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November 17, 2003

Vernon A. Williams  
Secretary  
Office of the Secretary  
Case Control Unit  
Surface Transportation Board  
1925 K Street, NW #700  
Washington, DC 20423

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

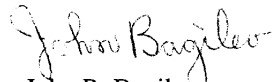
Dear Secretary Williams:

Enclosed please find the original and ten copies of the National Classification Committee's compliance with the STB's October 16, 2003 Decision in the above-styled proceeding concerning renewal of the NCC's Section 5a Agreement. A copy has been served on this date on all known parties of record.

An additional copy is included which it is requested be date-stamped, or receipt otherwise acknowledged, and returned to me. A self-addressed, stamped envelope is enclosed for your convenience.

Thank you for your assistance.

Sincerely,



John R. Bagileo  
Counsel for National Classification  
Committee

ENTERED  
Office of Proceedings

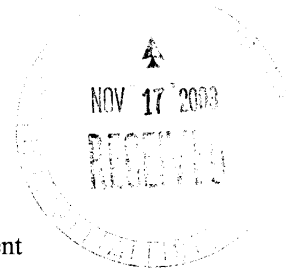
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Part of  
Public Record

Enclosures

209434

Before The  
Surface Transportation Board



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

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Further Modifications in Response to the Surface Transportation  
Board's Decision Served on October 16, 2003

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Public Record

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Counsel for National Motor Freight Traffic  
Association, Inc. and National  
Classification Committee

Due and Dated: November 17, 2003

Before The  
Surface Transportation Board

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

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Further Modifications in Response to the Surface Transportation  
Board's Decision Served on October 16, 2003

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The National Motor Freight Traffic Association, Inc. (NMFTA) and the National Classification Committee (NCC), through counsel, hereby submits these modifications to the NCC's Section 5a Agreement in response to the Surface Transportation Board's (STB) Decision served in this proceeding on October 16, 2003. The changes in the NCC Agreement are set forth in Attachment A, and the modified or added provisions are highlighted. The revised Agreement incorporating those changes is annexed as Attachment B. In support of those changes, the NMFTA and the NCC respectfully state as follows:

I.  
Statement of the Required Changes

In the STB's Decision two issues were identified as requiring changes. The first concerned the use of protective orders; and the second addressed the statutory right of a

person to petition for the suspension of NCC or Classification Panel decisions affirmed by arbitrators.<sup>1</sup>

As discussed below, those changes required modifications in Article IV, Rule 4(a), Public Docket Files, pertaining to protective orders; and in Article V, Rule 6, Decision of Arbitrator and Rule 8, Challenge of the Arbitrator's Decision, incorporating the right of a person to seek suspension of an affirmed classification provision.

1. Protective Orders

Pursuant to the STB's requirement, Article IV, Rule 4(a) has been modified to conform with the provisions as submitted to the agency in the NCC's draft revised agreement dated March 20, 2002. That provision now reads as follows:

Copies of all reports, analyses, studies, work papers, supporting raw data and other information in the Committee's possession relating to a docketed proposal, along with the full text of the proposed change, shall be made available in a public file, subject to any protective orders that may be obtained from the Surface Transportation Board. Protective orders notwithstanding, the public docket file will not name the entity that provided the raw data, nor will it include information that could lead to the name of the entity that provided the raw data. The source of the raw data will be identified as "shipper/receiver," "carrier," or the like. (Emphasis supplied.)

As the STB emphasized, the use of protective orders to discover source information would be prohibited. (October 16, 2003 Decision, p. 3.)

2. Petitions for Suspension of NCC Decisions Affirmed by Arbitrators

In the STB's Decision served in this proceeding on November 20, 2001, the agency, in addressing a challenge of the reasonableness of an arbitrator's classification decision, indicated that a complaint be filed by any aggrieved party. (November 20, 2001

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<sup>1</sup> A third matter involving the number of arbitrators to be included on a master list by the NCC was addressed by the STB. The agency approved the NCC's proposal to produce an advance list of not less

Decision, p. 22.) In response to that comment, which the NCC interpreted as requiring the filing of a complaint, rather than resort to a suspension proceeding, in its proposed modifications to its Section 5a Agreement filed on March 20, 2002, the NCC drafted Article V, Rule 8, Challenge of the Arbitrator's Decision, to read as follows:

If a classification decision by the Committee or a Classification Panel is the subject of an arbitration proceeding, the classification decision, if affirmed by the arbitrator, may not be protested to the Surface Transportation Board but must be challenged only through the filing of a complaint with the Surface Transportation Board.

In its Decision served on March 27, 2003, the STB referenced that provision noting that its effect was to eliminate the existing right to petition for suspension of arbitration decisions that affirm NCC decisions. Further, the STB indicated that the Shipper Organizations did not object to that provision, and, indeed, had proposed identical language in their own proposed rule. It was also noted that one party, Bohman, requested that the option of allowing appeals to the full NCC, and, thereafter, the option of filing petitions for suspension (in addition to complaints) with the STB, be retained. The STB stated that:

Bohman proposes that we give parties, at least for a trial period, the option of choosing between (a) the present procedure or (b) the arbitration process prescribed in [the] 2001 Decision. Under this proposal, dissatisfied parties would be able to choose only one method for resolving a classification decision.

The NCC indicated its willingness to accommodate Bohman's request, and the Shipper Groups did not object to it. (March 27, 2003 Decision, pp. 11-12.)

Nonetheless, in its October 16, 2003 Decision, the STB clarified that its intent was not to prohibit the exercise of the existing statutory right to petition for suspension of

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than 10 potential arbitrators provided by an independent arbitration association, rather than a list of 50 arbitrators initially proposed by several shipper associations.

classification changes where those changes were approved by an arbitrator. Accordingly, it required that the NCC's Article V, Rule 8 be revised to provide for that right as well. (Decision, at pp. 3-4.)

Therefore, and in keeping with the STB's requirement, Article V, Rule 8, Challenge of the Arbitrator's Decision, is modified to read as follows:

If a classification decision by the Committee or a Classification Panel is the subject of an arbitration proceeding, the classification decision, if affirmed by the arbitrator, may be taken to the Surface Transportation Board either by complaint or by a timely filed petition for suspension of any affirmed classification changes.<sup>2</sup>

It is also noted that the revision of Rule 8 requires a similar revision in Article V, Rule 6, Decision of Arbitrator, addressing the finality of an arbitrator's decision subject only to review through the filing of a complaint with the STB. Therefore, the pertinent language in Rule 6 has been modified to read:

The arbitrator's decision shall be final, subject only to review by complaint or by a timely filed petition for suspension with the Surface Transportation Board.

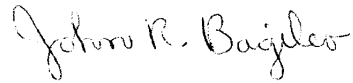
## II. Conclusion

In view of the foregoing modifications, which it is submitted comply fully with the changes required by the STB in its October 16, 2003 Decision regarding protective orders and the petitioning for suspension of arbitrator's decisions, NMFTA and NCC request that the Agreement as so revised and set forth in Attachment B hereto be summarily approved.

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<sup>2</sup> The language suggested in the Decision inadvertently refers to a "classification proceeding" whereas the original language refers to a "classification decision." Therefore, that term has been modified accordingly.

Respectfully submitted,



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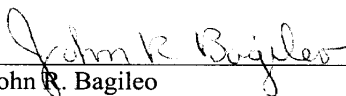
William W. Pugh  
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Alexandria, VA 22314  
(703) 838-1825

Counsel for National Motor Freight Traffic  
Association, Inc. and National  
Classification Committee

Due and Dated: November 17, 2003

Certificate of Service

I hereby certify that I have this 17<sup>th</sup> day of November 2003, served a true and correct copy of the foregoing pleading, with Attachments A and B, upon all parties of record, properly addressed and with postage prepaid.

  
\_\_\_\_\_  
John R. Bagileo

**Attachment A**

**AGREEMENT**

**As Amended**

**\_\_\_\_\_, 200\_**

**RELATING TO**

**PROCEDURES FOR**

**COLLECTIVELY ESTABLISHING AND**

**MAINTAINING THE PROVISIONS OF THE**

**NATIONAL MOTOR FREIGHT CLASSIFICATION**

**By The**

**NATIONAL CLASSIFICATION COMMITTEE**

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **PREAMBLE**

The undersigned motor carrier in consideration of the covenants of the other motor carriers of property signatory to this Agreement agrees that it will participate in the collective initiation, consideration and change of classifications and rules governing the transportation of property in interstate or foreign commerce in accordance with the terms of this Agreement.

