of shippers and eliminate the cost of a public appearance.

Matthew Welsh elaborates in detail the notice provided to interested persons at all stages of the classification process and the assistance NMFTA staff regularly provides to shippers and any other interested persons in classification matters. Additionally, he details

the information provided and the steps taken to ensure that persons unfamiliar with the classification procedures become conversant with the process.

Turning now to the unfounded allegation made by some, that the sole or principal function of the NCC is to process class increases, I had Mr. Welsh survey the period of 1989 through 1999 to determine how many proposals involved class increases as compared to other classification changes. In the 75 Dockets dispositioned by the carrier members during that period, some 1500 proposals were processed. Six categories of proposals are identified, i.e., packaging, class increases only, class reductions only, combinations of class increases and reductions, clarifications and the removal of obsolete or outdated provisions. Some 20.39 percent of those proposals were for class increases only. Over three-fourths, or 79.61 percent, involved the other categories of proposal actions, with 14.94 percent of the total proposals involving class reductions only.

With respect to those proposals which involved class increases only and were protested, I requested Kelly Powers, NMFTA's Legal Assistant, to review all dockets going back to 1980 to determine what action was taken by the ICC and the STB on the merits of those proposals. As shown in the survey appended to Ms. Powers' statement, there were 52 proposed classification increases that were protested. Of those, 42, or about 80 percent, were neither suspended nor investigated. Two proposals involving pork skins and bacon rinds, Item No. 72400, and rawhide dog chews, Item No. 27765, were suspended and investigated on procedural issues. In subsequent publications, they were not suspended or investigated, although assigned the same class changes as had originally been proposed.

Two proposals were found not reasonable, i.e., furnaces, Item Nos. 26280 and 26300, and poisons, Item Nos. 2080-A through 102101-A. However, in Court it was held that the

agency had relied upon arbitrary and capricious standards in making those determinations, and those agency decisions were reversed. On remand, the furnace proposal, although again protested, was neither suspended nor investigated, and the originally NCC approved class increases became effective. In poisons, an Ad Hoc Committee of carriers and shippers considered and agreed to increased ratings on poison gases which became effective. Classification changes for acids were found not reasonable by the ICC on the grounds that released liability provisions were involved, and because a “substantial change” had not been shown in their transportation characteristics. The Court subsequently reversed the application of the “substantial change” standard in the poisons case. Finally, with respect to sprayers, a similar entry for hand-held sprayers ultimately became effective. Certainly, the success which has been experienced in the NCC’s justifying those increases, notwithstanding protests, demonstrates most clearly the reasonableness of those classification changes. So too, that success shows that those few who attempt to denigrate the classification process and the carriers’ fairness in establishing class increases, where appropriate, have no legitimate basis on which to predicate that unjustifiable criticism.

Methodologies for Increasing Shipper Participation

The STB’s Decision seeks suggested methodologies for increasing shipper participation in the classification process. As indicated, the contentions that the NCC has been unwilling to entertain suggestions for improving the classification process and has a “closed mind” are unfounded and disappointing. For that reason, before turning to the NCC’s proposals for additional measures to facilitate shipper participation, I would like to recount those actions, which already have been taken on the NCC’s own initiative, to

familiarize all interested persons with the NMFC, as well as the NCC's procedures and standards for classification or reclassification. Further, I will describe the assistance available from staff to all interested persons regarding classification activities. These steps have been taken to ensure that all are made aware and kept apprised of upcoming or pending classification matters. They include:

1. The nationwide promotion and conduct of classification workshops open to all who wish to learn more about the classification, its purpose and function. (So far over 70 percent of the more than 800 individuals who have attended the workshops have been shippers or shipper consultants).
2. The furnishing of information as to the classification process and classification matters on the Internet.
3. Making available all written reports and analyses regarding classification matters which have been prepared by NMFTA's staff for the NCC and its Classification Panels available to everyone, upon request and at no charge.
4. Continuation of the practice of identifying and contacting as many shippers as possible for the purpose of providing notice and requesting relevant information in connection with NCC research, including those organizations listed in the Thomas Register of American Manufacturers and their trade associations identified in the National Trade and Professional Associations directory.
5. Continuation of the practice of notifying any interested person who has submitted information in response to any NMFTA staff request for data when the research has been completed, and advising them that they will be notified, in advance, of the date, time and location of any public meeting where the classification matter might be considered.
6. Continuation of the practice of NMFTA's staff of providing classification expertise and assistance to anyone upon request and free of charge. Those functions include helping shippers and their representatives develop classification proposals in accord with established classification principles and providing informal opinions with respect to the classification provisions applicable to their products.
7. Continuation of the practice of providing, without cost, packaging expertise to anyone so requesting assistance. That service includes solving packaging-related problems and developing improved packaging techniques, and the proposals necessary to effectuate packaging changes and/or improvements.

To further enhance shipper participation, the NCC offers the following proposals:

1. NMFTA's staff, on a direct reimbursable cost basis for travel to a shipper's facility, would be available to assist shippers in conducting research on their products so that their current classification could be reviewed. If any changes were warranted by a review, a report of those findings would be made to a Classification Panel. Further, the shippers would be assisted in submitting appropriate proposals upon request.
2. At open meetings, subject to subsequent Section 5a Agreement notice requirements, shippers or their representatives could present any classification subjects for discussion with the carrier members of the NCC or Classification Panels.
3. NMFTA's staff will accept classification proposals from interested persons in any form, including via telephone, subject to confirmation by the submitting party. The staff will provide technical assistance on classification matters as may be requested. The
4. NCC's use of its web page on the Internet will be expanded to include all classification-making activities, as well as a summary of the subjects to be considered on the next docket and the staff-respected classification reports and analyses.
5. Without request, copies of the staff's report on commodities will be provided to any person who has submitted information on the involved article.
6. Revise the formats of the classification reports and analyses to reduce the number of pages by placing factual information in a prominent location and presenting it in a more concise manner. This should enable readers to spend less time in reviewing the pertinent classification material.
7. The information provided in a "justification" statement in the Docket Bulletin will be expanded to include data on the transportation characteristics of the article known to the NMFTA staff at that time.
8. NMFTA staff, at the direction of the NCC, will expand its efforts to solicit and collect density and other shipping information from shippers and carriers which might support classification reductions. That data would be sought in conjunction with the carrier-supplied "Shipment Information Forms." Shippers would be advised if the initial investigation indicated that lower classes might be warranted, and they would be assisted by staff should they desire to file a proposal seeking a reduction.
9. Arrangements could be made so that shippers or their representatives, upon their request, could participate in a public meeting on a classification matter via telephone conference call.

It is believed that the foregoing steps are responsive to the STB's request for methodologies for increasing shipper participation.

VERIFICATION

I, Martin E. Foley, verify, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on April 7, 2000.


MARTIN E. FOLEY

Attachment A

Transportation Solutions Inc.

P.O. Box 1617, McDonough, GA 30253-1617
 Telephone 770.474.1555 - Facsimile 770.474.3040
 Website www.transportationsolution.com or www.trans-2000.com

March 7, 2000

Re: The Motor Carriers' Proposal to Increase your Truck Rates by 15%

Our firm has been hired to assist the transportation lawyer retained to oppose the proposal before the National Classification Committee to increase the class rating on tobacco products from class 85 to class 100, which will result in a 15% increase in your transportation costs if we do not succeed in opposing it!

All shippers and receivers of tobacco products such as cigarettes, cigars, snuff, chewing tobacco, manufactured tobacco, cut or granulated should take this proposal seriously due to the statistics obtained by the motor carriers on a few shipments showing excessive values.

It is also proposed to cancel the special ratings on Cigarette Making Kits (class 100), Snuff Flour (class 85) and a rule that permits a 10% mixture of cigarette papers, pipe cleaners and hand cigarette rollers in the same carton with cigarettes.

At this time, some of the major cigarette manufacturers have retained William J. Augello, Esq. to oppose this proposal pending before the National Classification Committee. We are assisting by gathering statistics on the movement of tobacco products by motor carrier (truck) throughout the United States. It is requested therefore, that you complete the enclosed survey and return it to this office as promptly as possible. If you also answered the Classification Committee's recent survey, please enclose a copy of that form.

Transportation Solutions Inc.
Trans2000® PLUS

In addition, you are invited to join the group of shippers opposing this increase, by contributing a sum proportioned to your annual motor carrier transportation expense. The following schedule is suggested:

Annual Motor Carrier Transportation Expense:

Less than \$1 Million	\$100.00
5 Million	\$300.00
10 Million	\$500.00
50 Million	\$1,000.00
100 Million	\$2,000.00
Over 100 Million	\$3,000.00

The funds thus raised will be used to analyze the statistics received from the firms responding to our survey, prepare a brief in opposition to the proposed increases, attend the hearings to be held by the Classification Committee, and to file appeals before the Surface Transportation Committee if necessary.

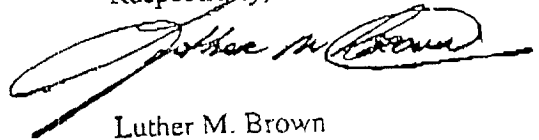
The most important information needed from shippers and receivers relates to the value of tobacco products moving via motor carriage, the number and amount of claims filed for loss, damage or delay, and the density of cartons shipped.

The Classification Committee contends that claims are exceeding 1% of motor carriers revenue, and that the value of tobacco products exceeds their guideline for class 85. The NCC also contends that carriers are worried about being held liable in tobacco industry liability cases due to their transportation of these products!

As you can well imagine, this could be a difficult case to win, and will require the cooperation and participation of every tobacco shipper and receiver if we are to prevail. Therefore, please complete the enclosed survey and return it to this office with your check for financial support in accordance with the scale described above.

If we can provide any assistance to you in this connection, please feel free to call me at 770.474.1555. Or if you wish to speak with our Transportation Attorney, Mr. William Augello, you may reach him at 520.591.0203 (Mountain Pacific Time).

Respectfully,



Luther M. Brown

Transportation Solutions Inc.
Trans2000® PLUS

Survey of Tobacco Shippers and Receivers

Please furnish the following information:

1. For each different size carton or package shipped or received, furnish the:
 - a. Product description, and the length, width and height of the outer container, in inches.
 - b. The weight of each different type of package shipped or received.
 - c. The density of each package (multiply length x width x height, and divide by the weight), in pounds per cubic foot (pcf).
 - d. The wholesale value of each package.
 - e. The value per lb. of each package. (Value divided by weight).
2. How many claims have you filed against motor carriers in 1999, by category and by carrier:
 - a. Damage
 - b. Loss (non-delivery)
 - c. Pilferage
 - d. Other
3. What was the total \$ amount of claims: (By Carrier):
 - a. Filed
 - b. Paid (Settled)
 - c. Declined
 - d. Salvaged
4. What is the biggest problem you have with carriers' delivering products safely and on time?
5. Do you ship or receive any of the products for which the NCC is proposing to cancel the classification provision, as related above?
6. How will the proposed increase in ratings affect your company?

7. Number of motor carrier shipments in 1999.
8. Total motor carrier transportation cost in 1999.
9. Is your product shipped under an FAK (freight all kinds) class rating? If so, what class do the motor carriers apply?
10. List the names of motor carriers serving your company, with the name, address and telephone numbers of the carriers' representatives that you deal with. Also show the total amount of tobacco shipment revenues that you paid each carrier in 1999.
11. Please submit any other information believed to be helpful to the defeat of this proposal.

Please mail your response, and your check for financial support, payable to:

Luther M. Brown
President
Transportation Solutions, Inc.
P.O. Box 307
McDonough, GA 30253-0307

Transportation Solutions Inc.
Trans2000® PLUS

STATEMENT
OF
GEORGE M. BECK
And
JOEL L. RINGER

Statement of George M. Beck and Joel L. Ringer

This Statement is submitted jointly by George M. Beck and Joel L. Ringer, Senior Classification Specialists for the National Motor Freight Traffic Association, Inc., 2200 Mill Road, Alexandria, Virginia 22314. We previously submitted joint Statements in this proceeding in conjunction with the Opening and Reply Comments of the National Classification Committee, dated January 29, 1998, and February 26, 1998, respectively.

In our prior Statements, we demonstrated that:

- shippers have a very strong voice in the classification-making process;
- shippers draw on, and benefit from, the expertise of the NMFTA's staff in classification-related matters;
- the NCC's antitrust immunity protection enables shippers to jointly, and more effectively, promote their interests in classification-related matters; and
- the present classification-making process, with its antitrust protections, fosters an environment where shippers and carriers can work together to develop equitable and mutually agreeable classification provisions.

Moreover, we explained that the NCC keeps shippers apprised of its classification-making activities and allows shippers access to the information on which classification changes are based.

Nevertheless, opponents of the NCC's Section 5a Agreement continue to allege, misleadingly, that shippers are largely shut out of, or disadvantaged by, the classification-making process. Once again, we will try to set the record straight.

**NMFTA Strives to Educate the Shipping Public
About the NCC and the Classification System**

The NMFTA is committed to educating shippers and the entire transportation community about the NCC, the *National Motor Freight Classification* and the classification-making process. To that end, and as discussed in our previous Reply Statement,¹ the NMFTA has prepared an informational booklet that provides an overview of the *National Motor Freight Classification* and the classification system. The booklet is updated periodically, most-recently in November 1998. The NMFTA also provides copies of the NCC's Section 5a procedures, the NCC's current density and value guidelines (used by the Committee and its Classification Panels in the assignment of classes) and proposal forms for making changes to the *Classification*.

These materials are available to all without charge either in hard copy or on the Internet at the NMFTA's Web site.² Copies are included with this Statement in Attachment A.

Further, the NCC has developed a set of policies and directives for itself and its Panels in maintaining the *Classification*. These policies and directives, which include the NCC's density and value guidelines, are reviewed and voted on by the NCC at least once a year at an open, public meeting. In addition to serving as a guide for the NCC, they provide insight as to how classification decisions are made.³ For this reason, the policies and directives are now available, free of charge, to shippers and

¹ Reply Statement of George M. Beck and Joel L. Ringer, February 26, 1998, at pages 7 and 8.

² www.erols.com/nmfta/.

³ The policies and directives also strictly define the role of the NMFTA's staff.

all interested parties. They are posted on the NMFTA's Web site, and hard copies are furnished upon request.

A copy of the NCC's policies and directives is appended to this Statement as Attachment B.

NMFTA's Classification Workshops

Perhaps the best example of the NMFTA's ongoing efforts to promote better understanding of the NCC, the *National Motor Freight Classification* and the classification-making process is its classification workshops. Offered throughout the country and open to anyone having an interest, these workshops provide step-by-step instruction in the use of the *National Motor Freight Classification* as well as insight into how class assignments are determined and information on how changes to the *Classification* are made. Attendees receive a copy of the current *National Motor Freight Classification* plus a workbook that accompanies the course. The workbook, entitled *Classification Basics – A Guide To The National Motor Freight Classification*, includes a copy of the NCC's Section 5a procedures for amending the *Classification*, the current NCC density and value guidelines, and a proposal form for making changes to the *Classification*.

From 1997, when they began, through 1999, over 800 individuals have attended the workshops. Over 70 percent of those attending have been shippers or shipper consultants.

Fifteen workshops are scheduled for 2000. The 2000 workshop schedule and registration form are available on the Internet at NMFTA's Web site. Copies are included here in Attachment C.

Shippers Are Kept Apprised of The NCC's Classification-Making Activities

The fact is that the NCC endeavors to keep shippers and indeed all interested parties involved and informed throughout the classification-making process.

The NCC's Docket Bulletin provides a wealth of timely information on classification matters that will be considered by the NCC and its Classification Panels at upcoming public meetings. Each bulletin:

- details proposed amendments to the *Classification* (proposals);
- lists classification review matters, which may lead to research investigations (projects) or proposals to change the *Classification*;⁴
- details Panel dispositions (actions taken on proposals) that have been appealed and will be heard by the full NCC; and
- notices other classification issues that will be discussed by the NCC.

The bulletins also notice all classification actions that were taken at the previous NCC and Panel meetings and provide a complete, current list of NCC members, their carrier affiliations and addresses.

The bulletins invite all interested parties to participate in the classification process by submitting, in person and/or in writing, information relating to the transportation characteristics of the product(s) involved and statements of position. The time and location of the NCC and Panel meetings is provided as is contact information including the telephone number, fax number, street address and e-mail address of the NMFTA's Docket Coordinator for the NCC, Matthew Welsh.

⁴ Classification review matters are essentially discussion subjects that pertain to a particular commodity or group of commodities and may deal with any classification issue as it relates to that commodity or commodity group. A more thorough discourse on classification review matters was provided in the Reply Statement of George M. Beck and Joel L. Ringer, February 26, 1998, at pages 1 through 7. For ease of reference, copies of those pages are appended here as Attachment D.

Shippers and others who offer various services to shippers, including consultants and trade associations, regularly monitor the NCC's Docket Bulletin to keep abreast of the activities of the NCC and its Classification Panels. The NCC's Docket Bulletin is available to anyone on a subscription basis.⁵ However, shipper organizations such as the National Small Shipments Traffic Conference (NASSTRAC), the National Industrial Transportation League (NIT League) and the Transportation Consumer Protection Council (TCPC) each receive at least one copy of every bulletin gratis, as do state regulatory agencies and the STB. (See accompanying Statement of Matthew Welsh, Docket Coordinator.) Approximately 900 copies of the most-recent bulletin, Docket 2000-1, were distributed.

Additional publicity for classification activities is given in *Transport Topics*, "The National Newspaper of the Trucking Industry," which boasts a circulation of 32,000. Proposals, review matters, appeals and discussion subjects are noticed prior to the meetings where they will be considered along with meeting times and locations and contact information. Following the meetings, information regarding the classification actions that were taken is published.

Moreover, to assure the widest possible dissemination, up-to-date information on classification activities—including information from the NCC's Docket Bulletin and a listing of current research investigations (projects)—is available without charge on the Internet at the NMFTA's Web site. Opened over three years ago, the NMFTA's Web site is a resource for anyone wanting to learn about the *National Motor Freight*

⁵ The annual subscription rate is currently \$30.00.

Classification and the classification-making process. As has already been mentioned, the Web site provides an overview of the *Classification* and the system for maintaining the *Classification*. It provides the NCC's Section 5a procedures and a proposal form as well as the NCC's policies and directives, which include the density and value guidelines. Also posted on the Web site is the NCC/Panel meeting schedule, complete with dates and locations, and a listing of NMFTA staff members, complete with telephone numbers and e-mail addresses. We have attached copies of pages from the NMFTA's Web site to show the breadth of information available. See Attachment E.

**Shippers Who Participate In NCC Research Projects
Are Notified Directly About Classification Activities**

To help assure that the data obtained through the NCC's research investigations (projects) is representative of the commodities involved, the NMFTA's staff makes every effort to identify and contact as many shippers as possible as early as possible for relevant information. Various sources are reviewed in this regard, including the NCC's files and the *Thomas Register of American Manufacturers*. The current *Thomas Register* identifies and categorizes by commodity or commodity group over 150,000 American and Canadian companies.⁶

It is now NCC policy to also contact trade associations representing companies that produce or ship the product(s) being researched for their assistance in identifying potential shippers and as a source of relevant information. To help locate those trade associations that should be contacted, the NMFTA's staff consults the *National Trade*

⁶ Per Thomas Publishing Company, New York, NY.

and *Professional Associations* directory. The current directory lists approximately 7,600 trade associations, professional societies and similar national groups.⁷ The NMFTA subscribes to the *Associations* directory, which is published annually, and has also purchased a PC version that includes software that facilitates finding all possible associations to contact.

In the course of conducting a single research project, the NMFTA's staff might survey over 100 shippers (sometimes well over).⁸ And companies that do not respond to our initial contact are reached a second time to give them every opportunity to participate.

All shippers who participate in a NCC research project by furnishing relevant information, or who otherwise express an interest, are notified directly by letter prior to all public meetings where the classification of the product(s) researched is to be considered. All trade associations identified as possibly representing shippers of the involved product(s) are notified directly by letter as well.⁹ These parties receive the relevant page(s) from the NCC's Docket Bulletin and are invited to submit, in person and/or in writing, (additional) information relative to the transportation characteristics of the product(s) involved as well as statements of position. And since research projects are initially considered as classification review matters, these interested parties are made aware of the NCC's activities well before there is any proposal for reclassification (*if* indeed a proposal is ultimately docketed).

⁷ Per Columbia Books, Inc., Washington, DC.

⁸ During 1998 and 1999, the NMFTA's staff contacted over 6,600 shippers in connection with research projects.

⁹ NASSTRAC, NIT League and TCPC are now notified in all cases.

Shippers Have Access to the Information On Which Classification Changes Are Based

The *National Motor Freight Classification* assigns classes to commodities or groups of commodities based upon their relative transportability. Determining the transportability of a commodity or commodity group is accomplished through an evaluation of the four transportation characteristics prescribed by the Interstate Commerce Commission:¹⁰

1. Density;
2. Stowability, which includes excessive weight or excessive length;
3. Ease or difficulty of handling, which includes special care or attention necessary to handle the goods;
4. Liability, which includes value per pound, susceptibility to theft, liability to damage, perishability, propensity to damage other commodities with which transported and propensity to spontaneous combustion or explosion.

The NCC understands that to engage intelligently and effectively in any discussion involving the assignment of classes, all parties must be conversant with the underlying facts. For years the NCC provided shippers and others having an interest summaries detailing the information on which class assignments are based, i.e. the transportation characteristics of density, stowability, handling and liability as they relate to the product(s) involved.¹¹

Some shipper organizations denigrated the summaries, however, as not being fully responsive to the information needs of shippers. These groups argued that, to

¹⁰ *Investigation Into Motor Carrier Classification*, 367 I.C.C. 243, 258 and 367 I.C.C. 715-717 (1983).

¹¹ These summaries, though not required by the NCC's Section 5a Agreement, were provided as a service to interested parties upon request.

effectively participate in the classification-making process, shippers must have access to the same materials presented to the NCC and its Classification Panels. In light of these concerns, as well as similar concerns expressed by the STB, copies of classification reports and analyses are now available to all interested parties, upon request and free of charge. Beginning with Docket 2000-1 (February 2000), shippers now have access to the very same written materials that are prepared by the NMFTA's staff for the NCC and its Classification Panels in considering classification review matters, proposals and appeals.

Copies of a typical Commodity Report, Research Project Report and Proposal Analysis are provided in Attachment F.

Shipper Interests Are Well Represented Within the Current Classification System

In our previous Reply Statement, we said "The NMFTA's staff conducts research projects on commodities *only* when expressly directed to do so by the NCC, a Classification Panel or an individual member carrier."¹² (Emphasis ours.) Our intent was to clarify that the NMFTA's staff, in accord with the mandate of the NCC's Section 5a Agreement, does not conduct research on its own initiative. However, in its Decision in the instant proceeding served February 11, 2000, the STB hit upon this statement as evidence that, under the current classification system, "There is no mechanism to ensure that shipper requests for classification study are not arbitrarily denied."¹³ It appears the STB misconstrued what we said.

¹² Reply Statement of George M. Beck and Joel L. Ringer, February 26, 1998, at page 3.

¹³ STB Decision in Section 5a Application No. 61, *National Classification Committee—Agreement*, February 9, 2000, served February 11, 2000, footnote 6 at page 4.

In our earlier Statements we demonstrated that shippers have a strong voice in the classification-making process. Indeed, when they choose to participate in the process, shippers have a very real, direct impact on the NCC's classification activities. The current classification system enables shippers and carriers to work together to develop relevant data and, from that data, equitable and mutually agreeable classification provisions.¹⁴ In our previous Statements we gave specific, detailed examples to illustrate how effectively shipper interests are represented within the current system.¹⁵ We would like to take this opportunity to provide additional examples.

1. Videodiscs, including DVDs

Videodiscs are named in item 168950. Subject 4 of NCC Docket 991 (February 1999) was a proposal by Divx Distribution c/o Circuit City to establish a new item specifically for digital videodiscs, such as DVDs, at class 85. This would result in a reduction from the classes then assigned in item 168950. (At the time, item 168950 assigned a class 100 to blank videodiscs and, depending on actual value, class 100, 150 or 200 to recorded videodiscs.) Information of record furnished by the shipper proponent as well as obtained from other sources, including information submitted on behalf of the Recording Industry Association of America, Inc. (RIAA), indicated that a class reduction was warranted. But the

¹⁴ Within the confines of its Section 5a Agreement, the NCC's antitrust immunity protects shippers as well as carriers, enabling all interested parties, including direct competitors, to cooperate with each other on classification matters without the risk of antitrust exposure.

¹⁵ Statement of George M. Beck and Joel L. Ringer, January 29, 1998, at pages 6 through 10, and Reply Statement of George M. Beck and Joel L. Ringer, February 26, 1998, at pages 11 through 16. For ease of reference, copies of those pages are appended here as Attachment G.

shipper's proposal would have left *nondigital* videodiscs assigned the higher classes in item 168950, which did not appear to be justified.

Based on the information of record, and in order to treat all videodiscs equitably, the Classification Panel that met on February 8, 1999, disapproved the shipper proposal. It then docketed a new proposal, Subject 1 of Docket 992 (May 1999), to reduce the classes assigned in item 168950. In lieu of classes 100, 150 and 200, the Panel proposed classes 85, 100 and 150, respectively. The Panel also proposed updating and simplifying the item description.

The RIAA submitted a Statement in support of Subject 1 of Docket 992, and the Panel that met on May 4, 1999, approved the proposal as docketed. The result was an across-the-board class reduction for all videodiscs, including DVDs, as well as an updated, simplified classification description for the benefit of everyone.

2. Tobacco Products

Cigarettes, cigars and other tobacco products are classified under the "Cigarettes and Cigars Group," items 47760 through 47840. A participating carrier, concerned about the liability exposure associated with transporting these goods, requested the NMFTA's staff to conduct research. Shippers of tobacco products were contacted and invited to submit relevant information, but research yielded carrier-supplied data only. When related to NCC policies and guidelines, the information obtained indicated that a class increase was in order for cigarettes and cigars, from 85 to 100. The information also indicated a number of the provisions under the "Cigarettes and Cigars Group" to be obsolete.

A report on the research was presented to the Classification Panel that met on November 9, 1999. Upon consideration of the report, the Panel voted to docket a proposal to increase the class assigned to cigarettes and cigars from 85 to 100, and to cancel the various provisions that were indicated as being obsolete.

In keeping with NCC policy, 38 shippers were notified by letter of the proposal, Subject 8 of Docket 2000-1 (February 2000). Four shippers—Brown & Williamson Tobacco Corporation, John Middleton, Inc., Lorillard Tobacco Company and R. J. Reynolds Tobacco Company—submitted written statements, and Mr. Monty Boling of Brown & Williamson and Mr. John Sapp of R. J. Reynolds appeared before the Classification Panel that considered the proposal. Some specific data was furnished, but the gist of the shippers' comments was that more time would be needed for them to develop representative information. And they expressed a willingness to work with the NMFTA's staff in this regard.

The Panel that met on February 7, 2000, disapproved Subject 8 of Docket 2000-1 and directed the staff to work with the tobacco industry, as the shippers requested. The parties agreed to participate in a cooperative effort and develop an appropriate proposal.

3. Can Opening, Conveying, Dumping and Crushing Machines

Questions concerning the applicable classification provisions and the appropriateness of those provisions led a shipper to docket a proposal to establish a specific item for its products.

Subject 11 of Docket 993 (August 1999) was a proposal by Edlund Company, Inc., to add a new item for can opening, conveying, dumping and crushing

machines, at class 125. It had been determined that the machines in question were properly classified under the general machinery item, 133300. And in view of their packaging (in crates) and density (less than 8 pounds per cubic foot), sub 2 of the item applied, at class 200. Edlund believed that class 200 was too high for its products and that a specific description was needed. With assistance from the NMFTA's staff, the shipper developed a proposal.

Information submitted by Edlund showed the transportation characteristics of the machines to meet NCC guidelines for the proposed class 125. The Classification Panel that met on August 2, 1999, approved the shipper's proposal as docketed. And the new provisions, item 116350, have since gone into effect.

4. Lighting Diffusers, Globes, Lenses, Reflectors, Refractors or Shades, plastic

In response to information indicating that the transportation characteristics of plastic lighting diffusers, globes, lenses, reflectors, refractors or shades were not consistent with the applicable classification provisions, a Classification Panel directed that research be conducted. Forty-eight shippers were contacted and asked to participate in the research survey. The American Lighting Association was also contacted and assisted by surveying its members. Information was received from twelve companies who claimed to represent, in total, close to 100 percent of the industry.

A report on the research was presented to the Classification Panel that met on February 8, 1999, and upon consideration of the report, the Panel voted to docket a proposal. The proposal was listed as Subject 6 of Docket 992 (May 1999). Forty-five shippers were notified of the proposal, including all of the companies

that had participated in the research survey. One shipper submitted written comments, and three other shipper representatives appeared before the Classification Panel that considered the proposal: one representing the American Lighting Association, another representing the National Electrical Manufacturers Association (NEMA) and the third, Mr. Bud Poulin of PSI South, a manufacturer of the products in question. All were generally opposed to the proposed changes.

Mr. Poulin stated that PSI South was having problems applying the provisions of the *Classification* to its products. He explained that there were three overlapping descriptions that could apply on PSI South's products, with classes ranging from 77.5 to 250, and this was quite obviously causing confusion. Mr. Poulin was concerned that the proposal did not address this interpretation conflict.

Responding to the shipper comments, the Panel that met on May 4, 1999, disapproved Subject 6 of Docket 992 and directed the NMFTA's staff to work with the industry to develop additional information and address the shipper concerns.

Pursuant to the Panel's directive, the NMFTA's staff solicited additional information from the two association representatives as well as from Mr. Poulin of PSI South. Only Mr. Poulin furnished additional data.

A report detailing all of the available information was presented to the Classification Panel that met on August 2, 1999. Mr. Poulin attended the meeting and participated in a rather lengthy discussion on the matter, during which he shared with the Panel his concerns regarding the involved classification provisions. Responding to Mr. Poulin's remarks, and to allow greater flexibility

to find provisions that would be acceptable to all parties while at the same time being true to classification principles, the Panel docketed two alternative proposals.

The proposals were docketed as Subjects 11 and 12 of Docket 994 (November 1999). Once again, Mr. Poulin appeared before the Panel, which met on November 9, 1999. Following discussion, the Panel approved a modified version of Subject 12 that both addressed the classification issues involved and was deemed acceptable by the parties. The approved provisions established full-scale density-based classes with the "bumping" privilege, the exact same provisions found reasonable by the STB for cloth, fabric or piece goods.¹⁶ This resulted in reductions, increases or no change in class, depending on the density of the particular product. Importantly, the approved provisions also eliminated the interpretation problems that were plaguing PSI South, which were such a concern to Mr. Poulin. The provisions have since gone into effect.

Mr. Poulin has been kind enough to submit a letter relating his experience with the NCC and supporting the present classification system. A copy of his letter, dated March 3, 2000, is furnished as Attachment H.

Shippers Have A Responsibility To Take Part In the Classification-Making Process

The case examples discussed above, and those detailed in our previous Statements, demonstrate that the NCC works with, not against, shipper interests.

¹⁶ STB Docket No. ISM 35007, decided January 20, 2000.

In this connection, it is clear that the NCC has a responsibility to work with the shipping community. But it must also be understood that shippers and shipper groups who have an interest in the *National Motor Freight Classification* have a responsibility, as well, to get involved in the classification-making process.

All classification decisions take place at open, public meetings that are well publicized. These sessions provide a forum where shippers and carriers can freely exchange information, ideas and opinions relating to classification matters. Shippers and other interested parties can present statements of fact and comment and can discuss classification issues directly with members of the NCC and the NMFTA's staff. Throughout the classification-making process—research projects, proposals, appeals—shippers and anyone else having an interest are invited to attend these meetings. Recognizing that the best classification decisions are based on the most complete information, they are also invited, indeed encouraged, to submit relevant information pertaining to the transportation characteristics of the product(s) under review.

Cooperation between shipper and carrier interests facilitates the collection of industry-representative information, enabling the NCC to fulfill its obligation to establish reasonable classifications reflective of the transportation characteristics of the commodities involved. And by participating in the process, shippers can influence decisions impacting the classification of their products.

Fortunately, there are literally thousands of individual shippers that have taken an active role in the classification-making process. In addition, many trade associations have gotten involved on behalf of their shipper members. Three of these groups, the

American Lighting Association, the National Electrical Manufacturers Association and the Recording Industry Association of America, have already been mentioned in connection with the specific case examples discussed herein. Since 1989, over 65 such groups have participated in classification actions:

Air Conditioning and Refrigeration Institute	International Sign Association
Air Movement and Control Association	International Sleep Products Association
Aluminum Foil Container Manufacturers Association	Juvenile Products Manufacturers Association
American Amusement Machine Association	Lamp and Shade Institute
American Brush Manufacturers Association	Motor Vehicle Manufacturers Association
American Feed Industry Association	National Association of Hose and Accessories Distributors
American Forest & Paper Association	National Association of Hosiery Manufacturers
American Fun Kart Association	National Coffee Association
American Furniture Manufacturers Association	National Electrical Manufacturers Association
American Lighting Association	National Furniture Traffic Conference
American Loudspeaker Manufacturers Association	National Oak Flooring Manufacturers Association
American Meat Institute	National Office Products Association
American Paper Institute	National School Supply and Equipment Association
American Rental Association	Office Furniture Distribution Association
American Textile Manufacturers Institute	Outdoor Power Equipment Institute
Association of Home Appliance Manufacturers	Paper Shipping Sack Manufacturers Association
Association of Independent Corrugated Converters	Plastic Lumber Trade Association
Automobile Body Parts Association	Recording Industry Association of America
Automotive Rebuilder Association and Production Engine Remanufacturers Association	Rubber Manufacturers Association
Biscuit and Cracker Manufacturers Association	Secondary Materials and Recycled Textiles Association
Ceilings and Interior Systems Construction Association	Snack Food Association
Chemical Manufacturers Association	Specialized Furniture Carriers Association
Composite Can and Tube Institute	Specialty Sleep Association
Eastern Lamp and Lighting Association	Summer and Casual Furniture Manufacturers Association
Electronic Industries Association	Textile Bag and Packaging Association
Fibre Box Association	Textile Bag Manufacturers Association
Fine Hardwood Veneer Association	The Society of the Plastics Industry
Footwear Distributors and Retailers of America	Toy Manufacturers of America
Futon Association International	Trench Shoring and Shielding Association
Gas Appliance Manufacturers Association	Tube Council of North America
Grinding Wheel Institute	Uniform and Textile Service Association
Hardwood Plywood and Veneer Association	Vacuum Cleaner Manufacturers Association
INDA, Association of the Nonwoven Fabrics Industry	Wholesale Florists and Florist Suppliers Association
Institute of Packaging Professionals	
International Safe Transit Association	

Along with individual shippers, these associations have opted to work within the existing classification-making framework on behalf of their members. They have

availed themselves of the opportunity to meet with the NCC or Classification Panels or submit written materials in connection with research projects, docketed proposals and appeals.

Significantly, none of these groups have asked for changes to the NCC's procedures.

