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SURFACE TRANSPORTATION BOARD ISSUES FURTHER DECLARATORY ORDER CONCERNING BILLING DISPUTES BETWEEN MOTOR CARRIERS AND SHIPPERS

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Monday, April 21, 1997 ï¿½ ï¿½ ï¿½ ï¿½ ï¿½ ï¿½ ï¿½ ï¿½ ï¿½ ï¿½ ï¿½ ï¿½ ï¿½ ï¿½ (202) 565-1596 No. 97-26 ï¿½ï¿½ADD (202) 565-1695

**SURFACE TRANSPORTATION BOARD
ISSUES FURTHER DECLARATORY ORDER ï¿½
CONCERNING BILLING DISPUTES BETWEEN
MOTOR CARRIERS AND SHIPPERS**

Surface Transportation Board (Board) Chairman Linda J. Morgan today announced that the Board has issued a second declaratory order interpreting the billing dispute provisions of 49 U.S.C. 13710(a).
The billing dispute provisions require carriers and shippers alike to notify each other of billing disputes within 180 days of the billing in order to have the right to obtain a ruling by the Board or to go to court to seek relief. The provisions also permit (though they do not require) motor carriers to obtain a Board ruling on whether any charges are due in addition to those already paid by the shipper, and they allow shippers to obtain a Board ruling on whether they should have to pay billed charges. Ultimately, however, carriers must go to court to collect charges that shippers refuse to pay, and shippers must go to court to obtain reimbursement for excessive charges that they have already paid.

In Carolina Traffic Services of Gastonia, Inc.--Petition for Declaratory Order, STB No. 41689 (June 7, 1996) (CTS), the Board held that the 180-day notification period is a generally applicable notification requirement that is a prerequisite to any sort of relief, at either the Board or in court. Thus, for a shipper to seek relief either at the Board or in court, it must, within 180 days, notify the carrier that it disputes the charges; by the same token, for a carrier to seek relief either at the Board or in court, it must, within 180 days, rebill the shipper for the extra charges sought. If either a carrier or a shipper does not meet the 180-day requirement, then it may not seek relief either at the Board or in court.

In the second declaratory order, a group of freight consultants sought reconsideration of CTS, arguing that the 180-day rule is simply a time limit for coming to the Board for relief, but that failure to meet the 180-day rule does not preclude a party from going to court. After the Board sought further comment from

the public in general, a variety of other shipper carrier interests submitted their views on this and other issues relating to the 180-day rule.

While noting its limited role in resolving disputes related to motor carriage, the Board affirmed its conclusion in CTS that the 180-day rule is not limited to Board proceedings. The Board also agreed with the freight consultants that shippers may challenge a bill through any means--including by facsimile [“fax”] or by mail)--that provides the carrier with actual notice. In addition, the Board expressed the view that carriers could forgive claims even if shippers did not comply with the 180-day rule.

In summing up its decision, the Board stated:

> **In this decision and in CTS, we have not adopted the position of the petitioning freight bill auditor and the shippers on all of the issues. It is unfortunate that some shippers, under their current auditing practices, are sometimes unable to detect problems until after the 180-day period for contesting claims has passed, but Congress decided to impose a 180-day notification period nonetheless. On the other hand, we do share the views of the shippers and their auditors on two very important issues. First, we agree that the law does not preclude carriers from voluntarily paying shipper claims, or from forgoing claims that they have brought against shippers, even if the shipper has not complied with the 180-day requirement. Second, we agree that the 180-day rule does not apply to shippers’ ability to defend themselves against undercharge claims. The right to settle cases and the right to a defense in a lawsuit are significant, and we hope our action here in protecting those rights will facilitate the resolution of disputes.**

The Board’s decision was issued to the public on April 21, 1997, in National Association of Freight Transportation Consultants, Inc.--Petition for Declaratory Order, STB 41826.[STOP]