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SERVICE DATE - JULY 16, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB DOCKET NO. ISM 35004

PROTEST OF NCC ACTION TAKEN MAY 3, 1999  
(National Motor Freight Classification)

Decided: July 15, 1999

In Supplement 5 to Tariff STB NMF 100-Y (National Motor Freight Classification), issued by the National Motor Freight Traffic Association, Inc. (NMFTA), Agent, revisions are proposed to Items 49265 and 49540, et al., to make the classification of the shipments of Cloth, Fabric or Piece Goods currently covered by Item 49265 dependent upon the density of the shipments. The currently effective classifications in Item 49265 (Class 85 for “Knit” in sub 1, and Class 70 for “Woven” in sub 2) are not subject to density provisions.<sup>1</sup> The revisions are proposed to become effective July 17, 1999, pursuant to a collective action agreement approved by the Board.

A protest requesting suspension and investigation of the proposed revisions was filed by the Secondary Materials and Recycled Textiles Association (SMART).<sup>2</sup> NMFTA filed a reply to the protest.

SMART contends that the proposed provisions are unreasonable in that they join under a single category two product categories which have distinctly different shipping characteristics, and establish a full-density scale that allows significantly higher potential tariff rates for the items subject to the currently effective Item 49265. SMART also contends that the collective action was not based on any changes to the “four primary shipping characteristics (density, stowability, handling and liability)” routinely used in determining the proper class for commodities; rather, it states that the action was based, instead, on a vague, unquantified claim that certain contract motor carriers have had difficulty distinguishing between “knit” and “woven” fabrics.

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<sup>1</sup> The proposal combines the existing Items 49265 and 49540 (which also covers certain cloth items) into a revised Item 49265, and includes in the revised item the density provisions that are currently limited to the products listed in Item 49640. The proposal also affects current Items 49266, 49542, and 49543.

<sup>2</sup> We also received a letter from Cone Mills Corporation on July 6, 1999, requesting that the Board intervene to suspend the proposed revisions; however, there is no indication that the letter was served on NMFTA as required by section 1132.1(d) of our regulations [49 CFR 1132.1(d)], and we will not consider it as a formal protest.

SMART indicates that the proposed action was taken initially by the Classification Panel on February 9, 1999, and that it appealed the Classification Panel's action to the full National Classification Committee (NCC) based largely on survey data which clearly show major differences in all four of the primary shipping characteristics that exist between fabrics classified under Item 49265 and those classified under Item 49540. SMART states that its data were not questioned by NCC members or staff during the course of its appeal, nor was any basis for the change justified on the ground that the shipping characteristics of either of the product categories had changed in any way; rather, the NCC simply voted to uphold the Classification Panel's decision with no explanation for the basis of that vote.

In its reply to the protest, NMFTA states that its tariff proposal is intended to resolve problems of product misdescription and rating misalignment. The basic product description problem, however, according to NMFTA, does not involve whether sub 1 or sub 2 of Item 49265 should be applied to a given shipment, as alleged by SMART; rather, it involves whether Item 49265 or Item 49540 should be applied.

NMFTA states that the shipping characteristics are similar for the commodities currently classified in Items 49265 and 49540, and that there are significant problems in determining whether Item 49265 or Item 49540 should be applied to certain shipments. Indeed, NMFTA states that in many instances "motor carrier employees and, in fact, any layman" would be unable to determine the proper classification for the myriad cloth products subject to Items 49265 and 49540. Whether a particular product should be classified under Item 49265 or 49540 may depend on information that must be supplied by the manufacturer, and NMFTA says that shippers are not willing to provide that information when it would result in an increase in the class ratings applicable for their products.

NMFTA argues that the existing class ratings in Item 49265 are not appropriate for the widely varying densities of many of the products. NMFTA states that the density of products shipped under 49265 ranges from 2.2 to 64.6 pounds per cubic foot (pcf), and that the class 70 or 85 ratings currently provided are not sufficient to properly represent the wide density range of either knit or woven products.

