Issued on November 19, 1996.
Robert Arnold,
District Engineer, Albany, New York.
[FR Doc. 96–30192 Filed 11–25–96; 8:45 am]
BILLING CODE 4910–22–M

Federal Highway Administration

Environment Impact Statement; Orange County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Rescind notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will not be prepared for a proposed highway project in Orange County, Florida.
FOR FURTHER INFORMATION CONTACT: David Unkefer, Transportation Engineer, Federal Highway Administration, 227 North Bronough Street, Room 2015, Tallahasee, Florida, 32301, Telephone: (904) 942–9612.
SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Apopka Bypass new alignmental roadway in Orange County, Florida, was issued on December 19, 1994 and published in the January 3, 1995 Federal Register. The FHWA, in cooperation with the Florida Department of Transportation, has since determined that preparation of an EIS is not necessary for this proposed highway project and hereby rescinds the previous Notice of Intent.
(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)
Issued On: November 12, 1996.
Mark D. Bartlett,
Program Operations, Engineer, Tallahassee, Florida.
[FR Doc. 96–30077 Filed 11–25–96; 8:45 am]
BILLING CODE 4910–22–M

Surface Transportation Board

[No. 41826]

National Association of Freight Transportation Consultants, Inc.—Petition for Declaratory Order

AGENCY: Surface Transportation Board, DOT.
ACTION: Institution of declaratory order proceeding.

SUMMARY: The Board is instituting a proceeding under 5 U.S.C. 554(e) to resolve questions regarding the application of the 180-day shipper notification provisions of 49 U.S.C. 13710(b)(3)(B).

DATES: Comments by or on behalf of those opposing the positions of the National Association of Freight Transportation Consultants, Inc. (NAFTC) or petitioner and the Transportation Consumer Protection Council (TCPC), including any further comments by the Regular Common Carrier Conference (RCCC), are due December 26, 1996. Petitioner's replies and comments from any person desiring to submit comments in support of its positions are due January 10, 1997.

ADDRESSES: The original and 10 copies of submissions identified as such and referring to No. 41826 must be sent to: Office of the Secretary, Case Control Branch, Surface Transportation Board, Washington, DC 20423.

One copy of evidence and arguments by or on behalf of those opposing the positions of NAFTC and TCPC must be served simultaneously on their representatives: Donna F. Behme, Executive Director, National Association of Freight Transportation Consultants, Inc., P.O. Box 21418, Albuquerque, NM 87154–1418; Raymond A. Selvaggio, Augello, Pezold & Hirschmann, P.C., 120 Main Street, Huntington, NY 11743–6936.

One copy of evidence and arguments by or on behalf of those opposing the positions of the RCCC must be served simultaneously on its representative: Kevin M. Williams, Executive Director and General Counsel, Regular Common Carrier Conference, 211 North Union Street, Suite 102, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Michael Martin, (202) 927–6033, [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: In *Carolina Traffic Services of Gastonia, Inc.—Petition for Declaratory Order*, STB No. 41689 (June 7, 1996) (*CTS*), we issued a declaratory order answering certain questions regarding the so-called ''180-day rule'' of 49 U.S.C. 13710. That provision requires, inter alia, that shippers ''contest the original bill or subsequent bill within 180 days of the receipt of the bill in order to have the right to contest such charges.'' 49 U.S.C. 13710(a)(3)(B).[1]

In *CTS*, we concluded: (1) That the rule applies to all original freight bills issued on or after August 26, 1994 (date of TIRRA's enactment), and to rebillings issued on or after January 1, 1996 (the effective date of ICCTA, which clarified the applicability of the 180-day rule to rebillings by carriers); (2) that, to perfect its right of action, a shipper must, in addition to complying with the statute of limitations on court actions (49 U.S.C. 14705), notify carriers that they contest a billing or rebilling within 180 days of the contested billing, but that they need not request a Board determination within that time period, or at all; and (3) that there is no statutory prohibition against carriers paying late-contested claims.

On June 17, 1996, NAFTC (which represents the interests of freight bill auditors for shippers) filed a petition for declaratory order asking the Board to resolve a number of issues relating to the 180-day rule. In its petition, NAFTC suggests that we establish a procedural schedule to permit interested parties to file comments regarding the issues it raises.