The undersigned carrier and every other carrier party to this Agreement may exercise the free and unrestrained right to take independent action at any time with respect to any of the matters contained herein.

The undersigned carrier appoints the Secretary of the National Classification Committee as its agent and attorney-in-fact to sign, file and pursue in its name before the United States Surface Transportation Board (Surface Transportation Board) such application(s) as may be required for the authorization or reauthorization of this Agreement, and to take any other appropriate action in connection therewith.

### **ARTICLE I - PURPOSE AND SCOPE**

This Agreement pertains to the collective initiation, consideration and handling of motor freight classification matters and for the organization, powers and procedures of a committee of up to one hundred representatives of the motor carriers party to this Agreement to be known as the National Classification Committee (hereinafter called the Committee).

### **ARTICLE II - ORGANIZATION OF THE NATIONAL CLASSIFICATION COMMITTEE**

#### **Section 1. National Classification Committee**

The Committee shall consist of up to one hundred members, to be elected from the fifty states, the District of Columbia, Canada and Mexico (hereinafter called jurisdiction(s)). The number of members to be elected from each jurisdiction shall be determined by the Secretary of the Committee, in accordance with the classification participation fees received from each of the jurisdictions during the previous fiscal year.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE II - ORGANIZATION OF THE NATIONAL CLASSIFICATION COMMITTEE**

#### **Section 2. Voting Rights**

Each party to this Agreement shall be entitled to one vote for each Committee member to be elected from the jurisdiction in which its principal place of business is located. A carrier entitled to vote for more than one nominee may, if it so elects, cast all of the votes to which it is entitled in favor of one nominee, or it may cast one or more votes for each of one or more nominees.

#### **Section 3. Nominations**

(a) The Committee shall be reconstituted on July 1 of each year. Any officer, owner or full-time employee of a motor carrier party to this Agreement shall be eligible for membership on the Committee, except that no member of the Committee who is serving a consecutive term and who has not attended one of the three regular meetings next preceding the issuing of ballots as provided in Section 4 hereof, shall be eligible for re-election.

(b) Any party to the Agreement may nominate one qualified person for election from the jurisdiction in which such nominator is domiciled. The Secretary of the Committee shall request nominations from all parties not later than April 1 of each year. Nominations must be made in writing to the Secretary not later than May 1.

#### **Section 4. Elections**

By June 1 of each year, the Secretary of the Committee shall issue by mail or electronic means to each party to this Agreement a ballot listing all nominees in its jurisdiction. Each party desiring to vote shall return its ballot to the Secretary of the Committee not later than June 25. The Secretary of the Committee and two witnesses shall count the votes and certify the results to the Chairman of the Committee. In the event of a tie vote, the Secretary shall take a second ballot in the jurisdiction in which the tie occurs, and balloting shall continue until the tie is broken.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE II - ORGANIZATION OF THE NATIONAL CLASSIFICATION COMMITTEE**

#### **Section 5. Officers**

At its first meeting subsequent to the annual election, the Committee shall organize by electing a Chairman, a First Vice-Chairman and a Second Vice-Chairman; and by selecting the Secretary of the Committee, who shall have no vote and need not be a member of the Committee.

#### **Section 6. Classification Panels**

Classification Panels are subgroups of the Committee that have the power and duty to consider and act on classification matters. At the discretion of the Committee, the Chairman may establish up to four Panels of up to 25 Committee members each. Panel members and a Chairman and Vice Chairman of each Panel shall be appointed as necessary by the Chairman of the Committee. The Secretary of the Committee shall act as the Secretary of each Panel. Members of the Classification Panels shall serve until their successors have been appointed. No Committee member shall be obliged to serve on a Panel.

#### **Section 7. Subcommittees**

The Chairman of the Committee may, and at the discretion of the Committee shall, appoint such subcommittees as are required to conduct the work of the Committee.

#### **Section 8. Vacancies and Tenure of Office**

The Chairman of the Committee shall have the authority to fill any vacancy on the Committee by appointment. All members shall serve until their successors are elected or appointed and have signified a willingness to serve. The Chairman, Vice-Chairmen and Secretary of the Committee shall serve for terms beginning with election to office and continuing until the next succeeding Committee shall have elected new officers. In the event a vacancy occurs in the office of Chairman, through resignation or otherwise, the First Vice-Chairman shall succeed to that post, and the Second Vice-Chairman shall succeed to the post of First Vice-Chairman.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE III - NATIONAL CLASSIFICATION COMMITTEE - POWERS, DUTIES AND PROCEDURES**

#### **Section 1. Powers and Duties of the Committee**

The Committee shall have the power and duty to:

(a) Investigate and consider matters affecting the classification of commodities, initiate proposals for changes in the National Motor Freight Classification (hereinafter called the Classification), and determine and prescribe the descriptions of articles, classes, rules, packaging requirements and specifications, bill of lading formats, other provisions and the context of the Classification; provided, however, that any participating carrier shall have the free and unrestrained right to establish, or concur in, exceptions to the Classification;

(b) Establish the procedures under which the Classification Panels shall operate, and direct and monitor the staff in its performance of analytical and support services;

(c) Upon request, make the staff available, on a direct-cost reimbursement basis, to assist shippers in conducting research on classification matters and to report the results to the Committee when the research reveals that a classification change may be warranted;

(d) Upon request, make the staff available to assist shippers in making appropriate proposals for classification changes;

(e) Establish the procedures under which proposals for new or changed descriptions of articles, classes, rules, packaging requirements and specifications, bill of lading formats and other provisions of the Classification shall be initiated, heard and decided;

(f) Upon request, make the Committee's Synopsis of Classification Opinions available to any interested person, to the same extent, on the same terms and at the same charge that it is made available to the Committee's member carriers;

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE III - NATIONAL CLASSIFICATION COMMITTEE - POWERS, DUTIES AND**

#### **PROCEDURES**

##### **Section 1. Powers and Duties of the Committee – concluded**

(g) Establish reasonable terms and conditions under which entities may become participants in the Classification, and any entity may become a participant therein upon complying with such terms and conditions.

##### **Section 2. Powers and Duties of Classification Panels**

(a) At the direction of the Committee, Classification Panels may:

- (1) Direct research regarding commodities and any classification proposal or provision;
- (2) Docket proposals for changes in the Classification;
- (3) Hear, consider and act on docketed proposals and other classification matters.

(b) In acting on a docketed proposal, a Classification Panel may: (1) approve the proposal as docketed; (2) disapprove the proposal as docketed; (3) modify and approve the proposal; or (4) at its discretion defer disposition to the next Classification Panel.

(c) The disposition of a docketed proposal by a Classification Panel shall be the final disposition of the Committee, unless reconsideration by the full Committee, rather than arbitration, is requested of a Classification Panel decision and is agreed to by all parties to the classification proposal.

##### **Section 3. Conduct of Business by the Committee or a Classification Panel**

(a) The Committee and/or a Classification Panel shall conduct business at meetings which shall be held at least three times a year at times and places and in formats to be designated and noticed by the Secretary of the Committee not less than sixty (60) days in advance. Special meetings to consider matters other than docketed proposals may be called by the Secretary, and shall be called by the Secretary at the request of fifteen or more members, on not less than twenty (20) days' written notice.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE III - NATIONAL CLASSIFICATION COMMITTEE - POWERS, DUTIES AND PROCEDURES**

#### **Section 3. Conduct of Business by the Committee or a Classification Panel – continued**

(b) At meetings of the Committee or a Classification Panel each member shall have one vote. A majority vote of the members present at a meeting shall govern the Committee's or Classification Panel's action. At all meetings the presence of 30% of the total membership of the Committee or Classification Panel shall be necessary to transact business. Meetings shall be governed by Robert's Rules of Order. Formal minutes of all meetings and a record of the maker and seconder of every motion respecting a docketed proposal and the vote of all members thereon shall be maintained.