The NCC Offers Its Services to Shippers Free of Charge

By law, motor carriers who use or refer to any provisions of the *National Motor Freight Classification* in their contracts, rate schedules or tariffs to determine rates or charges must be participants in the *Classification*. Pursuant to the *ICC Termination Act of 1995*, Section 13703(g) of Title 49 of the United States Code requires that:

A motor carrier of property whose routes, rates, classifications, mileage guides, rules, or packaging are determined or governed by publications established under agreements approved under this section must participate in the determining or governing publication for such provisions to apply.

Carriers who use the *Classification*, and benefit from the activities of the National Classification Committee, must pay an annual participation fee for the privilege. Current fees range from \$265 to \$13,314.

While shippers are encouraged to participate in the classification-making process, they are not required to be participants, per se, in the *Classification*. They do not pay an annual participation fee. They do not contribute financially to the maintenance of the *Classification*, nor one cent to support the operations of the NCC or NMFTA.

Nevertheless, as has been discussed herein and in our previous Statements, the NCC offers many services to shippers, shipper advocates and others without charge.

Educational materials on the *Classification*, the NCC and the classification-making process are available on the Internet and are provided in hard copy on request. The cost to shippers: nothing.

The NCC's Section 5a procedures for maintaining the *Classification* and proposal forms for making changes to the *Classification* are available on the Internet and are provided in hard copy on request. The cost to shippers: nothing.

The NCC's policies and directives, including its density and value guidelines, which help explain how the NCC makes classification decisions, are available on the Internet and are provided in hard copy on request. The cost to shippers: nothing.

Up-to-date information on classification proposals, review matters and research projects, as well as the NCC/Classification Panel meeting schedule with dates and locations, is available on the Internet or on request. The cost to shippers: nothing.

Expressing concern that the current classification system is biased against shippers, the STB states that "shipper proposals for classification analysis must be financed independently by the shippers making the proposals, whereas carrier proposals do not face this limitation."¹⁷ The fact is, though, that the NMFTA's staff of classification experts is available to shippers as well as carriers for consultation, without charge.

As the specific case examples detailed herein and in our previous Statements illustrate, the NCC, through the NMFTA's staff, works with shippers and shipper groups to develop industry-representative product data and to find solutions to

¹⁷ STB Decision in Section 5a Application No. 61, *National Classification Committee—Agreement*, February 9, 2000, served February 11, 2000, at page 4.

classification-related problems that are agreeable to the parties involved yet are in accord with established classification principles. The NMFTA's staff also provides technical assistance to shippers and shipper groups in developing shipper proposals for amending the *Classification*. The charge for this service: nothing.

Shippers also pay no fee to docket a proposal. Under the NCC's procedures, anyone, except the NMFTA's staff, may docket a proposal to amend the *Classification*. There is never a docketing fee.

Shippers can obtain copies of the classification reports and analyses that are prepared by the NMFTA's staff in connection with review matters, proposals and appeals. The very same reports and analyses presented to, and considered by, the NCC and its Classification Panels are now available to everyone, including shippers, on request. The charge for this material: nothing.

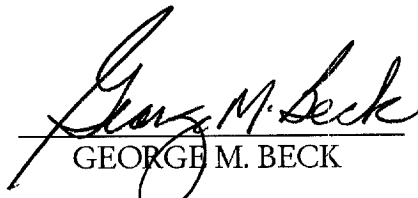
Shippers can get assistance, too, if they have questions concerning the classification provisions that apply on their products. On request of shippers and others,¹⁸ the NCC, through the NMFTA's staff, reviews product literature, specification sheets and any other descriptive material available on the commodity in question. It researches the NCC's files for relevant precedent and reviews the provisions of the *Classification* to find the description that most closely or accurately fits the commodity involved. It then issues nonbinding, informal opinions (interpretations) to this effect, specifying the classification description and item

¹⁸ The NCC accepts requests from shippers, brokers, consultants and the like, as well as from carrier participants in the *Classification*. But it will not entertain requests from nonparticipating carriers, since any use of the *Classification* by those carriers would be unlawful.

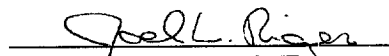
number of the provisions it believes to be applicable. The charge for this service:
nothing.

VERIFICATION

We, George M. Beck and Joel L. Ringer, verify, under penalty of perjury, that the foregoing is true and correct. Further, we certify that we are qualified and authorized to file this statement. Executed on April 7, 2000.



GEORGE M. BECK



JOEL L. RINGER

ATTACHMENT

A

*** NOTICE ***

**CARRIERS USING THE
NATIONAL MOTOR FREIGHT
CLASSIFICATION
MUST PARTICIPATE**

Pursuant to the ICC Termination Act of 1995, Section 13703(g) of Title 49 of the United States Code mandates that:

A motor carrier of property whose routes, rates, classifications, mileage guides, rules, or packaging are determined or governed by publications established under agreements approved under this section must participate in the determining or governing publication for such provisions to apply.

Accordingly, the use of provisions contained in the National Motor Freight Classification (NMFC or Classification), including, but not limited to, commodity descriptions, classes, rules, packaging definitions or specifications, or the bill of lading formats, is reserved **exclusively** for those carriers who participate, and are so listed, in the NMFC.

Under Section 13703(g), the National Motor Freight Traffic Association (NMFTA) must issue each carrier member a written certificate of participation, and the carrier member must make this certificate available for public inspection.

In view of the legislative requirement for participation, shippers and their representatives have recognized the need to confirm that carriers are bona fide participants in the publications used in determining their (the carriers') rates, etc. In addition to issuing the requisite certificate of participation, the NMFTA has established a toll-free number—**1-800-539-5720**—for confirming that a carrier is a participant in the National Motor Freight Classification. This number may also be used to obtain information on becoming a participant in the NMFC.

**THE NATIONAL MOTOR FREIGHT
TRAFFIC ASSOCIATION, INC.
AND
THE NATIONAL CLASSIFICATION
COMMITTEE**

Purposes and Functions

The purpose of the NMFTA is to serve motor carriers operating within the United States and to continuously work towards the mutual improvement and advancement of their interests and welfare. NMFTA is a nonprofit corporation.

Some of the functions of NMFTA and its standing committee, the National Classification Committee, include:

- Investigating and analyzing information relating to commodity classifications, packaging specifications and related rules and regulations; and
- Preparing and publishing a freight classification system (the **National Motor Freight Classification**) and related rules, supplements and revisions. In this function, NMFTA serves as the agent for member motor carriers at the direction of the **National Classification Committee**.
- Preparing, assigning and publishing the **Standard Carrier Alpha Code (SCAC)** and **Standard Point Location Code (SPLC)**.

Membership

Any motor carrier of property can join the NMFTA. Eligible individuals, partnerships or corporations seeking to become a participating member must file an application with the NMFTA and agree to abide by the terms of the **National Motor Freight Traffic Agreement**.

As NMFTA members, carriers may attend meetings of the Association and participate in the business decisions made by the Association.

NMFTA Standing Committees

NMFTA's by-laws create three standing committees:

1. The **National Classification Committee (NCC)** considers, initiates and establishes freight classifications and related rules and practices. This Committee is discussed in detail later.
2. The **Commerce Committee** makes recommendations to NMFTA and its membership on proceedings before legislative and regulatory authorities.
3. The **Weighing and Research Committee** studies problems experienced by individual carriers in connection with their Weighing and Research activities and makes recommendations to the Association with regard to these activities.

In addition, NMFTA has a number of special committees, including the Government Relations and the Interline Procedures Committees.

The National Classification Committee (NCC)

The NCC is an autonomous standing committee of the NMFTA. It is the body which is responsible for determining the context, provisions and classes of the National Motor Freight Classification. It considers matters affecting commodity classifications, packaging specifications and related rules.

The NCC consists of not more than 100 members elected by the parties to the NMFC Agreement from each of the 48 contiguous United States, Alaska, the District of Columbia and Canada, with at least one member representing each. The number of members elected from each state or jurisdiction is determined by the Classification participation fees received from motor carriers domiciled in each state or jurisdiction. Any owner, officer or full-time employee of a motor carrier party to the NMFC Agreement is eligible for membership on the NCC. Individuals are generally nominated for membership by other parties to the Agreement from their jurisdiction.

Elections are conducted by the Secretary of the Committee by mail ballot, and the Committee is reconstituted annually.

The National Motor Freight Classification (NMFC)

The National Motor Freight Classification (NMFC) is a publication that contains approximately 10,000 descriptions of commodities transported by motor carriers providing interstate or intrastate service. The NMFC also sets forth rules pertaining to procedures for filing claims, packaging provisions, handling and service requirements, Bills of Lading and the application of commodity descriptions. In addition, Bill of Lading formats are also published.

Each commodity description generally is assigned a class, which is determined according to the transportation characteristics of the commodity. There are 18 separate 'classes' in the Classification for which participating carriers can establish rates.

Only carriers which maintain participation in the NMFC may use the publication as a reference for pricing or any other purpose. Federal Law [49 USC 13703] requires a carrier's participation in publications such as the NMFC which govern their routes, rates or classifications. To legally establish participation, interested eligible parties must file a Power of Attorney with NMFTA and pay an annual participation fee.

Participation fees are based upon the carrier's total gross operating revenue for the previous calendar year.

For further information on participation in the NMFC or to verify a carrier's participation, call 1-800-539-5720.

To purchase the NMFC call: 1-800-282-5463 for hard-copy, or 703-838-1837 for diskette or 9-track tape.

The Classification System

As indicated, the National Classification Committee essentially establishes, maintains and updates the National Motor Freight Classification. Much of this work is performed by Classification Panels. Each Panel consists of between 15 and 25 carrier members of the NCC appointed annually by the NCC Chairman.

Classification Panels meet regularly throughout the year to conduct public docket hearings. At these

hearings the NCC considers facts and render decisions on proposals to change commodity descriptions, classes, packaging requirements and NMFC rules or regulations.

Proposed changes to the NMFC are analyzed by the NCC and its Classification Panels in light of the transportation characteristics of the commodity in question. The characteristics evaluated by the NCC have been the subject of many formal regulatory proceedings. For purposes of establishing classes, all products must be evaluated according to the following four composite transportation characteristics:

- 1) **Density**, as measured by shipping weight per cubic foot;
- 2) **Stowability**, which includes excessive weight or excessive length;
- 3) **Ease or difficulty in handling**, which includes special care and attention necessary to handle the goods; and
- 4) **Liability**, as measured by value per pound, susceptibility to theft, liability to damage, perishability, propensity to damage other freight with which it is transported, and propensity to spontaneous combustion or explosion.

These characteristics represent the 'transportability' or service requirements of a commodity based on considerations that are most relevant from the carrier's point of view. Through this detailed procedure, the NCC ensures that products are assigned classes that equitably reflect their transportation characteristics in relation to the transportation characteristics of all other products. Classification evaluation does not take into consideration the revenue to be derived from shipments of a given commodity, or other economic factors relating to the transportation of that commodity. Such considerations pertain exclusively to the making of rates.

Proposals dealing with changes to packaging specifications are evaluated on their own merits with consideration given to the existing requirements and data ascertain on the performance of the modifications in field and laboratory situations.

Changes to the NMFC

Commodities moving in commerce are constantly changing in character, while, at the same time, new products are introduced daily. Changes in product design, production materials and packaging require a dynamic NMFC to effectively maintain equity among all products. In maintaining the Classification and making necessary changes in rules, classes and packaging specifications, the NCC and its Classification Panels strictly adhere to the procedures set forth in the NMFC Agreement, which was originally filed with and approved by the Interstate Commerce Commission (ICC) and is now under the jurisdiction of the Surface Transportation Board of the U.S. Department of Transportation.

Under these procedures, any shipper, carrier, government agency or individual (other than an employee of the NCC) can initiate a request to change the Classification. To start the process, an interested party submits to the Secretary of the NCC a proposal that describes the desired change and explains why the change is necessary. All relevant data, including information on the transportation characteristics of the commodity, should be submitted with the proposal.

Proposals are listed promptly on the NCC Docket Bulletin. The Docket Bulletin contains information about the proposed change and the date and location of the NCC Classification Panel meeting at which the proposal will be considered. The bulletin also lists prior actions taken by the NCC, identifies matters being appealed and provides other meeting information. The Docket Bulletin is available on an annual subscription basis. *Transport Topics*, a trade newspaper, also provides abbreviated information on matter noticed in the public Docket Bulletin. Additionally, this information is available on the Internet, at NMFTA's web site <http://www.erois.com/nmfta/>. All NCC and Panel meetings are open to the public.

Before the public Panel meeting, the NCC staff reviews the proposal for clarity and to ensure that the supporting information is complete. In the event of questions about the proposal, the NCC staff will contact the proponent of the proposal. All interested parties have the right to appear at the Panel meeting and present their views orally and/or in writing on the proposals listed in the Docket Bulletin. Interested parties also have the right to become a party of record by so notifying the NCC's staff in writing prior to the

Panel meeting. This will protect their ability to appeal the decision of a Panel to the full NCC.

After discussing each proposal and considering all relevant material received from the proponent and all interested parties, the attending carrier members of the Panel vote on the proposal by written ballot. The proposal may be approved as docketed, approved as modified, disapproved, deferred to the next meeting of the Panel for further consideration or referred to the entire NCC for consideration at its next meeting. The Panel's disposition of each proposal is disclosed at the meeting and in a notice of disposition which is sent to all parties of record for each proposal. Disposition information is also published in *Transport Topics*, the next Docket Bulletin and at the NMFTA home page on the Internet.

If the proponent or any party of record to the proposal is not satisfied with the Panel's disposition of the proposal, the procedures provide for appeal of the decision to the full NCC for review and a final decision at its next meeting. Further, any interested person having additional information not previously available or considered that may affect the basis upon which a proposal was dispositioned may request that the matter be reconsidered.

Finally, any carrier participating in the NMFTA not satisfied with any of the provisions of the NMFC maintains their right to independent action.

How the Classification Functions

By assuring that a product is grouped with other products having comparable transportation characteristics, the NCC helps provide equitable treatment for the vast array of products moving in commerce. Classification greatly simplifies the process of ratemaking by grouping hundreds of thousands of products moving in commerce into 18 published classes. As the ICC said in Classification of Canned Goods, 98 ICC, 166, 176: 'Classification is largely a matter of comparison of all commodities that move as freight and the assignment of ratings such that each shall bear its fair share of the transportation burden.'

The importance of this classification function has been recognized recently by Congress: twice in 1994 during its development of legislation entitled Transportation Industry Regulatory Reform Act (TIRRA) and Section 601 of the Federal Aviation

Agency Appropriation Act (FAAAA); and, also, in connection with the ICC Termination Act of 1995. All three pieces of legislation give specific recognition to and support for classification.

Any interested party will be provided, at their request, assistance in completing the information required for submitting a proposed amendment to the NMFC. Guidance with respect to customary Classification terminology and formats is also available. All proponents of changes in the NMFC and parties of record are notified with regard to any action of the Classification Panel or NCC concerning their proposals. The NCC's staff is available to respond to inquiries regarding public meetings, proposals, classification matters for review, dispositions, adjustments or other classification actions, the procedures followed by the National Classification Committee or Classification Panels, and the criteria used in evaluating proposed NMFC provisions.

National Motor Freight Traffic Association Services

Classification Services

- **Research and Development**

The NMFTA has a staff of classification experts that assists the NCC in the maintenance and development of the NMFC. The staff conducts research and analysis of the transportation characteristics of commodities moving by motor carrier. It then presents reports of such research and analysis to the NCC or one of the NCC's Classification Panels for discussion and consideration. The staff conducts research and analysis only at the direction of the NCC or a Classification Panel, or at the request of an individual member carrier.

The staff also conducts research and collects pertinent information in conjunction with docketed proposals for changing the NMFC, and it presents all relevant information to the NCC or a Classification Panel.

The staff is accessible to carriers, shippers and other interested parties seeking technical expertise or other assistance in the development or evaluation of proposals for changing the NMFC. But the staff cannot docket, direct the docketing or recommend the docketing of any classification proposal, and it cannot make any decisions or recommendations with

respect to the disposition of any classification proposal.

- **Classification Interpretation**

The NMFTA's staff of classification experts is available to carriers, shippers and other interested parties who have questions concerning the proper interpretation of the NMFC. Although the opinions expressed by the staff are informal, they generally are accepted as expert advice in such matters. The procedures used in giving interpretations follow principles developed in numerous judicial and administrative proceedings. All inquiries must include full details pertaining to the problem. Interpretation requests involving the classification of a specific commodity must include all relevant information on the nature of that commodity, such as its use, material construction and form of shipment, as well as the manner in which it is represented for sales purposes and recognized in the industry.

- **Packaging**

The NMFTA has a Packaging Engineer on staff who, along with other staff members, assists the transportation community in packaging matters. The packaging staff answers questions and resolves problems relating to the packaging of commodities. It keeps apprised of new packaging materials and methods and, where requested, works with carriers, shippers, packaging manufacturers and other packaging professionals to develop improved packaging designs and techniques. The staff's Packaging Engineer also provides technical expertise to the NCC and the Classification Panels in connection with docketed classification proposals involving packaging.

- **Classification Participation and NMFTA Membership**

The staff is responsible for processing membership applications from prospective members of the Association, furnishing members a "Certificate of Participation," maintains the Association's membership files and overseeing the Association's annual participation process. It is available to carriers, shippers and other interested parties who have questions concerning NMFTA membership and NMFC participation. Membership and participation information is also available at 1-800-539-5720.

Educational Services

In response to carrier and shipper requests, NMFTA has instituted a series of workshops to help inform those who use the National Motor Freight Classification. "HOW TO USE THE NATIONAL MOTOR FREIGHT CLASSIFICATION" workshop consists of a one-day, hands on, intense training covering the entire publication. The workshop will help participants to understand the Classification publication and the Classification system, resulting in quick location of commodity descriptions and packaging requirements, resulting in more efficient shipping practices. Workshops are scheduled throughout the United States. For more information see the Web site or call Bill Mascaro at 703-838-1834.

Legal Services

NMFTA has an attorney on its staff who provides legal advice on classification matters and responds to questions regarding the Interstate Commerce Act and other related laws or regulations

Standard Carrier Alpha Code (SCAC) and Standard Point Location Code (SPLC)

To better enhance efficiency in the transportation industry, NMFTA has developed two standard code sets to facilitate computerization of rating, routing, auditing and Electronic Data Interchange (EDI). The SCAC is a unique, two- to four-letter, alphabetic code that identifies a transportation company (trucking, railroad, airline, etc.). It is the recognized transportation-company identification code used in the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12 and in UN EDIFACT-approved transaction sets for EDI. The U. S. Department of Defense and the General Services Administration require the use of the SCAC on government bills of lading and tenders of service. The U. S. Customs Service has mandated the use of the SCAC as the first four digits of the bill of lading number in their Automated Commercial System for tracking imported and exported freight. Many commercial shippers and receivers also utilize the SCAC in their freight bill audit and payment systems and, therefore, require that their carriers be assigned a code.

The SPLC is a unique numeric code that identifies each point in the U. S., Canada, Mexico and Puerto Rico where freight originates or is received. A point is defined as a particular city, town, village, community, railroad station, airport, industrial plant or other area that is treated as a unit for transportation purposes, including the application of rates. The code numbers are so constructed as to identify the point with its geographic location. The SPLC is used in EDI applications, mileage guides, etc.

The SCAC and SPLC are available by subscription from the NMFTA as printed directories and electronically on magnetic tape and CD ROM.

Further Information

Contact NMFTA by calling 703-838-1810 or on the Internet at <http://www.erols.com/nmfta/>. E-mail may be directed to welsh@nmfta.org.

National Classification Committee

2200 Mill Road

Alexandria, VA 22314

(703) 838-1810

DESCRIPTION OF PROCEDURES GOVERNING THE AMENDMENT OF THE NATIONAL MOTOR FREIGHT CLASSIFICATION

Proposal Forms

The National Classification Committee (NCC) will provide a suitable form for proposals to amend the provisions of the National Motor Freight Classification (NMFC) and it may require the form to be fully executed by the proponent. The submission of advertising literature, samples, charts, exhibits or written statements, in addition to the proposal form, is encouraged.

Classification Panels

Classification Panels consist of 15 to 25 carrier members of the National Classification Committee and are empowered to:

- (a) Evaluate classification provisions to determine what action, if any, should be taken.
- (b) Direct research studies on the transportation characteristics of commodities that are shipped by motor carriers.
- (c) Docket proposals to amend the National Motor Freight Classification.
- (d) Consider and dispose of proposals to amend provisions of the NMFC.

Proposals

- (a) Each proposal to establish a new item or to amend existing descriptions of articles, packaging requirements, classes, rules or regulations in the Classification, must be filed in writing. Proposals may be filed by the NCC, a Classification Panel and by any individual, firm, corporation or association having an interest in the contents of the National Motor Freight Classification; provided, however, that no employee of the National Classification Committee may docket or vote upon any proposal.
- (b) Each proposal will be placed on the first available docket and published in a bulletin describing the proposal. Docket Bulletins will be mailed to proponents of proposals, to all members of the NCC and to docket subscribers.
- (c) Upon request, the name of the proponent of a proposal will be promptly divulged to any person. In the case of a proposal docketed by the NCC or a Classification Panel, the member moving to docket, the member seconding the motion and a tally of the votes will be promptly divulged to the inquiring party.
- (d) Upon request, the Secretary of the National Classification Committee promptly will divulge to any person the vote cast by any NCC or Panel member on any docketed proposal.
- (e) Anyone desiring to be made a Party of Record to a docket proposal, in order to receive all dispositions or notices pertinent to the proposal, and to have the right to appeal the Classification Panel's decision, must communicate that interest in writing to the National Classification Committee, 2200 Mill Road, Alexandria, Virginia 22314, prior to the meeting. Proponents of proposals and individuals attending a meeting are registered as Parties of Record; therefore, nothing additional in writing is required.
- (f) NCC or Panel members are prohibited from discussing, considering or approving rules to limit liability.

Public Meetings

Public meetings will be conducted by a Classification Panel or by the National Classification Committee, as the case may be, on docketed proposals, appeals, and other classification matters, and may be conducted by subcommittees when considering matters pertaining to changes in the Classification. Any person may participate in public meetings conducted on classification matters and may be granted an allotment of time for discussion or oral presentation. Persons may participate individually or collectively through leagues, associations or any other organized group. Individuals who desire to submit written statements for consideration by the National Classification Committee or a Classification Panel are requested to send a copy to the National Classification Committee, 2200 Mill Road, Alexandria, Virginia 22314, so that it is received prior to the meeting date.

Formal minutes of public meetings and a record of the maker and seconder of every motion respecting a docketed proposal and the vote of all members thereon will be maintained. Note taking or sound recordings are permitted. Notice of public meetings, setting forth the time, date and location of the meeting will be published in the Docket Bulletin.

Disposition of Proposals

- (a) Final disposition of proposals to amend the National Motor Freight Classification will be made by the 120th day after docketing, except that, in unusual circumstances such period may be extended, if relief is granted by the Department of Transportation Surface Transportation Board.
 - (b) In acting on a docketed proposal a Classification Panel may: approve the proposal as docketed; disapprove the proposal; modify and approve or disapprove the proposal; defer disposition of the proposal to the next meeting of the Panel providing such deferral would not result in final disposition beyond 120 days; refer the proposal to the National Classification Committee for consideration and disposition.
- Absent an appeal or reconsideration, the disposition of a proposal by a Classification Panel will be final.

Appeals

- (a) An appeal to the National Classification Committee of the disposition of a proposal by a Classification Panel may be filed by: The proponent of the proposal; Any party of record to the proposal; Eight members of the NCC; Representatives of fifteen motor carriers participating in the National Motor Freight Classification.
- (b) An appeal must be filed in writing with the National Classification Committee within 30 days from the date of the disposition by the Classification Panel.
- (c) The National Classification Committee, acting at public meetings, will decide the appealed disposition of a Classification Panel by voting to: Approve the action of the Classification Panel; Disapprove the action of the Classification Panel. If the NCC disapproves the Panel's action, the members may vote to: Approve the proposal as Docketed; Disapprove the proposal as Docketed; Modify the proposal and approve or disapprove the proposal as Modified by the National Classification Committee.
- (d) The National Classification Committee's disposition of an appeal of a Classification Panel decision or a docketed proposal referred to the National Classification Committee by a Classification Panel will not be appealable.

Notice of Disposition and Publication

Notice of National Classification Committee and Classification Panel dispositions of proposals, decisions on classification matters, and NCC actions on appeals, will be given to the proponents, appellants, parties of record, members of the National Classification Committee, and subscribers to the Docket Bulletin by U.S. Mail. Information on classification actions also will be published in Transport Topics, an industry newspaper.

The Secretary of the National Classification Committee will instruct the Publishing Agent of the National Motor Freight Classification of changes to be made in the NMFC in accordance with final disposition of proposals.

Reconsideration

- (a) Any person who has additional information not previously available or considered which may affect the basis upon which a proposal was dispositioned or who is aware of an error in the facts of record, may, not later than 15 days after the date of publication in the National Motor Freight Classification, file with the Secretary of the NCC a request in writing for reconsideration, together with a statement of the reasons therefor.
- (b) A request for reconsideration will be forwarded to all members of the NCC or the Classification Panel, who will vote by written ballot to determine whether or not reconsideration will be granted.
- (c) If a majority of the NCC or the Classification Panel, not later than 25 days after the date of publication in the NMFC, votes to grant reconsideration, the Secretary will instruct the Publishing Agent of the National Motor Freight Classification to postpone the effective date of the involved provisions.
- (d) Upon reconsideration, the NCC or the Classification Panel, will have the same powers and duties as in the case of initial decisions or appeals, and will be subject to the same public meeting requirements. The disposition of a Panel on reconsideration will be appealable. The disposition of the National Classification Committee on reconsideration will be final.

Amendments Without Docketing

Amendments to the Classification required by law or by order of a regulatory body may be made without docketing or observance of the procedures herein. Notice of such changes will be published in the Docket Bulletin and Transport Topics. Amendments solely for removal of outdated or irrelevant terminology or to correct printing errors may be made without docketing or notice.

Independent Action

Neither the actions of Classification Panels nor the actions of the National Classification Committee preclude the right of motor carriers to independently maintain exceptions to any or all of the provisions of the National Motor Freight Classification.

NATIONAL CLASSIFICATION COMMITTEE DENSITY GUIDELINES	
Minimum Average Density (in pounds per cubic foot)	Class
50	50
35	55
30	60
22.5	65
15	70
13.5	77.5
12	85
10.5	92.5
9	100
8	110
7	125
6	150
5	175
4	200
3	250
2	300
1	400
Less than 1	500

The density guidelines are used in the assignment of classes where average density is representative or reflective of the range of densities exhibited. Furthermore, the density/class relationships set forth in the guidelines presume that there are no unusual or significant stowability, handling or liability characteristics, which would call for giving those characteristics additional or different "weight" in determining the appropriate class.

8/3/99

NATIONAL CLASSIFICATION COMMITTEE VALUE GUIDELINES	
Class	Maximum Average Value Per Pound
50	\$ 0.85
55	\$ 1.68
60	\$ 2.54
65	\$ 4.22
70	\$ 6.37
77.5	\$ 8.49
85	\$ 12.75
92.5	\$ 16.98
100	\$ 21.23
110	\$ 23.36
125	\$ 26.54
150	\$ 31.87
175	\$ 37.18
200	\$ 42.49
250	\$ 53.11
300	\$ 63.72
400	\$ 84.97
500	\$106.22

Unlike density, value per pound is not in and of itself a separate transportation characteristic. Pursuant to the decisions in Ex Parte No. MC-98 (Sub-No. 1), *Investigation Into Motor Carrier Classification*, value per pound is only one component of the liability characteristic. Accordingly, information relating to value per pound must be analyzed in conjunction with the other liability elements, i.e., susceptibility to theft, liability to damage, propensity to damage other freight, perishability, and propensity to spontaneous combustion or explosion. Where those other liability elements are found to present no substantial problems or concerns, value per pound is of less significance.

Consequently, the value guidelines cannot be viewed as forming a matrix with the density guidelines, where one is measured against the other to arrive at the appropriate class representing an "average" of the two factors. Rather, the value guidelines provide an indication of the upper value limits associated with the various classes, as determined using the density guidelines.

8/3/99

National Classification Committee

2200 Mill Road
Alexandria, Virginia 22314

PROPOSAL FORM TO AMEND THE NATIONAL MOTOR FREIGHT CLASSIFICATION

Please respond to all questions as completely as possible. You are encouraged to submit supporting statements of position, tables, exhibits, brochures, photographs or samples; if practical.

Please sign the proposal form and label all attachments clearly. In accord with the legal provisions of the Motor Carrier Act of 1980, the name of the proponent of a proposal will be released upon request. If you have any questions regarding this form or require technical assistance, please contact our staff at (703) 838-1810.

INDIVIDUAL'S NAME _____ TITLE _____

COMPANY NAME _____

STREET ADDRESS _____

CITY _____ STATE _____ ZIP _____

TELEPHONE _____ FAX NO. _____

SIGNATURE _____ DATE _____

1) Brief description of commodity:

2) Trade Name or Advertising nomenclature:

3) Specify the precise material construction or chemical consist of the commodity. Please include the material construction of all facings, backings, housings or component parts. Please list all materials or ingredients in order of predominance, with percentages if possible.

4) Please state if the product, as shipped, is finished, or if further manufacturing processes, forming or shaping operations are necessary.

5) (A) Name and address of Manufacturer or Shipper (when proponent is carrier).

(B) Name and address of Major Competitor (when proponent is manufacturer).

TRANSPORTATION CHARACTERISTICS

1) Claims Experience (Motor Common Carrier Shipments)

- a) Number of claims (one year period) _____ Dollar amount of claims _____
- b) Percentage of claims filed by shipper (consignor) _____ % receiver (consignee) _____ %
- c) Total number of shipments made (one year period) _____
- d) Total amount of freight paid (one year period) _____
- e) If the information is available, please indicate the percentage of claims for:
loss _____ damage _____

2) Is the commodity subject to U.S. Department of Transportation Regulations governing hazardous materials?
Yes _____ No _____ If yes, what DOT commodity description and label are required? _____

3) Does the commodity require temperature control? _____

4) Is commodity solid _____ liquid _____ paste _____ granular _____ dry _____

5) If your product is shipped disassembled or taken apart in any manner, please provide details with respect to the shipping containers required to transport one product.

6) If the shipping package is neither rectangular nor cylindrical, please attach a diagram or photograph.

7) Does commodity have any projections, edges or extensions which are not enclosed by the package?
Yes _____ No _____ If yes, please describe? _____

8) Does commodity require floor loading or special placement in trailer? Yes _____ No _____
If yes, please describe _____

9) Is freight palletized? Yes _____ No _____ If yes, are pallets unitized? Yes _____ No _____

10) Does the commodity require more than one person to load or unload? Yes _____ No _____

11) Is the product as packaged for shipment, compatible with mechanical handling equipment?
Yes _____ No _____ If yes, what type? _____

12) Are there precautionary markings or instructions on the shipping packages or shipping documents?
Yes _____ No _____ If yes, please state what they are: _____

13) Is the commodity top heavy or does it have a balance point which requires special handling? Yes _____ No _____

14) Does the commodity require any special handling in loading or unloading? Yes _____ No _____
If yes, please explain what care and attention is necessary _____

15) Does the commodity require a special orientation, such as being loaded in an upright position? Yes _____ No _____
If yes, please describe _____

16) Is the commodity, as tendered for shipment, capable of being stacked in conventional trailers?
Yes _____ No _____ If yes, what is the stack height? _____

17) Is commodity magnetically sensitive? Yes _____ No _____

18) Does commodity contain magnetic materials? Yes _____ No _____

19) If commodity is wheeled, does the article rest on its wheels during shipment? Yes _____ No _____

20) Does commodity require blocking or bracing for safe transportation? Yes _____ No _____

TRANSPORTATION CHARACTERISTICS

Please utilize **exact** figures, including all fractions. Please do not round off the numbers.

[illegible]

* To determine the density (pounds per cubic foot), multiply the three largest straight line dimensions (in inches) of the article as tendered for shipment. Divide by 1728 to determine the cubic footage. Then divide the weight by the ascertained cubic feet. To determine the cubic feet of space occupied by a drum, pail or other cylindrical container, square the greatest diameter and multiply that result by the height or length. If the package is of irregular shape, use the largest dimensions, including all projections.

IF YOU WISH ANY ASSISTANCE IN THE COMPLETION OF THIS FORM, PLEASE CONTACT THE NCC STAFF AT (703) 838-1810.

PRESENT CLASSIFICATION: (Show specific NMFC item number, and appropriate sub number, description and class)

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>CLASS</u>
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PROPOSED AMENDMENTS: (Show description and classes as you propose them to be established in the Classification.)

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>CLASS</u>
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JUSTIFICATION: Please state the reasons for the proposed changes:

ATTACHMENT

B

**NATIONAL CLASSIFICATION
COMMITTEE
POLICIES AND DIRECTIVES
PERTAINING TO THE NATIONAL MOTOR
FREIGHT CLASSIFICATION**

Revised February 8, 2000, by the
National Classification Committee
at its open meeting in
Fort Lauderdale, Florida

National Classification Committee Policies and Directives Pertaining To the National Motor Freight Classification

I. National Classification Committee Policies

Following are the policies of the National Classification Committee (NCC or Committee) for maintaining the descriptions, classes, packaging requirements and specifications, rules, and other provisions of the National Motor Freight Classification (Classification). These policies are intended to be used by the NCC and its Classification Panels on a discretionary basis; but the Committee and Panels must, at all times, act in full accord with the National Motor Freight Classification Agreement, the Motor Carrier Act of 1980, and all other applicable laws and regulations.

A. Transportation Characteristics - When evaluating commodities in connection with the assignment of classes, the NCC and its Classification Panels must consider the four transportation characteristics of density, stowability, handling and liability, as set forth in the decisions in Ex Parte No. MC-98 (Sub-No. 1), *Investigation Into Motor Carrier Classification*.

1. Density - It has been well established through numerous administrative decisions that, absent any unusual or significant stowability, handling or liability characteristics, density is of prime importance in the assignment of classes. The NCC has developed density guidelines that are based on the precedent of pertinent administrative decisions as well as the Committee's own past dispositions. The present guidelines are attached hereto.

The density guidelines are used in the assignment of classes where the average density of a particular commodity or group of commodities is representative or reflective of the range of densities exhibited by that commodity or commodity group. Furthermore, the density/class relationships set forth in the guidelines presume that the other three transportation characteristics are neutral, i.e., that there are no unusual or significant stowability, handling or liability characteristics, which would call for giving those characteristics additional or different "weight" in determining the appropriate class.

