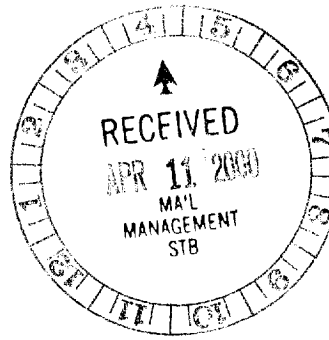


PATTON BOGGS LLP
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April 11, 2000

BY HAND

The Hon. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, NW Suite 700
Washington, DC 20423-0001

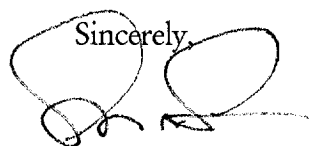
Re: Sec. 5a Application No. 61 (Sub-No. 6), National Classification Committee – Agreement; Sec. 5a Application No. 118 (Sub-No. 1), et al., EC-MAC Motor Carriers Service Association, Inc., et al. (and embraced dockets)

Dear Secretary Williams:

Enclosed for filing in this docket are the original and 10 copies of the Comments of the Halogenated Solvents Industry Alliance, Inc., together with a separate Request for Suspension of Current Classification Proceedings. Also enclosed is a computer diskette containing a copy of these filings in WordPerfect 5.x.

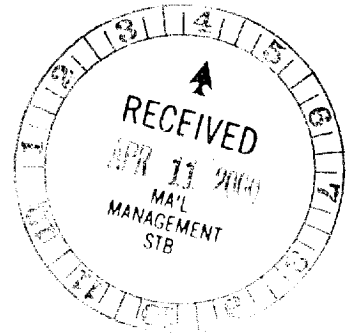
Both of the enclosed filings have been served upon parties of record.

Please acknowledge receipt of these papers by date-stamping the enclosed duplicate copy and returning it with our messenger. Thank you.

Sincerely,


Scott N. Stone

BEFORE THE
SURFACE TRANSPORTATION BOARD



198053 ✓ Sec. 5a Application No. 61 (Sub-No. 6),
NATIONAL CLASSIFICATION COMMITTEE – AGREEMENT

Sec. 5a Application No. 118 (Sub-No. 1), et al.,
EC-MAC MOTOR CARRIERS SERVICE ASSOCIATION, INC., ET AL.
(and embraced dockets)

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COMMENTS OF THE
HALOGENATED SOLVENTS
INDUSTRY ALLIANCE, INC.,

The Halogenated Solvents Industry Alliance, Inc. (“HSIA”) respectfully submits these comments in response to the Board’s decisions served December 18, 1998 and February 11, 2000 in these and the embraced dockets. In the former docket the Board seeks suggested methods for increasing shipper participation in the classification process, and in the latter docket the Board seeks suggested ways to adjust collectively set benchmark rates to prevailing market-based rates.

Statement of HSIA’s Interest

HSIA is a non-profit trade association representing companies that manufacture, distribute and use halogenated solvents such as dichloromethane and trichloroethylene. Such solvents are often shipped by motor carrier, both in bulk tanker and, in packaged form, in

truckload or less-than-truckload shipments. Several HSIA members formulate industrial and commercial products (e.g., aerosols, adhesives, and coating removers) with chlorinated solvents and ship these products exclusively by motor freight, often by common carrier.

HSIA has become quite concerned about the motor carrier freight classification process, which it views as arbitrary and biased in favor of motor carriers. For example, as explained in more detail below (see Discussion), HSIA recently participated in a public meeting at which a panel of the National Classification Committee (“NCC”) recently raised the class rating (value per pound) of certain chemicals including dichloromethane and trichloroethylene by 55%. HSIA believes that even though its members have the theoretical right to negotiate whatever rates they are able to obtain for the shipment of these products, such large, arbitrary increases in benchmark class ratings are bound to influence motor carriers to seek higher rates for the affected products. HSIA therefore submits these comments in an effort to mitigate the arbitrariness and lack of transparency of the classification process.

Summary of HSIA’s Position

HSIA does not believe that the motor carrier classification and ratemaking processes are deserving of antitrust protection in any circumstances. Nothing about the motor carrier industry justifies treating it differently from any other industry. Pricing decisions are no more complex than in many other industries. Nor can collective action be justified on the basis of the supposed efficiency of collective action; if it could, the same could be said for many other industries. Nonetheless, HSIA recognizes that the Board does not at this time seek to reopen its determination that rate bureaus may continue to operate if the Board’s conditions are met, and offers below suggested methodologies and guidelines as requested by the Board.

HSIA also submits that it is contrary to the spirit of the Board's recent decisions to permit rate bureaus to carry through with pending reclassification and other collective actions until the Board has concluded the current proceedings to establish meaningful shipper participation and readjust benchmark rates to more closely track market rates. HSIA therefore has on this date filed a motion requesting that the Board issue an order suspending such proceedings until the Board has reviewed these comments and approved a path forward for collective motor carrier proceedings.

HSIA supports the following procedural rules to increase shipper participation and enhance the transparency and fairness of collective motor carrier actions: (1) require the NCC and rate bureaus (and their members) to place in an open public docket, at least 90 days prior to any proposed reclassification or other collective action, all evidence, including data, studies, surveys, analyses, and related workpapers, that the NCC/rate bureau will seek to use to justify the reclassification or other collective action, (2) require the NCC and rate bureaus, at least 90 days prior to any proposed reclassification or other collective action, to take steps reasonably calculated to bring the proposed action to the attention of all known shippers of the products affected by the action, (3) make the foregoing evidence, data, etc. available to shippers on demand in hard copy and computer-readable form, (4) permit interested parties to submit into the public docket evidence and comments contesting or commenting upon the evidence placed in the docket by the NCC/rate bureau (or their members), (5) require the NCC/rate bureaus to pay the reasonable costs of non-duplicative studies requested by shippers, when those studies are designed to address issues (i) that are germane to the proposed reclassification or other collective action and (ii) that have not been addressed by the NCC/rate bureau or its members in their public docket evidence, or as to which the evidence submitted by the NCC/rate bureau or its

members is subject to reasonable good-faith dispute based upon disputed facts, different interpretations of the facts or different views regarding appropriate methodologies, and (6) require the NCC/rate bureaus, in making reclassification or other collective actions, to cite the specific record evidence supporting such actions, and bar rate bureaus, in making reclassification and other collective actions, from relying upon material not placed timely in the public docket.

In addition to these procedural safeguards, HSIA advocates a basic substantive rule that, where an upward reclassification is proposed, the reclassification decision can only be made where there is record evidence of changed circumstances, in particular that a substantial percentage of motor carriers have actually experienced higher costs as a result of the factor reflected in the proposed reclassification, and that the likely rate increases generated by the reclassification are commensurate with the documented increase in carrier costs. Similarly, in the case of increases in benchmark rates as the result of collective rate bureau action, the rate increase would be permitted only to the extent it reflects documented higher costs among the rate bureau members for the affected transportation. These rules are designed to ensure that collective motor carrier processes reflect the market rather than driving the market.

Regarding the adjustment of benchmark rates to market levels, HSIA supports adjusting benchmark rates based upon an across-the-board minimum discount of 45% from benchmark rates.

Discussion

1. The Current Classification Process Is Arbitrary and Is Not Transparent

Based upon its recent experience with the classification process, HSIA strongly agrees with the Board that the process has a strong built-in bias towards rate increases and against

effective shipper participation. The issue of concern to HSIA was a proposal by the NCC to raise the class rating for all chemicals in the U.S. Department of Transportation's Hazard Class 6.1, Packing Group III, based on the supposed hazards associated with shipping the products, and the inability to segregate the products from foodstuff shipments. Notwithstanding that there had been no change to the longstanding DOT classification of these products, the NCC proposed to increase their class ratings by up to 545% -- almost five and a half times the existing class ratings.

HSIA's Executive Director, who was informed about the proposal by one of HSIA's members, sought to learn the details of the change and the basis for it. This required two separate phone calls to NCC headquarters in Alexandria, Virginia, which elicited, first, the text of the proposed changes, and, following a second call, an 11-page staff analysis (dated January 26, 2000) purporting to set out justifications for the increases. The analysis in fact contained no information that would logically justify the proposed class rating increases. For example, although it cited the theoretical cost of segregating the products in question from foodstuff cargoes, it did not contain any data showing how frequently such segregation resulted in smaller loads. The staff analysis noted that over 6,000 "incidents" involving hazardous materials had occurred in recent years, but of the dozen examples provided, one-third were not transportation related. Moreover, the analysis provided no quantification of the costs or injuries associated with, much less caused by, the transportation of these products.

The staff analysis was not made available until a week or two before the public meeting of the NCC panel considering the proposed change. That was not enough time for HSIA to do anything other than to have its Executive Director appear at the meeting and point out the obvious flaws in the staff analysis. It was not possible in the time available to provide any

detailed critique or counter-analysis of the issues addressed in the NCC staff paper. Based upon the opposition from HSIA and two of its members, counsel for NASSTRAC, and representatives from two laboratory supply companies, the NCC panel decided, at the February 7, 2000 public meeting, to increase the class ratings by up to 55%, rather than the proposed 545% increase. HSIA has appealed that panel decision.

This experience illustrates the problems shippers have in participating effectively in the classification process. They had too little notice of the impending reclassification, and inadequate time to analyze the data purporting to justify the proposed change. The data provided were sketchy and did not show that the proposed reclassification had any relation to higher costs being experienced by carriers.

HSIA submits that the procedural and substantive guidelines set out below are necessary to help level the playing field so that shippers can attempt to have a voice in the reclassification and rate bureau processes and help ensure that collective actions by motor carriers have some rational basis.

2. The Proposed Procedural Safeguards

HSIA suggests the following procedural safeguards to increase the ability of shippers to participate meaningfully in classification committee and rate bureau actions. These procedures mirror in some respects the Board's own rules, which require that all of the evidence forming the basis for the Board's decisions be placed on the public record and be made available to interested parties, who are given the ability to analyze and comment upon the proffered evidence. (HSIA recognizes that confidential commercial information is often filed under seal and made subject to protective orders; similar procedures could be used in collective motor carrier proceedings.)

