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longer apply except to the extent adopted by carrier quotations. The categories of commodities which are exempt under this decision, by Standard Transportation Commodity Code (STCC) number are:

- 01 ..... Farm products, with the exception of grain (STCC No. 0113), soybeans (STCC No. 01144), and sunflower seeds (STCC No. 0114940).
- 09 ..... Fresh fish and other marine products.
- 20-11 ..... Fresh meat.
- 20-15 ..... Fresh dressed poultry.
- 20-17 ..... Processed poultry.
- 20-21 ..... Creamery Butter.
- 20-23 ..... Condensed, Evaporated or Dried Milk.
- 20-25 ..... Cheese and Special Dairy Products.
- 20-26 ..... Processed Whole Milk.
- 20-141 ..... Hides and Skins.
- 20-144 ..... Animal refuse, tankage, or meat meal.
- 20-421-27 ..... Citrus pomace.
- 20-712-12 ..... Shelled walnuts.
- 20-914-25 ..... Cottonseed hulls.
- 20-915 ..... Cotton linters.
- 20-999-29 ..... Butter and honey mixed.
- 20-999-41 ..... Honey, comb, granulated or strained, or heat treated to retard granulation.
- 20-999-76 ..... Freeze-dried poultry.
- 20-999-77 ..... Freeze-dried meat.
- 20-999-78 ..... Freeze-dried salad ingredients.
- 20-999-93 ..... Fresh and salted meat and products mixed, not hung.
- 20-999-94 ..... Fresh and salted meat and products mixed, hung and not hung.
- 21-4 ..... Stemmed or redried tobacco.
- 22-811-30 ..... Cotton, carded, dyed or not dyed, but not spun, woven or knitted, but including cotton lap.
- 22-911-63 ..... Mattress felt, nec, ciors, not finished.
- 22-911-74 ..... Felts, cotton, nec.
- 22-971-35 ..... Wool, nec, scoured.
- 22-995-22 ..... Flax fibre.
- 22-999-26 ..... Cotton linters, bleached or dyed.
- 28-423-37 ..... Beeswax.

and shall embrace all articles assigned additional digits. The STCC shall be those code numbers in effect as of January 1, 1979, as shown in Standard Transportation Commodity Code Tariff 1-G, STB STCC 6001-C. Nothing in this exemption shall be construed to affect our jurisdiction under section 10502 or our ability to enforce this decision or any subsequent decision made under authority of this exemption section. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Board.

[48 FR 9277, Mar. 4, 1983; 49 FR 22095, May 25, 1984, as amended at 49 FR 26745, June 29, 1984; 49 FR 27321, July 3, 1984; 64 FR 53267, Oct. 1, 1999; 69 FR 58365, Sept. 30, 2004]

**§ 1039.11 Miscellaneous commodities exemptions.**

(a) *Commodities exempted.* Except as indicated in paragraph (b) of this sec-

tion, the rail transportation of the commodities listed below is exempt from the provisions of 49 U.S.C. subtitle IV. The Standard Transportation Commodity Code (STCC) numbers that identify the exempted commodities are those in effect on the effective date of the tariff cited, and shall embrace all commodities assigned additional digits.

STCC No.	STCC tariff	Commodity
14 1 .....	6001-T, eff. 1-1-92.	Dimension stone, quarry.
14 2 .....	.....do .....	Crushed or broken stone or riprap.
14 411 .....	.....do .....	Sand (aggregate or ballast).
14 412 .....	.....do .....	Gravel (aggregate or ballast).
20 .....	.....do .....	Food or kindred products except
		20 143 Grease or inedible tallow.
		20 32 Canned specialties.
		20 33 Canned fruits, jams, jellies, preserves or vegetables.
		20 4 Grain mill products.
		20 6 Sugar, beet or cane.
		20 8 Beverages or flavoring extracts.
		20 911 Cottonseed oil, crude or refined.
		20 914 Cottonseed cake or meal or by-products.
		20 92 Soybean oil or by-products.
		20 93 Nut or vegetable oils or by-products.
22 .....	.....do .....	Textile mill products.
23 .....	.....do .....	Apparel or other finished textile products or knit apparel.
24 .....	.....do .....	Lumber or wood products.
25 .....	.....do .....	Furniture or fixtures.
26 .....	.....do .....	Pulp, paper or allied products except
		26 1 Pulp or pulp mill products.
		26 211 Newsprint.
		26 212 Ground wood paper, uncoated.
		26 213 Printing paper, coated or uncoated, etc.
		26 214 Wrapping paper, wrappers or coarse paper.
		26 218 Sanitary tissue stock.
		26 471 Sanitary tissues or health products.
		26 6 Building paper or building board except
		26 613 Wallboard.
27 .....	.....do .....	Printed matter.
28 195 .....	.....do .....	Iron chloride, liquid.
22-23 .....		
28 195 .....	.....do .....	Iron sulphate.
27-30 .....		
28 195 .....	.....do .....	Ferrous sulphate.
68-69 .....		
29 914 .....	.....do .....	Coke produced from coal.
29 915 .....	.....do .....	Distillate or residual fuel oil from coal refining.
30 .....	.....do .....	Rubber or miscellaneous plastics products except
		30 111 Rubber pneumatic tires or parts.
31 .....	.....do .....	Leather or leather products.
32 .....	.....do .....	Clay, concrete, glass or stone products except