Commodities or commodity groups exhibiting a wide density range not accurately reflected by a single, overall average density may be assigned density-based classes; particularly where there are no unusual or significant stowability, handling or liability characteristics and where there is no other feasible means of effectively narrowing the range. And where densities are distributed throughout the range, commodities or commodity groups may be assigned classes predicated on a full density scale. In this regard, unless a substantial percentage of the densities involved exceeds 20 pounds per cubic foot, full-scale density classifications should generally provide the following standard progression:

Less than 1.....	400
1 but less than 2.....	300
2 but less than 4.....	250
4 but less than 6.....	150
6 but less than 8.....	125
8 but less than 10.....	100
10 but less than 12.....	92.5
12 but less than 15.....	85
15 or greater	70

When a substantial percentage of the densities involved exceeds 20 pounds per cubic foot, full-scale density classifications should generally provide the following, alternative standard progression:

Less than 1.....	400
1 but less than 2.....	300
2 but less than 4.....	250
4 but less than 6.....	150
6 but less than 8.....	125
8 but less than 10.....	100
10 but less than 12.....	92.5
12 but less than 15.....	85
15 but less than 22.5.....	70
22.5 but less than 30.....	65
30 or greater	60

Where the NCC or a Classification Panel directs that full-scale density provisions be developed or docketed, such provisions will provide the progression of density groups set forth herein—including references to Item (Rule) 170, the inadvertence clause, and Item (Rule) 171, the "bumping" privilege—unless the NCC or Classification Panel instructs otherwise.

2. Stowability - The majority of shipments tendered to general commodities carriers are comprised of packaged freight that stows well in carriers' equipment. Some articles, however, present additional stowability considerations, including, but not limited to: 1) loading restrictions necessary to comply with government regulations or carrier policies, such as coloaded prohibitions in connection with the transportation of hazardous materials; 2) loading restrictions arising from practical considerations, such as excessive weight or excessive length; 3) difficulty in loading other freight adjacent to the commodity due to protrusions and the like; 4) the inability to tier the commodity in carriers' equipment; and 5) the inability to load other freight on top of the commodity due to the absence of load-bearing surfaces.

In evaluating docket proposals or classification reports involving the assignment of classes, the NCC and Classification Panels must examine stowability and its impact on the transportability of the involved commodity or commodity group. Unusual or significant stowability considerations may warrant deviation from the Committee's density guidelines. In this connection, where loaded density provides a quantifiable measure of the stowability problems associated with a particular commodity or commodity group, such loaded density is to be evaluated by the Committee or Panel in relation to the density guidelines.

3. Handling - As with stowability, most freight tendered to general commodities carriers does not present substantial handling problems. The packaged freight that comprises the majority of shipments is readily handled by dock personnel, often with the aid of mechanical handling equipment. Some articles, however, due to their size, weight, configuration, hazardous nature, fragility, etc., pose additional handling difficulties, whether or not mechanical equipment is used, and may necessitate special care or attention.

In evaluating docket proposals or classification reports involving the assignment of classes, the NCC and its Classification Panels must consider ease or difficulty of handling and the impact of such on the transportability of the involved commodity or commodity group. Unusual or significant handling characteristics may warrant deviation from the Committee's density guidelines.

4. Liability - Pursuant to the MC-98 (Sub-No. 1) decisions, the liability characteristic includes susceptibility to theft, liability to damage, propensity to damage other freight with which transported, perishability, propensity to spontaneous combustion or explosion, and value per pound. Value per pound provides a measure of carriers' potential liability, and the NCC has established value guidelines to assist in the assignment of classes. The present guidelines are attached hereto.

It is the NCC's policy that the value guidelines be reviewed biennially at the Committee's summer meeting to compensate for the impact of inflation. This is accomplished using the Producer Price Index (PPI).

Unlike density, however, value per pound is not in and of itself a transportation characteristic. As set forth in MC-98 (Sub-No. 1), it is only one component of the liability characteristic, and accordingly, information relating to value per pound must be analyzed in conjunction with an analysis of the other liability elements. Where the other liability elements are found to present no substantial problems or concerns, value per pound is of less significance.

Consequently, the attached value guidelines cannot be viewed as forming a matrix with the density guidelines, where one is measured against the other to arrive at the appropriate class. Rather, the value guidelines provide an indication of the upper value limits associated with the various classes, as determined using the density guidelines.

As with stowability and handling, where unusual or significant liability characteristics are revealed, the NCC may deviate from the density guidelines.

- B. Class Floor and Ceiling - The NCC has established class 50 as the lowest class in the Classification and class 500 as the highest. (For a complete listing of the classes assigned in the Classification, as established by the NCC, see the attached density and value guidelines.)
- C. Classification Updating - The provisions of the Classification are to be kept up-to-date with respect to the commodities moving in commerce. Included in this policy is the: 1) establishment of classifications for new commodities; 2) amendment of existing classifications to reflect changes in transportation characteristics; 3) establishment of classifications for commodities classed by analogy, in keeping with the requirements of Item (Rule) 421 of the Classification; and 4) establishment or amendment of classifications for commodities that are a source, or potential source, of interpretation disputes so as to eliminate or avoid those disputes.
- D. Clarification, Simplification and Uniformity - Generally speaking, the policies grouped under this heading pertain to "housekeeping" matters necessary to improve the usability of the Classification and to ensure compliance with regulations. The following activities are to be conducted to implement these policies: 1) adding commonly used terminology to item descriptions to identify commodities (including trade names, properly noticed, where a commodity is essentially known by a trade name); 2) replacing outdated terminology in item descriptions with current terminology; 3) combining item descriptions embracing related commodities, including the combining of subclassifications having the same class; 4) eliminating excess or unclear wording, and employing language that is concise and clear as to intent; 5) structuring item descriptions so as to foster clarification and simplification; 6) listing item descriptions alphabetically by noun or compound noun, as the case may be; 7) replacing broad, indistinct nouns (e.g., assemblies, devices, units) with more specific, definitive nouns wherever appropriate and practicable; 8) listing items under appropriate generic headings; 9) providing uniformity in provisions addressing the same or similar circumstances published in conjunction with different items; and 10) removing obsolete provisions.
- E. Classification Index - The index is typically the Classification user's "first step" when determining the applicable provisions. Accordingly, the NCC has developed policies to improve the index and, thus, the usability of the Classification. As index listings are generally derived directly from the item descriptions, these policies are closely related to those established for "Clarification, Simplification and Uniformity." The policies are as follows:
 - The index should list commodities by their commonly recognized names in addition to their technically correct names. Where a commodity is essentially known by a trade name, the index should include that trade name. (The trade name should be properly noticed.)
 - Where commodities may be looked up in more than one way, the index should be cross-referenced. This includes adding index listings that are keyed to adjectives as well as to nouns; particularly where the noun is broad and indistinct.

- Index listings should be as specific and definitive as practicable.
- Index listings that can be consolidated should be consolidated, and unnecessary listings should be removed.

F. Packaging - The NCC is to establish packaging rules and specifications as necessary to ensure that freight is adequately protected in the motor-carrier environment, and can be handled and stowed in a manner that is reasonably safe and practicable.

In considering docket proposals or classification reports involving packaging, the NCC and its Classification Panels are to evaluate prospective packagings against established performance criteria, as reflected by the packaging provisions published in the Classification. Generally speaking, prospective packaging materials or methods are considered consistent with NCC packaging policy when their performance is demonstrated to be as good as, or better than, currently authorized materials or methods.

G. Rules - The rules published in the Classification are to be: 1) consistent with current law as well as applicable decisions of the Surface Transportation Board of the U. S. Department of Transportation (STB) and its predecessor, the Interstate Commerce Commission (ICC); 2) consistent with NCC precedent and current motor carrier practice; 3) clear as to intent; and 4) otherwise up-to-date.

H. Other Policies -

1. Members of the Committee are not to divulge the identity (number) of a Classification Panel or the names of individual members of a Classification Panel prior to the meeting of that Classification Panel.
2. Beginning with Docket 2000-1, members of the Committee may furnish copies of classification reports or analyses to any interested party. However, the NCC will continue to honor its commitment to protect the confidentiality of commercially sensitive information that it receives from shippers and others on the assurance, expressed or implied, that disclosure will be limited. Therefore, confidential information not included in the reports or analyses, e.g. market data and data on specific, identified products of a particular shipper, the dissemination of which might be detrimental to a company that has chosen to participate in the classification process, should not be released. Similarly, privileged information or material, such as attorney-client work products prepared by Counsel, should not be released.

II. Role of the Staff

Pursuant to the aforementioned policies, and in strict accord with the Motor Carrier Act of 1980 and other applicable laws and regulations, the NCC charges its staff with three primary responsibilities: 1) to receive on behalf of the NCC information from shippers, carriers and other sources pertaining to commodities moving in commerce, including their transportation characteristics, as well as packaging and other classification-related matters; 2) to report that information to the NCC or one of its Classification Panels for their consideration and appropriate action; and 3) to be responsive to directives from the NCC and its Classification Panels, as well as from individual member carriers, in connection with classification matters.

- A. Classification Reports - Where the staff receives information indicating that the classification of a particular commodity or group of commodities is inconsistent with NCC policies or precedent, pertinent STB/ICC decisions, current motor carrier practice, or the law, the NCC directs the staff to report on such commodity or commodity group. The reports are to relate the information received to the NCC's policies. Density data are to be compared to the NCC's density guidelines, and stowability, handling and liability must be analyzed with respect to their impact on the transportability of the involved commodity or commodity group and related to applicable NCC and STB/ICC precedent. In connection with stowability, reports are to include information regarding loaded density, where relevant, and how that density relates to the density guidelines.

To enable the staff to adequately perform this function, the staff is directed to keep apprised of new commodities and technologies, as well as changes in existing commodities.

The staff is also directed to report on classification descriptions that are inconsistent with NCC policies or precedent respecting clarification, simplification or uniformity. Reports pertaining to such "housekeeping" matters may include possible language that would bring the involved classification description(s) into conformance with NCC policies and precedent. And the staff shall report on provisions published in the Classification that are indicated to be obsolete.

The NCC directs the staff to report on rules published in the Classification where such rules are inconsistent with current law, applicable STB/ICC decisions, NCC precedent or current motor carrier practice, or where they lack clarity or otherwise require updating. Reports of a clarification nature may include possible clarifying language for consideration.

Generally, reports prepared by the staff are to be presented to any one of the NCC's Classification Panels. It is the Panel's responsibility to determine what action, if any, is appropriate. Upon consideration of a classification report, the Panel may vote to: docket a proposal; direct the staff to institute a research investigation (project) into the transportation characteristics of the involved commodity(ies)*; or refer the matter to the full NCC. It may also decide to take no further classification action.

* Research investigations (projects) may also be initiated at the direction of an individual member carrier.

The staff shall advise the full NCC of matters having broad-based interest or implications for the Classification, such as those involving significant STB decisions or changes in law.

All determinations respecting the appropriate course of action in connection with staff-prepared reports rests solely with the NCC or Classification Panel, as the case may be. The staff may not docket, direct the docketing or recommend the docketing of any classification proposal, nor may the staff on its own initiative conduct research investigations on commodities. Indeed, without expressed, specific direction or instruction from the Committee or Panel, the staff may not act in any way on the reports.

Where research is directed, the staff is to make every effort to identify and contact potential shippers of the involved commodity(ies). It is to consult all available sources in this regard, including the *Thomas Register of American Manufacturers* and the NCC's files. The staff shall also contact trade associations to request their assistance in identifying potential shippers and obtaining relevant information.

- B. Packaging - The NCC directs the staff to: 1) receive information pertinent to the efficacy of currently authorized packaging materials or methods; 2) keep apprised of new packaging materials and methods; and 3) develop, in cooperation with shippers, packaging manufacturers and packaging professionals, improved packaging.

The staff is further directed to report problems and other information concerning packaging to any one of the Classification Panels or, with respect to packaging matters having industry-wide interest or implications, to the Packaging Subcommittee of the NCC.

- C. Analysis of Classification Proposals - The NCC directs the staff to collect pertinent information in conjunction with docketed proposals, including proposals under reconsideration and appealed dispositions. The staff is further directed to include all such available information in written analyses, which are to be submitted to the NCC or its Classification Panels, as the case may be, for the Committee's or Panel's consideration and action.

The analyses are to relate the information of record to the NCC's policies, and analyses of proposals involving the assignment of classes are to include a discussion of all four transportation characteristics, as set forth in the Ex Parte No. MC-98 (Sub-No. 1) decisions. Density data are to be compared to the NCC's density guidelines, and stowability, handling and liability must be analyzed with respect to their impact on the transportability of the involved commodity or commodity group and related to applicable NCC and STB/ICC precedent. In connection with stowability, proposal analyses are to include information regarding loaded density, where relevant, and how that density relates to the density guidelines.

The staff, however, is not to make any decisions or recommendations with respect to the disposition of any classification proposal.

- D. Other NCC Directives to the Staff -

1. Providing Assistance to Interested Parties - The staff shall assist interested parties, including shippers, in the development of classification proposals or amendments

(modifications) to proposals already docketed, when so requested. And with respect to proposals and other classification matters, the staff is directed to make itself available to receive on behalf of the NCC comments and statements of position from interested parties, answer questions from interested parties concerning classification principles and procedures, and be responsive to requests for information pertaining to the background of a proposal or the facts of record. In this connection, beginning with Docket 2000-1, the staff shall provide copies of classification reports and analyses to any interested party, upon request.

The staff, however, is not to make any decisions or recommendations with respect to the disposition of any classification proposal.

2. Providing Notice to Interested Parties - The public should be as fully informed as practicable with regard to the National Motor Freight Classification and the work performed by, or on behalf of, the NCC. Toward that end, the staff shall provide notice of proposals and other classification matters in accord with the National Motor Freight Classification Agreement. At a minimum, notice shall be given to all shippers who have expressed an interest in the matter being considered, including shippers who have participated in NCC research by submitting relevant information, and trade associations that may represent shippers of the involved commodity(ies).
3. Classification Interpretations - On request of any interested party and upon receipt of the requisite information, the staff shall research and issue nonbinding, informal opinions (interpretations) as to the classification provisions applicable to any particular commodity.
4. Defending Classifications and Interpretations - The staff shall prepare and submit defenses to appropriate regulatory or judicial bodies where published classification provisions, or interpretations, are contested. The staff shall also report to the NCC the status of these administrative or judicial proceedings at the Committee's regularly scheduled meetings.
5. Miscellaneous -
 - a. In preparing NCC docket bulletins, the staff may suggest technical amendments to proposals, provided such amendments are nonsubstantive and do not alter the intent or spirit of the proposal. These amendments include bringing proposals into conformance with accepted convention regarding Classification language and format.
 - b. The staff is directed to issue and publish whatever dispositions may be established by vote of the NCC or its Classification Panels.
 - c. The staff is not to divulge the identity (number) of a Classification Panel or the names of individual members of a Classification Panel prior to the meeting of that Classification Panel.

- d. The NCC will continue to honor its commitment to protect the confidentiality of commercially sensitive information that it receives from shippers and others on the assurance, expressed or implied, that disclosure will be limited. Therefore, the staff is not to release confidential information not included in classification reports or analyses, e.g., market data and data on specific, identified products of a particular shipper, the dissemination of which might be detrimental to a company that has chosen to participate in the classification process. Similarly, the staff is not to release any privileged information or material, such as attorney-client work products prepared by Counsel.
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At least once a year, the NCC shall review these policies and directives, including the density and value guidelines, in view of current NCC dispositions, STB decisions, changes in law, and the like. When the staff receives information indicating that any of the policies or directives are no longer consistent with NCC precedent, STB decisions or the law, or otherwise may be in need of revision or updating, the staff is directed to bring such information to the NCC's attention for the Committee's review.

NATIONAL CLASSIFICATION COMMITTEE DENSITY GUIDELINES	
Minimum Average Density (in pounds per cubic foot)	Class
50	50
35	55
30	60
22.5	65
15	70
13.5	77.5
12	85
10.5	92.5
9	100
8	110
7	125
6	150
5	175
4	200
3	250
2	300
1	400
Less than 1	500

The density guidelines are used in the assignment of classes where average density is representative or reflective of the range of densities exhibited. Furthermore, the density/class relationships set forth in the guidelines presume that there are no unusual or significant stowability, handling or liability characteristics, which would call for giving those characteristics additional or different "weight" in determining the appropriate class.

NATIONAL CLASSIFICATION COMMITTEE VALUE GUIDELINES	
Class	Maximum Average Value Per Pound
50	\$ 0.85
55	\$ 1.68
60	\$ 2.54
65	\$ 4.22
70	\$ 6.37
77.5	\$ 8.49
85	\$ 12.75
92.5	\$ 16.98
100	\$ 21.23
110	\$ 23.36
125	\$ 26.54
150	\$ 31.87
175	\$ 37.18
200	\$ 42.49
250	\$ 53.11
300	\$ 63.72
400	\$ 84.97
500	\$106.22

Unlike density, value per pound is not in and of itself a separate transportation characteristic. Pursuant to the decisions in Ex Parte No. MC-98 (Sub-No. 1), *Investigation Into Motor Carrier Classification*, value per pound is only one component of the liability characteristic. Accordingly, information relating to value per pound must be analyzed in conjunction with the other liability elements, i.e., susceptibility to theft, liability to damage, propensity to damage other freight, perishability, and propensity to spontaneous combustion or explosion. Where those other liability elements are found to present no substantial problems or concerns, value per pound is of less significance.

Consequently, the value guidelines cannot be viewed as forming a matrix with the density guidelines, where one is measured against the other to arrive at the appropriate class representing an "average" of the two factors. Rather, the value guidelines provide an indication of the upper value limits associated with the various classes, as determined using the density guidelines.

ATTACHMENT

C

Classification Workshops

This workshop will teach you how to effectively use the National Motor Freight Classification. At this one-day workshop you will learn how to:

Understand the Classification, Packaging, and Transportation of Your Products

The *National Motor Freight Classification (NMFC)* is the recognized standard of the LTL trucking industry, providing a basis for its freight rates for more than 60 years. The *NMFC* greatly simplifies the process of pricing the transportation of thousands of products moving in today's marketplace by grouping them into one of 18 classes. It provides both carriers and shippers with a standard by which to begin pricing negotiations. **Every major LTL carrier uses the *NMFC*.**

Verify the Classification of Your Products Quickly and Accurately

If your freight charges are predicated on a freight class, this workshop will save you time and money by giving you the ability to quickly and accurately use the *NMFC* to determine your product's description and applicable class. If your shipping is on a freight all kinds (FAK) or contract basis, this workshop can help you verify that the basis of your rates is accurate.

Learn to "Work Smart" in the *NMFC*

At this workshop, you will learn how to:

1. Quickly locate commodity descriptions
2. What the packaging requirements are for those commodities
3. What the headings and indentations used in commodity descriptions mean
4. How to propose a change in a commodity's classification
5. Where to turn for help.



Save Your Company Time and Money

In today's transportation environment, accurate information is vital. A working knowledge of the *NMFC* can provide you with the inside information necessary to save your company time and money and avoid unwanted corrected freight bills.

PLUS, each workshop participant will receive a copy of the current *NATIONAL MOTOR FREIGHT CLASSIFICATION* and a handy reference guide on how to use the *NMFC*.

2000 WORKSHOP SCHEDULE

April 17 _____ Charlotte, NC
May 22 _____ Detroit, MI
May 24 _____ Cleveland, OH
June 9 _____ Newark, NJ
June 12 _____ Minneapolis, MN
June 13 _____ Minneapolis, MN
June 26 _____ Chicago, IL
June 27 _____ Chicago, IL

August 9 _____ Seattle, WA
September 18 _____ Providence, RI
September 19 _____ Boston, MA
September 25 _____ Sacramento, CA
September 27 _____ Ontario, CA
October 16 _____ Chicago, IL
October 17 _____ Chicago, IL

Space is limited so register early to insure availability.
See reverse side for registration information

REGISTRATION FORM

Name _____
Title _____
Company _____
Address _____
City _____ State _____ Zip _____
Phone _____ Fax _____
Workshop Date _____
Workshop Location _____

Please Check One:

(Your registration includes a copy of the current National Motor Freight Classification and a reference guide on how to use the NMFC.)

☐

Registration fee \$225.00

☐

NMFC **Motor Carrier** Participant discounted fee \$175.00
(Please Note – purchase of the NMFC from the American Trucking Associations, Inc. does not constitute participation)

Payment Information:

☐

Bill me (\$10.00 processing fee)

☐

Check Enclosed (payable to NMFTA)

☐

Credit Card

☐

Visa

☐

MasterCard

☐

American Express

Card # _____ Expiration Date _____

Name Printed on Card _____

Credit Card Billing Address _____

City _____ State _____ Zip _____

Signature of authorized card user _____

Return this form to:

National Motor Freight Traffic Association
2200 Mill Road, Alexandria, VA 22314
FAX: 703-683-1094

Workshop locations will be announced approximately 30 days in advance. They will begin at 8:30 a.m. and conclude at approximately 4:30 p.m., with a one-hour break for lunch. The registration fee includes access to the workshop as well as a handy reference guidebook on how to use the NMFC. Transportation, meals and accommodations are not included.

Cancellations received up to seven days before the workshop are refundable. Cancellations received less than seven days before the workshop are not refundable. Substitutions of registrants may be made at any time. The National Motor Freight Traffic Association, Inc., reserves the right to unilaterally change any information contained in this brochure.

Questions? Call 703-838-1834 or 1813

www.erols.com/nmfta

Email: beck@nmfta.org or mascaro@nmfta.org

ATTACHMENT

D

Reply Statement of George M. Beck and Joel L. Ringer

This Reply Statement is submitted jointly by George M. Beck and Joel L. Ringer, Senior Classification Specialists for the National Motor Freight Traffic Association, Inc., 2200 Mill Road, Alexandria, Virginia 22314. We previously submitted a joint Statement in conjunction with the Opening Comments of the National Classification Committee, dated January 29, 1998.

Comments have been filed with the Board suggesting that the activities of the National Classification Committee and the classification-making process are inherently unfair to shippers. The National Small Shipments Traffic Conference and the Health & Personal Care Distribution Conference (Conferences) discuss the classification-making process at some length in an attempt to show an alleged anti-shipper bias. As will be demonstrated, however, the Conferences paint a distorted picture, fraught with inaccuracies and untruths.

Classification Review Matters

The Conferences would have the Board believe that the NCC engages in an "ongoing process of raising Class Ratings."¹ And the first step in this purported nefarious process is listing a commodity in one of the NCC's dockets as a classification review matter.

In reality, there is nothing sinister about classification review matters. They are essentially discussion subjects that are considered by the NCC's Classification Panels at their open, public meetings. Each review matter pertains to a particular commodity or group of commodities and may deal with any classification issue as it

¹ Conferences' Comments, at page 6.

relates to that commodity or commodity group. Discussions can focus on the class(es) assigned, the possible need for clarifying the involved classification provisions to eliminate or avoid interpretation questions, the possible need to update commodity description(s) to better reflect the current nature of the product(s), etc. Review matters are not docket proposals, so the Panel cannot act on them to change the National Motor Freight Classification. But if upon consideration of a review matter the Panel finds that an amendment to the Classification may be warranted, the Panel can vote to docket a proposal to change the Classification.

Review matters can take several forms, but for the most part, they consist of commodity reports and research project reports.

Commodity Reports—

It should surprise no one that the staff of the National Motor Freight Traffic Association regularly hears from shippers, carriers, consultants and other transportation professionals about classification-related problems, or potential problems. Someone has developed a new product, and the Classification does not provide an appropriate description; an article that traditionally was constructed of steel is now being made of aluminum, with significantly different transportation characteristics; a commodity description is less than clear, causing interpretation disputes between shippers and carriers; and so forth. The NCC has the responsibility for maintaining the Classification, and to this end, it has directed the NMFTA's staff to bring these matters before the Classification Panels for consideration. These matters are presented in the form of commodity reports.

A commodity report will state the nature of the classification problem or issue, provide relevant background and historical information, and show the classification provisions involved. Where pertinent, and available, information relating to the products' transportation characteristics²—the basis for all class assignments—is furnished and related to the NCC's policies and guidelines. Upon consideration of a commodity report, the Classification Panel may docket a proposal to change the Classification (to be heard at a future meeting), institute a research investigation (project) to gather further information, or refer the matter to the full NCC for its consideration. The Panel may also decide to take no classification action, in which case the matter dies.

Research Project Reports—

The NMFTA's staff conducts research projects on commodities *only* when expressly directed to do so by the NCC, a Classification Panel or an individual member carrier. The Transportation Consumer Protection Council (TCPC), which has also filed Comments with the Board in this proceeding, refers to a "system of secret investigations."³ But the NCC's research activities are anything but secret.

To help assure that the data obtained through the research projects is representative of the commodities involved, the NMFTA's staff endeavors to contact as many shippers as possible for information pertaining to their products. The NCC's files are carefully reviewed for possible shippers in this regard, as are various publications. One excellent source that is routinely consulted is the *Thomas Register*

² As prescribed by the Interstate Commerce Commission: Density, Stowability, Ease or Difficulty of Handling, and Liability.

³ TCPC's Comments, Reason 5, at page 2.

of *American Manufacturers*, which identifies, and categorizes by commodity or commodity group, approximately 153,000 companies,⁴ including American subsidiaries of foreign companies. Trade associations representing companies that produce or ship the product(s) being researched are often contacted for information and to get the names of additional shippers. In the course of conducting a single research project, it is not uncommon for the NMFTA's staff to survey over 100 companies (sometimes well over).⁵ And shippers who do not respond to our initial contact are generally contacted a second time so that they have every opportunity to participate.

The information obtained through these research projects is presented to the Classification Panels in the form of research project reports. The reports include a discussion of the classification problems or issues involved. They also detail the information obtained through the project, including the transportation characteristics of the involved article(s), and relate that information to the NCC's policies and guidelines. Upon consideration of a research project report, the Classification Panel may docket a proposal (to be heard at a future meeting), opt to continue the research, or refer the matter to the full NCC. The Panel may also decide to take no classification action and discontinue the research.

**Shippers Are Well Informed About Classification Review Matters
And Have Every Opportunity to Participate in Their Consideration**

The Conferences' Comments would lead the Board to believe that shippers are largely kept in the dark with respect to classification review matters. They claim

⁴ Per the Thomas Publishing Company, New York, NY.

⁵ In 1997 alone, the NMFTA's staff contacted over 4,700 shippers in connection with research projects.

shippers are not even informed of the genesis of the matters. "It is not disclosed as to how these Review items were placed on [the] agenda,"⁶ "...the origin of how a commodity came to be noticed for [the review matter] list is not ordinarily made available to the shipping public,"⁷ and "No information is given out as to how [a review matter] got on the agenda or as to why it is on the list."⁸ These statements are untrue.

Review matters are not classification proposals, so there is no proponent name or identity to disclose. But when requested by a shipper or other interested party, the background of a review matter—or, in the words of the Conferences, how a commodity got on the list—is revealed. If, for instance, a review matter stems from carrier reports indicating that the involved commodity exhibits transportation characteristics inconsistent with the presently applicable classification, that information is revealed. Or if a particular commodity classification has been shown to be a source of shipper/carrier interpretation disputes, that information is revealed. Whatever the background, this information is readily given to anyone who requests it so they may know the circumstances that led to the listing of the review matter. In fact, Counsel for the Conferences has on occasion requested, and received, such information.

Just as they can with classification proposals, under the NCC's procedures, shippers and other parties having an interest can directly participate in the handling of

⁶ Conferences' Comments, at page 8.

⁷ Conferences' Comments, at page 9.

⁸ Conferences' Comments, at page 12.

any review matter. And as with proposals, the shipping public is kept well informed as to where and when review matters are to be considered.

All review matters—commodity reports, research project reports, packaging reports, whatever—are considered by the NCC's Classification Panels at their open, public meetings. Anyone with an interest is welcome to attend these meetings and take part in any discussion. If it is not possible to appear in person, interested parties may still submit written statements.

Although they are not proposals, review matters are nonetheless noticed in the NCC's dockets—listed by commodity—so anyone who might have an interest can know ahead of time where and when the discussion will take place and make arrangements to participate. Publicity is also given in the trucking industry's newspaper, *Transport Topics*, as well as on the Internet at the NMFTA's Web Site.

The numerous shippers contacted through the NCC's research efforts know well in advance of any review matter discussion that the NCC is examining the transportation characteristics of a particular commodity. Some shippers contact the NCC during the research phase to find out why the commodity is being researched and to learn what this may mean insofar as the commodity's classification is concerned. And those shippers who choose to participate in the research survey are notified directly by letter prior to review matter discussions pertaining to that research.

There are also individuals and groups, such as consultants and trade associations, that offer various services to shippers and regularly monitor the NCC's dockets to keep abreast of the activities of the NCC and its Classification Panels for

their clients or members. Major shipper organizations, such as the National Industrial Transportation League (NIT League), subscribe to the NCC's dockets. TCPC and Counsel for the Conferences are also docket subscribers.

The NCC Provides Shippers Information On The Classification System

The NCC is aware that the classification system is not universally known. To help educate the uninitiated, NMFTA has prepared a booklet for shippers and others interested in the classification system.⁹ The booklet provides important information on the NMFTA and NCC, the National Motor Freight Classification and the classification-making process. It is given, without cost, to anyone who wishes to know more about the classification system.

The NCC also provides, at no charge, copies of its 5a procedures for amending the Classification, as well as its current density and value guidelines, and proposal forms for making changes to the Classification.

Typically, whenever a shipper or other party requests information on the classification system, all of these materials are furnished as a kind of informational packet. Copies of these materials are attached to this Statement.

As further evidence that the current classification system is not some secret conspiracy against shippers, the NMFTA conducts workshops throughout the country to give people a better understanding of the Classification, its contents and the process for maintaining it. These workshops, entitled "How To Use The National Motor Freight Classification," provide step-by-step instruction in the use of the

⁹ The booklet was developed years ago, and NMFTA updates it periodically. It was most-recently updated in 1997.

ATTACHMENT

E

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Address  http://users.erols.com/nmfta/index.htm

★ Special Notice: STB Decision Regarding Cloth or Fabrics Protest



National Motor Freight Traffic Association, Inc.
2200 Ball Rd
Alexandria, VA 22314
Phone: (703) 833-1310 | Fax: (703) 683-1094

*Expertise in Freight Classification,
Packaging and Transportation Codes*



Welcome to the NMFTA Web Site

Next Classification Meetings: May

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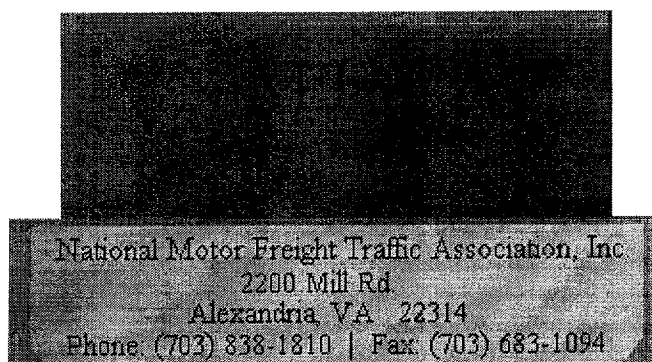
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★ *Special Notice: STB Decision Regarding Cloth or Fabrics Protest*



***Expertise in Freight Classification,
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Year 2000 Meeting Schedule ||||| **NMFTA Staff Phone Numbers**

Click on the following headings for detailed information on NMFTA activities:

● **PARTICIPATION & MEMBERSHIP**

- [Participation in the National Motor Freight Classification \(NMFC\)](#)
- [When Participation is Required](#)
- [List of Participating Carriers](#)
- [Membership in the National Motor Freight Traffic Association \(NMFTA\)](#)

● **NATIONAL MOTOR FREIGHT CLASSIFICATION**

- [What is the NMFC?](#)
- [NMFTA & NCC Informational Booklet](#)
- [NCC Procedures & Proposal Form](#)
- [NCC Policies and Directives](#)
- [NCC and Classification Panel Dockets \(proposed changes to the NMFC\)](#)
- [Research and Interpretation Requests](#)
- [Current Research Projects](#)
- [Item 172 -- Limitations of Carrier Liability](#)
- [Packaging Laboratories and Info](#)
- [How to Purchase the NMFC](#)
- ["How to Use the NMFC" Workshops](#)

● STANDARD TRANSPORTATION CODES

- [Standard Carrier Alpha Code \(SCAC\) Application](#)
- [Directory of Standard Carrier Alpha Codes \(SCAC\) Subscription Order Form](#)
- [Directory of Standard Point Location Codes \(SPLC\) Subscription Order Form](#)

● BILL OF LADING INFORMATION

- [June 17, 1998 -- Bill of Lading Pamphlet Now Available](#)
- [March 27, 1998 -- License Agreement for Publishing Uniform Straight Bill of Lading](#)

The National Motor Freight Traffic Association, Inc., (NMFTA) is a non-profit organization with thousands of members throughout the United States and Canada. Its members are primarily motor carriers in the less-than-truckload transportation market. Through its staff, NMFTA offers a variety of transportation services to both shippers and member carriers. In conjunction with the National Classification Committee (NCC), NMFTA publishes the National Motor Freight Classification, which is used by shippers and carriers in the rating of products shipped by truck. For more information on NMFTA or the NCC please contact the NMFTA staff by phone or e-mail.

Links to some NMFTA Members:

[ABF](#) | [American Freightways](#) | [A-P-A Transport](#)
[Averitt Express](#) | [CF](#) | [Nussbaum](#) | [Overnite](#)
[Oak Harbor](#) | [Roadway](#) | [Watkins](#) | [Yellow](#)

Some pages on this web site are best viewed through Adobe Acrobat.
To download a free copy of the Adobe Acrobat Reader, [click here](#).

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Participation in the National Motor Freight Classification

The National Motor Freight Classification lists the names of approximately 2500 participants which are primarily motor carriers in the United States and Canada. Participation in the Classification authorizes each participant to use or reference all, or specific portions, of the Classification in their rate schedules or contracts with their customers. Participation is accomplished by the completion of a Power of Attorney authorizing NMFTA to publish the carrier's participation, and payment of a yearly participation fee. Upon receipt of the power of attorney and fee, the NMFTA will publish the carrier's participation in the NMFC and issue the carrier a certificate affirming its participation.

Only those carriers which are bona fide participants in the classification may use or refer to its provisions.

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What is the NMFC?

The National Motor Freight Classification is a pricing tool that provides a comparison of commodities moving in interstate and intrastate transport. Based on an evaluation of *density*, *stowability*, *ease of handling* and *liability*, the commodities are grouped into one of 18 **classes**. The NMFC provides both carriers and shippers with a standard by which to begin pricing negotiations and greatly simplifies the comparative evaluation of the many thousands of products moving in today's marketplace.

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Year 2000 Schedule of NCC and NMFTA Meetings

May 1-2, 2000

**Radisson Hotel Old Town
901 N. Fairfax St.
Alexandria, VA 22314
(703) 683-6000**

- Monday, May 1 -- NCC Meeting
- Tuesday, May 2 -- NMFTA Meeting
- Tuesday, May 2 -- Classification Panel Meeting

August 7-9, 2000

**Doubletree Hotel
300 112th Ave., SE
Bellevue, WA 98004
(425) 455-1300**

- Monday, August 7 -- Classification Panel Meeting
- Tuesday, August 8 -- NCC Meeting
- Wednesday, August 9 -- NMFTA Meeting

November 6-7, 2000

**Radisson Hotel Old Town
901 N. Fairfax St.
Alexandria, VA 22314
(703) 683-6000**

- Monday, November 6 -- NCC Meeting
- Tuesday, November 7 -- NMFTA Meeting
- Tuesday, November 7 -- Classification Panel Meeting

**For further information on these meetings, please contact NMFTA's Docket Coordinator
Matthew Welsh at (703) 838-1869**

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CLASSIFICATION RESEARCH AND DEVELOPMENT

The NMFTA has a staff of classification experts which assists the National Classification Committee (NCC) in the maintenance and development of the National Motor Freight Classification (NMFC). Upon request or instruction, the staff conducts research on the transportation characteristics of commodities moving by motor carrier and presents reports to the NCC or one of its Classification Panels for discussion and review. The staff conducts research and analysis only at the direction of the NCC or a Classification Panel, or at the request of an individual member carrier.