#### **(c) Notice and Disclosure required prior to a meeting of the Committee or Classification Panel**

- (1) Not less than sixty (60) days prior to a Committee or Classification Panel meeting:
  - (i) The full text of the Committee's Docket Bulletin shall be posted on the National Motor Freight Traffic Association's website and simultaneously provided by mail, e-mail or facsimile to proponents of docketed proposals scheduled to be considered at the meeting, to all members of the Committee or Panel, as the case may be, and to each subscriber to the Docket Bulletin. The notice provided in the Docket Bulletin shall specify the time, date and place of the meeting, and shall contain the full text of each proposed change along with the relevant staff report (analysis), or a summary thereof, and specify how to contact the staff member assigned to the proposal, how to contact the proponent(s) of the proposal and how to obtain the raw data and any other information in the Committee's public docket file. The Docket Bulletin shall also list classification review matters to be considered at the meeting, including how to contact the staff member assigned and how to obtain a copy of the relevant staff report.

## NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT

### ARTICLE III - NATIONAL CLASSIFICATION COMMITTEE - POWERS, DUTIES AND

#### PROCEDURES

#### Section 3. Conduct of Business by the Committee or a Classification Panel – continued

##### (c) Notice and Disclosure required prior to a meeting of the Committee or Classification Panel

- (1) Not less than sixty (60) days prior to a Committee or Classification Panel meeting:
  - (ii) Individual notice shall be provided by mail, e-mail or facsimile to all shippers that participated in any Committee research activities leading to docketed proposals or other classification matters to be considered at the meeting. Individual notice shall likewise be provided to all trade and professional associations that have been identified by staff as representing shippers of the involved product(s). Individual notice shall specify the time, date and place of the meeting, the National Motor Freight Traffic Association's website address for online access to the Docket Bulletin and instructions for obtaining access to the Committee's public files.
  - (iii) The Committee, without request and free of charge, shall provide copies of any reports (analyses) prepared by the staff concerning a docketed proposal to any party that has participated in the corresponding research study.
- (2) No later than thirty (30) days prior to the public meeting, interested parties may submit statements, including any underlying studies, work papers, supporting raw data and any other information, relating to a docketed proposal to the Secretary of the Committee.
- (3) After thirty (30) days but no later than fifteen (15) days prior to the public meeting, the Committee and any interested party may submit a statement or analysis regarding the information of record, but no new facts, data or evidence will be accepted or considered. The Committee shall include this material in the public docket file.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE III - NATIONAL CLASSIFICATION COMMITTEE - POWERS, DUTIES AND PROCEDURES**

#### **Section 3. Conduct of Business by the Committee or a Classification Panel – continued**

##### **(c) Notice and Disclosure required prior to a meeting of the Committee or Classification Panel**

(4) The Secretary of the Committee shall forward all information of record to the Committee or Classification Panel members, as the case may be, prior to the meeting at which a docketed proposal is to be considered.

(d) Any interested person may file with the Secretary of the Committee written representations respecting any docketed proposal or other classification matter in electronic or paper format. Written representations relating to a docketed proposal will be included in the Committee's public docket file. Such public files will be posted on the National Motor Freight Traffic Association's website, and written representations submitted in paper format will be electronically scanned for inclusion in the files. To ensure that the highest quality image is captured during the scanning process, all letters, statements, data sheets and other written representations submitted in paper format must be typed on 8½ by 11-inch white paper, with type no smaller than 12 point.

(e) Any person interested in a docketed proposal or other classification matter shall, upon request to the Secretary of the Committee, be allotted a reasonable amount of time, as determined by the Secretary, for an appearance before the Committee or Classification Panel, as the case may be.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE III - NATIONAL CLASSIFICATION COMMITTEE - POWERS, DUTIES AND PROCEDURES**

#### **Section 3. Conduct of Business by the Committee or a Classification Panel – concluded**

(f) In considering a docketed proposal, the Committee or Classification Panel will be guided exclusively by:

- (1) The public record consisting of all material in the public docket file that has been established by the process set forth in this Agreement;
- (2) The applicable regulatory and legal standards and precedent establishing the reasonableness of classification provisions;
- (3) Principles of procedural fairness as set forth in this Agreement and the arguments of the parties based on the public file; and
- (4) The Committee's policies and guidelines of record contained in the public file.

(g) Upon request, the Secretary promptly shall divulge to any person the vote cast by each member of the Committee or a Classification Panel on any docketed proposal.

#### **Section 4. Subcommittee Meetings**

Meetings of any subcommittees shall be held on call of the Chairman of such subcommittee. The members present at any meeting shall constitute a quorum and all meetings shall be governed by Robert's Rules of Order; except that any part of a meeting of a subcommittee during which proposals for new or changed provisions in the Classification may be developed shall be noticed as provided in Section 3(c) and will be subject to the quorum, open meeting and any other applicable procedural requirements established in the Agreement for the collective consideration of classification matters by the Committee and Classification Panels. Any person interested in such classification matters may attend the meeting, and all persons in attendance may participate in discussions.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE IV – RULES OF PROCEDURE FOR CHANGES IN THE NATIONAL MOTOR FREIGHT CLASSIFICATION**

#### **Rule 1. Proposal Forms**

The Committee shall provide a suitable form for the submission of proposals for changes in the provisions of the National Motor Freight Classification.

#### **Rule 2. Proposals**

(a) All proposals to establish new or changed descriptions of articles, classes, rules, packaging requirements and specifications, bill of lading formats or other provisions of the Classification, shall be filed in writing with the Secretary of the Committee. The staff will provide assistance in the formulation or preparation of such proposals, as may be requested. Proposals may be filed by the Committee, a Classification Panel or any other person, firm, corporation or group having an interest in the contents of the Classification; provided, however, that no employee or employee committee of the Committee may docket or act on any proposal.

(b) Each classification proposal shall be docketed. A Docket Bulletin describing such proposals shall be published by the Secretary and posted on the National Motor Freight Traffic Association's website. Docket Bulletins shall be simultaneously provided by mail, e-mail or facsimile to proponents, to all members of the Committee and to all subscribers to the Docket Bulletin.

(c) Upon request, the name of the proponent of a proposal shall be promptly divulged to any person. In the case of a proposal docketed by the Committee or a Classification Panel, the member moving to docket, the member seconding the motion and a tally of the votes promptly will be divulged.

#### **Rule 3. Docketing and Parties of Record**

(a) The Secretary of the Committee shall place proposals on the first available docket for public hearing.

(b) Any person may become a party of record to a docketed proposal by communicating an interest in writing to the Secretary prior to the public meeting at which the proposal will be considered.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE IV – RULES OF PROCEDURE FOR CHANGES IN THE NATIONAL MOTOR FREIGHT CLASSIFICATION**

#### **Rule 4. Public Docket Files**

(a) Copies of all reports, analyses, studies, work papers, supporting raw data and other information in the Committee's possession relating to a docketed proposal, along with the full text of the proposed change, shall be made available in a public file, subject to any protective orders that may be obtained from the Surface Transportation Board. Protective orders notwithstanding, the public docket file will not name the entity that provided the raw data, nor will it include information that could lead to the name of the entity that provided the raw data. The source of the raw data will be identified as "shipper/receiver," "carrier," or the like.

(b) Any interested person may obtain the Committee's public file on any docketed proposal by submitting a request in writing by mail, by e-mail or by facsimile to the Committee. The request must specify the Committee's docket and subject numbers, the material(s) sought, and whether the material(s) is to be furnished by mail or e-mail or made available for courier pick-up. The material(s) will be mailed, e-mailed or made available for courier pick-up no later than two (2) business days after the request is received. If the request is received before the docket record is closed, the material(s) will be furnished as of the date the request is received. After the docket record is closed, any material(s) added to the public file subsequent to the date of the request will be furnished, as per the requesting party's instructions, within two (2) business days. A reasonable charge, not to exceed the Committee's cost for copying and transmittal, will be assessed for these services.

(c) The Committee will also post the public docket files on the National Motor Freight Traffic Association's website, organized by docket and subject numbers, each file including an index of documents. Material received after the initial posting of a public docket file will be posted on the website within two (2) business days after the deadline for receiving the material.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE IV – RULES OF PROCEDURE FOR CHANGES IN THE NATIONAL MOTOR FREIGHT CLASSIFICATION**

#### **Rule 4. Public Docket Files – concluded**

(d) The Committee's public docket files will be retained at the Committee's offices for a period of at least five (5) years. Public files posted on the National Motor Freight Traffic Association's website will be retained there until final disposition, including any arbitration proceeding or proceedings before the Surface Transportation Board.