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STCC No.	STCC tariff	Commodity	STCC No.	STCC tariff	Commodity
32 411		Hydraulic cement, natural, portland or masonry.	33398	.....do. ....	Misc. nonferrous metal residues, including solder babbitt or type metal residues.
32 741		Lime or lime plaster.	40112	.....do. ....	Ashes.
32 95		Nonmetallic earths or minerals, ground or treated in any other manner except	40212	.....do. ....	Brass, bronze, copper or alloy scrap, tailings, or wastes.
32 952 15		Cinders, clay, shale expanded shale), slate or volcanic (not pumice stone), or haydrite.	40213	.....do. ....	Lead, zinc, or alloy scrap, tailings or wastes.
33	.....do. ....	Primary metal products, including galvanized.	40214	.....do. ....	Aluminum or alloy scrap, tailings or wastes.
34	.....do. ....	Fabricated metal products except	4021960	.....do. ....	Tin scrap, consisting of scraps or pieces of metallic tin, clippings, drippings, shavings, turnings, or old worn-out block tin pipe having value for remelting purposes only.
34 6		Metal stampings.	40221	.....do. ....	Textile waste, scrap or sweepings.
34 919 40		Radioactive material shipping containers, etc.	40231	.....do. ....	Wood scrap or waste.
35	.....do. ....	Machinery except	40241	.....do. ....	Paper waste or scrap.
35 11		Steam engines, turbines, turbine generator sets, or parts.	40251	.....do. ....	Chemical or petroleum waste, including spent.
35 85		Refrigerators or refrigeration machinery or complete air-conditioning units.	40261	.....do. ....	Rubber or plastic scrap or waste.
36	.....do. ....	Electrical machinery, equipment or supplies except	4029114	.....do. ....	Municipal garbage waste, solid, digested and ground, other than sewage waste or fertilizer.
36 12		Power, distribution or specialty transformers.	4029176	.....do. ....	Automobile shredder residue.
36 21		Motors or generators.	4111434	.....do. ....	Bags, old, burlap, gunny, istle (ixtle), jute, or sisal, NEC.
37 11	.....do. ....	Motor vehicles.	41115	.....do. ....	Articles, used, returned for repair or reconditioning.
37 14	.....do. ....	Motor vehicle parts or accessories.	42111	.....do. ....	Nonrevenue movement of containers, bags, barrels, bottles, boxes, crates, cores, drums, kegs, reels, tubes, or carriers, NEC, empty, returning in reverse of route used in loaded movement, and so certified.
38	.....do. ....	Instruments, photographic goods, optical goods, watches or clocks.	42112	.....do. ....	Nonrevenue movement of shipping devices, consisting of blocking, bolsters, cradles, pallets, racks, skids, etc., empty, returning in reverse of route used in loaded movement, and so certified.
39	.....do. ....	Miscellaneous products of manufacturing.	42311	.....do. ....	Revenue movement of containers, bags, barrels, bottles, boxes, crates, cores, drums, kegs, reels, tubes, or carriers, NEC., empty, returning in reverse of route used in loaded movement and so certified.
41 118	6001-U, eff. 1-1-93.	Used vehicles.			
14 715	6001-V, eff. 1-1-94.	Rock salt.			
20 143	.....do. ....	Grease or inedible tallow.			
28 133	.....do. ....	Carbon dioxide.			
28 991	.....do. ....	Salt.			
32-4	.....do. ....	Hydraulic cement.			
34 912	6001-W, eff. 1-1-95..	Steel shipping containers.			
40 211	.....do. ....	Iron and steel scrap.			
33 119	6001-X, eff. 1-11-96.	Blast furnace, open hearth, rolling mill or coke oven products, NEC.			
20511	6001-X, eff., 1-1-96.	Bread or other bakery products exc. biscuits, crackers, pretzels or other dry bakery products. See 20521-20529.			
22941	.....do. ....	Textile waste, garnetted, processed, or recovered or recovered fibres or flock exc. packing or wiping cloths or rags. See 22994.			
22973	.....do. ....	Textile fibres, laps, noils, nubs, roving, sliver or slubs, prepared for spinning, combed or converted.			
22994	.....do. ....	Packing or wiping cloths or rags (processed textile wastes).			
24293	.....do. ....	Shavings or sawdust.			
30311	.....do. ....	Reclaimed rubber.			
3229924	.....do. ....	Cullet (broken glass).			
33312	.....do. ....	Copper matte, speiss, flue dust, or residues, etc.			
33322	.....do. ....	Lead matte, speiss, flue dust, dross, slag, skimmings, etc.			
33332	.....do. ....	Zinc dross, residues, ashes, etc.			
33342	.....do. ....	Aluminum residues, etc.			