The staff is accessible to carriers, shippers and other interested parties seeking technical expertise or other assistance in the development or evaluation of proposals for changing the NMFC. However, the staff cannot and does not docket, direct the docketing of, or recommend the docketing of any classification proposal. The staff does not and cannot make any decisions or recommendations with respect to the disposition of any classification proposal.

Requests to conduct classification research should be mailed to:

**Classification Research and Development
National Motor Freight Traffic Association
2200 Mill Rd., 4th Floor
Alexandria, VA 22314**

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CLASSIFICATION INTERPRETATION

The NMFTA's staff of classification experts is available to carriers, shippers and other interested parties who have questions concerning the proper interpretation of the National Motor Freight Classification. Although the opinions expressed by the staff are informal, they generally are accepted as expert advice in such matters. The procedures used by the staff in giving interpretation opinions follow principles developed in numerous judicial and administrative proceedings.

All inquiries submitted to the staff should include all details pertaining to the problem. Interpretation requests involving the classification of a specific commodity must include all relevant information on the nature of that commodity, including its use or function, material construction and form of shipment, as well as the manner in which it is represented for sales purposes and recognized in the industry.

Whenever possible, interpretation requests should include pictures, samples, and/or product literature describing the commodity in industry-recognized terms.

Mail interpretation requests to:

**Mr. Daniel Horning
Senior Classification Specialist
National Motor Freight Traffic Association
2200 Mill Rd., 4th Floor
Alexandria, VA 22314
Send E-Mail to Dan Horning**

ATTACHMENT

F

COMMODITY REPORT

Commodities: 3-D glasses

Staff Member Assigned: Lisa K. Winter

Present Classification Provisions:

Item No.	Description	Class
	DRAWING INSTRUMENTS, OPTICAL GOODS OR SCIENTIFIC INSTRUMENTS:	
	subject to item 57670	
57830	Eyeglasses or Spectacles:	
Sub 1	NOI, in boxes or drums.....	300
Subs 2-5	Not involved.	

Substance of Report and Analysis:

The staff has received requests as to the applicable classification provisions for 3-D glasses made of paperboard and plastic film. Since there is no specific item for the involved commodities, the staff has been of the informal opinion that they are classified under the general provisions of item 57830, Sub 1, which provides a class 300 for eyeglasses or spectacles not more specifically named elsewhere in the *Classification*.

3-D glasses are used for viewing stereoscopic motion or still pictures in which the right component of a composite image, usually red in color, is superimposed on the left component in a contrasting color to produce a three-dimensional effect. A manufacturer's sales literature explains that they may also be used for viewing fireworks and laser light shows.

Shipment information on one manufacturer's 3-D glasses shows that these products are made of paperboard and plastic film. Information on three packages shows densities of 9.07, 22.00 and 25.63 pcf. The average of these three figures is 18.90 pcf. 3-D glasses are shipped in boxes. As such, stowing and handling them should not pose any notable problems. 3-D glasses are not liable to damage, nor are they likely to damage freight with which stowed. The value per pound of 3-D glasses is unknown. The remaining liability elements should not impact significantly on an evaluation of these products.

NCC updating policy is to amend or establish classifications for commodities that are a source, or potential source, of interpretation disputes so as to eliminate or avoid those disputes. Further, NCC policy is to assign classes that reflect the transportation characteristics of commodities, according to NCC guidelines. The currently applicable class 300 is usually associated with a minimum average density of 2 pcf; whereas, the average density of 18.90 pcf would usually be associated with a class 70, according to NCC guidelines. However, it should be noted that the staff has information on only one manufacturer's products, while the Internet and the *Thomas*

Register of American Manufacturers combined show eight manufacturers of 3-D glasses. This indicates that the information available to the staff may not be representative of all 3-D glasses manufactured nationwide. The Panel's directive to establish a research project would provide the opportunity to develop additional information.

This report is presented to the Panel for its information.

RESEARCH PROJECT REPORT

Research Project: 829—Christmas tree stands

Staff Member Assigned: Lisa K. Winter

Present Classification Provisions:

Item No.	Description	Class
	HOLDERS: subject to item 99500	
99540	Christmas Tree, NOI:	
Sub 1	Iron:	
Sub 2	Cast, in boxes, crates or drums.....	70
Sub 3	Other than cast:	
Sub 4	KD or nested, in boxes, crates or drums.....	70
Sub 5	Other than KD or nested, in boxes, crates or drums.....	100
Sub 6	Wooden, KD flat, in packages.....	70
	STANDS: subject to item 178350	
178690	Stands, NOI, other than furniture, in packages, subject to Items 170 and 171 and having a density in pounds per cubic foot of:	
Sub 1	Less than 1	400
Sub 2	1 but less than 2	300
Sub 3	2 but less than 4	250
Sub 4	4 but less than 6	150
Sub 5	6 but less than 8	125
Sub 6	8 but less than 10.....	100
Sub 7	10 but less than 12.....	92.5
Sub 8	12 but less than 15.....	85
Sub 9	15 or greater	70

Background:

At the Classification Panel meeting on February 8, 1999, the members present considered a Commodity Report on Christmas tree stands. The report stated that the staff received a number of interpretation requests as to the applicable classification provisions for plastic Christmas tree stands. Since the specific item for Christmas tree stands or holders, item 99540, requires that the involved product is made of iron or wood, the staff has been of the opinion that item 178690, Stands, NOI, other than furniture, applies on plastic stands. Further, the report stated that sales literature refers to the involved products as Christmas tree *stands*, not *holders*. Following the report the Panel directed the staff to institute a research project on all Christmas tree stands and to report back to a future Panel with provisions consistent with NCC policies and guidelines.

Scope of Project:

Responding to the research directive, the staff attempted to contact all 17 potential manufacturers or shippers of Christmas tree stands shown the *Thomas Register of American Manufacturers*. Also, the staff contacted the National Christmas Tree Association whose members are involved in the production and sale of real Christmas trees and related industries and services.

Information was received from two manufacturers of steel Christmas tree stands who claim to represent about 15 percent of the industry. Additional data was compiled from carrier-provided shipment information forms and density and continuing traffic studies.

Analysis of Facts Gathered:

The provisions for iron¹ Christmas tree holders were adopted from the rails in 1936 and have remained substantially unchanged to the present. A class 100 is assigned to iron or steel Christmas tree stands, that are not made of cast iron, and that are not shipped KD or nested. A class 70 is assigned to wooden stands that are shipped KD flat and other iron or steel stands.

Since there is not a specific item for plastic Christmas tree stands, the staff has been of the opinion that the full-scale density-based provisions of item 178690, which provides for stands that are not more specifically named elsewhere in the Classification, are applicable.

Transportation Characteristics of Christmas Tree Stands

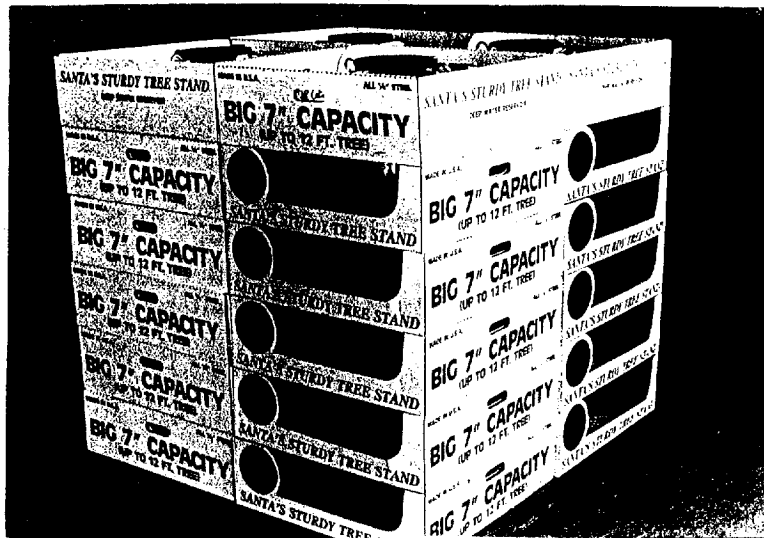
Density: Steel Christmas tree stands have an average density of 10.34 pcf and have a range in density from 2.34 to 26.46 pcf. No information was received on wood or plastic stands.

Currently, iron or steel Christmas tree stands are distinguished in the *Classification* by whether or not they are cast and whether or not they are shipped knocked down or nested. None of the Christmas tree stands on which information was received were shipped knocked down or nested. Information was received on two cast steel Christmas tree stands. They have densities of 22 and 26.46 pcf. The remaining stands are made of sheet steel. They have densities ranging from 2.34 to 15.00 pcf and have an average density of 8.20 pcf.

While sheet steel Christmas tree stands have a wide density range, the frequency distribution chart of the densities shown in the **Attachment** reveals that the densities are not distributed evenly throughout the density range. Also, there are no density figures near the average density of 8.20 pcf; rather, most of the figures are clustered at either end of the range. There are no density figures between 5 and 9 pcf. Sheet steel Christmas tree stands with densities under 8 pcf have an average density of 3.26 pcf. Sheet steel Christmas tree stands with densities of 8 pcf or greater have an average density of 12.44 pcf.

Stowability: Information of record shows that Christmas tree stands are shipped in fibreboard packages. Most shipments are said to be shipped in fibreboard boxes; however, one shipper who indicated that his products move in fibreboard boxes provided the following photograph of his stands packaged for shipment in a unitized pallet load of open-topped fibreboard containers.

¹ Item (Rule) 110, Section 14 explains that "'Iron' as used in the description of an article includes 'Steel' and vice versa."



Such containers do not meet the definition of "boxes" spelled out in item 220. Carriers may need to provide some protection to the stands shipped in this manner to prevent damage caused by top-loaded freight.

Handling: The stands on which the staff received information were shipped in fibreboard boxes or in open-topped containers on pallets. Handling Christmas tree stands should not pose any unusual or significant problems.

Liability: Christmas tree stands do not have the propensity to damage other freight with which transported. They are not likely to be damaged by freight with which stowed. Christmas tree stands range in value from \$.99 to \$1.88 per pound and have an average value of \$1.43 per pound. There is no evidence of a claim problem.

The remaining liability elements do not impact significantly on an evaluation of the involved commodities.

NCC Guidelines and Precedent:

NCC density policy is to assign classes based on density when there are no unusual or significant stowing, handling and liability characteristics. Christmas tree stands do not pose any notable or significant stowing, handling or liability considerations. Consistent with the distinction in the Classification between iron or steel Christmas tree stands that are made from cast metal and those that are not, the current data shows that densities of cast stands are higher than those of other than cast stands. Cast iron or steel Christmas tree stands have an average density of 24.23 pcf. An average density of 24.23 pcf would be associated with a class 65 according NCC density guidelines.

Other than cast iron or steel Christmas tree stands have an average density of 8.20 pcf; but they have densities clustered at either end of the density range with no densities near the average density. Iron or steel Christmas tree stands made from other than cast metal with densities under 8 pcf have an average density of 3.26 pcf; whereas those stands with densities of 8 pcf or greater have an average density of 12.44 pcf. An average density of 3.26 pcf would be associated with a class 250; and an average density of 12.44 pcf would be associated with a class 85 according to NCC density guidelines. Assigning a class 65 to cast iron or steel Christmas tree stands; a class 250 to other than cast iron or steel Christmas tree stands with densities under

NCC policies with respect to *Classification* clarification, simplification and uniformity call for listing items under appropriate generic headings and for adding commonly used terminology to item descriptions to identify commodities and replacing outdated terminology in item descriptions with current terminology. Currently, iron, steel and wood Christmas tree stands are provided for under the Holders generic grouping; however, they are commonly known as Christmas tree *stands*. Canceling the current provisions for iron, steel or wood Christmas tree stands under the Holders Group and establishing new provisions under the Stands Group would be in keeping with NCC policy.

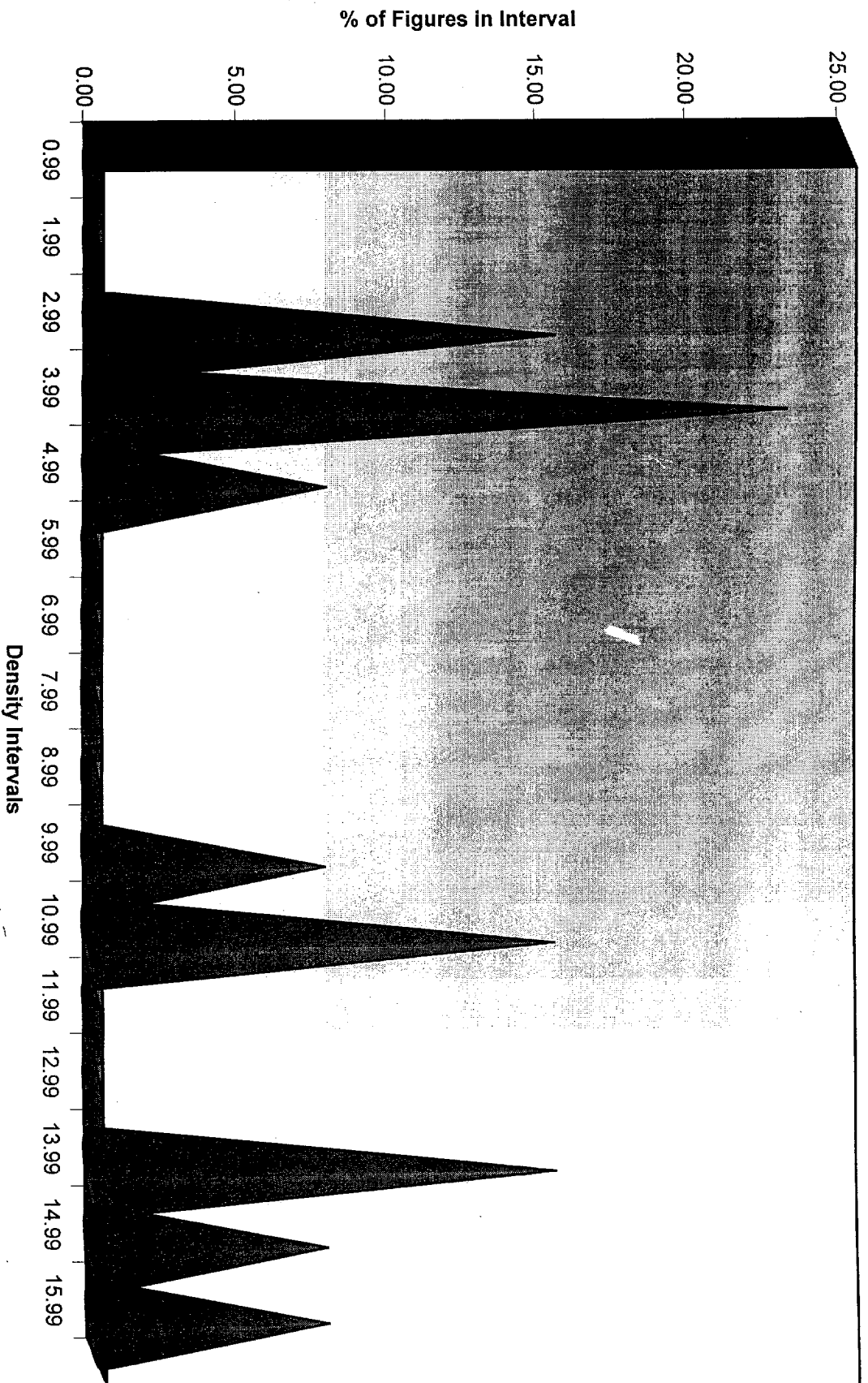
Absent a specific listing for plastic Christmas tree stands, the staff has been of the informal opinion that they are provided for under item 178690, Stands, NOI, other than furniture. Amending item 178690 to specifically name plastic Christmas tree stands would be in the interest of Classification clarification.

In keeping with NCC policies and with the directive of the earlier Classification Panel, the provisions below are shown for this Panel's consideration.

Provisions Consistent with NCC Policies and Guidelines

Item No.	Description	Class
	HOLDERS: subject to item 99500	
99540	Christmas Tree, NOI; Cancel, see item NEW.	
	STANDS: subject to item 178350	
NEW	Christmas tree:	
Sub 1	Iron or steel:	
Sub 2	Cast, in boxes or crates	> 65
> Sub 3	Other than cast, in packages, subject to Item 170 and having a density in pounds per cubic foot of:	
> Sub 4	Less than 8.....	> 250
> Sub 5	8 or greater.....	> 85
> Sub 6	Wooden, KD flat, in packages.....	No class change.
178690	Stands, other than furniture, viz.:	
	Christmas Tree Stands, NOI;	
	Stands, NOI;	
	In packages, subject to Items 170 and 171 and having a density in pounds per cubic foot of:	
	Subs 1 through 9--No class change.	

Density Frequency of Other than Cast Iron or Steel Christmas Tree Stands



ANALYSIS OF PROPOSAL

Re: Hardware, NOI - Items 95180, 95190 and 95200

Staff Member Assigned: William F. Mascaro

A. Proponent: Carrier members present at the Classification Panel meeting on November 9, 1999

B. Present Classification Provisions:

Item No.	Description	Class
	HARDWARE GROUP: subject to item 92900	
95180	Hardware, NOI, brass, bronze or copper, see Note, item 95204, in boxes, drums or Package 783.....	77.5
95190	Hardware, NOI, iron or steel, see Note, item 95202, in boxes or drums	70
95200	Hardware, NOI, iron or steel, combined with brass, bronze or copper, see Note, item 95204, in boxes, drums or Package 783	77.5
95202	NOTE - When shipments weigh 30,000 pounds or more, provisions also apply on mixtures of iron or steel hardware, NOI, and iron or steel hardware articles otherwise classified at not higher than class 70.	
95204	NOTE - When shipments weigh 30,000 pounds or more, provisions also apply on mixtures of hardware, NOI, brass, bronze or copper, or iron or steel combined with brass, bronze or copper, and brass, bronze or copper hardware articles otherwise classified at not higher than class 85.	

C. Proposed Classification Provisions:

Item No.	Description	Class
	HARDWARE GROUP: subject to item 92900	
95180	Hardware, NOI, brass, bronze or copper, see Note, item 95204, in boxes, drums or Package 783.....	Cancel; see item 95190
95190	Hardware, NOI, in boxes, crates, drums or Package 783, subject to Items 170 and 171 and having a density in pounds per cubic foot of:	
Sub 1	Less than 1	400
Sub 2	1 but less than 2	300
Sub 3	2 but less than 4	250
Sub 4	4 but less than 6	150
Sub 5	6 but less than 8	125
Sub 6	8 but less than 10.....	100
Sub 7	10 but less than 12.....	92.5
Sub 8	12 but less than 15.....	85
Sub 9	15 but less than 22.5.....	70
Sub 10	22.5 but less than 30.....	65
Sub 11	30 or greater	60
95200	Hardware, NOI, iron or steel, combined with brass, bronze or copper, see Note, item 95204, in boxes, drums or Package 783	Cancel; see Item 95190
95202	NOTE - Cancel; no further application.	
95204	NOTE - Cancel; no further application.	

D. Proponent's Justification: To promote clarification, it is proposed to consolidate the provisions of items 95180 and 95200 into item 95190. Concurrently, it is proposed to amend item 95190 to provide density-based classes to reflect the varying transportation characteristics of hardware.

E. Effect of Proposal: The provisions of items 95180 and 95200 would be cancelled with reference to item 95190. Item 95190 would be amended to reference "Hardware, NOI," and to provide for density-based classes. These classes would range from a high of 400 for densities of less than 1 pcf to class 60 for densities exceeding 30 pcf. The notes, items 95202 and 95204 would be cancelled with no further application.

F. Analysis of Proposal: This proposal stems from a report on Research Project 837 which was reviewed by the Classification Panel that met in November, 1999. Based on that review, the Panel voted to docket this proposal.

The provisions of items 95180, 95190 and 95200 as shown above were adopted from the rails in 1936 and have remained substantially unchanged to the present.

Each of these items are general "NOI" or catchall provisions for the Hardware Group. The provisions of item 95190 also serve as the general "NOI" or catchall item for the Iron or Steel Group. Given the general nature of these provisions, they apply on a wide variety of different types of commodities that may also exhibit a wide range of transportation characteristics.

Among the products found to be moving under these items are assembled steel handrails, gun shooting braces and numerous brackets and fittings. Due to the virtually limitless variety of products that are moving today under these provisions, it would be logical to assume that the transportation characteristics of these commodities will also vary. The type of retail packaging utilized may also impact the transportation characteristics.

Information in the NCC's files, while not inclusive of every product moving under these items, does reinforce the potential for a wide range of characteristics. The information currently available shows densities ranging from 2.67 to 44.57 pcf, with a simple average density of 12.36 pcf. As with density, the handling, stowing and liability characteristics of commodities classified under these items will also vary. In this context, the information available indicates that articles packaged in accordance with the existing packaging requirements do not appear to exhibit any unusual handling, stowing or liability characteristics. Improperly packaged articles, however, may present some difficulties due to their length or less than favorable stowing characteristics. There is no information available with respect to liability.

G. Relationship of Proposal to NCC Policies and Guidelines: NCC policy calls for classification provisions to reflect a commodity's known transportation characteristics. Information available in the NCC's files reveals that products moving under items 95180, 95190 and 95200 have a simple average density of 12.36 pcf. NCC guidelines for the currently applicable class 77.5 under items 95180 and 95200 call for a minimum average density of 13.5 pcf, while the class 70 applicable under item 95190 calls for a minimum average density of 15 pcf.

NCC policy also calls for the establishment of density based classes for commodities that exhibit a wide range in density, and for which there are generally no unusual handling, stowing or liability characteristics. Products found to be moving under the provisions of items 95180, 95190 and 95200 have been found to have densities ranging from 2.67 to 44.57 pcf. Given the wide range in density associated with products moving under these items and the apparent lack of any unusual handling, stowing or liability characteristics when properly packaged, establishing density-

based classes would be in keeping with NCC policy and guidelines.

This proposal is also consistent with NCC precedent. The Classification currently has approximately 20 full-scale density-based items that are the general NOI item for a generic group, including most of the major generic groups. Among the more recent conversions to full-scale density-based classes is item 176050, "Signs, NOI," which is the NOI provision for the Signs Group. This change was effected as a result of action taken on Docket 991, Subject 10. Another recent conversion to full-scale density classes involved item 188560, naming "Barrows, Carts, Trucks or Wagons, NOI," which is the general "NOI" item for the Vehicles, Other than Self-Propelled Group. Previously, this item had classes predicated upon form of shipment. This change was the result of Docket 971, Subject 12. Yet another recent conversion involved item 198080 applying on wire goods or wirework. This item was amended as a result of action taken on Docket 972, Subject 14 and converted the item from providing classes based on form of shipment and packaging to full-scale density.

This proposal also addresses the concerns raised by the D.O.T.'s Surface Transportation Board in STB Docket No. ISM 35004. This decision suspended the provisions shown in Supplement 5 to NMF 100-Y amending items 49265 and 49540, which apply on cloth or fabric. These amendments would have cancelled the provisions of item 49540 with reference to item 49265. Concurrently, item 49265 would have been amended to reference products in item 49540 and to apply the NCC's full-scale density-based classes to these products.

In its decision the STB stated that;

"in the instant proposal, however, (Subject 11 of Docket 991), we have a significant concern regarding the reasonableness of imposing higher ratings for the lowest density shipments, without offering concomitantly lower ratings for the highest density shipments."

Based on this decision, the NCC withdrew the proposal and docketed a new proposal, Docket 933, Subject 18, that sought to establish density-based classes with the addition of two new subprovisions for densities of 22.5 to 30 pcf at class 65 and 30 or greater pcf at class 60. The proposal was approved as modified by the Panel that met in August 1999 to include a reference to Item 171, the bumping privilege. These changes were published in Supplement 3 to NMF 100-Z, with an effective date of January 22, 2000. Shipper interests again filed a protest with the STB asking for suspension and investigation of these changes. However, in a decision dated January 20, 2000 and released on January 21, 2000 the STB voted unanimously not to suspend and investigate the amendments published in Supplement 3 to NMF 100-Z. Consequently, the changes to items 49265 and 49540 became effective as scheduled on January 22, 2000.

Based on the information of record detailed in this analysis, this proposal, as docketed, is in keeping with the concerns expressed by the STB with respect to density based classes and NCC policy, guidelines and precedent.

ATTACHMENT

G

Under the NCC's 5a Agreement, anyone with an interest, except the NCC's staff, may propose amendments to the Classification. As such, shippers and shipper groups may propose classification changes that they believe are appropriate and necessary. And shippers and shipper groups are free to present their views on any proposed change, regardless of who has made the proposal. It is not uncommon for groups of shippers, including direct competitors, to take a unified, coordinated position on a classification matter. Within the confines of the 5a Agreement, the NCC's antitrust immunity protects these shippers, enabling them to cooperate with each other without the risk of antitrust exposure. Similarly, antitrust immunity enables shippers and carriers to work together to find equitable classification solutions.

The following specific cases serve as illustrations:

1. Gases That Are Poisonous By Inhalation

Subject 14 of NCC Docket 958 (December, 1995) was a proposal to reclassify gases and gas mixtures that are poisonous by inhalation, reflective of current U. S. Department of Transportation hazardous materials regulations. Shippers of the involved gases and gas mixtures objected to the proposed reclassification. The Classification Panel that considered the proposal approved the proposal as docketed, leading the National Small Shipments Traffic Conference (NASSTRAC) and the Health and Personal Care Distribution Conference to appeal the Panel's action to the full NCC. Upon consideration of the facts of record, the NCC upheld the Panel's disposition. This in turn led several shippers

and shipper groups, including the aforementioned conferences, to protest the matter to the Surface Transportation Board.

This matter was subsequently discussed at the NCC meeting on May 6, 1996, and several shipper representatives were present for the discussion. Following this exchange, an ad hoc committee of shippers and carriers was set up to develop classification provisions for poison inhalation hazard gases and gas mixtures that would be acceptable to all parties.

The shipper/carrier ad hoc committee met on August 5, 1996, under the umbrella of the NCC's antitrust immunity. Following extensive discussion, middle ground was found, and the committee was able to recommend the docketing of a proposal that was deemed acceptable by both shipper and carrier interests. The proposal was docketed as Subject 24 of Docket 964 (November, 1996), and the previous proposal was withdrawn by the NCC (discontinuing the litigation). Subject 24 of Docket 964 was approved by the NCC as docketed, and the changes have since gone into effect.

2. Nonwoven Cloth or Fabric

Subject 12 of NCC Docket 938 (December, 1993) was a proposal to reclassify nonwoven cloth or fabric, as named in items 49160 and 49164. Shippers of the nonwoven material opposed the proposed changes. Several shippers, as well as a representative from INDA, the Association of the Nonwoven Fabrics Industry, appeared before the Classification Panel that considered the proposal. Following the shipper presentations, the Panel voted to withdraw the proposal and directed further research.

The additional research led to the docketing of another proposal to reclassify the nonwoven cloth or fabric. That proposal, Subject 16 of Docket 971 (February, 1997), met with shipper opposition, too. Again, several shippers of the nonwoven material, as well as the representative from INDA, appeared before the Panel considering the proposal. Following the shipper presentations, the Panel voted to approve the proposal with modifications. The shippers, however, remained opposed. Consequently, INDA appealed the Panel's disposition to the full NCC, and two other shipper representatives joined in the appeal.

The INDA representative indicated that the shippers intended to offer an alternative proposal and requested a meeting with NCC staff to exchange information and ideas in this regard. The meeting was held on May 7, 1997, with two NCC staff members and several shippers of the involved material in attendance. From that meeting, the shippers were able to formulate their alternative, which they presented to the NCC on June 9, 1997, during consideration of the appeal. The NCC found the shippers' proposal equitable, based on classification principles, and modified Subject 16 of Docket 971 accordingly. The changes have since gone into effect.

3. Industrial Spill Containment Kits

A North Carolina company ships kits used to contain and remove spilled acids, caustic substances or petroleum. Each kit includes absorption material, a plastic container, certain tools and protective clothing. The shipper, uncertain as to the proper classification of these kits, contacted the NCC's staff for guidance in this regard. At the time, the kits were not named in the Classification, and an opinion

was given applying Item 640, the rule governing mixed shipments and mixed packages. Under Item 640, the classification of each article in the mix (in this case, kit) has to be determined before the applicable class can be ascertained.

The shipper was made aware that it could docket a proposal to specifically name the kits in the Classification, which would obviate the application of Item 640 and greatly simplify the classification of the products. This option was attractive to the shipper, who worked with the NCC's staff to craft a proposal.

With assistance from the NCC's staff, the shipper developed a proposal to establish a specific description for its kits, at a class it believed reflective of the transportation characteristics. That proposal was docketed as Subject 9 of Docket 974 (August, 1997). The Classification Panel that considered the shipper's proposal approved it as docketed, and the new provisions—item 108140 and clarifying Note, item 108141—have gone into effect.

4. Uniform Straight Bill of Lading

Following legislative changes that effectively ended the filing of motor carrier tariffs, the NCC endeavored to remove references to "lawfully filed" tariffs and tariffs "lawfully on file" from the bill of lading formats published in the Classification. Shipper groups resisted these efforts, however, believing that such action coupled with certain other aspects of the bills of lading worked to the detriment of shippers. Attempts by the NCC to remove the references were protested and ultimately set for investigation and suspension. Nevertheless, both shippers and carriers recognized the need to update the bills of lading. To that end, an ad hoc committee consisting of six shipper members of NASSTRAC and

six carrier members of the NMFTA was established to review the Uniform Straight Bill of Lading—long the standard in the motor carrier industry. The committee, meeting under the umbrella of the NCC's antitrust immunity, meticulously examined this bill of lading format, including the terms and conditions. What emerged was a completely revised bill of lading acceptable to both shipper and carrier interests. The shipper and carrier members of the committee were able to agree on a number of changes that served to simplify and clarify the document, modernize and streamline its provisions and remove the conflicts with the recent legislation.

The revisions were docketed by the ad hoc committee as Subject 15 of Docket 975 (October, 1997). With support from NASSTRAC, the NCC approved the revisions (with some nonsubstantive modifications) at its meeting on October 6, 1997. Although certain other interests subsequently protested the changes, the Surface Transportation Board allowed them to take effect.

These examples clearly demonstrate that:

- shippers have a very strong voice in the classification-making process;
- shippers draw on, and benefit from, the expertise of the NCC's staff in classification matters;
- the NCC's antitrust immunity protection enables shippers to jointly, and perhaps more effectively, promote their interests in classification matters; and
- the present classification-making process, with its antitrust protections, fosters an environment where shippers and carriers can work together to develop equitable and mutually-agreeable classification provisions.

decisions regarding classification proposals and review matters take place at these meetings in the presence of those shippers and others in attendance. And the meetings are well publicized so parties having an interest have the opportunity to attend.

It is true that only the carrier members of the NCC vote on classification proposals and review matters, but contrary to the Conferences' assertions, shippers have tremendous influence on classification decisions. Experience shows that, where they choose to participate, shippers have a very real, direct impact on the classification-making process.

The NIT League, in its Comments to the Board in this proceeding, says "The motor carrier industry as a whole would be better served if shippers and motor carriers worked together to determine commodity classifications."¹⁵ Our initial Statement provided four specific cases demonstrating that, under the umbrella of the NCC's antitrust immunity, shippers and carriers can, and *do*, work together to develop equitable and mutually agreeable classification provisions.¹⁶ Many such examples could be cited. Here are four more:

1. Lighting Fixtures

The present provisions for lighting fixtures, item 109810, reflect a compromise between NCC carriers and interested shippers following extensive negotiations and several proposals. The provisions result from action taken on Subject 10 of NCC Docket 904 (June, 1990), which proposed, among other things, to

¹⁵ NIT League's Comments, at page 15.

¹⁶ Statement of George M. Beck and Joel L. Ringer, pages 6 through 10.

consolidate several lighting fixture provisions into a single, comprehensive item, with classes based on density. Following presentations by shipper interests, the Classification Panel that considered the proposal voted to modify the proposed classes. The modified classes, lower than those called for under the NCC's guidelines, were deemed more acceptable by shippers and were approved.

On April 24, 1997, a member carrier of the NCC requested the staff to review the provisions of item 109810 and report the findings to a Classification Panel. The carrier indicated that the lighting fixture shipments it was handling exhibited densities inconsistent with NCC guidelines for the assigned classes.

In response to the carrier's request, a commodity report was presented to the Classification Panel that met on June 10, 1997. The Panel voted to docket a proposal maintaining the current density scale in item 109810 but with higher classes, consistent with NCC guidelines.

The proposal, Subject 8 of Docket 974 (August, 1997), was considered by the Classification Panel that met on August 4, 1997. Shipper representatives appeared before the Panel in opposition to the proposed class increase, and following the shipper presentations, the Panel voted to refer the proposal to the full NCC for consideration.

The NCC considered Subject 8 of Docket 974 at its October 6, 1997, meeting. Several shipper representatives made presentations, again, in opposition to the proposal. After discussion, the NCC voted to disapprove the proposal, continuing the shipper/carrier compromise reached seven years earlier.

2. Sanitary Commodes

Sanitary commodes are specifically named in item 56550. The item was established by action taken on Subject 11 of Docket 974 (August, 1997), which stemmed from a research project on the articles. Information of record, derived from the project, showed sanitary commodes to exhibit transportation characteristics consistent with NCC guidelines for class 250, and on that basis, class 250 was assigned. The item became effective on October 18, 1997.

After the establishment of item 56550, a shipper representative contacted the NMFTA's staff to inquire about the provisions. During discussion, the representative indicated that the company she represented was developing a new sanitary commode model having a design that would allow for a more-compact, higher-density shipping package than the other commodes on the market. Though the product was still in the final design stages, the shipper wished to establish a new classification at a class level reflective of the product's more-favorable transportation characteristics. Accordingly, the NMFTA's staff advised the shipper's representative of the NCC's procedures for docketing a proposal and mailed her the appropriate forms.

Through her conversations with the NMFTA's staff, the shipper representative learned that the new commode exhibited transportation characteristics consistent with NCC guidelines for class 70. With assistance from the NMFTA's staff, she docketed a proposal to amend item 56550 to provide for the new product, at class 70. That proposal was listed as Subject 10 of Docket 981 (February, 1998).

Subsequent to the docketing of the proposal, the shipper representative informed the staff that a final design change had been made, resulting in a somewhat less-dense package. The new package was found to exhibit transportation characteristics—in particular, density—consistent with NCC guidelines for class 85.

The shipper representative attended the Classification Panel meeting on February 2, 1998, where the proposal was considered. Appearing before the Panel, she displayed the packaged commode, answered questions from the Panel and requested that the proposed class be modified from 70 to 85. Based on the information furnished, the Panel voted to modify the class to 85 and approved the proposal as modified. A new subprovision was added to item 56550 for the shipper's product, resulting in a reduction in class from 250 to 85.

