

## Surface Transportation Board, DOT

## § 1039.14

(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]

### § 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 have qualified as an excluded carrier and which bears the reporting marks of an excluded carrier.

(i) An "excluded carrier" is a Class III carrier or a Class II carrier not affiliated with one or more Class I carriers. To be affiliated, the Class II carrier must be more than 50 percent owned by one or more Class I carriers.

(ii) The boxcar exclusion of paragraph (c)(2) of this section will apply:

(A) To an excluded boxcar whenever it is owned or leased by any Class III carrier and bears a Class III carrier's reporting marks; and

(B) To an excluded boxcar owned or leased by an excluded Class II carrier beginning on October 16, 1986, and ending on October 31, 1990, so long as such boxcar has not been otherwise owned or leased by another carrier during this period.

(iii) The exclusion will not apply during any period in which an excluded boxcar is leased or assigned to a Class I or affiliated Class II carrier. If an excluded Class II carrier becomes a Class III carrier within the period under § 1039.14(c)(2)(ii)(B), that carrier will thereafter, for purposes of this rule, be treated as if it had been a Class III carrier on December 10, 1983.

(iv) Nothing in paragraph (c)(2) of this section will affect the right of any carrier to negotiate bilateral agreements governing car hire rates and rules.

(3) The hourly and mileage car hire rates in effect on January 1, 1985, as published in AAR Traffic Circular No. OT-10, for any boxcar excluded under paragraph (c)(2) of this section, will remain in effect without regard to the aging of such car subsequent to January 1, 1986, and any modification to the existing car hire formula will not apply to such cars. With respect to an excluded boxcar owned or leased by an excluded Class II carrier, those car hire

## § 1039.16

rates shall remain in effect through October 31, 1990. Any improvements subsequent to January 1, 1985, to the excluded boxcars capitalized under OT-37 criteria or under rebuilt criteria will be subject to the same formula applicable to OT-37 or rebuilt cars under Ex Parte No. 334 or any other railroad car hire proceeding, including any efficiency ratio, if adopted. Any improvements or repairs subsequent to December 31, 1990, to the excluded boxcars performed under OT-37 criteria or under rebuilt criteria or any other criteria shall not result in any increases, additions, or surcharges in the car hire rates for such cars.

(4) No freight rate made effective after April 1, 1985, that applies to traffic moving by boxcar and originating or terminating at an industry facility served physically by a Class III rail carrier may discriminate while these rules are in effect on the basis of:

(i) The ownership of the boxcar used or the reporting marks any such boxcar bears;

(ii) The car hire rate applicable to the boxcar used; or

(iii) Any car hire discounts, in the form of reclaims or otherwise, available to any carriers with respect to the boxcar used.

Except as prohibited above, carriers may use car ownership or car marks for identification purposes when establishing rates.

(5) The provisions of 49 U.S.C. 10705 and 10705a applicable to joint rates and through routes will be effective as to rates and routes applicable to boxcar traffic originating or terminating at an industry facility served physically by a Class III rail carrier.

(6) The following carriers are not regarded as Class III or unaffiliated Class II carriers for the purpose of this section:

Central New York Railroad Corporation  
Cooperstown and Charlotte Valley Railway Corporation  
Fonda, Johnstown & