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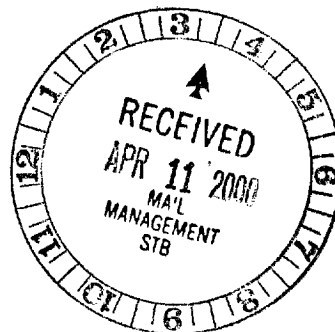
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AMERICAN TEXTILE
MANUFACTURERS INSTITUTE

April 11, 2000



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

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

Dear Sir or Madam:

The American Textile Manufacturers Institute (ATMI) is encouraged by the Surface Transportation Board's recent decision regarding the renewal of the bureau agreement of the National Classification Committee (Section 5A application No. 61 served December 18, 1998 and February 11, 2000). ATMI supports the STB decision and looks forward to constructive changes in the classification process that will ultimately benefit both shippers and motor carriers. We believe that the only way to ensure the future integrity of the National Classification Committee (NCC) and the National Motor Freight Classification (NMFC) is to encourage more open, inclusive procedures that encourage cooperative action and mutual benefit.

ATMI is the national trade association for the domestic textile industry. Member companies operate in more than 30 states and process approximately 75 percent of all textile fibers consumed by plants in the United States. The industry employs approximately 600,000 people.

As your web site states "The STB's mission is to ensure that competitive, efficient, and safe transportation services are provided to meet the needs of shippers, receivers, and consumers."¹ Therefore we are confident that you will consider our comments and those of other shippers when making your final decisions regarding the NCC agreement.

The NCC Should Not Have Antitrust Immunity

Antitrust Immunity is not necessary for the establishment, maintenance, classification or interpretation of the NMFC. In fact, we believe that the anti-trust immunity given to the NCC is counterproductive, encouraging bias in favor of motor carriers, reducing accountability, and discouraging the establishment of checks and balances. The



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problem is compounded further because during the appeals process shippers are forbidden from making arguments about the economic impact of the NCC's decisions, despite the fact that in many cases the classification changes result in increased rates for some shippers. If the anti-trust immunity is granted without instituting a strong set of checks and balances, charges of de-facto rate setting could seriously damage the credibility of the NCC and the classification process will soon be in jeopardy.

It is well established that the NCC could and should operate without anti-trust immunity. Instead, the NCC should follow the model of voluntary standards development bodies such as the International Organization for Standardization (ISO), the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), or the Voluntary Interindustry Commerce Standards Committee (VICS) that effectively manage complex guidelines, standards, classifications, procedures, directives and test methods across all industries without anti-trust immunity.

ANSI's Accredited Standards Committee X12 establishes voluntary standards, procedures, and implementation guides for Electronic Commerce that are used by almost all U.S. industries and manages to update them on a yearly basis. ASTM develops and maintains vast volumes of test methods and definitions used by a wide range of industries worldwide. Both ANSI and ASTM manage these tasks, which are far greater in scope than the NMFC, without anti-trust immunity. They also have effective procedures that ensure openness, balance, and due process.

The NCC is defined as an autonomous standing committee of the National Motor Freight Traffic Association (NMFTA). It is the body that is responsible for determining the context, provisions and classes of the National Motor Freight Classification (NMFC). It considers matters affecting commodity classifications, packaging specifications and related rules.² Based on this definition the NCC clearly has the same function as the above mentioned standards organizations and should not require anti-trust immunity to achieve its goals. Further, because the NMFC is a voluntary system³ that can be set aside or superseded by agreements between individual shippers and their motor carriers, the function of the NCC is not that of a regulatory body.

Unless a very strong argument can be made for granting the NCC anti-trust immunity, ATMI urges the STB to consider alternatives to the NCC agreement based upon the successful examples of ANSI and other voluntary standards organizations.

