

or court, and (2) the carrier proposing the discontinuance or change in service must, itself, place the matter within the hands of the Commission. Unless both of these elements are present, the Commission is without authority to institute an investigation or entertain a complaint, regarding a discontinuance under section 13a.

Where these elements are present, a proceeding under section 13a(1) goes through one or both of the following two phases. First, a proceeding under section 13a(1) for the discontinuance of an interstate train is instituted by the carrier filing with the Commission, and posting in every affected depot, station, or other facility for the benefit of the general public, and on each car on each train, a notice of its intention to effect a discontinuance or change in service on a specified date at least 30 days in advance of the proposed discontinuance. The carrier must also mail a copy of the notice to the Governors of the states involved simultaneously with filing the notice with this Commission.

The form and style of the notice must conform with the Commission's rules and regulations issued under this section. It must include such information as the exact corporate name and address of the carrier, the number and name or other description of the train to be discontinued, the date the discontinuance is proposed to become effective, and advice to the public as to its rights to object to such discontinuance. The carrier is also required to furnish additional supplementary information consisting of data regarding the general financial status of the carrier, the financial results of operating the train to be discontinued, the general territory affected, the service performed by the train, alternate service available, the reasons for the carrier's proposal, and a map of the line over which the train to be discontinued operates.

Under the statute, the Commission has authority, if its jurisdiction has been properly evoked and sustained, during the 30 days' notice period, either upon complaint or on its own initiative without complaint, to institute an investigation of the proposed discontinuance. The Commission is also authorized to require continuance of the train in service during the investigation, but not for a period longer than four months beyond the date the carrier's notice announced the discontinuance would be accomplished. However, the Commission's order instituting the investigation and requiring the retention of the train in service for the four-month period must be served on the carrier at least 10 days prior to the time the discontinuance would become effective pursuant to the carrier's notice. If the Commission institutes an investigation in a period less than 10 days prior to the effective date of the notice, it cannot then require the continued operation of the train for the four months pending the investigation. No investigation may be instituted after the effective date provided in the notice.

If it appears clear that the train involved is operating at a loss sufficient to constitute a burden on interstate commerce, that its service receives little patronage and few, if any protests have been received, ordinarily no investigation will be instituted.

If the Commission decides an investigation is not required, it will serve on the carrier and all interested parties a formal notice to that effect. This notice is not required by the statute. The notice procedure has been adopted by the Commission as a means of notifying the public of its decision not to investigate and for providing interested parties with an opportunity to appeal from such decision prior to the date the train is discontinued.

If no appeal is filed to the decision not to investigate, or if an appeal is filed and is denied, the carrier is free to discontinue its train on the date set forth in its notice.

The second phase of one of these proceedings becomes operative in those cases where the Commission decides to investigate the proposed discontinuance. Normally it will, by order served on the carrier and other interested parties, require the train to be kept in operation pending completion of the investigation or up to the four-month period permitted by the statute. Appeals, if any, from this order may be filed within 15 days from the date of its service pursuant to the Commission's Special Rules of Practice.

The investigation is conducted through public hearings held at various points in the territory to be affected by the discontinuance. The carrier is permitted to present its case for discontinuance supported by the necessary financial and operational data. Protestants may cross-examine on the carrier's testimony and evidence and present direct testimony and evidence themselves, subject, of course, to the carrier's cross-examination.

Because of the four-month limitation, no report and recommended order of the hearing examiner is served. Instead, the initial decision is rendered by the Commission itself, usually Division 3.