#### **Rule 5. Public Meetings**

Meetings open to the public shall be conducted by the Committee or a Classification Panel, as the case may be, on all docketed proposals and on all other classification matters, and by subcommittees when considering matters pertaining to changes in the Classification. At public meetings any person may participate by presenting views orally and/or in writing on any classification matter under consideration; however, facts, data or evidence relating to docketed proposals received less than thirty (30) days prior to the meeting will not be accepted or considered. Note-taking and/or sound recordings are permitted at these public meetings provided that the meeting is not disrupted by such activities.

#### **Rule 6. Disposition of Proposals**

(a) Disposition of docketed proposals shall be made by the 120<sup>th</sup> day after docketing, unless reconsideration by the full Committee is requested of a Committee or Classification Panel decision by all parties to that classification proposal.

(b) In disposing of a docketed proposal, the Committee or a Classification Panel may modify the proposal, but it may not broaden the scope of the proposal as shown in the Docket Bulletin.

(c) Members may not discuss or vote on provisions governed by Section 14706 (c)(1)(C) of Title 49 of the United States Code.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE IV – RULES OF PROCEDURE FOR CHANGES IN THE NATIONAL MOTOR FREIGHT CLASSIFICATION**

#### **Rule 7. Changes Without Docketing**

Changes in the Classification made necessary by law or by order of a regulatory body or for clarification, may be made without docketing or observance of the procedures herein. Notice of such changes shall be provided in the Docket Bulletin and posted on the National Motor Freight Traffic Association's website.

#### **Rule 8. Notice and Publication**

(a) Notice of Committee and Classification Panel dispositions of docketed proposals shall be provided by mail, e-mail or facsimile to the proponents, parties of record, members of the Committee, subscribers to the Docket Bulletin and any parties that have submitted written requests for such notice. Information on all classification actions will be posted on the National Motor Freight Traffic Association's website.

(b) The Secretary of the Committee shall instruct the Publishing Agent of the Classification of changes to be made in the Classification in accordance with the disposition of proposals.

#### **Rule 9. Independent Action**

(a) The Committee may not interfere with a carrier's free and unrestrained right of independent action.

(b) Proposals for independent action will not be discussed by the Committee or by any Classification Panel. Any expert analysis or technical assistance provided by employees or employee committees concerning any independent action proposal shall be kept confidential.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE V – ARBITRATION**

Should any party disagree with the disposition of a docketed proposal by the Committee or a Classification Panel, arbitration may be sought by that party subject to the following rules of procedure.

#### **Rule 1. Request for Arbitration**

The party seeking relief shall be referred to as the claimant and the National Classification Committee (Committee) shall be referred to as the respondent. Within thirty (30) days of a classification decision by the Committee or a Classification Panel, claimant(s) shall notify the Secretary of the Committee by mail, telephone, e-mail or facsimile that arbitration is requested of the Committee or Classification Panel action on the docketed proposal.

#### **Rule 2. Selection of Arbitrator**

(a) The Secretary of the Committee shall post on the National Motor Freight Traffic Association's website a list of not less than ten (10) neutral arbitrators selected by an independent arbitration association. If a person does not have Internet capability, upon notice by that party that it wishes to seek arbitration, the Secretary, within two (2) business days after that notice, will provide the list of not less than ten (10) neutral arbitrators by express mail, e-mail or facsimile. The claimant(s) and the Secretary of the Committee shall confer by telephone, e-mail or facsimile within three (3) business days after the list of neutral arbitrators has been received by the claimant(s) or was available to the claimant(s) on the National Motor Freight Traffic Association's website to mutually agree to a neutral arbitrator. If the claimant(s) and the Secretary select different neutral arbitrators, and cannot agree on a single neutral arbitrator, they will so notify the arbitration association, and the two selected arbitrators will choose the arbitrator to handle the matter from the remaining arbitrators on the list who were not selected. The arbitration association shall be notified by telephone, e-mail or facsimile of the selection of the neutral arbitrator, and the arbitration association shall determine whether the selected neutral arbitrator has a conflict of

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE V – ARBITRATION**

#### **Rule 2. Selection of Arbitrator - concluded**

interest. The claimant(s) and the Secretary of the Committee shall be notified promptly of the results of that inquiry. If the neutral arbitrator selected has a conflict of interest, the two originally selected arbitrators will choose another neutral arbitrator until no conflict of interest exists.

(b) The list of neutral arbitrators will be utilized unless, within seven (7) business days after notice of arbitration is provided by a claimant, the parties mutually agree to utilize a neutral arbitrator not identified on the list.

#### **Rule 3. Commencing The Arbitration Process**

Prior to the commencement of the review by the neutral arbitrator, claimant(s) and the Committee will be required to execute an arbitration agreement. Upon receipt of the signed arbitration agreement, the arbitration association shall direct the selected neutral arbitrator to commence the proceeding. The claimant(s) and the Committee will share equally in the fees charged for the arbitration process by the arbitration association, except that each will bear their own legal or representation fees and administrative costs.

#### **Rule 4. Transmittal of Public Record**

Within one (1) business day after the notice of the selection of a neutral arbitrator, the Secretary of the Committee shall forward by express mail a complete copy of the public record developed during the course of the handling of the docketed proposal before the Committee or a Classification Panel to the arbitrator, and concurrently, a copy (copies) by express mail to the claimant(s).

#### **Rule 5. Parties' Statements of Position**

Within seven (7) business days after the notice of the selection of a neutral arbitrator, the claimant(s) may submit to the arbitrator a statement of position as to why the initial classification action

## NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT

### ARTICLE V – ARBITRATION

#### Rule 5. Parties' Statements of Position - concluded

by the Committee or a Classification Panel is not in conformity with established classification standards. A copy of the statement shall be provided by express mail, e-mail or facsimile to the Secretary of the Committee. Within ten (10) business days after the receipt of claimant's(s') statement(s) the Committee may submit a response by express mail, e-mail or facsimile to the arbitrator, and send a copy by express mail, e-mail or facsimile to the claimant(s). At the arbitrator's discretion, rebuttal statement(s) may be submitted by the claimant(s) by express mail, e-mail or facsimile within five (5) business days after receipt of the Committee's reply. A copy of the rebuttal(s) must be served contemporaneously by express mail, e-mail or facsimile on the Secretary of the Committee.

#### Rule 6. Decision of Arbitrator

Within thirty (30) days after the receipt of the parties' statements of position, the arbitrator shall issue a written decision determining whether or not to affirm the challenged classification action. The arbitrator's decision will consider statements on appeal submitted by the parties, but such statements must not include inappropriate evidence and issues and must not seek or constitute a de novo review. The arbitrator's conclusions shall be governed by the established regulatory and legal standards and precedent for evaluating the reasonableness of classification provisions. The reasonableness of the class(es) proposed for any commodity shall be determined exclusively by comparison of that commodity's four recognized transportation characteristics (density, stowability, handling and liability, as defined by the Interstate Commerce Commission in Ex Parte No. MC-98 (Sub-No. 1), Investigation Into Motor Carrier Classification, 367 I.C.C. 243 (1983) and related cases) with the transportation characteristics of other commodities that are assigned a comparable class(es). The decision will set forth the essential reasoning that was relied upon in reaching these conclusions. The arbitrator's decision shall be final, subject only to

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE V – ARBITRATION**

#### **Rule 6. Decision of Arbitrator - concluded**

review ~~through the filing of a~~ by complaint or by a timely filed petition for suspension with the Surface Transportation Board. The Committee may publish any classification action found reasonable by the arbitrator to become effective not less than fifteen (15) days after the arbitrator publishes his or her decision.

#### **Rule 7. Challenge of Classification Decision If Arbitration Is Not Sought**

If arbitration is not sought within thirty (30) days after the classification decision on a proposal is made by the Committee or a Classification Panel, the approved changes may be published to take effect on not less than fifteen (15) days' notice. Should the classification change be protested before the scheduled effective date, in accord with the Surface Transportation Board's procedures, the protest and any reply by the Committee shall be based on the public record upon which the Committee's or Classification Panel's action was based, unless the party(ies) protesting the classification action establishes that the Committee failed to give notice of the docketed proposal as required by its approved classification procedures.

#### **Rule 8. Challenge of the Arbitrator's Decision**

If a classification decision by the Committee or a Classification Panel is the subject of an arbitration proceeding, the classification decision, if affirmed by the arbitrator, may ~~not be protested taken~~ to the Surface Transportation Board ~~but must be challenged only through the filing of a~~ either by complaint ~~with the Surface Transportation Board~~ or by a timely filed petition for suspension of any affirmed classification changes.

