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SERVICE DATE - FEBRUARY 24, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 624

REMOVAL OF OBSOLETE REGULATIONS CONCERNING RAIL PASSENGER FARE
INCREASES

AGENCY: Surface Transportation Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Surface Transportation Board (Board) proposes to remove from the Code of Federal Regulations obsolete regulations concerning rail passenger carrier commutation or suburban fare increases.

DATES: Comments are due on March 26, 1997.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927-5660.
[TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), abolished the Interstate Commerce Commission (ICC) and established the Board within the Department of Transportation. Section 204(a) of the ICCTA provides that "[t]he Board shall promptly rescind all regulations established by the [ICC] that are based on provisions of law repealed and not substantively reenacted by this Act."

The regulations at 49 CFR part 1136 require that a rail passenger carrier proposing commutation or suburban fare increases concurrently file tariffs and verified statements with the ICC and the Governor and appropriate state or county regulatory agency. The carrier is also to certify that the notice provisions of 49 CFR 1312.5 have been met.¹

The ICC issued these regulations, in Notice of Increases in Frt. Rates and Pass. Fares, 349 I.C.C. 741 (1975), to ensure that rail and motor carriers would give advance notice of and justification for commutation and suburban passenger fare increases. The rules were designed to facilitate the filing of potential protests seeking the suspension and/or investigation of fare increases. Subsequently, the ICC modified these regulations by removing their application to motor passenger carriers. Practice and Procedure-Misc. Amendments-Revisions, 6 I.C.C.2d 587 (1990). The ICC reasoned that it could not investigate, suspend, revise or revoke for being unreasonable a rate proposed by a motor passenger carrier acting independently and noted, moreover, that there had been no complaints or protests under these rules

¹ These regulations describe, inter alia, the placement, form, and content of the notice given when a rail passenger carrier seeks a fare increase. The Board has proposed that these regulations be eliminated. Regulations for the Publication, Posting and Filing of Tariffs for the Transportation of Property by or with a Water Carrier in the Noncontiguous Domestic Trade, STB Ex Parte No. 618 (STB served Dec. 20, 1996).

regarding ratemaking activity by passenger carriers. See Practice and Procedure-Miscellaneous Amendments-Revision, Ex Parte No. 55 (Sub-No.73) (ICC served Oct. 10, 1989).

We believe that the remaining regulations in Part 1136 are now also obsolete. Under the ICCTA, with certain exceptions not relevant here, "the Board does not have jurisdiction . . . over mass transportation provided by a local governmental authority." 49 U.S.C. 10501(c)(2). Even as to rail passenger transportation that might not qualify for that exemption, our regulatory authority is quite limited. The tariff filing requirements formerly applicable to rail carriers, at former 49 U.S.C. 10761 and 10762, have been repealed.² Moreover, although the Board has the authority to issue injunctions "when necessary to prevent irreparable harm,"³ there is no longer a procedure for protesting, investigating, and suspending rates or fares prior to their going into effect. Under these circumstances, we do not believe that the regulations at 49 CFR 1136 are necessary. We seek comments concerning their proposed removal.

The Board preliminarily concludes that the removal of the rule, if adopted, would not have a significant effect on a substantial number of small entities. The effect, if any, of this rule's removal will be to lessen the regulatory filing requirements of rail passenger carriers. We believe that the removal of the notice provision is unlikely to significantly affect small governmental jurisdictions. The Board, however, seeks comments on whether there would be effects on small entities that should be considered.

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

List of Subjects in 49 CFR Part 1136

Administrative practice and procedure, Buses, Railroads.

Decided: February 10, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

² New 49 U.S.C. 11101(b) and (d) require disclosure of rail common carrier rates and service terms. New 49 U.S.C. 11101(c) further requires rail carriers providing common carriage to give advance notice of rate increases to those who have requested such notification. See Disclosure, Pub. & Notice of Change of Rates - Rail Carriage, 1 S.T.B. 153 (1996) and 49 CFR 1300.

³ See 49 U.S.C. 721(b)(4).

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 1136 [removed]

1. Part 1136 is removed.