The shipper representative, pleased with the classification-making process, was kind enough to submit a letter relating her experience. A copy of the letter, from Freight Shakers Logistics, is attached to this Statement.

3. Mailbox Kits

A Mississippi company ships mailbox kits consisting of a wood post, a metal post anchor and a metal mailbox with wood (cedar) covering or wrap. Without a classification description for the kits, shipments had been subject to Item 640, the rule governing mixed shipments and mixed packages. Under Item 640, the classification of each article in the mix (i.e., kit) has to be determined before the applicable class can be ascertained.

The shipper was having problems obtaining consistent freight rates due to the lack of a classification description for its kits. In the hope of resolving these problems, the shipper contacted the NMFTA's staff to inquire about establishing a classification item for the kits. The staff advised the shipper of the NCC's procedures for docketing a proposal and mailed the appropriate forms.

With assistance from the NMFTA's staff, the shipper developed a proposal to establish a description for its kits, at class 85. The proposal was docketed as Subject 9 of Docket 976 (November, 1997). Data submitted by the shipper showed the transportation characteristics of the kits to meet NCC guidelines for class 85, and the Classification Panel that met on November 17, 1997, approved the shipper's proposal as docketed. The new provisions, item 108170, have since gone into effect.

The shipper, The Solar Group, has submitted a letter in support of the present classification system. A copy of the letter is attached to this Statement.

4. Signs

In December, 1996, a letter was received from a member carrier of the NCC, requesting a review of iron or steel signs, per item 176280. In February, 1997, a letter was received from a second member carrier, requesting that research be initiated on electric signs, per item 176050. In response to these requests, a commodity report was presented to the Classification Panel that met on April 7, 1997. Upon consideration of the commodity report, the Panel voted to institute a research project on signs.

Responding to the Panel's research directive, the staff contacted 737 potential shippers of signs.

Upon completion of the investigation, a research project report was prepared for presentation at the Classification Panel meeting on February 2, 1998. All of the shippers of signs that participated in the research survey were sent notification letters informing them where and when the Panel meeting would take place. Five sign associations were also sent notifications.

On January 29, 1998, a letter was received from the International Sign Association asking the Panel to delay action to allow them time to conduct their own survey and participate in the classification-making process. On January 30, 1998, a letter was received from World Sign Associates also asking for more time and expressing a willingness to work with the NCC.

Representatives from the sign industry attended the February 2 Panel meeting. Once again, shippers asked for time to gather additional data and offered to work with the NCC.

Responding to the shipper requests, the Panel voted to refer the matter back for further research and directed the staff to work with the sign industry in this regard.

Another example of shipper satisfaction with the current classification-making process is related in a letter from Fan-Tastic Vent Corporation, which is also attached.

These examples, and the ones cited in our initial Statement, do not reveal a classification system hostile to shippers. On the contrary, they reveal a classification system that welcomes and respects shipper participation, and when shippers choose to participate, their views are heard.

FREIGHT LOGISTICS

SHAKERS

Mr. Martin E. Foley
National Motor Freight Traffic Association
2200 Mill Rd.
Alexandria, VA 22314

February 12, 1998

Dear Mr. Foley:

My company recently docketed a proposal to establish a new item for sanitary commodes. Prior to docketing this proposal our shipments were subject to class 250, but with the establishment of the new item our products are now classified under a specific item at class 85.

I consulted with the NMFTA's staff in developing and filing the proposal and I personally attending the classification panel meeting where the proposal was considered and voted on. It was my experience that the current classification system provides an equitable forum for shippers and carriers to resolve classification matters. In my particular instance, the proposal before the classification panel represented a significant reduction in class and the panel approved the proposal without hesitation.

My company was very satisfied that the classification panel reviewed our proposal fairly and assigned our new classification based on the transportation characteristics of our product.

Sincerely,



Katherine Crowley
Consultant for API Corporation
Proponent of Subject 10, Docket 981

THE **SOLAR GROUP**

P. O. BOX 525 • TAYLORSVILLE, MS 39168-0525
PHONE (601) 785-4711 • (800) 647-7063 • FAX (601) 785-4559

2/23/98

Mr. Martin E. Foley
National Motor Freight Traffic Association
2200 Mill Rd.
Alexandria, VA 22314

Dear Mr. Foley:

In November of 1997, my company docketed a proposal to establish a new item for mailbox kits. Prior to docketing this proposal our commodity was not provided for in the National Motor Freight Classification, but with the establishment of the new item our products are now classified under a specific item at class 85.

After contacting the NMFTA staff by telephone I was sent a package containing a proposal form, the NCC's density and value guidelines, and other materials explaining the docketing process and how to get a new item established for my product. The Classification Panel voted to approve my proposal on November 17, 1997 and a new item was established specifically describing the mailbox kits my company ships.

Based on my experience I believe the current classification system provides an equitable forum for shippers and carriers to resolve classification matters. In particular, it allows individual shippers to file proposals to change the National Motor Freight Classification to have their products specifically named in a classification that is fair to all parties.

Sincerely,



Ted Wallace
The Solar Group
Proponent of Subject 9, Docket 976

FAN-TASTIC VENTTM

February 20, 1998

Mr. Martin E. Foley
National Motor Freight Traffic Association
2200 Mill Rd
Alexandria, VA 22314

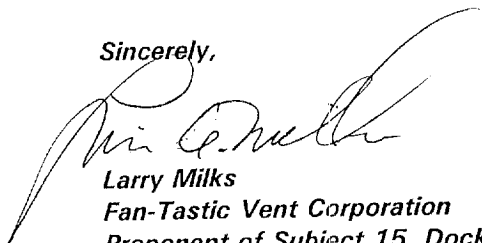
Dear Mr. Foley:

My company was the proponent of Docket 971, Subject 15, a proposal to establish a new item for vehicle roof or wall fans and ventilators combined. Prior to docketing this proposal our products were subject to class 200 under a general classification for fans and ventilators combined in item 61940. Our product is distinct from other types of fans and ventilators, and after presenting this information to a classification panel, our proposal was approved. The new item (18640) now allows us to ship our product at class 125.

After contacting the NMFTA staff by telephone in August of 1996 I was sent a package containing a proposal form, the NCC's density and value guidelines, and other materials explaining the docketing process and how to get a new item established for our product. In the process of filing my proposal I worked with the NMFTA staff to develop wording accurately describing our product. The classification panel voted to approve my proposal on February 10, 1997 and a new item was established specifically describing the products my company ships.

Throughout my experience of docketing the proposal I found the current classification system to be fair to shippers like myself. In the case of Docket 971, Subject 15 my company was able to establish a new classification that specifically names our product at a reduced class.

Sincerely,



Larry Milks
Fan-Tastic Vent Corporation
Proponent of Subject 15, Docket 971

2083 S. Almont Ave.
Imley City, Michigan 48444
(810) 724-3818 • FAX (810) 724-3460
(800) 521-0298

ATTACHMENT

H



PSI SOUTH

A Subsidiary of Plastic Specialties, Inc.

March 3, 2000

Mr. Martin E. Foley
National Motor Freight Traffic Association, Inc.
2200 Mill Road
Alexandria, VA 22314

Dear Mr. Foley,

Throughout 1999, I attended all of the Classification Panel meetings and worked with various Classification Panels and the National Motor Freight Traffic Association staff to develop Classification provisions acceptable to both PSI and the NCC. I found the staff to be forthcoming with information and the Classification Panels to be receptive to my concerns and ideas on the classification of PSI's products.

As one of the five leaders in lighting plastics, PSI was initially contacted by the NCC in 1998 and was asked to provide information on the transportation characteristics for our products. In January of 1999, the NCC alerted PSI South that its research was completed and that the report would be considered at the February 8, 1999 Classification Panel meeting. The NCC informed PSI of every subsequent meeting at which this matter was discussed.

As a result of my involvement in the classification process, the four Classification Panels that met throughout 1999 considered and reconsidered this issue until we came to the mutually agreeable provisions for lighting plastics that were ultimately approved.

My experience has shown that the NCC works with shippers to develop classifications that are agreeable to all parties involved.

Sincerely,

Bud Poulin
Vice President &
General Manager

STATEMENT
OF
MATTHEW WELSH

VERIFIED STATEMENT OF MATTHEW WELSH

My name is Matthew Welsh and I am employed by the National Motor Freight Traffic Association, as Docket Coordinator for the National Classification Committee. (NCC).

My business address is 2200 Mill Road, Alexandria, Virginia 22314. I am a graduate of Saint Lawrence University, where I earned a degree of Bachelor of Arts. I have been employed by NMFTA in various capacities of increasing responsibility since July, 1977. Initially, I served as a Research Analyst of the National Classification Committee for two and one-half years. Subsequently, I was a member of the Classification Interpretations Section for six years. I have been Docket Coordinator since March, 1986.

In my current position with the National Motor Freight Traffic Association [NMFTA], and through my prior classification experience, I have been involved on a daily basis with proposed amendments to the National Motor Freight Classification [NMFC], classification review matters, NCC discussion matters and Appeals of Classification Panel dispositions. My responsibilities include the formatting, publication and distribution of National Classification Committee Dockets that specify proposed changes to the National Motor Freight Classification, Appeals of Classification Panel decisions, classification review matters, and NCC discussion matters. Another of my primary duties is to ensure that notice is provided to interested parties of the public meetings at which all classification issues are evaluated.

I provide technical assistance with respect to proposing amendments to the NMFC, the customary format of proposals published in the NCC docket, and the procedures for submission of information and statements of position relative to a Classification Review Matter, Docket Proposal or Appeal to carriers, shippers, manufacturer's representatives, attorneys representing the members of a trade association and traffic consultants that represent both individual companies and industry groups. I coordinate the appearances of manufacturers or their representatives who attend the NCC's public meetings. Further, all interested parties are provided with general information concerning the NCC or NMFTA, and including their rights under the NCC's procedures governing amendments to the National Motor Freight Classification.

I inform interested parties of the criteria utilized to evaluate classification issues and clarify the function, composition, powers and duties of Classification Panels and the National Classification Committee. The NCC's Guidelines, Policies, and Directives are explained to interested parties. Further, documents, forms and pamphlets describing in detail, procedures governing amendments to the NMFC, Classification Panels, the National Classification Committee, and the National Motor Freight Traffic Association are made available to anyone who requests them.

I am thoroughly familiar with the National Classification Committee's procedures governing the docketing of proposals to amend the National Motor Freight Classification, Appeals of Classification Panel decisions, and public notification of all activities of the National Classification Committee and its Classification Panels.

In the initial segment of this statement, the various types of notices that the NCC provides in connection with all of its activities will be described. Further, the numerous opportunities that the National Classification Committee affords manufacturers, industry groups and other interested parties to participate in the Classification process will be demonstrated. The information and assistance available to anyone who has an interest in a classification matter will be identified. The last section of this statement constitutes a survey and analysis of the proposals to amend the provisions of the NMFC that the National Classification Committee Panels have considered from 1989-1999.

The National Classification Committee is responsible for the accuracy, reliability, quality, modernizing and improvement of the National Motor Freight Classification. (NMFC). The NCC's procedures assure that all considerations of proposed amendments to the NMFC and classification issues are accomplished in an objective fashion. The merits of a docket proposal or classification review matter are evaluated by the NCC in public meetings to provide interested parties a forum to discuss the issues simultaneously.

All Classification Panel Determinations are based upon the facts of record and are voted upon at public meetings. The decisions on classification issues either are announced by the Chairman of the Classification Panel at the meeting or are posted in a conspicuous area of the meeting room. Further, the staff will explain in detail to any interested party, the affect the decision will have on NMFC provisions, the publication schedule of all approved changes, appeal procedures, and all other options pertaining to future proposals or classification matters.

Notice of proposed amendments to the National Motor Freight Classification, Classification Review Matters, Appeals of Classification Panel decisions, and NCC Discussion Matters are published in NCC Dockets. The present and proposed NMFC provisions are reproduced in each docket subject and appeal; classification review matters identify the issue to be discussed in general terms. The date, time and address of the hotel at which the classification issues will be evaluated are provided. Each Docket indicates that the aforementioned issues will be considered at a public meeting and that anyone who has an interest in any classification matter may participate in the Classification process. Dockets are available through an annual subscription service.

The NCC will provide to any interested party, without cost, a complete reproduction of a docket proposal to amend NMFC provisions, including proposals that have been appealed, the identity of the proponent of a docket proposal, the disposition of a Classification Panel's action on a proposal or classification review matter, and the action taken by the National Classification Committee on Discussion Matters, or Appeals of Classification Panel dispositions of a docket subject. The NCC promptly divulges to an inquiring party, the votes of the individual NCC or Classification Panel members on any docketed classification issue. Upon request of any interested party attending a public meeting of a Classification Panel or the National Classification Committee, the Chairman of the meeting will announce the decision of the Classification Panel or NCC on any classification issue listed in the docket.

Notice of all of the National Classification Committee activities is provided on the Internet, by means of NMFTA's Web Site, www.erols.com/nmfta/. There is an initial notice posted identifying proposals to amend the provisions of the NMFC, classification review matters, appeals of Classification Panel decisions and NCC Discussion Matters. The date, time and hotel address of the public meeting are included in the notice. A subsequent notice is published on the Web Site revealing the determinations of a Classification Panel or the NCC on all of the involved classification issues considered at the public meeting. A schedule of upcoming public meetings at which all classification issues are considered is posted to the Web Site. NCC Commodity Research Surveys are identified on the Web Site, and all manufacturers are encouraged to participate in the classification process by submitting facts on the transportation characteristics of the commodities listed. Any manufacturer may inquire as to the status of a research survey and will be given the facts of record in composite form. Further, any interested party can inquire if the NCC is compiling data on the transportation characteristics of their specific products and will be provided a full explanation as to the scope of the research survey.

My name and telephone number are listed on each Web Site Notice, every NCC Docket, and each proposal notification, review matter notification or appeal notification letter. Anyone who has a question or requires further information on any classification issue is invited to contact me. The names and e-mail addresses of the entire NMFTA staff are listed on the Web Site. The telephone number, fax number and e-mail address of the National Motor Freight Traffic Association and the National Classification Committee are plainly identified on all correspondence from either organization.

The NCC annually mails thousands of commodity questionnaires encouraging shippers and manufactures to participate in NCC Research Surveys by providing data on the transportation characteristics of commodities that they produce. Questionnaires are also sent to trade associations, advocacy groups and industry organizations to request that their members submit data on the transportation characteristics of commodities being studied by the NCC. If a company does respond to the questionnaire, they are notified by individual letter of the date, time and location of the public meeting at which the findings of the research survey will be presented to a Classification Panel.

Prior to each Classification Panel meeting, letters indicating the time, date and location of the public meeting are sent to notify individual companies, trade associations, industry groups and packaging organizations of docket proposals, classification review matters or appeals of Classification Panel decisions in which they may have an interest. The NCC encloses with each letter either the entire Docket describing all of the proposals to be considered at the public meeting or a document clearly identifying the classification issue. The NCC recently has committed to an extensive program of providing written notice of all of the National Classification Committee's activities to public utility commissions, state organizations, federal regulatory agencies and transportation news services.

The staff is directed by the NCC to make every effort to facilitate the participation of interested persons in the evaluation of NMFC provisions. Pursuant to that responsibility, I inform interested parties of the technical aspects of the public meetings and provide them with the current status of a classification issue.

Anyone with an interest in the NMFC is encouraged to participate in the Classification process by responding to a commodity questionnaire with the submission of data, by filing a written statement or by scheduling an appearance to discuss an issue with the carrier members of a Classification Panel or the National Classification Committee.

Interested parties are advised that they may suggest a modification to a docketed proposal or recommend an alternative proposal. They are informed that the members of the Classification Panel will consider their suggestions or recommendations before voting to approve, disapprove or modify a docket proposal.

Upon request, interested parties are provided a summary of the facts of record, or when completed, the entire staff report for a docket proposal or classification review matter. Frequently, I will direct manufacturers or their representatives to the Classification Specialist responsible for analyzing the data for a docket subject or review matter. The specialist will then discuss the classification issue in detail with the interested party. The staff is obligated to provide anyone with technical assistance in the preparation of the submission of information to the NCC on any docketed classification matter.

Written reports concerning docketed proposals and classification matters for review are faxed or mailed to individuals having an interest in a particular docket subject or classification matter, upon request. These reports are distributed prior to the public meetings at which the issues are evaluated and additional copies are made available to anyone attending the public meeting. Any individual may contact the author of the report and ask any question pertaining to the factual analysis of the data.

The National Classification Committee, through published notice, Web Site Internet notice, individual notice by letter and telephone communication with industry representatives, encourages all interested persons to participate in the evaluation of National Motor Freight Classification provisions by filing out commodity questionnaires, submitting factual information, statements or by scheduling an appearance to discuss the merits of a docket proposal with a Classification Panel. Additionally, individuals may schedule a specific time to discuss any classification matter listed in the docket for review. Anyone unable to attend a meeting, may submit a written statement that will be distributed in conjunction with the staff reports to the members of the Classification Panel prior to the meeting. The Classification Panel evaluates all information presented at the public meetings, discusses the data with interested parties attending the meeting, and considers all relevant facts, prior to reaching a decision on any classification issue.

At every public meeting, the Chairman of the Classification Panel invites anyone in attendance to participate in the consideration of each docket proposal or review matter. Moreover, in accordance with the NCC's procedures, anyone present at a public meeting may ask the members of a Classification Panel or the National Classification Committee, any question relating to the transportation of any of the commodities being evaluated. Finally, each individual present is offered the opportunity to present facts regarding any classification issue and may, in fact, challenge any information reported to the Panel.

The NCC's records reveal that there have been over 1,200 individuals that have attended the 75 National Classification Committee Panel meetings from 1989-1999. In excess of 400 individual companies were represented at these meetings by either employees of the company, transportation consultants or attorneys. On average, at a single Classification Panel meeting, excluding the Panel members themselves and staff, there were 16 interested parties present for the evaluation of classification issues, [Please refer to Attachment A].

In addition to the representation of individual companies, numerous industry and shipper groups, represent their entire memberships, such as the National Small Shipments Traffic Association, the American Lighting Association, the Association of the Nonwoven Fabrics Industry, the Fibre Box Association, the American Furniture Manufacturers Association, the Toy Manufacturers of America, the Transportation Claims and Prevention Council, the Institute of Packaging Professionals and the National Electrical Manufacturers Association, have participated in the Classification process on a consistent basis. Associations individually have represented the interests of their member companies. Collectively, representatives of associations that have appeared before the National Classification Panels in the last 11 years have expressed the views of thousands of businesses on the classification of commodities. Therefore, any assertion that there has been minimal activity, representation or participation by manufacturers or distributors of commodities in the evaluation of docketed proposals and classification review matters concerning the National Motor Freight Classification is simply, factually incorrect.

Any individual shipper, broker, distributor, receiver, carrier, freight forwarder, traffic consultant, trade association, packaging organization or industry group may docket a proposal to amend the National Motor Freight Classification. Under the procedures governed by the NCC's Section 5a National Motor Freight Classification Agreement, the National Classification Committee must not only publish each proposal submitted, but must evaluate the merits of every proposal at meetings open to the public.

Each proposal, regardless of the proponent or the effect on the applicable classes, is processed in the same objective fashion. Every decision on a proposal to amend the NMFC or a classification review matter is made by a Classification Panel, based upon the facts of record, in a public meeting. The NCC does not discriminate between the facts presented by shipper groups, individual companies and the information submitted by motor carriers. The facts are combined, analyzed, and evaluated, regardless of their origin. Participants in the Classification process receive equal treatment that is guaranteed under the procedures of the NMFC Agreement.

Further, in accordance with the NCC procedures, a proponent of any proposal has the right to appeal the decision of the NCC Classification Panel and is then granted a second evaluation of the merits of the proposal by National Classification Committee members at the next regularly scheduled public meeting of the NCC. In the event that the proponent does not prevail under the appeal procedure, there is no restriction on the number of alternative proposals that may be filed concerning the same subject matter. The NCC is obligated to publish and evaluate each additional proposal submitted.

Public information is provided by the NCC to any interested party, without cost, that will facilitate their participation in the process of developing the standards identified in the NMFC. A manufacturer, carrier, shipper, or any person can contact the staff with a question on the NCC, docket proposals, classification review matters, Bills of Lading, packaging requirements and specifications, general transportation rules, or interpreting the provisions of the National Motor Freight Classification. The staff is required to respond to any inquiry received by telephone, letter or electronic transmission, from any interested party, regarding any aspect of the Classification.

The NCC directs the staff to assist interested parties in the technical development of docket proposals by providing examples of standard descriptions, docket formats, classification terminology, and packaging requirements. This assistance is provided without cost. The staff is prohibited from making any recommendation, suggestion or advocating any position that would affect the vote or determination of the NCC or a Classification Panel on any classification issue. Further, the staff is not permitted to evaluate the merits of a classification proposal or classification review matter.

It has been alleged the National Classification Committee considers docket proposals primarily as a means to increase the classes assigned to commodities listed in the NMFC and thereby, to augment the revenue of the motor carrier by inflating the price of transporting commodities. The National Motor Freight Traffic Association and its standing National Classification Committee are not — for — profit organizations.

The members of the National Classification Committee and NCC Classification Panels receive no compensation for their service. Committee members are elected or appointed to represent motor carriers party to the National Motor Freight Classification Agreement domiciled in an individual state or region. Further, NCC members are charged with the responsibility of evaluating all commodities moving in commerce on a nationwide basis. Frequently, the members evaluate classification issues pertaining to commodities that are not transported by their own companies. The members of the National Classification Committee vote on classification issues to improve the quality of the National Motor Freight Classification as an industry standard guide.

I reviewed all of the proposals listed in the National Classification Committee Dockets for the past eleven years, 1989 through 1999. There were 75 Dockets during this period. The survey encompasses over 1500 proposals. Included in this survey is an analysis of the number of proposals that were filed by carriers in relation to proposals filed by manufacturers, industry groups, trade associations and packaging organizations.

Six distinct groups of proposals emerged as follows: packaging; proposals that would result in class increases only; proposals that would result in class reductions only; proposed amendments that would result in class increases and reductions; proposals for clarification; and proposals for the removal of obsolete or outdated provisions.

The docket proposal analysis revealed that over three-fourths (79.61%) of the proposals evaluated by the NCC Panels concerned requested amendments pertaining to packaging; clarification; class reductions; removal of obsolete provisions and class increases and reductions. Proposals exclusively pertaining to class increases constituted only 20.39 percent of the total proposals evaluated in that period. Significantly, 14.94% of the total number of docket proposals were for class reductions only. The number of proposals in each category and the percentage that each category represents in relation to the total proposals evaluated are identified in Attachment B.

An important category of proposals considered by Classification Panels concerns amendments to provisions, requirements or specifications relevant to the packaging of commodities. In almost all instances, individual manufacturers, transportation consultants that represent individual companies or industry groups, organizations such as the Institute of Packaging Professionals, International Safe Transit Association, the Furniture Manufactures Traffic Conference and the Fibre Box Association are the proponents of proposals involving packaging. Packaging proposals comprised the dominant category over the last eleven years, with 366 out of the 1506 proposals (24.30%) evaluated.

In excess of 350 of the proposals considered, totaling (23.58%), involved amendments to clarify or update the language of the National Motor Freight Classification and to remove obsolete provisions in the NMFC. These two categories of proposals have no impact on the classes assigned a particular commodity, but rather, are docketed to simplify, clarify, modernize and organize the NMFC, thereby enhancing the usability of the Classification as a guide for manufacturers, carriers and transportation professionals.

Proposals involving a progression of density-based subprovisions that would result in both class increases and reductions, constitute a large category of proposals considered by the National Classification Committee Panels. There were 252 proposal accounting for 16.73% of the total number of proposal filed. The Surface Transportation Board and the Interstate Commerce Commission have consistently held that density-based NMFC items provide equitable class levels for commodities that display a wide range in density.

Therefore, for more than a decade, 79.61 percent of the proposals that the NCC Panels evaluated did not involve proposals to exclusively increase the class assigned to a commodity. Proposals for class increases only constituted 20.39 percent of all proposals considered by the NCC Panels in that eleven-year period. Based upon the analysis of over 1500 proposals considered by the National Classification Committee, I believe that not only is it an erroneous assumption that the NCC concentrates its efforts on proposals to increase the class assigned to a particular commodity; but also that any such contention demonstrates a complete lack of understanding with respect to the function, purpose, activities and obligations of the NCC and NCC Classification Panels.

In summary, the primary function of the National Classification Committee is to publish an industry standard guide, the National Motor Freight Classification, that describes commodities and reflects their transportation characteristics moving in nationwide commerce. The Committee is dedicated to developing packaging requirements and specifications that will ensure that the commodities being transported will survive the hazards of the less-than- truckload transportation environment.

The fact that over 1200 individuals representing thousands of companies from 1989-1999 made the effort to appear in person at NCC Classification Panel public meetings to participate in the process of refining the National Motor Freight Classification demonstrates that the transportation community was properly notified of the activities of the National Classification Committee and considered them relevant to their businesses.

It is a matter of record that during that eleven year period, individual manufactures have responded to hundreds of commodity questionnaires, and that transportation consultants, industry groups, trade associations, and packaging organizations have submitted thousands of letters and written statements of position with respect to docketed proposals and classification review matters. The National Classification Committee has not only afforded interested parties the opportunity to be instrumental in classification process, but has considered the information received from non-carrier organizations or companies absolutely essential to the development of the National Motor Freight Classification as an industry standard guide.

Respectfully Submitted

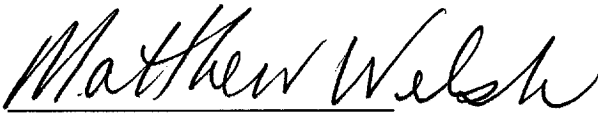
A handwritten signature in black ink, appearing to read "Matthew Welsh", written in a cursive style.

Matthew Welsh

April 7, 2000

VERIFICATION

I, Matthew Welsh, verify, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on April 7, 2000.


MATTHEW WELSH

ATTACHMENT A

**SUMMARY OF APPEARANCES
NATIONAL CLASSIFICATION COMMITTEE
PANEL MEETINGS
DURING THE YEARS 1989 THROUGH 1999**

TOTAL NUMBER OF APPEARANCES	1,206
TOTAL NUMBER OF COMPANIES REPRESENTED	417
TOTAL NUMBER OF MEETINGS	75
TOTAL NUMBER OF APPEARANCES FOR DOCKET SUBJECTS.....	904
TOTAL NUMBER OF APPEARANCES FOR REVIEW MATTERS	147
TOTAL NUMBER OF OBSERVERS	155
MEETING WITH MOST APPEARANCES/OBSERVERS	
December 12, 1994	67
MEETING WITH LEAST APPEARANCES/OBSERVERS	
August 7, 1989	1
AVERAGE NUMBER OF APPEARANCES/OBSERVERS.....	16

ATTACHMENT B

SUMMARY OF 75 DOCKETS 1989 – 1999

CATEGORIES OF PROPOSALS	NUMBER	PERCENT OF TOTAL PROPOSALS
Packaging	366	24.30 % of Total Proposals
Class Increases Only	307	20.39 % of Total Proposals
Clarification	281	18.66 % of Total Proposals
Increases and Reductions	252	16.73 % of Total Proposals
Class Reductions Only	225	14.94 % of Total Proposals
Obsolete Provisions	75	4.98 % of Total Proposals
Total Number of Proposals	1506	100 % of Total Proposals

PROPONENT	NUMBER	PERCENT OF TOTAL
Proposals – Carrier ¹	938	62.28 % of Total Proposals
Proposals – Non Carrier ²	568	37.72 % of Total Proposals

- 1 - Proposals that have individual motor carrier company proponent or carrier member Classification Panel proponents.
- 2 - Proposals that have individual manufacturer, shipper, trade association, industry group, traffic consultant or packaging organization proponents.

**STATEMENT
OF
KELLY POWERS**

Statement of Kelly Powers

My name is Kelly Powers. I am employed by the National Motor Freight Traffic Association, Inc. (NMFTA) as a Legal Assistant. My business address is 2200 Mill Road, Alexandria, Virginia 22314. I hold a Bachelor of Science degree from the State University of New York, College at Brockport and a Paralegal Certification from George Washington University.

I have been employed by NMFTA since June 1989. I am responsible for assisting NMFTA's General Counsel and I am often involved in legal proceedings involving NMFTA and its autonomous National Classification Committee (NCC). Among my many responsibilities, I prepare memoranda and pleadings and perform legal research, as well as general research, including research of various files maintained by NMFTA. I am familiar with the National Motor Freight Classification (NMFC) and the NCC's procedures governing the amendment of provisions of the NMFC. I work on a regular basis with the provisions of the NMFC.

In response to the Surface Transportation Board's request for comments in its proceeding designated Section 5a Application No. 61, National Classification Committee - Agreement, I was assigned the task of reviewing the last twenty years of NCC docket files to identify those classification proposals involving class increases that were protested and to report the action taken by the ICC or STB.

In completing the assignment, I prepared the enclosed table which provides a summary of my research. The table reflects an analysis of all classification changes proposed subsequent to 1979 involving class increases which were protested. The chart shows the action taken by either the Interstate Commerce Commission or Surface Transportation

Board in response to the protests. The chart also reveals a few cases where the outcome of the ICC's action on a protested classification proposal was appealed to a federal court.

As the table shows, there were 52 protested proposals involving class increases. In 42 of those protested proposals, the ICC or STB voted not to suspend or investigate. Two of the 52 proposals were suspended and investigated on procedural issues. One of the proposals involved pork skins and bacon rinds (Item 72400) and the other involved rawhide dog chews (Item 27765). However, these same two proposals, with the same class changes, were reintroduced in subsequent publications and the ICC voted not to suspend or investigate. The ICC suspended and investigated two other proposals, i.e., furnaces (Items 26280 and 26300) and poisons (items 2080-A thru 102101-A). These proposals were found not reasonable. On appeal, the U.S. District Court held that the ICC's decision finding the proposals unreasonable was arbitrary and capricious. The Court remanded the case to the ICC and in the subsequent proceeding, the furnace proposal, which contained the original increase classes, was not suspended or investigated. The poisons proposal was handled by the formation of a shipper/carrier Ad Hoc Committee that considered and agreed to increased ratings on poison gases. The increased ratings became effective.

The ICC did find that the proposal pertaining to acids was not reasonable because released liability provisions were involved and a "substantial change" in the transportation characteristics of the involved acids had not been shown to warrant such an increase in class ratings. However, a federal court subsequently reversed the ICC's "substantial change" standard that was applied in the decision regarding acids.

VERIFICATION

I, Kelly A. Powers, verify, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on April 7, 2000.


KELLY A. POWERS

PROPOSALS 1980	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
Furnaces (Item Nos. 26280,26300)	Case No. 69904 (S)	I & S Docket No. M-30240 (C, A) ICC denied our Petition for Review & Reopen ICC then denied our Petition for reconsideration	Civil Action No. 81-1600 (remanded)	When it rejected the NCC's rating comparisons, the ICC departed from established classification principles. On remand, ICC found proposed class increase (77.5 to 85) to be reasonable. First I & S under new standards setout in MC 98.
Sprayers Item No. 177680	Case No. 70216 (P, RA)	I & S Docket No. M-30292 (A, C)) Filed Admin. Appeal. ICC affirmed Board's decision. NCC then petitions GTI. ICC denied.	Civil Action No. 82-1595	
Cans, aluminum, fibreboard (Item Nos. 13310, 13312, 29030), Containers (Item Nos. 52760,80,90,52800) Barrels or Drums (Item No. 21960)	Case Nos. 70224 & 70227 - (S, A)	I & S Docket Nos. M-30294, M-30294 (sub 1). Admin Appeal denied. NCC petitions GTI. ICC denies.	Civil Action No. 82-2265	Following the ICC's decision in Pork Skins, NCC filed a motion to dismiss which was granted. We advised NCC that further proposals to provide remedial amendments of these classifications must come from individual carriers.
Cages, Bird, KD Item No. 395430 (Sub 3)	Case No. 69754 (P/NS)			
Covering, pipe or pipe joint Cages or Hoops, ladder Item Nos. 54445, 39545	Case No. 69794 (P/NS)			
Apparatus, gas or oxygen Item No. 56440	Case No. 69802 (P/NS)			
Clothing, fur, animal hide, Item No. 49830	Case No. 69814 (P/NS)			
Composters, Gardening Item No. 118095	Case No. 69881 (P/NS)			
Frames, mirror or picture Item No. 76580	Case No. 69972 (P/NS)			
Windows, NOI Item Nos. 20140, 20110	Case No. 69989 (P/NS)			
Solar Collectors Item 177012-B	Case No. 70041 (P/NS)			

PROPOSALS 1980	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
Sprinklers, garden, lawn or irrigation metal Item 178090	Case No. 70130 (P/NS)			
Carbon dioxide (Item 40730) Felts, textile shrinking machines (Item 131190)	Case No. 70137 (P/NS)			
Item 56220, Sets, candle, decorative (cancelled) Description added to Item 56290 Decorations, Notions, or Novelties, NOI	Case No. 70160 (P/NS)			

PROPOSALS 1981	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
Glass Globes, etc. Item Nos. 88220-88222	Case No. 70411 (P/NS)			
Paraphernalia, exhibition or show Item No. 154630	Case No. 70682 (P/NS)			
PROPOSALS 1982	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
Port Skins and Bacon Rinds Item No. 72400	Case No. 70884	I & S No. M-30360 (A) ICC disallowed certain mail ballot procedures of the NCC Review Subcommittee.	Civil Action No. 83-1866 - affirmed ICC decision	NCC petition for rehearing and enhance denied. Request Writ for Cert, also denied.
Forms, Interior packaging, or Packaging Trays Item 156848	Case No. 70797 (P/NS)			
Potato, Plantain or Banana Chips Item 74480	Case No. 70825 (P/NS)			
Amendment to Item (Rule) 540	Case No. 70908 (P/NS)			

PROPOSALS 1983	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
Lamps or Lighting Group, diffusers, globes, etc... Items 190090-92, 190138-39	Case No. 71012 (P/NS)			
Ball Cocks or Fluid Level Control Valves, water closet or toilet tank, Item No. 158020	Case No. 71034 (P/NS)			

PROPOSALS 1984	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
Rawhide Dog Chews Item Nos. 27765, 27767	Case No. 71162	I & S Docket No. M-30368 (C)		ICC recognized decision in pork rinds show cause, & discontinued this proceeding.