#### **Rule 9. Alternative to Arbitration**

If all of the parties objecting to an initial classification decision by the Committee or a Classification Panel agree to seek reconsideration of the classification action by the full Committee, that request must be made within thirty (30) days of the initial classification decision to the Secretary of the Committee by mail, e-mail or facsimile. A majority of the Committee present shall decide whether the reconsidered classification decision shall be approved or disapproved. The reconsideration process may

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE V – ARBITRATION**

#### **Rule 9. Alternative to Arbitration - concluded**

require that final disposition of the classification proposal extend beyond the 120<sup>th</sup> day after docketing. After reconsideration, dissatisfied persons may file petitions for suspension of the reconsidered classification proposal with the Surface Transportation Board.

### **ARTICLE VI - AMENDMENTS**

#### **Section 1. Committee Action**

This Agreement may be amended or revised at any regular or special meeting of the Committee by a two-thirds majority vote of the members present, a quorum being present and voting, provided that thirty (30) days' notice in writing of the proposed amendment shall have been provided by mail, e-mail or facsimile to all members of the Committee. Such notice shall set forth the exact language of the proposed amendment, but the Committee shall be empowered to change or modify such language so long as the amendment as finally adopted is within the scope and purpose of the proposed amendment of which notice was given.

#### **Section 2. Referendum**

Any three members of the Committee or any group of twenty-five or more parties to this Agreement by writing addressed to the Secretary within forty (40) days after the date of such amendment may request the Secretary to submit such amendments to a referendum mail vote to all persons then parties to this Agreement. Upon this demand being made, the Secretary shall submit such amendment to such referendum within thirty (30) days after such request and call for written and signed ballots with respect thereto to be filed with the Secretary within fifteen (15) days thereafter. Such amendment shall be deemed to be disapproved and shall be of no force or effect, if upon such referendum a majority of the then parties to this Agreement shall vote that such amendment be disapproved or rejected.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE VI - AMENDMENTS**

#### **Section 3. Effective Date**

No amendments to this Agreement shall become effective until submitted to, and approved by, the Surface Transportation Board.

#### **Section 4. Force and Effect**

An amendment adopted and approved as herein provided unless subsequently disapproved by referendum shall become a part of this Agreement with like force and effect as if it had been originally incorporated herein and shall be binding upon all parties to this Agreement.

### **ARTICLE VII - TERMS AND PARTIES**

#### **Section 1. Duration**

The term of this Agreement shall be for a period of one (1) year and thereafter until terminated, as it may be at any regular or special meeting of the Committee by a two-thirds vote of the members of the Committee present and voting, or by a majority of the entire Committee, provided written notice of such proposed termination shall have been mailed to all members of the Committee at least thirty (30) days prior to the meeting at which the same is to be considered.

#### **Section 2. Voluntary Withdrawal**

Any party to this Agreement may withdraw therefrom upon not less than sixty (60) days' notice in writing to the Secretary of the Committee.

#### **Section 3. Involuntary Withdrawal**

Any party to this Agreement who for any reason whatsoever shall cease to be a motor carrier of property or a participant in the Classification shall cease to be a party hereto upon the date of such cessation.

#### **Section 4. Readmission**

Any party to this Agreement who has withdrawn voluntarily or involuntarily may again become a party hereto by making a request in writing, provided such party is, upon the date of such request, a motor carrier of property and a participant in the Classification.

**NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

**IN TESTIMONY WHEREOF**, the parties hereto have set their hands and seals as of this.....

..... day of....., 20.....

Carrier .....

By .....

Title .....

Date .....

Trade Name (if any) .....

Business Address (Main Office) .....

Number Street

City County State Zip Code

Type of Organization .....

..... (Individual, partnership or corporation)

If a corporation:

State in which organized .....

Date of incorporation .....

If a partnership:

Date of formation of partnership .....

Names of all partners .....

Type of carrier .....

Certificates: MC No. .... US DOT No.. .....

**AGREEMENT**

**As Amended**

**\_\_\_\_\_, 200\_**

**RELATING TO**

**PROCEDURES FOR**

**COLLECTIVELY ESTABLISHING AND**

**MAINTAINING THE PROVISIONS OF THE**

**NATIONAL MOTOR FREIGHT CLASSIFICATION**

**By The**

**NATIONAL CLASSIFICATION COMMITTEE**

# **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

## **PREAMBLE**

The undersigned motor carrier in consideration of the covenants of the other motor carriers of property signatory to this Agreement agrees that it will participate in the collective initiation, consideration and change of classifications and rules governing the transportation of property in interstate or foreign commerce in accordance with the terms of this Agreement.

The undersigned carrier and every other carrier party to this Agreement may exercise the free and unrestrained right to take independent action at any time with respect to any of the matters contained herein.

The undersigned carrier appoints the Secretary of the National Classification Committee as its agent and attorney-in-fact to sign, file and pursue in its name before the United States Surface Transportation Board (Surface Transportation Board) such application(s) as may be required for the authorization or reauthorization of this Agreement, and to take any other appropriate action in connection therewith.

## **ARTICLE I - PURPOSE AND SCOPE**

This Agreement pertains to the collective initiation, consideration and handling of motor freight classification matters and for the organization, powers and procedures of a committee of up to one hundred representatives of the motor carriers party to this Agreement to be known as the National Classification Committee (hereinafter called the Committee).

## **ARTICLE II - ORGANIZATION OF THE NATIONAL CLASSIFICATION COMMITTEE**

### **Section 1. National Classification Committee**

The Committee shall consist of up to one hundred members, to be elected from the fifty states, the District of Columbia, Canada and Mexico (hereinafter called jurisdiction(s)). The number of members to be elected from each jurisdiction shall be determined by the Secretary of the Committee, in accordance with the classification participation fees received from each of the jurisdictions during the previous fiscal year.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE II - ORGANIZATION OF THE NATIONAL CLASSIFICATION COMMITTEE**

#### **Section 2. Voting Rights**

Each party to this Agreement shall be entitled to one vote for each Committee member to be elected from the jurisdiction in which its principal place of business is located. A carrier entitled to vote for more than one nominee may, if it so elects, cast all of the votes to which it is entitled in favor of one nominee, or it may cast one or more votes for each of one or more nominees.

#### **Section 3. Nominations**

(a) The Committee shall be reconstituted on July 1 of each year. Any officer, owner or full-time employee of a motor carrier party to this Agreement shall be eligible for membership on the Committee, except that no member of the Committee who is serving a consecutive term and who has not attended one of the three regular meetings next preceding the issuing of ballots as provided in Section 4 hereof, shall be eligible for re-election.

(b) Any party to the Agreement may nominate one qualified person for election from the jurisdiction in which such nominator is domiciled. The Secretary of the Committee shall request nominations from all parties not later than April 1 of each year. Nominations must be made in writing to the Secretary not later than May 1.

#### **Section 4. Elections**

By June 1 of each year, the Secretary of the Committee shall issue by mail or electronic means to each party to this Agreement a ballot listing all nominees in its jurisdiction. Each party desiring to vote shall return its ballot to the Secretary of the Committee not later than June 25. The Secretary of the Committee and two witnesses shall count the votes and certify the results to the Chairman of the Committee. In the event of a tie vote, the Secretary shall take a second ballot in the jurisdiction in which the tie occurs, and balloting shall continue until the tie is broken.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE II - ORGANIZATION OF THE NATIONAL CLASSIFICATION COMMITTEE**

#### **Section 5. Officers**

At its first meeting subsequent to the annual election, the Committee shall organize by electing a Chairman, a First Vice-Chairman and a Second Vice-Chairman; and by selecting the Secretary of the Committee, who shall have no vote and need not be a member of the Committee.

#### **Section 6. Classification Panels**

Classification Panels are subgroups of the Committee that have the power and duty to consider and act on classification matters. At the discretion of the Committee, the Chairman may establish up to four Panels of up to 25 Committee members each. Panel members and a Chairman and Vice Chairman of each Panel shall be appointed as necessary by the Chairman of the Committee. The Secretary of the Committee shall act as the Secretary of each Panel. Members of the Classification Panels shall serve until their successors have been appointed. No Committee member shall be obliged to serve on a Panel.