The NCC's Formal Procedures are Inadequate

ATMI has worked with many standards setting and regulatory bodies over the past 50 years, including ISO, ANSI, ASTM, the Consumer Product Safety Commission (CPSC), the Federal Trade Commission (FTC), the Occupational Safety & Health Administration (OSHA), and many other industry, state, national, and international bodies. All of these organizations have established and strictly adhered to procedures that ensure adequate notice, due process, openness, balance, and fair resolution of disputes and appeals.

ATMI recognizes that the NCC may have some unique responsibilities that other organizations do not have. However, when compared to the procedures used by similar standards and regulatory bodies, the NCC lacks even the most basic mechanisms for encouraging broad stakeholder participation and provides no constructive forum for addressing and resolving shipper concerns.

In fact, the NCC lacks a comprehensive set of formal, published procedures for classification changes. The *Description of Procedures Governing the Amendment of the National Motor Freight Classification* is the only set of procedures provided to ATMI by the NCC. This document attempts to cover proposals, classification panel responsibilities, public meetings, appeals, notices, and reconsideration in a mere two pages and fails to provide any procedures for record keeping and reporting of research results.

Better Notice is Required

It is generally recognized by all credible standards and regulatory organizations that an open process is essential to ensure fairness and due process. Because the NCC has the power to change established standards and business practices that may result in increased shipper rates, it has an obligation to notify the affected interests in a timely manner.

The NCC argues that they consider cases involving thousands of product descriptions from all industries, therefore it would be impossible to notify each industry group every time a change is proposed that affects them. This problem is not unique to the NCC. The difference is that other standards organizations have found ways to effectively address this problem without putting undue burden on themselves or the parties of interest. ATMI suggests the NCC adopt a formal notification procedure that provides adequate notice to industry groups whenever a change affecting them is proposed.

A similar situation existed with the National Fire Protection Association (NFPA) which is responsible for fire codes and ensuring technical solutions and rules to ensure fire safety. The National Institute of Standards and Technology (NIST) now proposes NFPA's code and other changes in the *Federal Register*, providing full notice to all interested parties in a similar way that federal agencies do. Thus, all affected parties have a single point to monitor for all changes to the NFPA's fire safety recommendations. If the NFPA can arrange to have their proposals announced in the federal register, there is no reason the NCC can't find a similar solution.

When addressing the notification issue, it is also important to ensure that notices are published in a timely manner. Notices issued after an NCC Classification Panel proposal has been approved are too late. Notices should be published whenever the NCC identifies an issue that it intends to take action on. This will allow stakeholders to be involved in the classification process early enough to participate in and comment on studies, surveys, and other research related to the classification issue.

The Process Must be More Transparent

ATMI has experienced the results of the NCC lack of openness. When asked to produce evidence and research data related to their proposed classification change, the NCC was at best uncooperative. As a result, key evidence was never produced to justify the NCC's claims.

A formal procedure must be established that requires the NCC to keep records of all studies, surveys, research projects, and written statements related to a particular classification change. These records should be made available to anyone, upon request in a timely fashion. Failure to fully disclose records should be grounds for denial of a proposed classification change or a suspension of the approval process. Likewise, all information by other stakeholders (shippers, etc.) directly related to the classification change should be made available to the NCC and other stakeholders upon request. Again the credibility of the NCC and the NMFC will come into question if the justification for classification changes are not documented.

Another example that illustrates the lack of openness in NCC procedures can be seen in the Proposals section of the NCC's *Description of Procedures Governing the Amendment of the National Motor Freight Classification*. Bullet (c) states that the name of proposal proponents will be identified only if specifically requested. Bullet (d) indicates that the votes cast by NCC or Panel members will be revealed only if specifically requested. These policies clearly place the burden on the shipper if they wish to obtain this information. This policy applies even to parties of record and docket subscribers. If the information is readily available upon request, why is it not simply reported to parties of record as a matter of procedure? Providing a detailed tally of votes as part of the notification procedure is the rule, not the exception, with standards development organizations.^{4,5}

The Procedures Must Ensure Balance

The lack of balanced representation is a major problem of the NCC. Unlike the STB's mission statement, nowhere in the NCC's mission, responsibilities, or purpose statement is any mention of fairness, cooperation, mutual benefit, or other indications that their purpose is anything other than the benefit and advancement of the motor carriers' interest. In fact, the NMFTA, of which the NCC is a part, lists as its purpose and function to "...serve motor carriers operating within the United States and to continuously work towards the mutual improvement and advancement of their interests and welfare."² Although the NCC is an "autonomous standing committee" of the NMFTA, it is clear that NCC decisions will have a natural bias toward motor carriers.

