

STB EX PARTE NO. 624

REMOVAL OF OBSOLETE REGULATIONS CONCERNING RAIL
PASSENGER FARE INCREASES

Decided June 6, 1997

AGENCY: Surface Transportation Board.

ACTION: Final rule.

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

EFFECTIVE DATE: July 18, 1997.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565-1600.
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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 or Commission) 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that "[t]he Board shall promptly rescind all regulations established by the [ICC] that are based on provisions of law repealed and not substantively reenacted by this Act."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 shall concurrently file tariffs and verified statements on the former ICC and on 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 In a notice of proposed rulemaking in this proceeding served and published in the *Federal Register* on February 24, 1997, we proposed to remove part 1136. In response to that notice, we received a comment from Joseph C. Szabo, for and on behalf of United Transportation Union-Illinois Legislative Board (UTU-IL).

BACKGROUND

In *Notice of Increases in Frt. Rates and Pass. Fares*, 349 I.C.C. 741 (1975), the ICC issued regulations for rail and motor carriers to give advance notice of and justification for commutation and suburban passenger fare increases.² The purpose of the rules was 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).³ 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, moreover, there had been no complaints or protests resulting from collective ratemaking activity by passenger carriers. See, *Practice and Procedure-Miscellaneous Amendments-Revision*, Ex Parte No. 55 (Sub-No. 73) (ICC served October 10, 1989).

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 eliminated these regulations. *Publication, Posting and Filing of Tariffs - - Water Carrier*, 2 S.T.B. 188 (1997).

² The rules were originally issued at 49 CFR part 1105. They were subsequently redesignated in part 1136. 47 Fed. Reg. 49,576 (1982).

³ This decision issued the part 1136 regulations (designated 49 CFR 1136.1) that are now in effect:

A rail passenger carrier proposing commutation or suburban fare increases shall concurrently file appropriate tariffs with the Commission and serve supporting verified statements on the Commission (at its headquarters office and at each Commission office in States affected by the proposal) and on the Governor and appropriate State or County regulatory agency in each affected State, certifying that the notice requirements of 49 CFR 1312.5 have been met.

DISCUSSION AND CONCLUSIONS

The only party responding to the February notice was UTU-IL, which states that its international organization is the collective bargaining representative for certain employees of rail carriers providing passenger train transportation in Indiana, Illinois, and Wisconsin. UTU-IL asserts, without substantiation or elaboration, that “[t]he interest of rail carrier employees in maximum train service is sometimes compromised by the different fare levels, or by the desire to discourage business”, and that “[r]ail employee organizations desire to monitor the fare changes, from both an individual route and regional basis.”

UTU-IL argues that, even though Congress eliminated tariff filing with the Board, we should maintain the requirement of filing justification statements for commutation or suburban fare increases. UTU-IL contends that this would not be a burden upon the railroads, and that they have continued to file justification statements with the Board as information.⁴

In addition to a justification statement, UTU-IL asks that other information, such as “interstate tariffs,” be made available to the public. It contends that, because the Board can require reports from freight rail carriers (49 U.S.C. 721(b)), we should require the submission of information concerning freight carrier participation in mass transportation related to local authorities. UTU-IL asks that the Board establish notice and disclosure requirements for rail passenger fares similar to those we established for rail freight rates in *Disclosure, Publication & Notice Of Change of Rates - Rail Carriage*, 1 S.T.B. 153 (1996) (*Rail Disclosure*).

We conclude that the regulations in part 1136 can be eliminated. As explained in the February notice, under the *ICCTA*, with certain exceptions not relevant here,⁵ “the Board does not have jurisdiction * * * over mass transportation provided by a local governmental authority.” 49 U.S.C.

⁴ UTU-IL states that a justification statement was filed on February 17, 1996, with tariff CSX 001-B. However, the Board’s policy has been to return or not consider rail tariff filings proffered after December 31, 1995, in light of the *ICCTA*’s repeal of rail tariff filing requirements.

⁵ The exceptions, listed in 49 U.S.C. 10501(c)(3)(A), concern safety, employee representation for collective bargaining, and other employee-related matters. Also, under 49 U.S.C. 10501(c)(3)(B), the Board has jurisdiction over transportation by local transportation authorities relating to use of terminal facilities (49 U.S.C. 11102) and switch connections and tracks (49 U.S.C. 11103).

10501(c)(2).⁶ Even as to rail passenger transportation that might not qualify for that exemption, our regulatory authority is quite limited. The vast bulk, if not all of such transportation, is currently provided by Amtrak, over which we have no rate regulatory authority. The tariff filing requirements formerly applicable to rail carriers at former 49 U.S.C. 10761 and 10762 have been repealed,⁷ and the circumstances under which we have authority to determine the reasonableness of rates are extremely limited.

UTU-IL has not provided independent grounds to maintain a requirement for justification statements for fare increases over which we have such limited regulatory authority. UTU-IL has not shown how it or its members directly benefits from the filing of a justification statement with the Governor and the relevant state or county regulatory agency. Moreover, the UTU-IL assertion that the filing of justification statements is not a burden on carriers is unsupported.

Moreover, we must reject the UTU-IL suggestion that we can require reports from freight carriers concerning their participation in mass transportation for local authorities. While the Board has jurisdiction over freight carriers under section 721(b), under section 10501(c)(2), we do not have jurisdiction in most cases "over mass transportation provided by a local governmental authority." The statutory definition of local governmental authority "includes a person or entity that contracts with the local governmental authority to provide transportation services * * *." 49 U.S.C. 10501(c)(1)(A)(ii). Accordingly, we see no basis for requiring that rail carriers provide information concerning their participation in mass transportation related to local governmental authority.

Finally, we see no need to institute a rulemaking proceeding regarding disclosure of interstate passenger fares. As to any passenger transportation not covered by the mass transportation exemption of section 10501(c)(2), we believe that the pertinent rate disclosure regulations issued at 49 CFR part 1300 would cover required disclosure of passenger fares.

⁶ "This provision * * * changes the statement of agency jurisdiction to reflect curtailment of regulatory jurisdiction in areas such as passenger transportation * * *. [A]lthough regulation of passenger transportation is generally eliminated, public transportation authorities * * * may invoke the terminal area and reciprocal switching access remedies of section 11102 and 11103." See, H. R. Conf. Rep. No. 422, 104th Cong., 1st Sess. 167 (1995).

⁷ 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) requires rail carriers providing common carriage not to increase rates without advance notice. See, *Rail Disclosure* and 49 CFR part 1300.

The Board concludes that the removal of the rule in part 1136 would not have a significant effect on a substantial number of small entities. No comments were filed on this issue in response to the February notice. Moreover, passengers are usually individuals and not small entities within the meaning of 5 U.S.C. 601 and, in any event, we do not expect that any effect on them would be significant.

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

List of Subjects

49 CFR Part 1136

Administrative practice and procedure, Railroads

By the Board, Chairman Morgan and Vice Chairman Owen.

APPENDIX

PART 1136 [Removed]

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 amended by removing part 1136.