#### **Section 7. Subcommittees**

The Chairman of the Committee may, and at the discretion of the Committee shall, appoint such subcommittees as are required to conduct the work of the Committee.

#### **Section 8. Vacancies and Tenure of Office**

The Chairman of the Committee shall have the authority to fill any vacancy on the Committee by appointment. All members shall serve until their successors are elected or appointed and have signified a willingness to serve. The Chairman, Vice-Chairmen and Secretary of the Committee shall serve for terms beginning with election to office and continuing until the next succeeding Committee shall have elected new officers. In the event a vacancy occurs in the office of Chairman, through resignation or otherwise, the First Vice-Chairman shall succeed to that post, and the Second Vice-Chairman shall succeed to the post of First Vice-Chairman.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE III - NATIONAL CLASSIFICATION COMMITTEE - POWERS, DUTIES AND PROCEDURES**

#### **Section 1. Powers and Duties of the Committee**

The Committee shall have the power and duty to:

(a) Investigate and consider matters affecting the classification of commodities, initiate proposals for changes in the National Motor Freight Classification (hereinafter called the Classification), and determine and prescribe the descriptions of articles, classes, rules, packaging requirements and specifications, bill of lading formats, other provisions and the context of the Classification; provided, however, that any participating carrier shall have the free and unrestrained right to establish, or concur in, exceptions to the Classification;

(b) Establish the procedures under which the Classification Panels shall operate, and direct and monitor the staff in its performance of analytical and support services;

(c) Upon request, make the staff available, on a direct-cost reimbursement basis, to assist shippers in conducting research on classification matters and to report the results to the Committee when the research reveals that a classification change may be warranted;

(d) Upon request, make the staff available to assist shippers in making appropriate proposals for classification changes;

(e) Establish the procedures under which proposals for new or changed descriptions of articles, classes, rules, packaging requirements and specifications, bill of lading formats and other provisions of the Classification shall be initiated, heard and decided;

(f) Upon request, make the Committee's Synopsis of Classification Opinions available to any interested person, to the same extent, on the same terms and at the same charge that it is made available to the Committee's member carriers;

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE III - NATIONAL CLASSIFICATION COMMITTEE - POWERS, DUTIES AND PROCEDURES**

#### **Section 1. Powers and Duties of the Committee – concluded**

(g) Establish reasonable terms and conditions under which entities may become participants in the Classification, and any entity may become a participant therein upon complying with such terms and conditions.

#### **Section 2. Powers and Duties of Classification Panels**

(a) At the direction of the Committee, Classification Panels may:

- (1) Direct research regarding commodities and any classification proposal or provision;
- (2) Docket proposals for changes in the Classification;
- (3) Hear, consider and act on docketed proposals and other classification matters.

(b) In acting on a docketed proposal, a Classification Panel may: (1) approve the proposal as docketed; (2) disapprove the proposal as docketed; (3) modify and approve the proposal; or (4) at its discretion defer disposition to the next Classification Panel.

(c) The disposition of a docketed proposal by a Classification Panel shall be the final disposition of the Committee, unless reconsideration by the full Committee, rather than arbitration, is requested of a Classification Panel decision and is agreed to by all parties to the classification proposal.

#### **Section 3. Conduct of Business by the Committee or a Classification Panel**

(a) The Committee and/or a Classification Panel shall conduct business at meetings which shall be held at least three times a year at times and places and in formats to be designated and noticed by the Secretary of the Committee not less than sixty (60) days in advance. Special meetings to consider matters other than docketed proposals may be called by the Secretary, and shall be called by the Secretary at the request of fifteen or more members, on not less than twenty (20) days' written notice.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE III - NATIONAL CLASSIFICATION COMMITTEE - POWERS, DUTIES AND PROCEDURES**

#### **Section 3. Conduct of Business by the Committee or a Classification Panel – continued**

(b) At meetings of the Committee or a Classification Panel each member shall have one vote. A majority vote of the members present at a meeting shall govern the Committee's or Classification Panel's action. At all meetings the presence of 30% of the total membership of the Committee or Classification Panel shall be necessary to transact business. Meetings shall be governed by Robert's Rules of Order. Formal minutes of all meetings and a record of the maker and seconder of every motion respecting a docketed proposal and the vote of all members thereon shall be maintained.

#### **(c) Notice and Disclosure required prior to a meeting of the Committee or Classification Panel**

- (1) Not less than sixty (60) days prior to a Committee or Classification Panel meeting:
  - (i) The full text of the Committee's Docket Bulletin shall be posted on the National Motor Freight Traffic Association's website and simultaneously provided by mail, e-mail or facsimile to proponents of docketed proposals scheduled to be considered at the meeting, to all members of the Committee or Panel, as the case may be, and to each subscriber to the Docket Bulletin. The notice provided in the Docket Bulletin shall specify the time, date and place of the meeting, and shall contain the full text of each proposed change along with the relevant staff report (analysis), or a summary thereof, and specify how to contact the staff member assigned to the proposal, how to contact the proponent(s) of the proposal and how to obtain the raw data and any other information in the Committee's public docket file. The Docket Bulletin shall also list classification review matters to be considered at the meeting, including how to contact the staff member assigned and how to obtain a copy of the relevant staff report.

## NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT

### ARTICLE III - NATIONAL CLASSIFICATION COMMITTEE - POWERS, DUTIES AND PROCEDURES

#### Section 3. Conduct of Business by the Committee or a Classification Panel – continued

##### (c) Notice and Disclosure required prior to a meeting of the Committee or Classification Panel

- (1) Not less than sixty (60) days prior to a Committee or Classification Panel meeting:
  - (ii) Individual notice shall be provided by mail, e-mail or facsimile to all shippers that participated in any Committee research activities leading to docketed proposals or other classification matters to be considered at the meeting. Individual notice shall likewise be provided to all trade and professional associations that have been identified by staff as representing shippers of the involved product(s). Individual notice shall specify the time, date and place of the meeting, the National Motor Freight Traffic Association's website address for online access to the Docket Bulletin and instructions for obtaining access to the Committee's public files.
  - (iii) The Committee, without request and free of charge, shall provide copies of any reports (analyses) prepared by the staff concerning a docketed proposal to any party that has participated in the corresponding research study.
- (2) No later than thirty (30) days prior to the public meeting, interested parties may submit statements, including any underlying studies, work papers, supporting raw data and any other information, relating to a docketed proposal to the Secretary of the Committee.
- (3) After thirty (30) days but no later than fifteen (15) days prior to the public meeting, the Committee and any interested party may submit a statement or analysis regarding the information of record, but no new facts, data or evidence will be accepted or considered. The Committee shall include this material in the public docket file.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE III - NATIONAL CLASSIFICATION COMMITTEE - POWERS, DUTIES AND PROCEDURES**

#### **Section 3. Conduct of Business by the Committee or a Classification Panel – continued**

##### **(c) Notice and Disclosure required prior to a meeting of the Committee or Classification Panel**

(4) The Secretary of the Committee shall forward all information of record to the Committee or Classification Panel members, as the case may be, prior to the meeting at which a docketed proposal is to be considered.

(d) Any interested person may file with the Secretary of the Committee written representations respecting any docketed proposal or other classification matter in electronic or paper format. Written representations relating to a docketed proposal will be included in the Committee's public docket file. Such public files will be posted on the National Motor Freight Traffic Association's website, and written representations submitted in paper format will be electronically scanned for inclusion in the files. To ensure that the highest quality image is captured during the scanning process, all letters, statements, data sheets and other written representations submitted in paper format must be typed on 8½ by 11-inch white paper, with type no smaller than 12 point.

(e) Any person interested in a docketed proposal or other classification matter shall, upon request to the Secretary of the Committee, be allotted a reasonable amount of time, as determined by the Secretary, for an appearance before the Committee or Classification Panel, as the case may be.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE III - NATIONAL CLASSIFICATION COMMITTEE - POWERS, DUTIES AND PROCEDURES**

#### **Section 3. Conduct of Business by the Committee or a Classification Panel – concluded**

(f) In considering a docketed proposal, the Committee or Classification Panel will be guided exclusively by:

- (1) The public record consisting of all material in the public docket file that has been established by the process set forth in this Agreement;
- (2) The applicable regulatory and legal standards and precedent establishing the reasonableness of classification provisions;
- (3) Principles of procedural fairness as set forth in this Agreement and the arguments of the parties based on the public file; and
- (4) The Committee's policies and guidelines of record contained in the public file.