Essentially the NCC is a group made up exclusively of motor carriers, under the administration of another group made up exclusively of motor carriers (NMFTA) who have been given the power to set freight classifications that have a direct impact on the rates paid by their customers (shippers). Further, the appeals are made to a panel comprised entirely of motor carriers. The inappropriateness of this arrangement is

obvious. The STB must take action to correct this clear conflict of interest before more serious abuses take place.

ATMI suggests dissolving the NCC and turning over all responsibility for the administration of the NMFC to a major consensus standards developer such as ANSI. This action would solve all of the current problems with the classification procedures. Short of this action, the STB should remove the NCC from NMFTA administration and have them administered by an association that includes both motor carrier and shipper interests.

An Independent Appeals Board Must be Established

The NCC's appeals process must be changed. Currently appeals of NCC Classification Panel decisions are made to the full NCC. Essentially this means that the same group that approved and submitted the classification change proposal decides on the appeal. This process heavily favors the NCC. Because the NCC's decisions often result in rate increases for shippers, it is imperative that all possible safeguards be put in place to prevent bias or the appearance of bias in the classification process.

The STB must establish an independent appeals board. The board should be completely independent of the NCC and the STB. No NCC members should be allowed to serve on the board. The board should be given full authority to make binding decisions related to an appeal. Independent appeals are the only way to ensure fairness and due process for shipper concerns.

Cooperation With Shippers Should be Required

It is clear that the best solution is always a consensus solution. Therefore the STB must require the NCC to work with shippers to find mutually agreeable solutions to classification problems. The refusal of the NCC to work cooperatively with shippers is a serious problem. It prevents compromises from being considered and excludes many industry experts from contributing to the process.

On numerous occasions the NCC refused offers to work cooperatively with textile industry experts on textile product classification issues. The NCC claimed that serious textile product identification problems existed, however they refused offers to work with industry experts on a compromise solution. As a result, the NCC made a major change in textile product classification without consulting a single textile industry expert. It is hard to believe that the NCC is serious about accurate product classification when it refuses to consult industry experts.

ATMI recommends that the classification process should be open to all interested parties from the very beginning research phases, well before the NCC Classification Panel votes on a final proposal. Refusal by the NCC to meet with industry experts should be grounds for denial of the proposed classification change or a suspension of the approval process.

Conclusion

The NCC is essentially a voluntary standards developer and should be governed by the same rules. The best solution is to dissolve the NCC and turn over the administration of the NMFC to an established, reputable national standards development organization such as ANSI. Short of this, the STB must make extensive changes to the structure of the NCC and discontinue its antitrust immunity. It should also remove the NCC from the administration of the NMFTA.

Thank you for the opportunity to submit these comments. We hope that you will give them serious consideration when addressing the renewal of the NCC agreement.

Sincerely,



Carlos Moore
Executive Vice President
American Textile Manufacturers Institute

¹ STB Web Site - <http://www.stb.dot.gov/organization/people.htm>

² The National Motor Freight Traffic Association, Inc. and the National Classification Committee, Information Pamphlet, Copyright 1998 NMFTA, Inc.

³ Description of Procedures Governing the Amendment of the National Motor Freight Classification, Independent Action, page 2, NCC

⁴ ANSI Procedures for the Development and Coordination of American National Standards, Section A.8.7 Voting, Report of Final Result, Copyright 1993 ANSI

⁵ ISO/IEC Directives, Part 1: Procedures for the Technical Work, Report of Voting (Forms 6, Form 13, Form 18), Third Edition, Copyright 1995 ISO