PROPOSALS 1985	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
Rawhide Dog Chews Item No. 27765	Case No. 71237 (P, A/NS)			New proposal filed by NCC and procedures did not violate Act of 1980. <u>Classes approved as proposed</u>
Fried Bacon or Pork Rinds or Skins Item No. 74400	Case No. 71257 (P, A/NS)			<u>Classes approved as proposed</u>
Parabolic Antennas Item Nos. 14440-A, 60535-40, 61055	Case No. 71265 (P/NS)			

PROPOSALS 1986	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
Controllers or Controller Parts, NOI Item Nos. 61480, 61482	Case No. 71306 (P,A/NS)			
Sprayers, Hand Held Item No. 177670	Case No. 71325 (P,A/NS)			

PROPOSALS 1987	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
Plastic or Rubber Articles Items 156600-A & 157320-A	Case No. 71337 (P,A/NS)			
Carrying Cases, Bags or Suitcases Item Nos. 187645, 187660 & 680	Case No. 71353 (P,A/NS)			
Plastic Pipe Fittings Item No. 156847	Case No. 71355 (P/NS)			
PROPOSALS 1988	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
Portable Electric Heaters Item No. 62220	Case No. 71423 (P, A/NS)			
Caps, Covers, Discs, Ends, Bands, Rings or Tops, NOI, Plastic Item No. 156600	Case No. 71427 (P,A/NS)			

PROPOSALS 1989	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
Displays, Advertising Store or Window Item No. 57410	Case No. 71442 (P/NS)			
Baths, Bathtubs, Pools, Pool Shells or Spas, Therapeutic Bathing Items 158032 & 158033	Case No. 71458 (P,A/NS)			
Copper and Aluminum Wire and Cable Item Nos. 30920, 61150, 60, 70	Case No. 71468 (P,A/NS)			
Density Ratings on Hose, NOI, or Flexible Tubing Item No. 100130	Case No. 71476 (P,A/NS).			
PROPOSALS 1990	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
Classification Ratings on Clothing Item No. 49880	Case No. 71466 (P, A/NS)			
Density Ratings on Meat Sticks or Strips Item Nos. 74880-74882	Case No. 71500 (P,A/NS)			
PROPOSALS 1991	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
Acids Subject to the Hazardous Materials Regs 33 NMFC Items	Case No. 71548 (S)	I & S Docket No. M-30424 (A) denied our petition for reconsideration. (C) ICC disallowed the proposal, finding that it affected classes subject to released rates. No substantial change in transportation characteristics.	Civil Action No. 92- 1212	Court upheld the ICC's determination - unrelated to class reasonableness
Air Filters, Air Filter Elements, Pads, Padding, Mats or Matting Item 69050	Case No. 71549 (P/NS)			

PROPOSALS 1992	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
Candy Canes Item No. 39915	Case No. 71578 (P, A/NS)	Formal Complaints (Nos. 40777, 40781) filed by Bob's Candy & Spangler requesting ICC to reconsider & reverse suspension. NMFTA filed motion to dismiss or consolidate. Motion to dismiss denied. ICC granted motion to consolidate.		Handled by ALJ. Found that complainants failed to establish ratings on candy canes not just and reasonable. Denied complaints and discontinued proceeding.
Classification Ratings on Poisons Item Nos. 2080-A thru 102101-A	Case No. 71579 (P)	I & S Docket No. M-30430 (C)	Civil Action No. 94- 1032	Court rejected ICC's new standard which required a show of substantial change in all transportation characteristics. Remanded to ICC.
PROPOSALS 1993	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
PROPOSALS 1994	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
Bulk Commodity Shipping Containers Item No. 41024, Sub 1 & 2	Case No. 71636	I & S Docket No. M-30436 (R)		
Cups, Dishes, Pans, Plates or Trays, NOI, Aluminum Foil or Sheet Item Nos. 13120 & 100750	Case No. 71635 (P, A/NS)			
Vehicles, Children's NOI; Bicycles, NOI; or Unicycles, NOI Item No. 189800	Case No. 71640 (P, A/NS)			

PROPOSALS 1995	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
Machinery or Machines, NOI Item No. 1333300	Case No. 71669 (P/NS)			
PROPOSALS 1996	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
Gases that are PIH	Case No. 71682			NCC withdrew in light of AD HOC Committee proposal
Classification Ratings on Interior Packing Forms, NOI Item Nos. 153285, 87, 90	Case No. 35001 (P/NS)			
PROPOSALS 1997	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
Increase in Class Ratings on Petroleum Products Item Nos. 155250, 155150	ISM 35003 (P/NS)			
PROPOSALS 1998	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
PROPOSALS 1999	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
Cloth, Fabric or Piece Goods and Plush or Plie Fabric Item No. 49265	ISM 35004 (S)			NCC withdrew from ISM 35004 & docketed another proposal (ISM 35007)
PROPOSALS 2000	SUSPENSION BD PROCEEDING	I & S PROCEEDING	CIVIL ACTION	RESULTS
Cloth, Fabric or Piece Goods and Plush or Plie Fabric Item No. 49265	ISM 35007 (P/NS)			

KEY

P/NS - PROTESTED, NOT SUSPENDED

S- SUSPENDED

A/NS - APPEALED, NOT SUSPENDED

RA - REVERSED ON APPEAL

W - PROPSAL WITHDRAWN

C- CANCELLATION OF PROVISIONS

R - PROVISIONS SHOWN TO BE REASONABLE

D - PROCEEDING DISCONTINUED

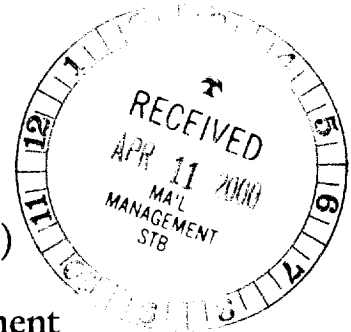
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Section 5a Application No. 61 (Sub-No. 6)

National Classification Committee - Agreement

Comments
Of the
National Classification Committee

VOLUME II

APPENDIX A

William W. Pugh
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(703) 838-1825

John R. Bagileo
Law Office of John R. Bagileo
1101 30th Street, NW #300
Washington, DC 20007
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Counsel for the
National Classification Committee

Due and Dated: April 11, 2000

Before The
Surface Transportation Board

Section 5a Application No. 61 (Sub-No. 6)
National Classification Committee - Agreement

APPENDIX A

Statements Incorporated From Prior Related Proceeding

(Section 5a Application No. 61 National Classification Committee – Agreement)

Included within this appendix are statements that were initially filed in the prior proceeding National Classification Committee -- Agreement Section 5a No. 61, on or before January 29, 1998. These statements were submitted by shippers, shipper representatives, Congressman Nick J. Rahall, former Commissioners of the Interstate Commerce Commission and others concerning the public interest contributions of the *National Motor Freight Classification* and the classification system.

STATEMENTS INCORPORATED FROM PRIOR RELATED PROCEEDING
(Section 5a Application No. 61 National Classification Committee - Agreement)

CONGRESSMAN NICK J. RAHALL, II
FORMER ICC CHAIRMAN REESE H. TAYLOR, JR
FORMER ICC VICE CHAIRMAN J. J. SIMMONS, III

NORTH CAROLINA TRAFFIC LEAGUE
ATOMIC TRANSPORTATION SYSTEM, INC.
BORDEN FOODS CORP.
THE CHINET COMPANY
EATON CORPORATION
PACCOON
ROCKWELL AUTOMATION
SIEMENS ENERGY & AUTOMATION, INC.
THERMO INDUSTRIES, INC.

STATE OF UTAH
STATE OF CALIFORNIA
STATE OF MICHIGAN
STATE OF WASHINGTON

ROBERT L. ABARE
THE BOHMAN GROUP
CASS INFORMATION SYSTEMS
WM. CARTER & ASSOCIATES
GAMBLE, HARTSHORN, ALDEN CO
FEDERAL TRAFFIC DEVELOPERS
WALLACE GRAYBILL
GREEN BAY PACKAGING
GOGAL & ASSOCIATES
LANTRAN SERVICES
ALFRED H. McKINLAY, P.E.
RUBENSTEIN LOGISTIC SERVICES, INC.

APPENDIX A

VOLUME II
INCORPORATED STATEMENTS
U.S. GOVERNMENT OFFICIALS

Comments of the Hon. Nick J. Rahall, II
Member, U.S. House of Representatives

in the matter of:

Section 5a Application No. 61

National Classification Committee Agreement
before the Surface Transportation Board

Filed: January 7, 1998

I am Nick J. Rahall, II, a representative to the United States House of Representatives from the Third Congressional District of West Virginia. Since I was first elected to this office in 1976, I have served as a member of the Committee on Transportation and Infrastructure, formerly the Committee on Public Works and Transportation, and its Subcommittee on Surface Transportation. In this regard, I am the former chairman of this Subcommittee and currently serve as its Ranking Democratic Member. The Subcommittee on Surface Transportation has jurisdiction over legislative matters pertaining to the motor carrier industry and handled the legislation which was ultimately enacted as the ICC Termination Act of 1995.

Pursuant to the ICC Termination Act of 1995, §13703 of Title 49, U.S.C., maintained antitrust immunity for agreements entered into by motor carriers for such activities as the establishment of through routes and joint rates, rates for the transportation of household goods, classifications, mileage guides, rules, and divisions subject to the approval of any such agreements by the Surface Transportation Board with the caveat that agreements in existence on the day before the effective date of the Act were grandfathered for a period of three years.

In accordance with the Act, it is my understanding that the Surface Transportation Board opened a proceeding on November 13, 1997, to review whether it is in the public interest to renew the agreement under which the National Motor Freight Classification is established (Section 5a Application No. 61 - National Classification Committee Agreement) although it should be noted that technically, the Board need not make a determination on this matter until January 1, 1999. I am filing these comments in support of the renewal of the Agreement.

As the Board is aware, the ICC Termination Act of 1995 was enacted to complete the process began by the Trucking Industry Regulatory Reform Act of 1994 which downsized the Interstate Commerce Commission's responsibilities and further deregulated the motor carrier industry. The 1995 Act completed that process by terminating the Interstate Commerce

Commission while preserving what was deemed to be its essential functions and transferring them to both the Department of Transportation and a new transportation adjudication panel, the Surface Transportation Board. As I noted during the November 14, 1995, debate on the House Floor on H.R. 2539, the bill which was ultimately enacted as the ICC Termination Act of 1995:

In my capacity last year as the chairman of the Subcommittee on Surface Transportation, and this year as its Ranking Democrat, I have sought to insure that this legislation causes the least disruption to the trucking industry, its employees, and the general public.

The Trucking Industry Regulatory Reform Act of 1994 not only began the process of downsizing the ICC's responsibilities, but further deregulated the motor carrier industry. In that law, as with this bill, however, we preserve regulatory regimes where they are necessary to promote the public interest.

The area of household goods carriers, for example, will continue under some regulation. In addition, *certain motor carrier practices, which well serve the industry and its customers, such as commodity classifications and ratemaking for intermodal shipments and joint lines, are maintained as well.* (Italics added)

This statement is representative of the negotiations which led to House approval of H.R. 2539. Many of us felt that the abolishment of the Interstate Commerce Commission was an issue devised by political desire (the attachment placed by certain Republican Members to illustrate that a federal agency could be eliminated), rather than the real need to actually take this action. At the same time, within this environment, those of us charged with actually crafting both the 1994 and 1995 Acts sought to maintain the public interest by preserving certain regulatory functions and practices such as antitrust immunity for commodity classifications. To wit, the language that was used (now U.S.C. §13703(d)) emphasizes that if the parties to the agreement seek renewal, it will be provided unless the Board finds that renewal is not in the public interest. It follows then that unless the Board finds that renewal is not in the public interest, immunity is continued by §13703(a)(6).

In fact, in the House of Representatives, there was never a question that we would not maintain immunity for commodity classifications with provision for this practice included in every draft of H.R. 2539 considered, from its introduction, through the Committee process, and as passed by the House. Indeed, without such a provision, I would not have been in a position to support the legislation. As I noted on the House Floor when, on December 22, 1995, the House of Representatives considered the Conference Report on H.R. 2539:

In my capacity as the ranking Democratic Member on the Subcommittee on Surface Transportation, there were several issues I championed during deliberations on this legislation. Among them are

maintaining antitrust immunity for classifications, mileage guides, the establishment of through routes and joint rates.

Under this legislation, antitrust immunity for these activities would continue subject to agreements approved by the new Surface Transportation Board.

In my view, the grant of antitrust immunity for these motor carrier activities has well served both the industry and the general public and this legislation's treatment of this matter is prudent and wise.

I believed then, as I do today, that the efficient operation of the motor carrier industry, and its ability to serve both shippers and consumers alike, depended on the continuation of commodity classifications. In this regard, the hearing record developed during consideration of the 1995 Act (as well as records developed in preceding legislative actions going back to 1980) clearly showed that motor carriers could not, and would not, meet collectively without immunity. It is a fact that tremendous volumes of traffic move in LTL service, rather than under contract for FAK, but subject to their proper classification. No system other than the National Classification Committee Agreement provides for the grouping of products with comparable characteristics, or the separation of products that are dissimilar, for transportation purposes.

For these reasons, I would support as being in the public interest the renewal of the National Classification Committee Agreement.

These comments filed on January 7, 1998, with the Surface Transportation Board, in Washington, D.C.

I am,

A handwritten signature in black ink, appearing to read "Nick Rahall". The signature is fluid and cursive, with a large, sweeping "N" and "R".

NICK J. RAHALL, II
Member of Congress

A copy of these comments has been served on those persons designated as parties of record on the service list.

NICK J. RAHALL II
3d DISTRICT, WEST VIRGINIA

COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE

RANKING DEMOCRAT:
SURFACE TRANSPORTATION
RAILROADS

COMMITTEE ON RESOURCES
NATIONAL PARKS, FORESTS, AND LANDS
ENERGY AND MINERAL RESOURCES

Congress of the United States
House of Representatives
Washington, DC 20515-4803

January 7, 1998

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101 NORTH COURT ST., P.O. Box 5
LEWISBURG, WV 24901-0005
(304) 647-3228

Office of the Secretary
Case Control Branch
Attn. Section 5a Application No. 61
Surface Transportation Board
1925 K Street NW
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed, please find an original plus 10 copies of my comments in the matter of Section 5a Application No. 61, National Classification Committee Agreement. A copy of these comments has been served on those persons designated as parties of record on the service list for this proceeding.

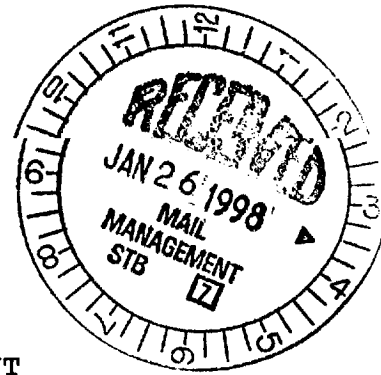
With warm regards, I am

Sincerely,


NICK J. RAHALL, II
Member of Congress

NJR/jz
enclosures

COMMENTS OF
REESE H. TAYLOR, JR.



In the Matter of:
SECTION 5a APPLICATION NO. 61
NATIONAL CLASSIFICATION COMMITTEE-AGREEMENT

I am Reese H. Taylor, Jr., an attorney engaged in the practice of law, specializing in the field of transportation. I was Chairman of the Interstate Commerce Commission from June of 1981 to December of 1985, when my term expired, and thereafter, I returned to the private practice of law. My comments are submitted in support of the Board's renewal of the 5a Agreement related to the above-captioned matter.

In its decision served November 13, 1997, initiating this proceeding, the Board raises the issue of whether the National Classification Committee (NCC) needs continued antitrust immunity, and in connection therewith, comments are invited on four questions specifically focused on the antitrust laws and immunity from them. With all due respect, I believe the Board's focus on the antitrust laws and immunity is misdirected, because the governing statute specifically confers immunity when the classification system is operated in conformance with an agreement that has been previously approved by the ICC and can now be approved by the Board.

Congress has repeatedly found that the National Motor Freight Classification (NMFC) system needs immunity from the operation of the antitrust laws in order to function. This finding was reaffirmed in the Motor Carrier Act of 1980, in the

Trucking Industry Regulatory Reform Act of 1994 (TIRRA), in Section 601 of Title VI of the Federal Aviation Administration Authorization Act of 1994 (FAAAA), and in the Interstate Commerce Commission Termination Act of 1995 (ICCTA), wherein Congress again made it clear that a functioning motor freight classification system requires immunity. Accordingly, in ICCTA, Congress gave the Board the duty of determining - if renewal of an agreement is sought - whether such agreement and the classification activities conducted under it are in the public interest. This should be the Board's focus instead of the issues raised regarding the antitrust laws and immunity from them.

Since the real question before the Board is whether the classification system is functioning in the public interest, it is this issue that my comments are intended to address. Going back to my tenure as Chairman of the ICC, I recall that the Commission issued a landmark decision pertaining to motor freight classification. In I&S Docket No. M-29788 - Charge for Shipments Moving On Order-Notify Bill of Lading N.M.F.T.A., served on March 22, 1983, the Commission carefully reviewed the NMFC and ordered expunged all nonclassification provisions, rules and charges, so as clearly to separate the functions and provisions which were properly classification matters as distinguished from those which were not. As a result of the Order-Notify decision, it has been well settled since that all of the provisions, rules and specifications that remain in the NMFC are classification matters which properly comprise the classification system.

Moreover, in a series of proceedings conducted simultaneously with Order-Notify, the ICC reviewed the classification-making agreements governing the procedures of a number of organizations operating under antitrust immunity conferred by 49 U.S.C. §10706(b), including Section 5a Application No. 61, National Classification Committee-Agreement. Those particular agreements were revised to conform to certain specific requirements identified by the ICC in the concurrent proceedings and in Ex Parte 297 (Sub No. 5) - Motor Carrier Rate Bureaus-Implementation of P.L. 96-296. After carefully considering the NCC's Agreement, the ICC prescribed several necessary changes, and when these were made, the Commission ultimately approved such Agreement in May of 1988.

As evidenced by the aforementioned developments, the Commission engaged in some thoroughgoing oversight, consistent with its mandate from Congress, to make sure the National Classification Agreement functions in the public interest. The Commission achieved its objective by insisting that all NCC activities be conducted in compliance with applicable law and the Commission's requirements.

Today, the NCC's system operates "in the sunshine" and continues to function in strict accordance with all of the ICC-imposed directives. Any shipper or other interested person is afforded both the right and the opportunity (i) to propose changes in the NMFC; (ii) to present views personally or in writing; (iii) to participate in the discussion of proposed changes in open public meetings of the NCC; (iv) to provide

NMFTA's staff with details on the transportation characteristics of a product; (v) to appeal any decision made by a Classification Panel; and (vi) to protest such a decision to the STB and ask for its suspension and investigation.

I have had the chance to observe the operations of the NCC first hand. Furthermore, it is my understanding that both during and after my ICC tenure, the Commission's staff religiously monitored every meeting of the NCC and its Classification Panels. This close oversight served to ensure that the NCC's system does function in the public interest by operating in strict accord with all of the ICC's prescribed procedures.

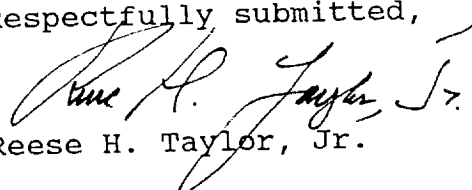
Let me also express my considered opinion that due to the interrelationship of all the provisions in the NMFC, there is no apparent practical way to segregate, compartmentalize, or otherwise limit antitrust immunity to one or more of the various activities or provisions of the classification program without destroying the entire system. Despite contrary inferences from a couple of the questions set out in the STB Decision of November 13, 1997, I believe any attempt at such segregation would only produce confusion in the public mind, and no carrier would dare to meet with another carrier to discuss and develop any aspect of the provisions in the NMFC without immunity. The risk of suit, for even an alleged violation of unimmunized activity, is simply too great!

With regard to the Board's question in which some concern is reflected concerning the scope of the agency's

regulatory jurisdiction, let me assert unequivocally that the ICC always understood its regulatory jurisdiction was limited to making certain the classification system functions in the public interest by operating in strict conformance with the approved provisions of its 5a Agreement. I submit that the Board's jurisdiction is no broader, in that the authority to confer or modify antitrust immunity is held exclusively by Congress, while jurisdiction regarding compliance with the antitrust laws rests with the Department of Justice and the courts.

From a review of the legislative process that led to the enactment of ICCTA, not even the slightest inference can be drawn that Congress intended to adopt the legislation without immunity for the classification system, and as a result, I am firmly convinced that the real issue before the Board is whether the classification system is functioning in the public interest. Consequently, because the ICC fully satisfied its oversight responsibility by prescribing the procedures warranted to make the NCC's classification process function in the public interest, and also because the NCC continues to operate in strict conformity with all the procedures and requirements mandated by the ICC, I urge the Board to find that a renewal of the NCC's 5a Agreement is in the public interest.

Respectfully submitted,


Reese H. Taylor, Jr.

Dated: January 22, 1998

(SMU\FORM\458031)

THE SIMMONS COMPANY

J.J. Simmons, III
President

701 Pennsylvania Avenue, NW
Suite 300-Box 19
Washington, DC 20004
(202) 508-5075
(202) 508-5380 (Fax)

January 28, 1998

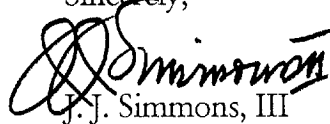
Office of the Secretary
Case Control Branch
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Attn: Section 5a Application No. 61

Dear Mr. Williams:

Enclosed please find the original and 10 copies of my comments in the matter of the Section 5a Application No. 61 – National Classification Committee Agreement. A copy of my comments has been served on those persons designated as parties of record on the latest service list by your office dated January 21, 1998.

Sincerely,



J.J. Simmons, III

cc: Parties of Record

THE SIMMONS COMPANY

J.J. Simmons, III
President

701 Pennsylvania Avenue, NW
Suite 300-Box 19
Washington, DC 20004
(202) 508-5075
(202) 508-5380 (Fax)

COMMENTS OF

J. J. SIMMONS, III

In the Matter of

SECTION 5a APPLICATION NO. 61

NATIONAL CLASSIFICATION COMMITTEE AGREEMENT

I am J. J. Simmons, III, a consultant now specializing in the field of transportation. I was the Vice Chairman of the Interstate Commerce Commission on three separate occasions. I served a total of 12 plus years as a member of the ICC: from April 27, 1982 to February 28, 1983, at which time I resigned from the Commission upon my confirmation as the Under Secretary of the Department of Interior; and from September 10, 1984 until December 31, 1995, when the ICC was abolished. I then served as the Vice Chairman of the newly created Surface Transportation Board through December 31, 1996, when I left the Board.

My comments are in support of the Board's renewal of the 5a Agreement related to the above-captioned matter.

The Board's decision served November 13, 1997, commencing this proceeding, questions whether the National Classification Committee (NCC) needs antitrust immunity. Comments were invited addressing four questions specifically directed at the antitrust laws and the NCC's immunity from them. With all due respect, the Board's focus is misdirected. The statute confers limited immunity from the operation of the antitrust laws when the classification

system is operated in conformance with an agreement which has been approved – previously by the ICC, and now by the Board.

To me it is significant, as regards antitrust and limited liability, to note that the Congress has always found that the classification of motor freight is a system which needs immunity from the operation of the antitrust laws. The Congress has reaffirmed that fact in its enactment of the Motor Carrier Act of 1980; the Trucking Industry Regulatory Reform Act of 1994 (TIRRA); and Section 601 of Title VI of the Federal Aviation Administration Authorization Act of 1994 (FAAAA). Again, in the Interstate Commerce Commission Termination Act of 1995 (ICCTA), the most recent legislation concerning for-hire trucking regulatory matters, Congress made it clear that motor freight classification requires immunity. Congress gave the Board the duty of determining – if renewal of an agreement is sought – whether the agreement and the classification activities conducted under it, are in the public interest. As I watched the legislation on ICCTA, it was clear to me that Congress didn't even consider enacting a bill without immunity for the classification system. In my mind, it is already settled that the NCC's classification activities need immunity.

The threshold question is whether the classification system is in the public interest. Therefore, I will speak to that issue. In my view, the ICC fulfilled its obligation as the regulatory agency having oversight over the NMFC and the classification-making process. It took a very active role in carefully prescribing the content of the NMFC and the procedures by which it is maintained and amended, thus insuring that the resulting classification system would operate in the public interest. During my terms at the ICC, there were a number of decisions in proceedings involving motor freight classification. First, in its decision, served March 22, 1983, in I & S Docket No. M-29788 – Charge for Shipments Moving on Order Notify Bill of Lading –

NMFTA, the Commission conducted a comprehensive examination of the entire content of the National Motor Freight Classification (NMFC). In that case the Commission painstakingly reviewed the NMFC and ordered all nonclassification provisions, rules and charges to be removed from the tariff so as clearly to separate the functions and provisions which are properly classification matters from those which are not. The effect of the Order-Notify decision was to remove all doubt that the provisions, rules or specification which remain in the NMFC are proper classification matters. They are as much a part of the classification system as the class ratings themselves.

Then, in a series of proceedings conducted simultaneously with Order-Notify, the ICC investigated all the rate or classification-making agreements and the procedures of the motor carrier organizations operating under antitrust immunity conferred by 49 U.S.C. §10706(b). This investigation included the NCC's Section 5a Application No. 61 – National Classification Agreement. All the agreements were revised to conform to specific requirements laid down by the ICC in those proceedings and in the proceeding titled Motor Carrier Rate Bureaus – Implementation of P.L. 96-296. After careful consideration of the NCC's Agreement, the ICC prescribed many necessary changes. When the Commission was satisfied that the changes had been made, it ultimately gave its final approval of the Agreement in May of 1988.

During my tenure at the ICC, the Commission watched very carefully to see to it that the National Classification Agreement was in the public interest. The Commission's staff monitored the NCC's meetings to ensure that they were conducted in compliance with applicable law and regulations. The Commission was very determined to see to it that the collective classification activities of the NCC were in the public interest.

I have observed the operations of the NCC first hand, attending many NCC and Panel meetings. I have seen that their meetings are conducted in strict accord with the ICC's requirements. The NCC's system not only operates "in the sunshine," any shipper or other interested persons may propose changes in the NMFC; may present views personally or in writing; can participate in the discussion of proposed changes in open public meetings of the NCC; can also provide NMFTA's staff with details on the transportation characteristics of a product. Finally, they may appeal the decisions of a Panel to the full NCC and if that is not satisfactory, they may protest the NCC's decision to the STB and ask for its suspension and investigation.

I'm convinced that the classification system, which contains only provisions specifically authorized by the ICC and operates in strict accord with the ICC prescribed procedures, is in the public interest. Frankly, it will be difficult to find a collective activity which is more in the public interest than the NCC's classification system. I urge the Board to renew the NCC's 5a Agreement.

Moreover, in my view, because of the interrelationship of all the provisions in the NMFC, there is no practical way to separate out one or more of the various activities or provisions of the classification system (as is hinted in questions 2 and 3 of the November 13, 1997, STB Decision). To do so would not only destroy the system, but such segregation would only create confusion in the public mind, rather than avoiding it. I have personally talked with many motor carrier officials. Their unanimous belief is that no carrier would dare to meet with another carrier to discuss and develop any aspect of the provisions in the NMFC without immunity. I am aware that many shippers feel the same way; that the risk of suit for alleged violations of unimmunized activities is simply too great.

In question 3, the Board mentions the scope and impact of its regulatory jurisdiction. From my personal perspective as a former Commissioner for more than 12 years, I can advise the Board that the ICC comprehended that its regulatory jurisdiction was limited to the issue of seeing to it that the classification system operated in the public interest, in strict conformance with the 5a Agreement which had been approved. I do not see that the Board's jurisdiction is any broader. The authority to confer or modify antitrust immunity is held exclusively by Congress, while jurisdiction regarding compliance with the antitrust laws rests with the Department of Justice and the Courts.

Respectfully submitted,


J. Simmons, III

Dated: January 28, 1998

APPENDIX A

VOLUME II
INCORPORATED STATEMENTS

SHIPPERS

NORTH CAROLINA TRAFFIC LEAGUE

INCORPORATED IN 1929

P.O. BOX 241203

CHARLOTTE, N.C. 28224-1203

(704) 357-8800 FAX: (704) 357-8804

67TH ANNUAL MEETING

June 12-13, 1998

Sea Trail Plantation

Sunset Beach, N.C.

(800-624-6601)

January 12, 1998

CHAIRMAN, BOARD OF GOVERNORS

Jim Bradley
CMI Industries Inc.
Elkin, NC

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John Deere Consumer Products
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Cheryl Walsh
Sara Lee Knit Products
Winston-Salem, NC

Executive Vice President

Bill Teague
Veteran Traffic Service
Charlotte, NC

Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, NW
Washington DC 20423

Re: Section 5a Application No 61
National Classification Committee

Dear Chairlady Morgan and Vice Chairman Owen:

My name is Bill Teague and I am the Executive Vice President of the North Carolina Traffic League, Inc. (NCTL). My business address is P.O. Box 241203, Charlotte, North Carolina 28224-1203. I am authorized by the NCTL to submit this statement on its behalf in support of the renewal of the National Classification Committee's (NCC) Section 5a Application No. 61 which authorizes the carrier members of that organization to collectively establish classification matters.

NCTL is a non-profit transportation organization, chartered by the Governor of North Carolina in 1929, serving the diverse needs of the North Carolina transportation community. Its members ship their products throughout the United States making substantial use of motor carriage. Included among its membership are some of the country's largest corporations such as E.I. Dupont, Ingersoll Rand Corp., Sara Lee, Hunt Mfg. Co., and Lowes Companies, as well as other manufacturers of all sizes engaged in business encompassing virtually all sectors of industry.

In its Notice, served November 13, 1997, the Surface Transportation Board invited comments regarding the renewal of the NCC's collective classification-making agreement posing questions concerning the public interest aspects of that activity and the need for antitrust immunity. During my more than 30 years of involvement in motor carrier pricing issues I have become very familiar with the provisions of the National Motor Freight Classification (NMFC), the views of my shipper members regarding that publication, and the importance of antitrust immunity to the classification process.

BOARD OF GOVERNORS

Austin Quality Foods
Richard Barnes
Cary, NC

Darvin Camp
Hunt Mfg. Co.
Statesville, NC

David Hentz
Clariant Corporation
Charlotte, NC

Don Lewis
Wix Corporation
Gastonia, NC

Dan Palcher
Ithaca Industries
Wilkesboro, NC

Walt Bendell
Lowes Companies
N. Wilkesboro, NC

Don Faucette
Carolina Steel Corporation
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Distribution Technology
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Stockhausen Inc.
Greensboro, NC

Ellis Brotherton
American & Elford Inc.
Mt. Holly, NC

Tom Guthrie
NC State Ports Authority
Wilmington, NC

Bennie Jones
Harriet & Henderson Yarns
Henderson, NC

Michael Murphy
Pass & Seymour/Legrand
Concord, NC

Glenn Wright
Cone Mills
Greensboro, NC

The need and practical necessity for a uniform freight classification cannot be questioned. With thousands of articles moving in commerce, and the availability of literally thousands of motor carriers, shippers must have a readily accessible and understandable tool by which it can measure the basis for a carrier's pricing of the transportation services it provides in handling a shipment. Through the identification of a commodity's transportation characteristics, namely its density, handling, stowing and liability factors, the carrier has a rational basis for the pricing of its services and the shipper is provided with an understanding of the elements upon which that pricing decision is predicated. Importantly, the shipper is able to ascertain the classes assigned to competitive products based on their recognized transportation factors, as well as to other articles which are related from a transportation standpoint, and to utilize that relationship in determining the fairness and competitiveness of the rates being offered to transport the shipper's goods by motor carriage.

The National Motor Freight Classification is particularly useful to shippers because in that single document is found the conveniently organized and readily understandable grouping of all the articles moving in commerce, the rules and regulations governing the construction and application of the classification provisions, and the rules pertaining to the operative conditions underpinning the classification. Very important to shippers are the packaging provisions which not only impact various transportation characteristics of the commodities affecting their classification but also assist shippers, and carriers, in securing the safe transportation of their articles to market.

Another important aspect of the NMFC is the direct access to the classification process provided to shippers under the procedures by which the classification is established. Shippers can submit proposals for establishing or changing the classification assigned to their products, can avail themselves of the classification expertise of NCC staff in formulating and supporting their proposals, can work with the carrier members in the development of the facts and data upon which the resulting classification will be based. Shippers, therefore, are able to promptly change the classes assigned to or applicable on their products whenever new technology, product design or packaging results in an improvement in the transportation characteristics of their commodities.

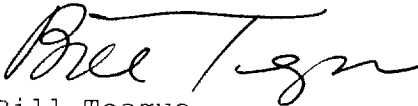
The Surface Transportation Board has raised a number of issues regarding continued antitrust immunity for the NMFC which, undoubtedly, will be addressed by legal representatives of the parties. In my view, however, antitrust immunity is a critical factor if shippers are to continue to be involved in the formula-

Surface Transportation Board,
January 12, 1998
Page 3

tion and updating of the classification. Classification activities, while not ratemaking, do constitute a pricing tool and involve competitors, among both carriers and shippers. As such, antitrust immunity is an important safeguard provided by Congress to participants in classification matters. It would also be harmful to the classification process if the classification would be divided into activities protected under the antitrust laws and those which are not. No sound reason exists for needlessly placing parties at risk in participating in any activities long identified as classification matters, all of which have been and are entitled to antitrust immunity under law.

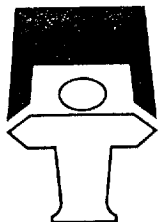
The NCTL, on behalf of its shipper members, supports renewal of the NCC's Section 5a No. 61 Application because the collective classification activities conducted under that agreement serve the public interest, and the continuation of antitrust immunity for all classification matters currently considered by the NCC in establishing the provisions and contents of the National Motor Freight Classification.

Respectfully submitted,


Bill Teague

cc: Parties of Record

atomic



ATOMIC TRANSPORTATION SYSTEM INC.
2070 LOGAN AVENUE, P.O. BOX 1045,
WINNIPEG, MANITOBA, CANADA R3C 2X6 • (204) 633-9320
FAX (204) 694-7021

December 31, 1997

Surface Transportation Board
Office of the Secretary - Case Control Unit
1925 K Street, NW
Washington, DC 20423

Re: Comments in Support of Sec. 5a Appl. No. 61
National Classification Committee Agreement

Dear Chairman Morgan and Vice Chairman Owen:

I am Mr. Larry Lakey, Director of Business Development of Atomic Transportation System Inc. My company is a motor carrier of general commodities domiciled in Winnipeg, Manitoba and doing business in the states of Washington and Oregon. We employ 30 people and operate 8 trucks and 2 terminals within that area. We understand that the Surface transportation Board is presently considering whether it would be in the public interest to renew the collective classification agreement of the National classification committee. I have been authorized to file this statement to advise you that Atomic Transportation System Inc. relies on the National Motor Freight Classification (NMFC), and we would urge the Board to renew the NCC's agreement in total so as to preserve the antitrust immunity for all of the functions that it now performs.

We should emphasize that the NMFC serves the public interest and it is procompetitive. It assists my company by providing a source of uniform classifications, rules, uniform bills of lading, packaging standards and other important information pertaining to the transportation of freight. Moreover, the NMFC equitably groups all products moving in commerce within 1 of 18 classes in accordance with an evaluation of the characteristics that the ICC prescribed in 1983 to assess the transportability of each commodity. As an informational standard, the NMFC is a fundamental component of the pricing system employed by our company, as well as thousands of motor carriers throughout the nation. While freight classification is not pricing, and it does not involve the setting of rates or charges, Atomic Transportation System Inc. relies on information contained in the classification to assist it in developing reasonable and equitable pricing for our customers. Without the NMFC, the pricing of LTL freight would be much more difficult, because it would be necessary to evaluate each commodity to separately determine its transportation characteristics. Like the vast majority of motor carriers, we simply do not have the capability to independently establish and maintain a freight classification that is national in scope. Rather, the only feasible way in which the classification on which we rely can be maintained is on a collective basis through the efforts of many participants acting in cooperation with affected shippers working under immunity from antitrust laws.