(g) Upon request, the Secretary promptly shall divulge to any person the vote cast by each member of the Committee or a Classification Panel on any docketed proposal.

#### **Section 4. Subcommittee Meetings**

Meetings of any subcommittees shall be held on call of the Chairman of such subcommittee. The members present at any meeting shall constitute a quorum and all meetings shall be governed by Robert's Rules of Order; except that any part of a meeting of a subcommittee during which proposals for new or changed provisions in the Classification may be developed shall be noticed as provided in Section 3(c) and will be subject to the quorum, open meeting and any other applicable procedural requirements established in the Agreement for the collective consideration of classification matters by the Committee and Classification Panels. Any person interested in such classification matters may attend the meeting, and all persons in attendance may participate in discussions.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE IV – RULES OF PROCEDURE FOR CHANGES IN THE NATIONAL MOTOR FREIGHT CLASSIFICATION**

#### **Rule 1. Proposal Forms**

The Committee shall provide a suitable form for the submission of proposals for changes in the provisions of the National Motor Freight Classification.

#### **Rule 2. Proposals**

(a) All proposals to establish new or changed descriptions of articles, classes, rules, packaging requirements and specifications, bill of lading formats or other provisions of the Classification, shall be filed in writing with the Secretary of the Committee. The staff will provide assistance in the formulation or preparation of such proposals, as may be requested. Proposals may be filed by the Committee, a Classification Panel or any other person, firm, corporation or group having an interest in the contents of the Classification; provided, however, that no employee or employee committee of the Committee may docket or act on any proposal.

(b) Each classification proposal shall be docketed. A Docket Bulletin describing such proposals shall be published by the Secretary and posted on the National Motor Freight Traffic Association's website. Docket Bulletins shall be simultaneously provided by mail, e-mail or facsimile to proponents, to all members of the Committee and to all subscribers to the Docket Bulletin.

(c) Upon request, the name of the proponent of a proposal shall be promptly divulged to any person. In the case of a proposal docketed by the Committee or a Classification Panel, the member moving to docket, the member seconding the motion and a tally of the votes promptly will be divulged.

#### **Rule 3. Docketing and Parties of Record**

(a) The Secretary of the Committee shall place proposals on the first available docket for public hearing.

(b) Any person may become a party of record to a docketed proposal by communicating an interest in writing to the Secretary prior to the public meeting at which the proposal will be considered.

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## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE IV – RULES OF PROCEDURE FOR CHANGES IN THE NATIONAL MOTOR FREIGHT CLASSIFICATION**

#### **Rule 4. Public Docket Files**

(a) Copies of all reports, analyses, studies, work papers, supporting raw data and other information in the Committee's possession relating to a docketed proposal, along with the full text of the proposed change, shall be made available in a public file, subject to any protective orders that may be obtained from the Surface Transportation Board. Protective orders notwithstanding, the public docket file will not name the entity that provided the raw data, nor will it include information that could lead to the name of the entity that provided the raw data. The source of the raw data will be identified as "shipper/receiver," "carrier," or the like.

(b) Any interested person may obtain the Committee's public file on any docketed proposal by submitting a request in writing by mail, by e-mail or by facsimile to the Committee. The request must specify the Committee's docket and subject numbers, the material(s) sought, and whether the material(s) is to be furnished by mail or e-mail or made available for courier pick-up. The material(s) will be mailed, e-mailed or made available for courier pick-up no later than two (2) business days after the request is received. If the request is received before the docket record is closed, the material(s) will be furnished as of the date the request is received. After the docket record is closed, any material(s) added to the public file subsequent to the date of the request will be furnished, as per the requesting party's instructions, within two (2) business days. A reasonable charge, not to exceed the Committee's cost for copying and transmittal, will be assessed for these services.

(c) The Committee will also post the public docket files on the National Motor Freight Traffic Association's website, organized by docket and subject numbers, each file including an index of documents. Material received after the initial posting of a public docket file will be posted on the website within two (2) business days after the deadline for receiving the material.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE IV – RULES OF PROCEDURE FOR CHANGES IN THE NATIONAL MOTOR FREIGHT CLASSIFICATION**

#### **Rule 4. Public Docket Files – concluded**

(d) The Committee's public docket files will be retained at the Committee's offices for a period of at least five (5) years. Public files posted on the National Motor Freight Traffic Association's website will be retained there until final disposition, including any arbitration proceeding or proceedings before the Surface Transportation Board.

#### **Rule 5. Public Meetings**

Meetings open to the public shall be conducted by the Committee or a Classification Panel, as the case may be, on all docketed proposals and on all other classification matters, and by subcommittees when considering matters pertaining to changes in the Classification. At public meetings any person may participate by presenting views orally and/or in writing on any classification matter under consideration; however, facts, data or evidence relating to docketed proposals received less than thirty (30) days prior to the meeting will not be accepted or considered. Note-taking and/or sound recordings are permitted at these public meetings provided that the meeting is not disrupted by such activities.

#### **Rule 6. Disposition of Proposals**

(a) Disposition of docketed proposals shall be made by the 120<sup>th</sup> day after docketing, unless reconsideration by the full Committee is requested of a Committee or Classification Panel decision by all parties to that classification proposal.

(b) In disposing of a docketed proposal, the Committee or a Classification Panel may modify the proposal, but it may not broaden the scope of the proposal as shown in the Docket Bulletin.

(c) Members may not discuss or vote on provisions governed by Section 14706 (c)(1)(C) of Title 49 of the United States Code.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE IV – RULES OF PROCEDURE FOR CHANGES IN THE NATIONAL MOTOR FREIGHT CLASSIFICATION**

#### **Rule 7. Changes Without Docketing**

Changes in the Classification made necessary by law or by order of a regulatory body or for clarification, may be made without docketing or observance of the procedures herein. Notice of such changes shall be provided in the Docket Bulletin and posted on the National Motor Freight Traffic Association's website.

#### **Rule 8. Notice and Publication**

(a) Notice of Committee and Classification Panel dispositions of docketed proposals shall be provided by mail, e-mail or facsimile to the proponents, parties of record, members of the Committee, subscribers to the Docket Bulletin and any parties that have submitted written requests for such notice. Information on all classification actions will be posted on the National Motor Freight Traffic Association's website.

(b) The Secretary of the Committee shall instruct the Publishing Agent of the Classification of changes to be made in the Classification in accordance with the disposition of proposals.

#### **Rule 9. Independent Action**

(a) The Committee may not interfere with a carrier's free and unrestrained right of independent action.

(b) Proposals for independent action will not be discussed by the Committee or by any Classification Panel. Any expert analysis or technical assistance provided by employees or employee committees concerning any independent action proposal shall be kept confidential.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE V – ARBITRATION**

Should any party disagree with the disposition of a docketed proposal by the Committee or a Classification Panel, arbitration may be sought by that party subject to the following rules of procedure.

#### **Rule 1. Request for Arbitration**

The party seeking relief shall be referred to as the claimant and the National Classification Committee (Committee) shall be referred to as the respondent. Within thirty (30) days of a classification decision by the Committee or a Classification Panel, claimant(s) shall notify the Secretary of the Committee by mail, telephone, e-mail or facsimile that arbitration is requested of the Committee or Classification Panel action on the docketed proposal.

#### **Rule 2. Selection of Arbitrator**

(a) The Secretary of the Committee shall post on the National Motor Freight Traffic Association's website a list of not less than ten (10) neutral arbitrators selected by an independent arbitration association. If a person does not have Internet capability, upon notice by that party that it wishes to seek arbitration, the Secretary, within two (2) business days after that notice, will provide the list of not less than ten (10) neutral arbitrators by express mail, e-mail or facsimile. The claimant(s) and the Secretary of the Committee shall confer by telephone, e-mail or facsimile within three (3) business days after the list of neutral arbitrators has been received by the claimant(s) or was available to the claimant(s) on the National Motor Freight Traffic Association's website to mutually agree to a neutral arbitrator. If the claimant(s) and the Secretary select different neutral arbitrators, and cannot agree on a single neutral arbitrator, they will so notify the arbitration association, and the two selected arbitrators will choose the arbitrator to handle the matter from the remaining arbitrators on the list who were not selected. The arbitration association shall be notified by telephone, e-mail or facsimile of the selection of the neutral arbitrator, and the arbitration association shall determine whether the selected neutral arbitrator has a conflict of

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#### **Rule 2. Selection of Arbitrator - concluded**

interest. The claimant(s) and the Secretary of the Committee shall be notified promptly of the results of that inquiry. If the neutral arbitrator selected has a conflict of interest, the two originally selected arbitrators will choose another neutral arbitrator until no conflict of interest exists.