NAFTC asserts that the 180-day rule does not apply to billing ''errors'', but only to billing ''disputes''. It attempts to draw a distinction between erroneous billings based on factual, arithmetical or clerical mistakes and disputes over, for example, which of two or more rates should apply. NAFTC points to the title of section 13710(a)(3) (''Billing disputes'') and relies on legislative history of TIRRA. It also cites *Duplicate Payments of Freight Charges*, 350 I.C.C. 513 (1975), in which the ICC ruled that duplicate payments, because they are made in response to bills issued in error, are not subject to the statute of limitations on court actions for overcharges.

NAFTC also challenges the Board's holding in *CTS* that 49 U.S.C. 13710(a)(3)(b) requires a shipper to notify the carrier (rather than bring an action before the Board) within 180 days in order to perfect its claim. According to NAFTC, the subsection, when read as a whole, indicates that the 180-day rule is simply a time limit for filing challenges before the Board.

NAFTC next contends that the 180-day rule applies only to billings for transportation that is subject to the tariff filing requirements administered by the Board. Petitioner also argues that carriers should be required to accept fax notification of overcharge claims and should be required to accept such

[1] This provision and the companion carrier-notification provision [49 U.S.C. 13710(a)(3)(A)], which requires carriers to rebill within 180 days of the original freight bill in order to collect any amounts in addition to those originally billed and paid, were enacted in the Transportation Industry Regulatory Reform Act of 1994 (TIRRA), Pub. L. No. 103–311, 206(c)(4), 108 Stat. 1683, 1685 (1994) and reenacted by the ICC Termination Act of 1995 (ICCTA), Pub. L. No. 104–88, 1103, 109 Stat. 803, 876–77 (1995). Further background concerning these provisions is set forth in *CTS*.

claims as long as they are postmarked by the 180th day.

Finally, NAFTC expresses concern that carriers may be engaging in concerted action by uniformly declining to pay overcharge claims received after the 180-day period, based on advice from the General Counsel of the National Motor Freight Traffic Association. It suggests that such action may constitute a violation of the antitrust laws.[2]

We initially determined to address NAFTC's claims at a voting conference we had scheduled for September 24, 1996. However, on September 23, 1996, TCPC filed a statement raising additional issues. As a result, we removed the matter from the conference agenda, and decided to ask for comments on the issues raised by petitioner and TCPC.

TCPC, in its comments, points to what it considers to be a possible inconsistency between 49 U.S.C. 13710(a)(3)(B), which provides that shippers must ''contest [a carrier's] original bill or subsequent bill within 180 days of the receipt of the bill in order to have the right to contest such charges,'' and certain applicable limitations provisions. In particular, it notes that 49 U.S.C. 14705(b) allows a shipper to ''begin a civil action to recover overcharges within 18 months after the claim accrues,'' or within three years after the claim accrues if it is against a carrier providing transportation subject to the jurisdiction of the Board and the Secretary under Chapter 135 of Title 49 and the shipper has elected to file a complaint under 49 U.S.C. 14704(c)(1), and that 49 U.S.C. 14705(d) extends those limitations periods ''if a written claim is given to the carrier within those limitation periods.'' Therefore, according to TCPC, the 180-day rule should not be read—as we read it in *CTS*—to disallow all claims for overcharges as to bills that are not contested within 180 days of the date of the bill. Rather, its view is that the 180-day rule applies only to unpaid freight bills; once a bill is paid, the only limitations or conditions on a shipper's subsequent challenge to the charges are those embodied in the provisions of 49 U.S.C. 14705 (b) and (d).[3] Although we are not certain that we share TCPC's logic in distinguishing, for purposes of the 180-day rule, between unpaid and paid bills, or overcharges in general and unpaid bills in particular, we seek comment on it.