We consider the NMFC to be a flexible system that can be changed easily and expeditiously. Classification proposals are considered in open public meetings by the NCC or one of its classification panels. Any person, including my company and its customers, can propose a change to the NMFC and appear at any meeting or submit a statement in order to make their view known. Further, any interested person who is dissatisfied with the disposition of a proposal by a classification panel has an automatic right to appeal the panel's action to the NCC and ultimately to file a protest with the Board.

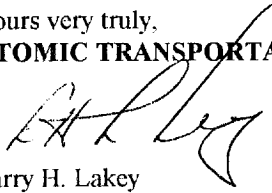
Despite the benefits we receive, my company would be reluctant to participate in the classification process without the certainty of knowing that we are protected by antitrust immunity. The mere threat of antitrust litigation is a severe deterrent because, even if we ultimately prevailed, the expense and disruption that are inherent in antitrust litigation could adversely affect our business. It is our view, however, that in the Interstate Commerce Commission Termination Act of 1995, Congress again restated its intention or provide antitrust protection for any activities that are properly considered to involve classification matters. In this regard, it must be recognized that there is an interrelationship between the descriptions, ratings, rules, packaging provisions and bills of lading that comprise the NMFC. A single classification provision might include not only a description and rating, but required packaging, and it may be subject to certain rules. Because of this interrelation, the elimination of antitrust immunity from any element of a classification provision would impact many others. Thus, partitioning the NCC's immunity would create doubt and confusion as to which provisions can be subject to the group's collective activity. This confusion concerning what is and is not immunized would have a chilling effect on the entire process. Therefore, in responding to the Board's question regarding the partitioning or paring down of the NCC's antitrust immunity to avoid confusion regarding the scope of its authority, we would point out that the only way to avoid confusing the public about the scope of the NCC's antitrust immunity is to preserve the immunity as it is. Consequently, any elimination or paring down of the activities which are immunized under the NCC's present agreement would destroy a resource that has proven to be an invaluable asset for this industry.

See Schedule "A" for additional comments.

Frankly, we would point out that without the NMFC, the resulting hodgepodge of non-uniform and incompatible classifications, rules and packaging provisions independently established by each carrier would create severe and unnecessary problems for our company and, especially, for our shipper customers. It is, therefore, essential that the NCC's limited protection from the antitrust laws be continued without change or dilution.

Yours very truly,

ATOMIC TRANSPORTATION SYSTEM INC.



Larry H. Lakey
Director of Business Development

LHL/dn

cc: Parties of Record

"APPENDIX A"

- The NMFC is a valuable and pro-competitive informational standard that carriers use in establishing equitable pricing for their services and avoiding cross subsidies between their shipper customers.
- The NMFC provides information on the transportability or service demands of all products moving in commerce nationwide. The commodities are accurately described for transportation purposes and equitably grouped into one of 18 possible classes according to their transportation characteristics.
- The NMFC provides the only uniform national standards for classifications, rules, packaging and bills of lading that are applicable for the transportation of commodities. This uniformity is invaluable. It assists shippers in comparing the prices offered by a variety of carriers. It enables shippers to package according to a single standard and it greatly facilitates the interlining of shipments between carriers.
- Changes to the NMFC are easily and expeditiously made in open public meetings where any interested person can appear and have his or her views heard and considered in connection with any classification matter.
- The NMFC has received long-standing support from the transportation industry because it is an equitable system that works well for carriers, shippers and others.
- The value of freight classification has been repeatedly recognized by congress in connection with the Motor Carrier Act of 1980; the Trucking Industry Regulatory Reform Act of 1994; Sec. 601 of the Federal Aviation Administration Authorization Act of 1994 and the Interstate Commerce Commission Termination Act of 1995.
- Continuation of the NCC's antitrust immunity is absolutely necessary for the classification process to continue. Even the threat of antitrust litigation would prevent both carriers and shippers from taking part in any collective classification making activities as no prudent business person would be willing to risk the expense and disruption that such litigation would entail.



IF IT'S BORDEN-IT'S
GOT TO BE GOOD

**BORDEN FOODS
CORPORATION**

January 2, 1998

Surface Transportation Board
C/O National Motor Freight Traffic Association
2200 Mill Road
Alexandria, VA 22314-4654

Dear Surface Transportation Board,

Borden Foods Corporation is a current subscriber to the National Motor Freight Classification (NMFC), its Docket Bulletins and the Classification System. We depend extensively upon the Classification System for LTL and Truckload contracting and rate negotiation. If it were not for the classification system Borden and its carriers would have difficulty in pinning down exactly where our diverse products fit in the proper classification to reasonably establish consistent and uniform rate bids or quotations from different carriers.

Borden Foods Corporation relies on the NMFC Classifications for the latest and most effective packaging minimum (base) requirements for existing and proposed new products. There is essentially no other resource available with the necessary groupings of products from which to establish "approved" or adequate packaging. We have in the past participated in the test shipment process and I have represented Borden at docket hearings for proposed new packaging for our products. The Classification Committee has always shown impartial and professional consideration for packaging proposals. The Classification Committee is a "one source resource" for shippers and carriers to determine if similar products from different manufacturers can be packaged alike and still withstand the rigors of transportation and distribution.

The Classification System provides a remedy for shippers of all sizes and types to classify their products and product packaging with the confidence that they have an equal and fair say in process. Borden Foods Corporation supports the NCC 5a Agreement Renewal. Enclosed are 10 copies of this letter to be filed with the Surface Transportation Board (STB).

Yours truly,

Mr. L.R. Wideman

Borden Foods Corporation

Logistics Administration

cc: B. White
S. Wood
R. Krombach
Parties of Record

180 EAST BROAD STREET
COLUMBUS, OHIO 43215-3799
TELEPHONE: 614/225-4000

Foodservice Logistics
242 College Avenue
P.O. Box 1016
Waterville, ME 04903-1016

Tel: (207) 877-6206
Fax: (207) 877-6222

Jan 19, 1998

Surface Transportation Board

Subject: Section 5A Application #61-National Classification Committee Agreement

Gentlemen:

We feel it is in the National interest to maintain the integrity of the National Motor Freight Classification. It is the only controlling organization affording the American Public with continuity of national transportation, especially where more than one carrier is involved. Without these standard classifications shippers would have to negotiate with every carrier involved in transporting his goods and that would be a nightmare, if not impossible.

It affords protection for both the shipper and transportation industry in providing for equitable, reliable transportation.

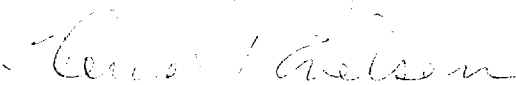
The Congress has repeatedly recognized the value of freight classification by its actions and rulings over the years, and even in ICCTA of 1995.

Standards for packaging to properly protect ones products in transport is also a very important part of their function.

To allow the NMFC to become extinct would place an unreasonable burden on the American shipping public.

Sincerely,

The Chinet Company



Herbert P. Nielsen
Traffic Manager

Eaton Corporation
Eaton Center
Cleveland, OH 44114-2584
216 / 523-5000
FAX: 216 / 523-4787



January 20, 1998

Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, N.W.
Washington, DC 20473

FAX 703-683-1094

Subject: Comments in Support of Section 5A Application No. 61,
National Classification Committee

Dear Chairman Morgan and Vice Chairman Owen:

My name is Joseph Sholtis and I am the General Transportation & Logistics Manager of Eaton Corporation.

Eaton Corporation is a global manufacturer of over 40,000 highly engineered products which serve industrial, vehicle, construction, commercial and aerospace markets. Principal products include electrical power distribution and control equipment, truck transmissions, engine components, hydraulic products, ion implanters and a wide variety of controls. Headquartered in Cleveland, OH, the company has over 50,000 employees and 155 manufacturing sites in 26 countries around the world, including nearly 100 facilities in North America. Sales for 1996 were \$7 billion.

I have been authorized by Eaton Corporation to provide this statement in support of the renewal of the National Classification Committee's Section 5A Agreement, which enables the motor carrier members of that organization to collectively establish freight classifications and related classification matters with antitrust immunity.

The Classification is a system that precisely describes all commodities moving in commerce and equitably groups them into 18 classes reflective of their transportability. These classes are determined according to an evaluation of the transportation characteristics of each commodity. The NMFC is valuable to Eaton Corporation inasmuch as it provides a source of procompetitive information pertaining to the transportability of not only our products, but all of the products with which they compete. In addition, the NMFC contains uniform rules, packaging standards, and bills of lading, which are useful to shippers, as well as carriers. While the classification does not include prices, rates or charges, Eaton Corporation and many other shippers rely on classification information as a basis for negotiating pricing with carriers. Without the NMFC, there would be no neutral standard to assess the transportation characteristics and the relative transportability of our products for pricing purposes.

Page Two
Surface Transportation Board
January 20, 1998

Subject: Comments in Support of Section 5A Application No. 61,
National Classification Committee

The continuation of the NCC's antitrust immunity in its entirety is absolutely necessary for the system to work. It must be recognized that the description, ratings, rules, packaging provisions and bills of lading that are published in the NMFC are all integral parts of the classification. Consequently, the elimination of antitrust immunity from any provision would create doubt and confusion as to which provisions are covered and can be the subject of the NCC's collective activity. Confusion concerning what is and is not immunized would strongly discourage participation in the process. Even the threat of antitrust litigation would seriously jeopardize the process as neither carriers nor shippers would be willing to risk the expense and disruption that such litigation would entail. In order to take part in the classification process, Eaton Corporation must have an assurance that the collective activity is immunized. Moreover, a statement by the Surface Transportation Board that the antitrust laws do not apply to the activity would not be sufficient. Consequently, any elimination or paring down of the immunity not provided under the NCC's present agreement, would diminish the participation in the NMFC. To be accurate, the Classification must reflect consideration of the maximum possible amount of information from an affected industry. Partitioning the NCC's antitrust immunity would be counterproductive because it would discourage companies, such as ours, from providing information and deny us the opportunity of safely taking part in the process.

The National Motor Freight Classification has well served the public for over 60 years and continues to do so. There is no reason to jeopardize the classification process by denying renewal of the National Classification Committee's Section 5A Agreement. Withholding antitrust immunity in the formulation of recognized classification activities would not be in the public interest.

Respectfully submitted,


Joseph M. Sholtis
General Transportation &
Logistics Manager

sc

January 13, 1998

Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, NW
Washington, DC 20423

Re: Section 5A Application No 61
National Classification Committee

Dear Chairman Morgan and Vice Chairman Owen:

As a packaging consulting company, PACCON is concerned with proceeding Section 5a Application No. 61 - National Classification Committee Agreement reviewing the agreement under which the National Motor Freight Classification (NMFC) is maintained.

We support the renewal of the NCC Agreement for the following reasons:

- There is no other collectively established classification system that operates in the public interest with national scope.
- It is the only fair way to create a level playing field for grouping products with comparable characteristics - or to separate those that are dissimilar for transportation purposes. No other system lets every user know where their products fit in the mix.
- Should the Agreement be revoked, the consequences of the variety of unrelated, unconnected classification methods, which would evolve, must be considered. At a time when meager profitability and the existence of some LTL carriers is based upon freight claims, it would seem inappropriate to dissolve the standards that guided the carrier industry from its inception.
- How would a shipper deal with the disparity of ratings/prices on shipments moving via two or more carriers?
- Shippers of all sizes and types must have a way to actively take part in the Classification system. This voice is lost if it were a unilateral system versus the collective NMFC system. Since Congress always provided for limited immunity for collective motor carrier classification procedures, it clearly sees the need for the system and for limited immunity to let it work. Carriers simply cannot and will not meet collectively without immunity.
- Without the NMFC guidelines and no freight packaging standards, it's possible that freight claim payments would be reduced while litigation is increased. More claims could be denied due to nonconformity or insufficient packaging. By dissolving standards, and with no common denominator for classifying freight, carriers would resort to classifying freight by weight without regard to value or the other important characteristics.

In our many years of experience, freight damages occur from:

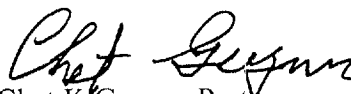
- Efforts by shippers to reduce costs by short-changing package protection.
- Applying ill-advised packaging technology and by misunderstanding stress levels and handling techniques of the LTL environment.
- Bypassing freight classification standards.

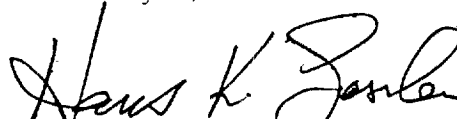
Shippers who comply with and/or surpass the guides and standards of the NMFC normally experience little damage. Conversely, carriers not complying with shipping standards often carry improperly protected freight, incurring higher claims.

The fact that this proceeding is being held to determine consumer value, it would be of great significance if an estimate of current total national freight-claims costs, as well as the higher collective cost of administration, were compiled. Such a figure would provide an eye-opening monetary reference that is normally passed on as additional overhead of current consumer costs.

If anything should be done, packaging standards should be tested and tightened with stricter enforcement by all concerned. A more active, instructional approach by the trucking industry through the NMFTA, with its shippers, would help indemnify carriers, increase industry-wide quality and reduce overall consumers costs.

Sincerely,


Chet K. Guynn, Partner


Hans K. Gossler, Partner

cc: Parties of Record



Allen-Bradley

January 15, 1998

Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, N.W.
Washington, DC 20423

*RE: Comments in Support of Section 5a Application No. 61, National
Classification Committee*

Dear Chairman Morgan and Vice Chairman Owen:

My name is Stuart Swinciki and I am the Corporate Traffic Manager of Rockwell Automation/Allen-Bradley. My company is a manufacturer of electrical automation, switches and equipment that is shipped from 25 manufacturing facilities in the United States, to our customers located in every state in the union. We rely on LTL Truck carriers to deliver 85% of our products to our customers. I have been authorized by my company to provide this statement in support of the renewal of the National Classification Committee's Section 5a Agreement which enables the motor carrier members of that organization to collectively establish freight classifications and related classification matters with antitrust immunity.

The need for a uniform freight classification has long been recognized by the transportation community. Without one, carriers would have to publish charges for transporting the literally thousands of articles moving daily between any two points in the United States. That would result in the publication of literally millions of separate and distinct rates for each commodity. Obtaining and analyzing rate information would become unduly burdensome and undermine access to the variety of price and service options created by Congress through the legislation lessening regulation of motor carrier transportation services.

The grouping of articles, including my company's products, into a limited number of classes within the National Motor Freight Classification simplifies our ability to obtain and compare pricing information. Under the procedures authorized in the National Classification Committee's present Section 5a agreement we are able to participate fully in the process whereby the transportation characteristics of a commodity are evaluated by the carriers, and, should we disagree with the resulting reclassification, we are free to protest that action to the Surface Transportation Board.



Congress has provided that the collective establishment of classification matters by carriers under approved agreements is entitled to antitrust immunity. The contents of the National Motor Freight Classification are confined to classification matters. The authorized procedures for formulating those matters have long served the interests of the shipping public. The National Classification Committee's Section 5a agreement continues to serve the public interest and should be renewed. Any attempt to redefine certain classification matters as requiring or not requiring antitrust immunity would serve no useful purpose and would only work to the detriment of the cohesive classification system now utilized by shippers and carriers. My company would not feel secure in participating in a classification process which is in part, or in whole, not within the protection of immunity from the antitrust laws. The risk of antitrust suits by the government, competitors, or affected shippers simply would be too great.

The National Motor Freight Classification has well served the public for over 60 years and continues to do so. There is no reason to jeopardize the classification process by denying renewal of the National Classification Committee's Section 5a Agreement. Withholding antitrust immunity in the formulation of recognized classification activities would not be in the public interest.

Respectfully submitted,



Stuart Swinciki
Corporate Traffic Manager
Rockwell Automation/Allen Bradley

SS/sf

cc: Parties of Record

SIEMENS

January 14, 1998

Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, NW
Washington, DC 20423

Re: Comments in Support of Section 5a Application No. 61, National Classification Committee

Dear Chairman Morgan and Vice Chairman Owen:

My name is Mike Brewer and I am the Corporate Transportation Manager of Siemens Energy & Automation Incorporated. Our company ships all types of electrical products including circuit breakers, switches, motors, medical equipment, automotive products, and lighting products among others. We have over 100 shipping origins to virtually all U.S. cities. I have been authorized by my company to provide this statement in support of the renewal of the National Classification Committee's Section 5a Agreement which enables the motor carrier members of that organization to collectively establish freight classifications and related classification matters with antitrust immunity.

The need for a uniform freight classification has long been recognized by the transportation community. Without one, carriers would have to publish charges for transporting the literally thousands of articles moving daily between any two points in the United States. That would result in the publication of literally millions of separate and distinct rates for each commodity. Obtaining and analyzing rate information would become unduly burdensome and undermine access to the variety of price and service options created by Congress through the legislation lessening regulation of motor carrier transportation services.

The grouping of articles, including my company's products, into a limited number of classes within the National Motor Freight Classification simplifies our ability to obtain and compare pricing information. Under the procedures authorized in the National Classification Committee's present Section 5a agreement we are able to participate fully in the process whereby the transportation characteristics of a commodity are evaluated by the carriers, and, should we disagree with the resulting reclassification, we are free to protest that action to the Surface Transportation Board.

Siemens Energy & Automation, Inc

3130 North Berkeley Lake Road • Duluth, GA 30136 • Tel: (770) 495-9346 Fax: (770) 418-9158

January 14, 1998
Page 2

Congress has provided that the collective establishment of classification matters by carriers under approved agreements is entitled to antitrust immunity. The contents of the National Motor Freight Classification are confined to classifications matters. The authorized procedures for formulating those matters have long served the interests of the shipping public. The National Classification Committee's Section 5a agreement continues to serve the public interest and should be renewed. Any attempt to redefine certain classification matters as requiring or not requiring antitrust immunity would serve no useful purpose and would only work to the detriment of the cohesive classification system now utilized by shippers and carriers. My company would not feel secure in participating in a classification process which is in part, or in whole, not within the protection of immunity from the antitrust laws. The risk of antitrust suits by the government, competitors, or affected shippers simply would be too great.

The National Motor Freight Classification has well served the public for over 60 years and continues to do so. There is no reason to jeopardize the classification process by denying renewal of the National Classification Committee's Section 5a Agreement. Withholding antitrust immunity in the formulation of recognized classification activities would not be in the public interest.

Respectfully submitted,



Mike W. Brewer
Corporate Transportation Manager

cc: Parties of Record



January 5, 1998

Attn: Secretary
Surface Transportation Board
1925 "K" Street
Washington, DC 20423

Dear Secretary:

Thermo Industries, Inc. is a franchised distributor of Bryant, Carrier and Payne air conditioning, heating and ventilating equipment, parts and accessories, both commercial and residential, throughout North Carolina and upstate South Carolina. We operate two main distribution centers, one in Charlotte and one in Raleigh, NC with 16 field parts branches throughout NC.

Our annual sales volume exceeds \$90,000,000, in excess of 16,000 motor carrier shipments with annual freight expenditures over \$750,000.

We urge the Surface Transportation Board to renew the agreement, (Section 5 a Application 61), under which the National Motor Freight Classification is established and maintained. We also would prefer an independent board or committee to arbitrate disagreements and/or disputes between shippers and carriers pertaining to all rules, packaging, descriptions and ratings contained in the National Motor Freight Classification.

We believe the NMFC is a fair and equitable basis for the establishment and application of motor carrier freight rates.

Cordially,

Edmund R. Piesciuk
Logistics Manager

cc: Parties of Record

HERMO INDUSTRIES, INC.

4300 Golf Acres Drive (28208) ♦ P.O. Box 668109 ♦ Charlotte, NC 28266-8109
(704) 394-7311 ♦ 800-927-6154 ♦ FAX (704) 392-0979

APPENDIX A

VOLUME II
INCORPORATED STATEMENTS

STATES



Department of Administrative Services

Division of Purchasing & General Services

3150 State Office Building, Capitol Hill

P.O. Box 141061

Salt Lake City, Utah 84114-1061

(801) 538-3026

FAX: (801) 538-3882

<http://www.purchasing.state.ut.us>

Michael O. Leavitt
Governor

Raylene G. Ireland
Executive Director

Douglas G. Richins, C.P.M.
Division Director

December 29, 1997

Surface Transportation Board
Office of the Secretary, Case Control Unit
1925 K Street, NW
Washington, DC 20423

RE: Comments in Support of Sec. 5a Appl. No. 61
National Classification Committee's Agreement

Dear Chairman Morgan and Vice Chairman Owen:

I am Daniel R. Reisner, Freight Manager of the State of Utah a shipper and receiver of general freight domiciled in Salt Lake City, Utah doing intrastate and interstate business. I understand the Surface Transportation Board is presently reviewing the activities the National Classification Committee performs under its collective classification agreement with a view toward determining whether these activities are in the public interest.

The Classification is a system that precisely describes all commodities moving in commerce and equitably groups them into 18 classes reflective of their transportability. These classes are determined according to an evaluation of the transportation characteristics of each commodity. The NMFC is valuable to the State of Utah inasmuch as it provides a source of procompetitive information pertaining to the transportability of not only products purchased by state agencies and political subdivisions (i.e. including cities, counties, school districts, universities and colleges) but of all products shipped via surface motor carrier transportation. In addition, the NMFC contains uniform rules, packaging standards, and bills of lading, which are useful to shippers as well as carriers. While the classification does not include prices, rates or charges, my State and many other shippers rely on the classification information as a basis for negotiating pricing with carriers and evaluating the service offered by various carriers that are competing for our freight. The NMFC has been used in statewide freight contract bids for various products purchased under contract and transported into various state locations and on occasion commodities transported from various state locations, e.g. prison industries, university bookstore returns,

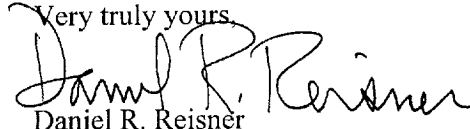
etc.. Without the NMFC there would be no neutral standard to assess the transportation characteristics and the relative transportability of commodities purchased for pricing purposes.

We consider the shipper's right to take an active role in developing classification proposals an important and valuable feature of the classification system. Changes to the NMFC are easily and expeditiously made. The NMFC is maintained or amended by way of proposal, which are discussed in open public meetings where my State, or any interested person can appear and have his or her views heard and considered in connection with any classification matter. My State has the right to propose a change to the NMFC and we may appear at any meeting or submit statements, in order to make our views known regarding a classification proposal. If we are dissatisfied with the disposition of a proposal by a classification panel, we have an automatic right to appeal the panel's action, first to the full NCC, and ultimately to the Surface Transportation Board.

The continuation of the NCC's antitrust immunity in its entirety is absolutely necessary for the system to work. It must be recognized that the descriptions, ratings, rules, packaging provisions and bills of lading that are published in the NMFC are all integral parts of the classification. Consequently, the elimination of antitrust immunity from any provision would create doubt and confusion as to which provisions are covered and can be subject of the NCC's collective activity. Confusion concerning what is and is not immunized would strongly discourage participation in the process. Even the threat of antitrust litigation would seriously jeopardize the process as neither carriers nor shippers would be willing to risk the expense and disruption that such litigation would entail. In order to take part in the classification process, my State must have an assurance that the collective activity is immunized. Moreover, a statement by the Surface Transportation Board that the antitrust laws do not apply to the activity would not be sufficient. Consequently, any elimination or paring down of the immunity not provided under the NCC's present agreement, would diminish the participation in the NMFC. To be accurate, the Classification must reflect consideration of the maximum possible amount of information from an affected industry. Partitioning the NCC's antitrust immunity would be counterproductive because it would discourage States such as ours and companies from providing information and deny us the opportunity of safely taking part in the process.

We know of few, if any, motor carriers that have the resources to independently develop a classification system that would be truly representative of commodities moving nationwide. Without the NMFC, a conglomeration of incompatible classifications, rules, packaging provisions would have to be independently established by each carrier. This would diminish the available information and consequently would create severe problems for us and our vendors. As Congress said in connection with

the Motor Carrier Act of 1980, the Classification "is a useful tool that allows all to know what they are talking about." The NMFC is an essential tool for the transportation industry and it can be obtained only if carriers and shippers are permitted to act under immunity from antitrust laws.

Very truly yours,

Daniel R. Reisner
Freight Manager
State of Utah

cc: Parties of Record

DEPARTMENT OF GENERAL SERVICES**TRAFFIC MANAGEMENT**

P.O. BOX 1010

NORTH HIGHLANDS, CA 95660



Surface Transportation Board
Office of the Secretary, Case Control Unit
1925 K Street, NW
Washington, DC 20423

SUBJECT: Comments in Support of Sec. 5a Appl. No. 61, National Classification Committee's Agreement

Dear Chairman Morgan and Vice Chairman Owen:

I am David Wallace, Traffic Manager for the State of California, Department of General Services, a shipper and receiver of general freight, located in north Highlands, California doing intrastate and interstate business. I understand that the Surface Transportation Board is presently reviewing those activities the National Classification Committee (NCC) performs under its collective classification agreement to determine if they are in the best interest of the public. I strongly urge you to support the continuation of the NCC and the activities it performs.

The current Classification system precisely describes all commodities moving in commerce and equitably groups them into 18 classes reflective of their transportability. These classes are determined by an evaluation of the transportation characteristics of each commodity. The NMFC is valuable to the State of California as it provides a source of pertinent competitive information, pertaining to the transportability of not only products purchased by state agencies and political subdivisions (cities, counties, school districts, universities and colleges etc.) but of all products shipped via surface motor carrier transportation, and those with which they compete. NMFC also contains uniform rules, packaging standards, and bills of lading, which are beneficial to both shippers and carriers. The NMFC is used in delivery of goods purchased under contract and transported to a variety of state locations.

While the classification does not include price, rates or other charges, my agency and many other shippers not only rely but also depend on the classification information as a basis for negotiating pricing and evaluating the service offered by various carriers that compete for our business. Without the NMFC there would be no neutral standard to assess the transportation characteristics and the relative transportability of our products for pricing purposes.

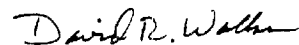
Another important and valuable feature of the classification system is our opportunity to take a proactive role in development of classification proposals. We have the right to partake in meetings, submit statements, and propose changes we deem necessary and share our views with the NMFC regarding any classification matter. Appropriate changes to the NMFC can be made. If we are dissatisfied with the disposition of a proposal by a classification panel, we are given the opportunity to appeal the panel's action, first to the full NCC, and ultimately to the Surface Transportation Board.

Chairman Morgan and Vice Chairman Owen
Surface Transportation Board
January 7, 1998
Page Two

The continuation of the NCC's antitrust immunity, in its entirety, is absolutely necessary for the system to work effectively. We recognize that the descriptions, ratings, rules, packaging provisions and bills of lading, published in the NMFC, are all integral parts of the classification. Consequently, elimination of antitrust immunity from any provision may prove to be costly to shippers and carriers alike and result in doubts and confusion as to which provisions would be covered and be subject of the NCC's collective activity. Confusion concerning what is and is not immunized would strongly discourage participation in the process. Even the threat of antitrust litigation would seriously jeopardize the process as neither carriers nor shippers would be willing to risk the expense and disruption that such litigation would entail. In order to take part in the classification process, we must have an assurance that the collective activity is immunized. Moreover, a statement by the Surface Transportation Board that the antitrust laws do not apply to the activity would not be sufficient. Consequently, any elimination or paring down of the immunity not provided under the NCC's present agreement would diminish the participation in the NMFC. To be accurate, the Classification must reflect consideration of the maximum possible amount of information from an affected industry. Partitioning the NCC's antitrust immunity would be counterproductive because it would discourage parties from providing information and deny them the opportunity of safely taking part in the process.

I know of few, in any, motor carriers or shippers that have the resources to independently develop a classification system that would be truly representative of commodities moving nationwide. Without the NMFC, a conglomeration of incompatible classifications, rules and packaging provisions would have to be independently established by each carrier. This would diminish the available information and consequently would create severe problems for our state agencies. The NMFC is an essential tool for the transportation industry and it can be obtained only if carriers and shippers are permitted to act under immunity from the antitrust laws.

Sincerely,



David R. Wallace
State Traffic Manager
State of California

cc: Parties of Record

STATE OF MICHIGAN



JOHN ENGLER, Governor

DEPARTMENT OF MANAGEMENT & BUDGET

P.O. BOX 30026, LANSING, MICHIGAN 48909

MARK A. MURRAY, Director

January 13, 1998

Surface Transportation Board
Office of the Secretary, Case Control Unit
1925 K Street, NW
Washington, DC 20423

Re: Comments in Support of Sec. 5a Appl. No. 61
National Classification Committee's Agreement

Dear Chairman Morgan and Vice Chairman Owen:

I am Corinne Sackrider, Traffic Manager of the State of Michigan, a shipper and receiver of general freight domiciled in Lansing, MI doing intrastate and interstate business. I understand the Surface Transportation Board is presently reviewing the activities the national Classification Committee performs under its collective classification agreement with a view toward determining whether these activities are in the public interest.

The Classification is a system that precisely describes all commodities moving in commerce and equitably groups them into 18 classes reflective of their transportability. These classes are determined according to an evaluation of the transportation characteristics of each commodity. The NMFC is valuable to the State of Michigan inasmuch as it provides a source of procompetitive information pertaining to the transportability of not only products purchased by State agencies and political subdivisions (i.e., including cities, counties, school districts, universities and colleges) but of all products shipped via surface motor carrier transportation. In addition, the NMFC contains uniform rules, packaging standards and bills of lading, which are useful to shippers as well as carriers. While the classification does not include prices, rates or charges, my State and many other shippers rely on the classification information as a basis for negotiating pricing with carriers and evaluating the service offered by various carriers that are competing for our freight.

The NMFC has been used in Statewide freight contract bids for various products purchased under contract and transported into various State locations and on occasion commodities transported from various State locations, e.g., prison industries, university bookstore returns, etc. The NMFC provides a neutral standard to assess the transportation characteristics and the relative transportability of commodities purchased. We consider the shipper's right to take an active role in developing classification proposals an important and valuable feature of the classification system. Changes to the NMFC are easily and expeditiously made.

The continuation of the NCC's antitrust immunity in its entirety is absolutely necessary for the system to work. It must be recognized that the descriptions, ratings, rules, packaging provisions and bills of lading that are published in the NMFC are all integral parts of the classification. Consequently, the elimination of antitrust immunity from any provision would create doubt and confusion as to which provisions are covered and can be subject of the NCC's collective activity. Confusion concerning what is and is not immunized would strongly discourage participation in the process. Even the threat of antitrust litigation would seriously jeopardize the process as neither carriers nor shippers would be willing to risk the expense and disruption that such litigation would entail. In order to take part in the classification process, my State must have an assurance that the collective activity is immunized. Moreover, a statement by the Surface Transportation Board that the antitrust laws do not apply to the activity would not be sufficient. Consequently, any elimination or paring down of the immunity not provided under the NCC's present agreement, would diminish the participation in the NMFC. To be accurate, the Classification must reflect consideration of the maximum possible amount of information from an affected industry. Partitioning the NCC's antitrust immunity would be counterproductive because it would discourage States such as ours and companies from providing information and deny us the opportunity of safely taking part in the process.

Few, if any, motor carriers have the resources to independently develop a classification system that would be truly representative of commodities moving nationwide. Without the NMFC, a conglomeration of incompatible classifications, rules, packing provisions would have to be independently established by each carrier. This would diminish the available information and consequently would create severe problems for us and our vendors. As Congress said in connection with the Motor Carrier Act of 1980, the Classification "is a useful tool that allows all to know what they are talking about". The NMFC is an essential tool for the transportation industry and it can be obtained only if carriers and shippers are permitted to act under immunity from antitrust laws.

Sincerely,



Corinne Sacknider
Senior Buyer/Traffic Manager
State of Michigan

cc: Parties of Record



STATE OF WASHINGTON

DEPARTMENT OF GENERAL ADMINISTRATION

OFFICE OF STATE PROCUREMENT

Rm. 201 General Administration Building, P.O. Box 41017 • Olympia, Washington 98504-1017 • (360) 902-7400
<http://www.ga.wa.gov/proc.htm>

January 2, 1998

Surface Transportation Board
Office of the Secretary, Case Control Unit
1925 K Street, NW
Washington, DC 20423

SUBJECT: Comments in Support of Sec. 5a Appl. No. 61, National Classification Committee's Agreement

Dear Chairman Morgan and Vice Chairman Owen:

I am Deborah Chakos, State Traffic Manager for the State of Washington, a shipper and receiver of general freight, domiciled in Olympia, Washington doing intrastate and interstate business. I understand that the Surface Transportation Board is presently reviewing those activities the National Classification Committee (NCC) performs under its collective classification agreement to determine if they are in the best interest of the public. I strongly urge you to support the continuation of the NCC and the activities it performs.

The current Classification system precisely describes all commodities moving in commerce and equitably groups them into 18 classes reflective of their transportability. These classes are determined by an evaluation of the transportation characteristics of each commodity. The NMFC is valuable to the State of Washington as it provides a source of pertinent competitive information, pertaining to the transportability of not only products purchased by state agencies and political subdivisions (cities, counties, school districts, universities and colleges etc.) but of all products shipped via surface motor carrier transportation, and those with which they compete. NMFC also contains uniform rules, packaging standards, and bill of lading, which are beneficial to both shippers and carriers. The NMFC is used in delivery of goods purchased under contract and transported to a variety of state locations.

While the classification does not include price, rates or other charges, my agency and many other shippers not only rely but also depend on the classification information as a basis for negotiating pricing and evaluating the service offered by various carriers that compete for our business. Without the NMFC there would be no neutral standard to assess the transportation characteristics and the relative transportability of our products for pricing purposes.

Another important and valuable feature of the classification system is our opportunity to take a proactive role in development of classification proposals. We have the right to partake in meetings, submit statements, and propose changes we deem necessary and share our views with the NMFC regarding any classification matter. Appropriate changes to the NMFC are expeditiously made. If we are dissatisfied with the disposition of a proposal by a classification panel, we are given the opportunity to appeal the panel's action, first to the full NCC, and ultimately to the Surface Transportation Board.