(b) The list of neutral arbitrators will be utilized unless, within seven (7) business days after notice of arbitration is provided by a claimant, the parties mutually agree to utilize a neutral arbitrator not identified on the list.

#### **Rule 3. Commencing The Arbitration Process**

Prior to the commencement of the review by the neutral arbitrator, claimant(s) and the Committee will be required to execute an arbitration agreement. Upon receipt of the signed arbitration agreement, the arbitration association shall direct the selected neutral arbitrator to commence the proceeding. The claimant(s) and the Committee will share equally in the fees charged for the arbitration process by the arbitration association, except that each will bear their own legal or representation fees and administrative costs.

#### **Rule 4. Transmittal of Public Record**

Within one (1) business day after the notice of the selection of a neutral arbitrator, the Secretary of the Committee shall forward by express mail a complete copy of the public record developed during the course of the handling of the docketed proposal before the Committee or a Classification Panel to the arbitrator, and concurrently, a copy (copies) by express mail to the claimant(s).

#### **Rule 5. Parties' Statements of Position**

Within seven (7) business days after the notice of the selection of a neutral arbitrator, the claimant(s) may submit to the arbitrator a statement of position as to why the initial classification action

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#### Rule 5. Parties' Statements of Position - concluded

by the Committee or a Classification Panel is not in conformity with established classification standards. A copy of the statement shall be provided by express mail, e-mail or facsimile to the Secretary of the Committee. Within ten (10) business days after the receipt of claimant's(s') statement(s) the Committee may submit a response by express mail, e-mail or facsimile to the arbitrator, and send a copy by express mail, e-mail or facsimile to the claimant(s). At the arbitrator's discretion, rebuttal statement(s) may be submitted by the claimant(s) by express mail, e-mail or facsimile within five (5) business days after receipt of the Committee's reply. A copy of the rebuttal(s) must be served contemporaneously by express mail, e-mail or facsimile on the Secretary of the Committee.

#### Rule 6. Decision of Arbitrator

Within thirty (30) days after the receipt of the parties' statements of position, the arbitrator shall issue a written decision determining whether or not to affirm the challenged classification action. The arbitrator's decision will consider statements on appeal submitted by the parties, but such statements must not include inappropriate evidence and issues and must not seek or constitute a de novo review. The arbitrator's conclusions shall be governed by the established regulatory and legal standards and precedent for evaluating the reasonableness of classification provisions. The reasonableness of the class(es) proposed for any commodity shall be determined exclusively by comparison of that commodity's four recognized transportation characteristics (density, stowability, handling and liability, as defined by the Interstate Commerce Commission in Ex Parte No. MC-98 (Sub-No. 1), Investigation Into Motor Carrier Classification, 367 I.C.C. 243 (1983) and related cases) with the transportation characteristics of other commodities that are assigned a comparable class(es). The decision will set forth the essential reasoning that was relied upon in reaching these conclusions. The arbitrator's decision shall be final, subject only to

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#### **Rule 6. Decision of Arbitrator - concluded**

review by complaint or by a timely filed petition for suspension with the Surface Transportation Board. The Committee may publish any classification action found reasonable by the arbitrator to become effective not less than fifteen (15) days after the arbitrator publishes his or her decision.

#### **Rule 7. Challenge of Classification Decision If Arbitration Is Not Sought**

If arbitration is not sought within thirty (30) days after the classification decision on a proposal is made by the Committee or a Classification Panel, the approved changes may be published to take effect on not less than fifteen (15) days' notice. Should the classification change be protested before the scheduled effective date, in accord with the Surface Transportation Board's procedures, the protest and any reply by the Committee shall be based on the public record upon which the Committee's or Classification Panel's action was based, unless the party(ies) protesting the classification action establishes that the Committee failed to give notice of the docketed proposal as required by its approved classification procedures.

#### **Rule 8. Challenge of the Arbitrator's Decision**

If a classification decision by the Committee or a Classification Panel is the subject of an arbitration proceeding, the classification decision, if affirmed by the arbitrator, may be taken to the Surface Transportation Board either by complaint or by a timely filed petition for suspension of any affirmed classification changes.

#### **Rule 9. Alternative to Arbitration**

If all of the parties objecting to an initial classification decision by the Committee or a Classification Panel agree to seek reconsideration of the classification action by the full Committee, that request must be made within thirty (30) days of the initial classification decision to the Secretary of the Committee by mail, e-mail or facsimile. A majority of the Committee present shall decide whether the reconsidered classification decision shall be approved or disapproved. The reconsideration process may

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE V – ARBITRATION**

#### **Rule 9. Alternative to Arbitration - concluded**

require that final disposition of the classification proposal extend beyond the 120<sup>th</sup> day after docketing. After reconsideration, dissatisfied persons may file petitions for suspension of the reconsidered classification proposal with the Surface Transportation Board.

### **ARTICLE VI - AMENDMENTS**

#### **Section 1. Committee Action**

This Agreement may be amended or revised at any regular or special meeting of the Committee by a two-thirds majority vote of the members present, a quorum being present and voting, provided that thirty (30) days' notice in writing of the proposed amendment shall have been provided by mail, e-mail or facsimile to all members of the Committee. Such notice shall set forth the exact language of the proposed amendment, but the Committee shall be empowered to change or modify such language so long as the amendment as finally adopted is within the scope and purpose of the proposed amendment of which notice was given.

#### **Section 2. Referendum**

Any three members of the Committee or any group of twenty-five or more parties to this Agreement by writing addressed to the Secretary within forty (40) days after the date of such amendment may request the Secretary to submit such amendments to a referendum mail vote to all persons then parties to this Agreement. Upon this demand being made, the Secretary shall submit such amendment to such referendum within thirty (30) days after such request and call for written and signed ballots with respect thereto to be filed with the Secretary within fifteen (15) days thereafter. Such amendment shall be deemed to be disapproved and shall be of no force or effect, if upon such referendum a majority of the then parties to this Agreement shall vote that such amendment be disapproved or rejected.

## **NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

### **ARTICLE VI - AMENDMENTS**

#### **Section 3. Effective Date**

No amendments to this Agreement shall become effective until submitted to, and approved by, the Surface Transportation Board.

#### **Section 4. Force and Effect**

An amendment adopted and approved as herein provided unless subsequently disapproved by referendum shall become a part of this Agreement with like force and effect as if it had been originally incorporated herein and shall be binding upon all parties to this Agreement.

### **ARTICLE VII - TERMS AND PARTIES**

#### **Section 1. Duration**

The term of this Agreement shall be for a period of one (1) year and thereafter until terminated, as it may be at any regular or special meeting of the Committee by a two-thirds vote of the members of the Committee present and voting, or by a majority of the entire Committee, provided written notice of such proposed termination shall have been mailed to all members of the Committee at least thirty (30) days prior to the meeting at which the same is to be considered.

#### **Section 2. Voluntary Withdrawal**

Any party to this Agreement may withdraw therefrom upon not less than sixty (60) days' notice in writing to the Secretary of the Committee.

#### **Section 3. Involuntary Withdrawal**

Any party to this Agreement who for any reason whatsoever shall cease to be a motor carrier of property or a participant in the Classification shall cease to be a party hereto upon the date of such cessation.

#### **Section 4. Readmission**

Any party to this Agreement who has withdrawn voluntarily or involuntarily may again become a party hereto by making a request in writing, provided such party is, upon the date of such request, a motor carrier of property and a participant in the Classification.

**NATIONAL MOTOR FREIGHT CLASSIFICATION AGREEMENT**

**IN TESTIMONY WHEREOF**, the parties hereto have set their hands and seals as of this .....

..... day of ....., 20 .....

Carrier .....

By .....

Title .....

Date .....

Trade Name (if any) .....

Business Address (Main Office) .....

Number Street

City County State Zip Code

Type of Organization.....

..... (Individual, partnership or corporation)

If a corporation:

State in which organized .....

Date of incorporation.....

If a partnership:

Date of formation of partnership .....

Names of all partners.....

Type of carrier .....

Certificates: MC No. .... US DOT No.....