TCPC raises two other issues in addition to the matters raised by NAFTC. First, it asserts that 49 U.S.C. 13710(a)(3)(A)'s requirement that a carrier must rebill within 180 days in order to collect additional charges does not bar a carrier from seeking to collect its originally-billed rates at any time before the expiration of the 18-month statute of limitations contained in 49 U.S.C. 14705(a). We believe that the plain language of the statute supports TCPC's conclusion. However, interested parties may also comment on this question, should they desire to do so. Second, TCPC contends that, even if the 180-day rule were deemed to bar overcharge claims contested more than 180 days after receipt of a bill, it could not apply to duplicate payment claims, because those claims seek recovery of a second payment made on an uncontested freight bill. Although our decision in *CTS* reached essentially that same conclusion, we do not preclude commentors from addressing that issue further.

Finally, we note that on October 22, 1996, the RCCC filed comments essentially supporting our decision in *CTS*, and responding to the comments of NAFTC and others.[4] First, it contends that we should reaffirm our holding that the 180-day rule applies broadly to all billing disputes, including those arising from errors or disputes involving challenges to the reasonableness or applicability of the rate. Second, it asserts that the 180-day rule is not a time limit for bringing disputes before the Board, but applies to any effort to contest a bill. Third, it argues that the 180-day rule applies to all billings, not just those for transportation that is subject to the tariff filing requirements administered by the Board. Fourth, it challenges TCPC's view that the 180-day rule applies only to unpaid freight bills. Finally, it agrees with NAFTC and with our view, as set forth in *CTS*, that carriers and shippers may mutually agree to waive the 180-day rule, but it asserts that the parties must do so expressly and in writing.

Despite its general concurrence with our *CTS* ruling, RCCC believes it appropriate that we address the issues raised by NAFTC and the other commentors. It suggests that the public be given an opportunity to comment prior to such a decision.

The petition will be granted and a declaratory order proceeding instituted. Opponents of the positions taken by NAFTC and TCPC, including RCCC, will be permitted to file comments on the issues presented, and NAFTC and TCPC, and any other party supporting their positions, will be permitted to file reply comments.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A declaratory order proceeding is instituted to consider the issues raised in this proceeding.

2. Comments by or on behalf of opponents of the positions of NAFTC and TCPC, including any further comments by RCCC, are due December 26, 1996.

3. Petitioner's and TCPC's replies and any comments from other interested persons are due January 10, 1997.

Decided: November 14, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–30180 Filed 11–25–96; 8:45 am]

BILLING CODE 4915–00–P

[2] Athearn Transportation Consultants, Inc.; Sandusky Traffic Counsellors, Inc.; Traffic Service Bureau, Inc.; Transportation Cost Control; Audit Branch of Traffic; Scott Traffic Consultants, Inc.; Industrial Traffic Consultants, Inc.; Carolina Traffic Services of Gastonia, Inc.; Orchard Supply Hardware; and Robert R. Piper, Ph.D., all filed comments in support of the petition. They all raise arguments similar to those raised by petitioner and express their view that the statute applies (or should apply) only to disputes over the level of rates, rather than to ''billing errors'' generally.

[3] Although not directly at issue in this proceeding, we note an apparent technical error in the statute. Section 14704(c)(1) authorizes a person to ''bring a civil action under subsection (b) [of section 14704] to enforce liability against a carrier or broker providing transportation subject to jurisdiction under chapter 135.'' As codified, subsection (b) refers only to tariff overcharges, while the provision allowing recovery of damages from carriers is contained in section 14704(a)(2) (as to which the statute does not expressly authorize a civil action). Both the House and Senate bills (H.R. 2539 and S. 1396) that became the ICC Termination Act of 1995, however, placed the damages provision in subsection (b)(2), as to which the statute does authorize a civil action. Subsection (b)(2), as passed by both Houses, reads as follows:

A carrier or broker providing transportation or service subject to jurisdiction under chapter 135 of this title is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

Thus, as enacted by Congress, section 14704(c)(1) authorized civil actions both for damages and for charges exceeding the tariff rate. Notwithstanding the fact that section 14704(b)(2) was misplaced [having been codified as section 14704(a)(2)], in our opinion, section 14704(c)(1) was intended to authorize a person to bring a civil action against a carrier or broker for damages sustained by that person as a result of any act or omission of the carrier in violation of Part B, Subchapter IV, of Title 49.

[4] On November 7, 1996, the American Trucking Associations, Inc., filed a letter supporting the comments of RCCC.