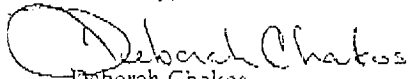
The continuation of the NCC's antitrust immunity, in its entirety, is absolutely necessary for the system to work effectively. We recognize that the descriptions, ratings, rules, packaging provisions and bills of lading, published in the NMFC, are all integral parts of the classification. Consequently, elimination of antitrust immunity from any provision may prove to be costly to shippers and carriers alike and result in doubts and confusion as to which provisions would be covered and be subject of the NCC's collective activity. Confusion concerning what is and is not immunized would strongly discourage participation in the process. Even the threat of antitrust litigation would seriously jeopardize the process as neither carriers

Chairman Morgan and Vice Chairman Owen
Surface Transportation Board
January 2, 1998
Page Two

nor shippers would be willing to risk the expense and disruption that such litigation would entail. In order to take part in the classification process, we must have an assurance that the collective activity is immunized. Moreover, a statement by the Surface Transportation Board that the antitrust laws do not apply to the activity would not be sufficient. Consequently, any elimination or paring down of the immunity not provided under the NCC's present agreement would diminish the participation in the NMFC. To be accurate, the Classification must reflect consideration of the maximum possible amount of information from an affected industry. Partitioning the NCC's antitrust immunity would be counterproductive because it would discourage companies such as ours from providing information and deny us the opportunity of safely taking part in the process.

We know of few, in any, motor carriers that have the resources to independently develop a classification system that would be truly representative of commodities moving nationwide. Without the NMFC, a conglomeration of incompatible classifications, rules and packaging provisions would have to be independently established by each carrier. This would diminish the available information and consequently would create severe problems for our customers and us. As Congress said in connection with the Motor Carrier Act of 1980, the Classification "is a useful tool that allows all to know what they are talking about." The NMFC is an essential tool for the transportation industry and it can be obtained only if carriers and shippers are permitted to act under immunity from the antitrust laws.

Sincerely,

 1/2/98
Deborah Chakos,
State Traffic Manager
State of Washington

cc: Parties of Record

APPENDIX A

VOLUME II
INCORPORATED STATEMENTS

OTHERS

Robert L. Abare
Consultant
5 Captain Brown Lane
Acton, Massachusetts 01720

I.C.C. Practitioner

Surface Transportation Board
Office of the Secretary
Case Control Branch
1925 K. Street, N.W.
Washington, D.C. 20423-0001

Attn: Section 5a Application No. 61

Dear Chairman Morgan & Vice Chairman Owen:

I am writing to support renewal of the Agreement in Application No. 61.

Before making my comments I perhaps should introduce myself in an effort to qualify my statements, and lend whatever credibility I can to my comments.

I am the retired Regional Director of the Former I. C. C.'s Region 1, Boston, MA. (N. E., N. Y., & N. J.) and prior to this served as Special Assistant to the Managing Director in the Washington headquarters. My service was nearly 30 years with the Commission. During this period I gained a deep insight into the intricacies of the transportation industry.

My experience gave me great respect for the transportation industry itself and the nation's business that relies on the smooth functioning of this system of moving goods and people efficiently. To this end the National Motor Freight Classification System makes a quality and tremendous contribution.

Through my experience with the Commission and in my retirement years (10 years) I have seen the classification system and its implementation to be the most democratic of operations.

From my own observations, it allows the National Motor Freight Traffic Association to bring together the industry experts who use the system and the industry that provides the services to discuss their mutual problems. As everyone knows there are two sides to every problem.

To witness this is to see the multiple questions raised by both industry needs and the transportation industry's efforts to meet the needs in a sensible, efficient and cost-effective way.

Since a great amount of traffic moves under the LTL service category, coffee classification is an example of the need for change. For many years coffee moved in the 1 lb., 2 lb., 5 lbs. etc. cans or bags, but with the advent of the office and restaurant needs, vacuum-packed bags became a significant percentage of the traffic. As you may know, "vacuum-packed" allows for a great deal of air to be transported; therefore a discussion through a deliberative body (NMFTA) became necessary to resolve differences in cube and weight that came about with this industry change.

The discussion resolved in a mutually agreeable way the coffee industries' needs and the carriers' problems of less weight, more cube, for the transportation of a vacuum-packed product.

As the industry is in constant change so is the need to discuss the most efficient way for the surface transportation industry to keep current of the ever changing transportation characteristics of the thousands of commodities which move in LTL service.

This is accomplished in open discussion and debate with industry experts and the transportation experts who must move the goods.

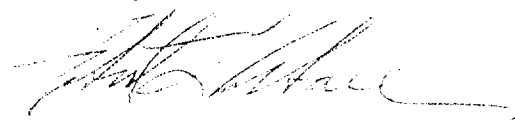
As your body, the Surface Transportation Board, sits in deliberation of this issue, it is my position that you have in the NMFTA an organization that provides a most useful service of deliberation, consideration and disposition of LTL classification matters. If not this organization and its democratic procedures, what else? As we say in New England, "If it isn't broke, don't fix it."

Over the years I have had first-hand experience observing the National Classification Committee's delicate balancing of the interests of all sides. As I see it, it is a non-government way of solving problems and reaching reasonable agreements.

The I. C. C. has over the years had Commissioners and employees observe the functions of the Association and reported favorably on its fairness. It would seem to me that the Board might want to observe on its own this democratic function. I believe this could be arranged. Observing is one of the better forms of education.

I thank you for the opportunity to express my opinion. The Classification system operated under the NCC's Agreement is clearly in the public interest and the application should be renewed. A copy of my statement has been served on each party of record.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert L. Abare", written in a cursive style.

Robert L. Abare

cc: Parties of Record

STATEMENT
of
RAYNARD F. BOHMAN JR.

in support of

CONTINUED ANTITRUST IMMUNITY FOR
THE NATIONAL CLASSIFICATION COMMITTEE
AND THE NATIONAL MOTOR FREIGHT
CLASSIFICATION

DATED: January 23, 1998

DUE: January 29, 1998

by:

Raynard F. Bohman Jr.
President
The Bohman Group
27 Bay Lane
Chatham, MA 02633

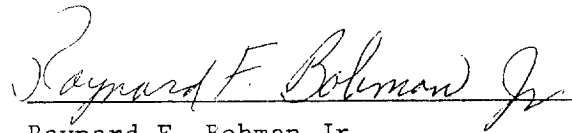
STATEMENT OF RAYNARD F. BOHMAN JR.

I, Raynard F. Bohman Jr., file this statment reflecting my own personal views based on over 40 years experience in the field of transportation; numerous appearances before the National Classification Committee (NCC), and observations of that Committee in action. It does not reflect the views of any of my clients.

I strongly support continued antitrust immunity of the NCC and the National Motor Freight Classification.

I think my views are best expressed in my column "Bohman On Pricing" in the February, 1998, issue of LOGISTICS MANAGEMENT & DISTRIBUTION REPORT, copy of which is appended. It is re-printed with the permission of the magazine.

This concludes my statement.



Raynard F. Bohman Jr.
President
The Bohman Group
27 Bay Lane
Chatham, MA 02633

Dated: January 23, 1998



Bohman on Pricing

Keep antitrust immunity for the NCC!

As you no doubt already know, late last December the Surface Transportation Board (STB) announced it was broadening its review of antitrust matters. Specifically, the board said that at the same time it was deciding whether or not to continue antitrust immunity for motor carrier rate bureaus beyond Dec. 31, 1998, it also would consider whether to continue antitrust immunity for classification activities—specifically those carried out by the National Classification Committee (NCC), which is responsible for approving all changes to the National Motor Freight Classification (NMFC).

As you consider your position on continued antitrust immunity for the NCC, you might think about what the alternatives would most likely be.

First of all, the NMFC would be frozen in place. No further changes in descriptions, ratings, rules, or packaging requirements could be made. Certain provisions in the current NMFC, which allow for ratings to go up or down, would remain in effect, including:

- Multiple ratings based on density
- Released-value ratings
- Actual-value ratings
- The "bumping" privilege in Rule 171 for certain density-based ratings.

But if antitrust immunity were ended, even those provisions couldn't be changed.

Does this mean the NMFC would no longer be of any value and that everybody—shippers and carriers alike—would throw out their copies?

Absolutely not. Unless something better came along, which I don't foresee, most carriers party to the NMFC would likely continue to use it, even in its frozen-in-place state. Wouldn't it be in the shipping public's best interest to continue a live classification that would allow for changes in descriptions, ratings,

rules, and packaging requirements if warranted?

Over the past 18 years, I have repeatedly observed the committee members trying their level best to apply the NCC Density and Value Guidelines and other criteria fairly. It has not been an easy role for NCC members to play—putting on an entirely different hat once they got into the meeting room, with some of their own customers present—but I haven't found any members being arbitrary or unfair. They have been very conscientious in trying to make certain the process works the same way for everyone.

Of course, not all of the committee's decisions have been popular. In some cases, shippers who had been enjoying unwarranted low ratings because their freight's descriptions and ratings hadn't been reviewed in years, were disturbed when they learned they were going to have to pay the piper. Likewise, I've seen many shipper applications turned down or modified because they asked for far more than they were entitled to (such as seeking Class 70 on a product having a density of only 5 pounds per cubic foot).

On the other hand, many shippers who met the criteria and NCC Guidelines have been granted the relief they sought.

For my money, I'll vote for continued antitrust immunity for the NCC—and a live National Motor Freight Classification.

Editor's note: Mr. Bohman has included this column in a filing with the STB addressing antitrust immunity for the NCC.

Ray Bohman is a well-known consultant and author. Mr. Bohman is editor of several highly successful newsletters on transportation and is a consultant to a number of national trade associations. He is president of The Bohman Group, consultants and publishers in the freight-transportation field. His offices are located at 27 Bay Lane, Chatham, MA 02633. Phone: (508) 945-2272.



December 15, 1997

The Honorable Linda Morgan
Chairman
Surface Transportation Board
1925 K Street N. W.
Washington, DC 20423

Subject: Section 5 a Application No. 61
National Classification Committee;
National Motor Freight Traffic Association;
National Motor Freight Classification

Dear Madam Chairman:

In the process of providing transportation and logistics management information, cost accounting and control for more than 2000 manufacturing and distributing businesses, Cass Information Systems authenticates, pre-audits and pays more than 20 million freight bills annually with a value that exceeds \$6 billion. The for-hire trucking industry accounts for more than 80 percent of the transactions that we process. We recommend that the Surface Transportation Board continue to immunize the National Motor Freight Classification process, and its publications, from our antitrust laws.

In producing the National Motor Freight Classification, the competing members of the National Classification Committee and their staff, gather information and exchange analysis of the transportation characteristics of all products moving in interstate and intrastate commerce. They take testimony from shippers, attorneys, consultants and other experts. They also publish rules regarding protective packaging. The designation of a classification is the starting point for the determination of a price. The process is fact based and orderly. It has served the public interest for more than 40 years of my personal experience.

The elimination of antitrust immunity would have a chilling affect on this process. The competing members would be required to withdraw their participation. It would lead



The Honorable Linda Morgan, Chairman
Surface Transportation Board

December 15, 1997
Page 2

to the end of motor freight classification as a frame of reference. It would be the equivalent of searching for a book in a library without the benefit of a catalog or reference number, or driving into an unknown area without the benefit of a map. There is no public interest in creating confusion.

While helpful as a frame of reference, the shipping public can no longer be abused by this process, if indeed it ever was. The end of economic regulation, both interstate and intrastate, permits shippers and motor carriers to either accept the classification as assigned, or change it to meet their purposes. We at Cass see these changes to classification by exception ratings in tariffs and in contracts that have been negotiated between shippers and carriers on a daily basis. There is no harm here.

We have no doubt that the Surface Transportation Board will receive recommendations to eliminate antitrust immunity in this case. Despite the many years involved in developing the reforms which have produced our current level of perfect competition, there may still be people who may wish to settle old scores. Consider that the critics will tend to be persons who are not actually shippers but claim to represent them. In contrast, we at Cass are a public company having a fiduciary responsibility to our clients, and their carrier. We are subject to five levels of independent audit including the Federal Reserve System.

We can speak with their authority on what is in the public interest.

We respectfully recommend that antitrust immunity be preserved in this case.

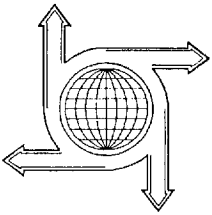
Sincerely,

A handwritten signature in black ink, reading "Robert V. Delaney". The signature is written in a cursive, flowing style.

Robert V. Delaney
Vice President

RVD/je

cc: The Honorable Gus Owen
Vice Chairman
Surface Transportation
Parties of Record



WM CARTER & ASSOCIATES
Logistics Management Advisors
Freight Bill Audit & Payment

225 1/2 N. Main Street
Urbana, Ohio 43078

Phone: (937) 653-6382
Fax: (937) 653-6111

*Professional
Freight Cost Control
Services Since 1983*

December 26, 1997

Attn: Secretary
Surface Transportation Board
1925 "K" Street N.W.
Washington, DC 20423

Dear Secretary:

As a provider of freight bill audit and payment services, our firm represents more than 130 shipper/receivers nationwide. I am going on record to say that our clients rely on the National Motor Freight Classification daily to insure a fair and equitable system of freight pricing.

The NMFC is the only system we have that can evaluate fairly, the wide variety of commodities tendered to less-than-truckload carriers. Without it, we believe that a maze of classification methods will evolve that will only add to the complexity of rate making and freight auditing.

This complexity will greatly increase freight transportation costs, auditing and administrative costs and billing errors, for every shipper/receiver. Either totally or in part, these increases will be passed on to the consumer. Therefore, we believe that it will be in the public interests to renew the agreement (Section 5a Application No. 61) under which the National Motor Freight Classification is established, amended and maintained.

Sincerely,

WM CARTER & ASSOCIATES

William Carter
President

WC/la

cc: Parties of Record

Gamble Hartshorn Alden Co. LPA

ATTORNEYS AT LAW

John L. Alden
Michael W. Hartshorn
Kenneth A. Gamble
Bryan B. Johnson
James H. Bownas
Craig A. Smith
Geoffrey L. Baker
Michael J. Yemc, Jr.
Mark S. Gutentag

One East Livingston Avenue
Columbus, Ohio 43215-5700

FAX: 614-365-9741
PHONE: 614-221-0922

January 2, 1998

ATTN: Secretary
Surface Transportation Board
1925 "K" Street, NW
Washington, DC 20423

Re: Renewal of the National Motor Freight Classification

Dear Secretary:

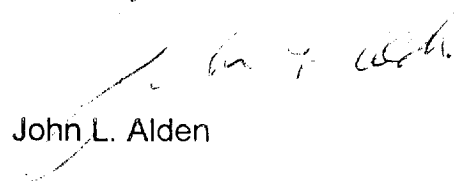
Our office has represented motor carriers, shippers and warehouse companies for 25 years. Our clients are nationwide. Not one client has ever voiced the opinion that transportation would be better off without the National Motor Freight Classification (NMFC).

NMFC gives the transportation industry a point of reference. It is up to individual companies in the transportation industry whether to take advantage of its many benefits. The NMFC provides a nationwide standard. It provides stability in an industry which, in recent years, has been constantly churning because of federal pre-emption, driver shortage, numerous issues as to cargo claims, low freight rates and a myriad of other operational problems for both shipper and carrier.

It is my opinion that the cost to commerce would be significant if every provider or user of transportation services had to reinvent its own standard of classifications.

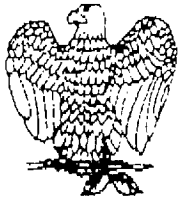
I support the renewal of the agreement, Section 5a Application No. 61, under which the National Motor Freight Classification is maintained.

Sincerely,


John L. Alden

JLA/mkv

cc: Parties of Record



FEDERAL TRAFFIC DEVELOPERS, INC.

7700 OLD BRANCH AVE., SUITE B205
CLINTON, MARYLAND 20735

(301) 856-1303

January 9, 1998

Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, N.W.
Washington, D.C. 20423

RE: Section 5a Application No. 61
National Classification Committee

Dear Chairman Morgan and Vice Chairman Owen:

Federal Traffic Developers, Inc. supports the Board's renewal of the Agreement in the National Classification Committee's Section 5a Application No. 61 and the conduct of those classification activities with antitrust immunity. Federal Traffic Developers is a sales agent meeting the needs of 5 clients utilizing the services of motor carriers in interstate commerce. My name is Walter P. Saylor and I am the President of Federal Traffic Developers, Inc. I have been authorized by my company to submit this statement in support of the NCC's application.

The National Motor Freight Classification provides the public a classification system which facilitates the establishment of equitable and responsive pricing of an article by the carriers, and provides shippers with a basis for understanding the transportation identity of their freight and the relationships of those articles, from a transportation standpoint, with other commodities. With such information carriers are better able to price their transportation services for handling a shipment, and shippers are better able to assess

Memorandum
January 9, 1998
Page 2

the reasonableness and competitiveness of the rates offered by the carriers. Also, through the classification process shippers have available a vehicle for increasing the economies and efficiencies of transporting their products by improving the packaging, product design or other factors bearing on the transportation characteristics of their articles. Presently, both the carriers are able to conduct and the shippers are able to participate in the Classification process without fear of the antitrust laws.

For the Board not to renew the collective classification-making Agreement of the NCC's Section 5a Application No. 61 would be to hamper unjustifiably the facilitation of a rational pricing system in the transportation market. Carriers and shippers rely heavily on the National Motor Freight Classification in their pricing negotiations. To end the uniform Classification system would only foster needless confusion in the marketplace.

Also, disruptive of the classifications system would be removal of antitrust immunity for any of the recognized Classification matters contained in the National Motor Freight Classification. The system has worked well with antitrust immunity and no sound reason exists for fragmenting that process so that carriers and shippers may run the risk of antitrust violations by participating in collective Classification-making activities.

My company believes that the continuation of the activities authorized under Section 5a Classification No. 61 is in the public interest and requests that the Surface Transportation Board renew the National Classification Committee's agreement.

Respectfully submitted,



Walter P. Saylor
President, Federal Traffic
Developers

cc: Parties of Record

December 22, 1997

Surface Transportation Board
1925 K Street NW
Washington DC 20423-0001

Re: Section 5a Application No. 61 - National Classification Committee Agreement

This letter is written in support of retaining the agreement under which the National Motor Freight Classification is established, amended and maintained.

I have been an instructor in transportation classes at the University of Missouri - Kansas City, and at present, an instructor in "Contracts and Rates" under a certificate program in Transportation and Logistics for the Community Colleges of Kansas City, Missouri. The NMFC has long been one of the subjects studied in my classes. It is vital that the NMFC be retained.

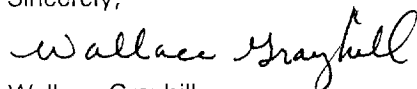
The present motor carrier pricing system is a mess! There is no need to further confuse the shipping public by elimination of a standard (NMFC) that, while imperfect, is the best tool available for classification of freight. Under the ICCTA, carriers have the freedom to establish their own classification if they so desire. Since enactment of the ICCTA, I have anticipated some carrier taking action to establish their own classification, knowing that unsophisticated shippers would become victims of a new set of carrier imposed regulations that would be available only from that specific carrier.

If you have not looked at any of the many individually published rules tariffs as maintained by the carriers at their place of business, I suggest you send for a copy. I wish you best of success, since carriers' are very reluctant to send a copy of such rules, even when requested in writing. It has been my experience that carriers send copies of their rules tariff only after many requests (if even then). Do you want to place the classification in the same "hidden" area as the rules? How will we know if a carrier has changed the class of any given commodity if the only way information is provided by the carrier is "upon request?"

There are many ways for carriers to deviate from the classification through imaginative pricing devices. However, those deviations always have a "base" (the NMFC) by which all deviations can be measured.

If you want to make improvements in the present NMFC structure, make sure that shippers have an active voice, by requiring that one-third of the Classification Committee be comprised of shippers, or shipper groups such as the Transportation Consumers Protection Council, NIT League, and Council of Logistics Management. You could make the NMFC more user friendly if more common names of items were referenced. If you want real control, have the STB publish the NMFC format.

Sincerely,



Wallace Graybill
903 Manor Road
Independence, MO 64055

cc: Parties of Record

GREEN BAY PACKAGING - FREMONT

2323 Commerce Dr., Fremont, OH 43420

Ph. (419) 332-5593 Fx (419) 332-5713

ISTA Lab No. ST-2049

January 13, 1998

To: Surface Transportation Board
c/o National Motor Freight Traffic Association, Inc.

Fr: Brian Walker, Manager of Technical services and Product Design

Re: National Classification Committee

As a member of the package manufacturing and testing industry we fully support the continuation of the National Motor Freight Traffic Association. These classifications are utilized not only by our company for design and manufacturing purposes, but by our customers that ship product. Feel free to contact me if you have any specific questions or need additional information.

Best regards,

Brian D. Walker

Brian D. Walker

cc: Mike Scanlan-GBP Corporate
Parties of Record

GOGOL & ASSOCIATES

203 E. Hamilton Ave.
Silver Spring, MD 20901
(301) 565-2150

January 7, 1998

Surface Transportation Board
Office of the Secretary, Case Control Unit
1925 K Street, N.W.
Washington, D. C. 20423

Re. Comments in Support of Sect. 5a Application No. 61
National Classification Committee's Agreement

Dear Chairman Morgan and Vice Chairman Owen:

I am principal and owner of Gogol & Associates, doing business primarily in the States of Ohio and Tennessee and the District of Columbia.

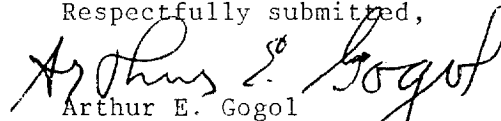
I understand the Surface Transportation Board is reviewing the activities and services the National Classification Committee performs to determine whether these activities are in the public interest. I support the classification process as performed by the National Classification Committee and its activities on behalf of its motor carrier members as well as shippers.

After two years of study and passing your examination, I was granted a Certificate of Practitioner before the Interstate Commerce Commission in 1951. I represented Westinghouse Electric in the 1950s and formed my own firm in 1960. As Gogol and Associates, I have represented a variety of shippers before the National Classification Committee. These representations included, not only opposition to proposed Classification changes, but also proposals I filed on behalf of shipper clients to clarify and/or reduce Classification Ratings.

The classification process stabilizes ratemaking and provides an avenue to reduce unfair ratemaking, as between large and small manufacturers of competing products.

Anti-trust immunity is absolutely essential for the National Classification Committee process to continue to apply the benefits of stability to the ratemaking process, as demonstrated over many, many years. I pray your Surface Transportation Board so rules.

Respectfully submitted,


Arthur E. Gogol
Practitioner before the Surface
Transportation Board

cc: Parties of Record

LANDTRAN SERVICES

**823 KAREN LANE
SAN ANTONIO, TEXAS 78218-4231**

**Email landtran.worldnet.att.net
Phone 210-820-0500
Fax 210-646-6218**

January 12, 1998

Surface Transportation Board
Case Control Unit
Office of The Secretary
1925 K Street, NW
Washington, DC 20423

Re: Section 5a Application No. 61--
National Classification Committee

Dear Chairman Morgan and Vice Chairman Owen:

My name is Nicholas Wingerter. I am the President / Owner of Landtran Services, a transportation consulting firm. My company provides an array of professional services involving trucking operations and pricing on behalf of carriers, brokers, shippers, receivers, law firms, trade associations, tariff bureaus and the U.S. Government. I have appeared and been recognized as an expert of the motor carrier industry in state and federal courts, and I have testified before the Interstate Commerce Commission (ICC) as a representative for the less-than-truckload (LTL) freight industry. I have also been hired by the U.S. Department of Justice to present expert opinions on trucking operations and pricing issues that were under litigation.

Before founding Landtran Services in 1988, I was Vice President-Traffic for Red Arrow Freight Lines, a Southwest regional carrier operating in interstate and intrastate commerce. In that capacity, I was elected by my peers as a member of the National Classification Committee (NCC) from 1978-1988. I have also served on the board of directors of the National Motor Freight Traffic Association (NMFTA), including a term as national chairman, for the last 15 years, first as an elected representative by the member motor carriers and, since 1988, as a director emeritus.

My experience working from within NMFTA and the NCC, and from the outside as a trucking industry consultant to non-carrier organizations, has given me a unique perspective to judge the effectiveness and worthiness of the Section 5a immunity granted to the NCC. I can state without hesitation and with enthusiastic urging that the Surface Transportation Board (STB) should affirmatively renew and extend indefinitely, before the end of this year, the antitrust immunity for the operations of the NCC.

The LTL trucking industry requires a freight classification. The shippers and receivers who utilize the services of LTL trucking require a freight classification. The LTL carriers are the only transportation companies which receive every conceivable item of freight that can be loaded into a van trailer. There are literally hundreds of thousands of commodities that carriers handle everyday. The densities of these commodities can range from almost nothing, like ping pong balls, to the very dense, like steel plate. Values of items shipped can range from little (toilet paper) to extremely expensive (computers and scientific equipment). The difficulty of handling and stowing freight runs the gauntlet from easy to very difficult. Another important issue to both carriers and shippers is what packaging standards will apply to ensure the safe transportation of all these commodities.

The National Motor Freight Classification (NMFC), as determined by the NCC, is without question the best system ever developed for grouping this vast array of motor freight into freight classes with comparable characteristics and for establishing packaging standards for these commodities. First of all, the NMFC is national in scope; no other system has ever been developed that has received universal approval of both carriers and shippers. Since passage of the Motor Carrier Act of 1980, carriers and shippers have been free to develop an alternative classification system, yet none has appeared on the national scene. It is obvious that the current system works as conceived and implemented by the NCC, and it works on a national basis. Please remember, freight characteristics and packaging do not change region by region in this country, and therefore the need for a national system for classifying freight and setting packaging standards is obvious and logical.

The STB should not disrupt the smooth and efficient flow of the nation's commerce by capriciously voiding the NCC's antitrust immunity. The STB should recognize the incalculable confusion that cancellation of the NCC 5a agreement would have on the pricing stability between carriers and shippers. Do not be swayed by the sirens' song of those who sing that the activities of the NCC do not require antitrust immunity, that the NMFC is a document of standards, and that no antitrust protection is needed by the carriers that participate in the formulation of the NMFC. Profound and disabling changes will be wrought if antitrust immunity is not continued.

As an insider and observer of the industry, I can predict with certainty that motor carriers will refuse to participate on the National Classification Committee without antitrust immunity. Current members will resign their membership. The carriers know there are certain entities within the transportation community who will sue the NCC for alleged antitrust activities over the first NCC decision that displeases them. It will not matter to these people whether the STB concludes the NCC does not require antitrust immunity or whether the DOJ has the same opinion. Industry history clearly predicts these litigious groups will pursue court action alleging antitrust violations by the NCC, once antitrust immunity has been removed.

Without Section 5a protection, the NCC carrier members will rationally calculate what the cost of defending the NCC in these lawsuits will be and what the threat of triple-damage antitrust awards could have upon their own corporate bottom lines. The obvious and prudent decision of the carriers will be to withdraw their participation in the NCC. Therefore, the NMFC as a dynamic,

changeable, national standard of freight classification and packaging will collapse. The forum that exists today for carriers and shippers to collaborate on these important and substantial matters will vanish.

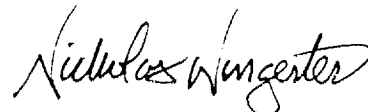
This scenario is not some idle, wistful musing about the future, but an educated prediction that is grounded in the cold reality of the day-to-day relationships between carriers and shippers. The STB must consider and grasp the consequences of its failure to renew the NCC Section 5a agreement. The NMFC developed by the NCC will collapse. There will be no dynamic, changeable system to reflect the national characteristics and packaging of LTL motor freight. With no standard, individual carriers will have to develop individual systems to classify their freight. Shippers and receivers will be forced to research and negotiate with each individual carrier over every detail of its proprietary classification system. Equally important, shippers and their industries will forfeit their forum at the NCC to discuss with motor carriers on a national basis their freight classification and packaging problems.

In Texas we have a saying that has become part of this country's jargon: "If it ain't broke, don't fix it!" Since establishing antitrust immunity for collective motor carrier classification procedures, Congress has continued its approval for this system in every trucking reform act, from the Motor Carrier Act of 1980 through the ICCTA in 1995. Obviously, Congress has recognized the need for a classification system and the limited antitrust immunity necessary for it to function properly.

On a personal note I would like to state, as an insider to activities at the NCC, that the NCC is worthy of the protection that limited immunity confers upon the group. The carrier members and staff of the NCC religiously adhere to the duties and responsibilities that a grant of immunity requires. The group always considers how best to implement the regulations of the supervising agency, formerly the ICC and now the STB. Never have I heard anyone ask or suggest how does the group get around a requirement of law or regulation. Since federal reform mandated NCC activities be conducted "in the sunshine," I have never observed any carrier or staff member violate the letter or spirit of that change. On numerous occasions I have met ICC employees monitoring NCC meeting and to my knowledge, not even a minor violation of federal procedure has ever been reported by these officials. The NCC is obviously respectful and fully compliant towards governmental requirements and oversight.

For all of the reasons stated above, I emphatically urge the STB to continue the limited antitrust immunity granted to the NCC.

Sincerely,



Nicholas Wingerter

cc: Parties of Record



Alfred H. McKinlay, P.E.

PACKAGING & HANDLING CONSULTANT

432 McDougall Road • Pattersonville, NY 12137

Phone: (518) 887-5656



Subject: *Section 5a Application no. 61- National Classification Committee Agreement*

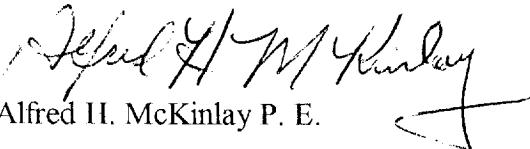
The National Motor Freight Classification provides an important service to industry, not only in the classifying of goods for transportation, but also in assuring that those goods are properly prepared for shipment with adequate packaging. The packaging Items (Rules) of the NMFC establish a minimum level of protection for goods which have proven quite adequate over the years, minimizing the extent of in-transit damage to acceptable levels.

It is important that freight damage be minimized, not only for carrier profitability, but more importantly for maintaining a high degree of assurance to customers that products they receive from suppliers will indeed be usable upon receipt. Without that assurance, the overall efficiency of supply-chain logistics will suffer as both suppliers and their customers will be unable to predict accurately the amounts needed to make supply systems such as "just-in-time" work.

The NMFC is the only authoritative document which most shippers have as their guide to assist establishment of specifications for shipping containers and protective packaging. Billions of dollars of containers are specified and purchased each year to the minimum levels of the NMFC and generally perform quite well in holding damages to a reasonably low level. The new Item 180 performance test packaging rule now makes it possible for innovative shippers to develop more efficient packages which also perform closer to expectations in transportation.

If the NMFC were longer available, I believe that damages in transit would rise significantly and along with it, legal actions between shippers and carriers would also escalate. Shippers are always looking for ways to cut costs, and packaging is an area that appears ripe for reduction for those who do not know better. Now the NMFC keeps them "honest", but without it, many will cut too far without knowing about it until too late, when the damage is done.

I feel that it is imperative to keep the classification system intact with the NMFC and its minimum rules. The basis for this opinion is 47 years in transport packaging working with many manufacturers, including 27 years with General Electric. My experience with hundreds of shippers is that they simply do not have any idea of what happens when their goods leave the shipping dock, or what is needed in packaging to avoid damage in-transit. The National Classification Committee provides the benchmark they need and it should be preserved.


Alfred H. McKinlay P. E.

January 7, 1998

cc: Parties of Record

RUBENSTEIN -

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Samuel Rubenstein, President
Bruce D. Hocum, Exec. Vice President

Formerly Samuel Rubenstein Freight
Transportation Consultants, Inc. &
SRFT-C Brokers, Inc.

January 20, 1998

Surface Transportation Board
Office of the Secretary, Case Control Unit
1925 K Street NW
Washington, DC 20423

Re: Comments in Support of Sec. 5a Appl. No 61 National Classification Committee's Agreement

Dear Chairman Morgan and Vice Chairman Owen:

I am Bruce D. Hocum, Executive Vice President, of Rubenstein Logistics Services, Inc., a transportation consulting firm located in Golden Valley, Minnesota.

Rubenstein Logistics Services, Inc. has been in business since 1961. We represent on a daily basis, shippers, motor carriers, surface freight forwarders and property brokers to name a few. I also work with numerous transportation law firms as an expert witness in court cases involving transportation issues.

I have been appearing before the National Classification Committee since the mid-1970's. The old saying is "If something isn't broke, why tinker with it, or attempt to fix it." The present system works very well for the public interest. Over the last ten years I have heard various individuals attack the present classification system. When you confront these individuals and ask what kind of new system they would like to see put into place, they absolutely have no suggestions. Logic tells me that if they are going to attack the present classification system, then there has to be some sort of replacement. So far, nobody to my knowledge has come up with that replacement. The present system is so ingrained into the motor carrier LTL system that it is impossible to think that the system could work without it.

I believe some of the confusion and misunderstanding of the present classification system comes from a total lack of understanding how the system works. The present public docket service that is provided by the National Classification Committee serves as a public notice to everyone in the industry of any suggested changes. The public can attend any open meeting and discuss their needs. Any shipper who comes up with a new product or feels that the present ratings do not fit their needs can

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docket a proposal and have the rating changed. There is nothing secretative or coercive about the system. One very good example of how the system works very well, is the joint ventures between the motor carriers and shippers to develop a new bill of lading to serve in both shippers' and carriers' best interest. Naturally, the new bill of lading is a compromise, and whenever there is a compromise that means somebody had to give in on something. This clearly shows that the motor carriers and shippers can jointly work out a solution to what is perceived as a problem. The new bill of lading format just went into effect 12/27/97.

One suggestion that has been bounced around is to freeze the present classification system in place and do away with the Section 5a Agreement. That could possibly lead to nothing more than mass confusion. It is inconceivable to think that every shipper would have to negotiate with every motor carrier the classification of their products. Even though a shipper may have negotiated a freight all kinds rating, they had to use the National Motor Freight Classification to get the average for their freight all kinds rating.

As manufacturing companies develop new products, they will need to have a classification in place to move their goods. Also, the present packaging requirements must be updated on a regular basis to make sure the product is packaged properly to withstand the normal hazards of transportation. Without a standard in the industry for packaging, this will lead to more litigation whenever a damage claim is involved. With the present packing requirements shown in the National Motor Freight Classification, both the shipper and the carrier know the standards in advance and there is a single standard, rather than one for each carrier.

Without the Section 5a Agreement for the National Classification Committee, no motor carrier, shipper or transportation consultant would get together again jointly and work out solutions to classification of products, package and rules and regulations. Every party would be fearful of being prosecuted for an antitrust violation. Just the threat of antitrust violations could mean spending tens of thousands of dollars to defend your position. Nobody in their right mind wants that kind of exposure.

I was very pleased to see that the Surface Transportation Board instituted two separate proceedings for the Motor Carrier Rate Bureaus and the National Classification Committee. That sends a very strong message to the shipping public that the Surface Transportation Board recognizes the Motor Carrier Rate Bureaus and the National Classification Committee serve two separate distinct functions. The Motor Carrier Rate Bureaus still provide a very necessary service for the small regional motor carriers. The National Motor Freight Classification, however, is used by both the large motor carriers and the small regional carriers.

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All you have to do is look in the front of the National Motor Freight Classification and you will see the magnitude of carriers that use the classification system on a daily basis.

I request that the Surface Transportation Board finds that the National Motor Freight Classification serves the public interest so that under 49 U.S.C. §13703, the National Classification Committee will continue to have immunity from the antitrust laws. Until such time as somebody comes up with a replacement to the present system, please don't disrupt a system that works very well.

Yours very truly,


Bruce D. Hocum

BDH/jb

cc: Parties of Record