NMFTA asserts that its statutory obligation is to provide classifications that are reasonable, and that the establishment of a single classification subject to full-scale density provisions is a reasonable solution to the misinterpretation, misdescription and inequitable rating problems being experienced in connection with products currently subject to Items 49265 and 49540. NMFTA states that full-scale density provisions are designed for products having as their controlling characteristic a widely varying density with densities distributed throughout the range, and that the involved cloth and fabric products are particularly good candidates for such provisions. NMFTA states that full-scale density provisions are widely used throughout the classification to encompass large groupings of products having densities that vary widely, and that such provisions have been approved time and time again by the Interstate Commerce Commission (ICC), the Board's predecessor agency, for products having transportation characteristics that are comparable to those of the products involved in the instant case.

Upon review of the protest and reply, we have determined to suspend and investigate the proposed provisions. As a general matter, we believe that density-based ratings are desirable, particularly for products (such as those at issue) which pose no significant stowability or handling problems and where there are wide variations in shipment density. In its investigation into motor carrier classification in Ex Parte No. MC-98 (Sub-No. 1), the ICC observed that “density is usually the most important transportation characteristic,” and classifications based on density can often give appropriate recognition to variations in this important characteristic. In the instant proposal, however, we have a significant concern regarding the reasonableness of imposing higher ratings for the lowest density shipments, without offering concomitantly lower ratings for the highest density shipments.

In its protest, SMART notes that the proposed density scale has a Class 70 rating “cap” at 15 pcf or greater, although it asserts that baled products, which it claims is a common way of shipping the commodities involved, would have a much greater density.<sup>3</sup> Additionally, the density data contained in the reply indicate that a significant number of the shipments subject to sub 2 of the current Item 49265 would qualify for lower ratings based on NMFTA’s own density guidelines. Thus, while we believe that density ratings are appropriate, in this case it appears to be unreasonable for NMFTA to adhere to its density guidelines where they result in higher classifications and ignore them where they result in lower classifications.<sup>4</sup> In these circumstances, we believe the proposal should be suspended and investigated.<sup>5</sup>

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<sup>3</sup> In this connection, we note that the Classification Panel took action on May 7, 1999, to disapprove a proposal to add lower Class 65 and Class 60 rates to Item 49265 at densities of 22.5 and 30 pcf, respectively, although the panel voted to docket an alternative proposal providing for lower classes without a reference to Item 171 (the “bumping clause” which allows shippers to increase the weight of packages or pieces to artificially increase their density and apply the next lower class to obtain a lower total charge). No rationale was provided for why the panel concluded that Item 171 should be excluded.

<sup>4</sup> The proposal would increase ratings for the less dense shipments subject to sub 2 of current Item 49265 but would not lower the ratings for any shipments, even though one density study cited in NMFTA’s reply indicates that a substantial number of shipments would qualify for lower ratings based on its density guidelines (and that the average density of such shipments is 20.3 pcf).

<sup>5</sup> SMART’s argument that the proposed revisions are unlawful because they are not based on changes to the four primary shipping characteristics is not meaningful. NMFTA is not required to demonstrate changes in the transportation characteristics of the products, as long as it shows that the new rating it proposes is reasonable. See National Motor Freight Traffic Ass’n v. ICC, 51 F. 3d 297 (D.C. Cir. 1995).

**It is Ordered:**

1. The revisions to Items 49265, 49266, 49540, 49542 and 49543 proposed in Supplement 5 to Tariff STB NMF 100-Y, issued by the National Motor Freight Association, Inc., Agent, are suspended and their use deferred until further order of the Board.<sup>6</sup>
2. An investigation into all issues relating to the lawfulness of the suspended provisions is instituted, and the affected provisions must remain unchanged until this proceeding has been concluded.
3. The National Motor Freight Traffic Association, Inc., Agent, is made respondent to this proceeding.
4. Respondent is hereby directed to promptly file a supplement to its affected tariff announcing this decision for suspension.
5. Petitions for reconsideration of this decision may be filed by any interested person within 20 days after the date of service, pursuant to 49 CFR 1132.2(a).

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams  
Secretary

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<sup>6</sup> Tariff STB NMF 100-Y applies, as a filed tariff, only in connection with other filed tariffs in the noncontiguous domestic trade that refer to it as a governing tariff. Nevertheless, the overall application of the suspended provisions, as an unfiled tariff, includes a much broader area. The Board's suspension includes the full scope of the collective action agreement.