Excluded from this exemption are any movements for which a finding of market dominance has been made. However, this exemption shall not be construed as affecting in any way the existing regulations, agreements, prescriptions, conditions, allowances or levels of compensation regarding the use of equipment, whether shipper or railroad owned or leased, including car hire, per diem and mileage allowances, and also including exemption from the anti-trust laws necessary to negotiate car service regulations or mandatory

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interchange of equipment or to maintain and execute such agreements. Nor shall this exemption be construed to affect existing Class III railroad "protections" in the case of boxcars.

(b) *Conditions.* Carriers must continue to comply with Board accounting and reporting requirements. All railroad tariffs pertaining to the transportation of these miscellaneous commodities will no longer apply. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Board.

[48 FR 24901, June 3, 1983, as amended at 48 FR 33306, July 21, 1983; 48 FR 55744, Dec. 15, 1983; 54 FR 51402, Dec. 15, 1989; 56 FR 31547, July 11, 1991; 58 FR 4356, Jan. 14, 1993; 58 FR 27951, May 12, 1993; 58 FR 43818, Aug. 18, 1993; 58 FR 53434, Oct. 15, 1993; 59 FR 51134, Oct. 7, 1994; 59 FR 59663, Nov. 18, 1994; 59 FR 63926, Dec. 12, 1994; 60 FR 26840, May 19, 1995; 60 FR 38281, July 26, 1995; 61 FR 7426, Feb. 28, 1996; 61 FR 47446, Sept. 9, 1996; 61 FR 66231, Dec. 17, 1996; 63 FR 19665, Apr. 21, 1998]

## § 1039.12 Long and short haul transportation exemption.

(a) All rates and charges for rail transportation are exempt from the provisions of 49 U.S.C. 10726 to the extent that:

(1) Board approval or consideration before the effective date of these rates and charges is not required; and

(2) Section 10707 will not apply to rates to the extent that they are challenged on the basis of alleged violations of section 10726.

(b) This exemption does not extend to review by the Board upon the filing of a formal complaint alleging a violation of section 10726. Board review will, however, be subject to the following conditions:

(1) A showing that a rate violates section 10726 will not create a presumption that the higher rate is unreasonably high, and

(2) A finding by the Board that a rate or charge violates the provisions of section 10726 will not, absent a specific showing of damages, afford a basis for an award of reparations.

[48 FR 9649, Mar. 8, 1983]

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### § 1039.13 Rail intermodal transportation exemption.

See Part 1090.

[52 FR 23660, June 24, 1987]

### § 1039.14 Boxcar transportation exemptions and rules.

(a) The Rail transportation of all commodities in boxcars is exempt from the provisions of 49 U.S.C. subtitle IV except as otherwise provided in this section.

(b) The Board retains jurisdiction in the following areas:

(1) Car hire and car service.

(2) Mandatory interchange of equipment.

(3) Reciprocal switching or joint use of terminal facilities.

(4) Car supply.

(5) Freight car pooling agreements.

(6) Freight rates applicable to boxcar traffic originating or terminating at an industry facility served physically by a Class III rail carrier, to the extent provided in paragraphs (c)(4) and (c)(5) of this section.

(c)(1) Except as provided in paragraph (c)(2) of this section, carriers are authorized to take the following actions with respect to boxcar equipment use:

(i) Assess charges for empty movement of cars where movements are made at the request of the car owner, the Association of American Railroads, or the Board. The empty mileage charge is subject to a maximum of 35 cents per mile, as adjusted for inflation or deflation using the rail cost adjustment factors published periodically by the Board in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*. In applying those factors, the figure of 35 cents will be treated as having been in effect on October 1, 1982.

(ii) Store empty cars and reclaim car hire payments beginning at the expiration of a 72-hour grace period after the car is made empty.

(iii) Negotiate bilateral agreements governing car hire rates, empty movements, and storage.

(2) The authorization in paragraphs (c)(1) (i) and (ii) of this section will not apply to excluded carriers, as defined in paragraph (c)(2)(i) of this section, nor will it apply to any boxcar which, on December 30, 1983, was owned or leased by a carrier which then would