HSIA supports the following procedural safeguards to increase shipper participation:

(1) require the NCC and rate bureaus (and their members) to place in an open public docket, at least 90 days prior to any proposed reclassification or other collective action, all evidence, including data, studies, surveys, analyses, and related workpapers, that the rate bureau will seek to use to justify the reclassification or other collective action;

(2) require the NCC and rate bureaus, at least 90 days prior to any proposed reclassification or other collective action, to take steps reasonably calculated to bring the proposed action to the attention of all known shippers of the products affected by the action,

(3) require that the NCC and rate bureaus make the foregoing evidence, data, etc. available to shippers on demand in hard copy and computer-readable form;

(4) require that the NCC and rate bureaus permit interested parties to submit into the public docket evidence and comments contesting or commenting upon the evidence placed in the docket by the rate bureau (or rate bureau members);

(5) require the NCC and rate bureaus to pay the reasonable costs of non-duplicative studies or analysis requested by shippers, when those studies are designed to address issues (i) that are germane to the proposed reclassification or other collective action and (ii) that have not been addressed by the NCC/rate bureau or its members in their public docket evidence, or as to which the evidence submitted by the NCC/rate bureau or its members is subject to reasonable good-faith dispute based upon disputed facts, different interpretations of the facts, or different views regarding appropriate methodologies; and

(6) require the NCC and rate bureaus, in making reclassification or other collective actions, to cite the specific record evidence supporting such actions, and barring the NCC and rate bureaus, in making reclassification and other collective actions, from relying upon any material not placed timely into the public docket.

These proposals, which are essentially self-explanatory, are required in the interest of fundamental fairness. Perhaps the only one of these proposals that could be viewed as controversial is the requirement that in certain circumstances the rate bureaus themselves underwrite the reasonable expenses of studies and analyses. HSIA submits that there is ample justification in the record of the instant proceedings showing that rate bureau and NCC staff perform studies only as directed by the motor carriers, and that this bias strongly favors the carriers in attempting to justify their action, while disproportionately burdening shippers who

seek to challenge collective actions. See Sec. 5a Application No. 61 (Sub-No. 6), National Classification Committee – Agreement, decision served February 11, 2000, at fn. 6. Plainly, the procedural changes needed to allow shipper participation and transparent, rational decision-making will involve some degree of cost to the rate bureaus, and one of those costs should be helping to underwrite balanced studies addressing points raised by shippers as well as carriers.

3. The Proposed Substantive Standard

In addition to these procedural safeguards, HSIA believes that a basic substantive rule must be put in place to ensure that classification procedures and collective rate increases are used to reflect market realities, rather than attempting to influence motor carriers to push rates higher. The rule would be that, where an upward reclassification or benchmark general rate increase is proposed, such that the decision would have the effect of raising rates paid by typical shippers, the reclassification or rate increase decision can only be made where there is record evidence of changed circumstances, and in particular that a substantial percentage of motor carriers have actually experienced higher costs. In the case of upward reclassifications those costs would have to be shown to be the result of the factor reflected in the proposed reclassification. In addition, the rate increases generated by the reclassification or general rate increase would have to be commensurate with the documented increase in carrier costs.

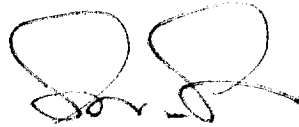
4. The Proposed Methodology for Adjusting Benchmark Rate Levels

HSIA supports the reduction of current benchmark rates by 45%, or alternatively the establishment of a minimum discount of 45% from current benchmark rates. In its May, 1991 decision in Ex Parte No. MC-196, Investigation of Motor Carrier Collective Ratemaking and

Related Practices and Procedures, 7 I.C.C. 2d 388, 496, the ICC found that the average discount nationwide was 40%. Given the numerous general rate increases in the past decade, a reduction, or minimum discount of 45%, would be more than fair to motor carriers.

Ordering such an across-the-board reduction, or discount, would be administratively simple, and would not burden shippers or carriers with the need for a complex and perhaps contentious study of specific market rates on particular classes of traffic. Such benchmark rates, or discounts would, of course, only serve as the starting point for negotiations, but recalibrating the starting point to market levels, rather than a semi-fictitious rate considerably above real market levels, would provide more balance to such negotiations.

Respectfully submitted,



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Washington, D.C. 20037

Counsel for the Halogenated Solvents
Industry Alliance, Inc

CERTIFICATE OF SERVICE

This is to certify that I have, this 11th day of April 2000, caused copies of the foregoing comments to be served upon parties of record in Sec. 5a Application No. 61 (Sub-No. 6), National Classification Committee – Agreement and Sec. 5a Application No. 118 (Sub-No. 1), et al., EC-MAC Motor Carriers Service Association, Inc., et al.

A handwritten signature in black ink, appearing to read "S. N. Stone", is written above a horizontal line.

Scott N. Stone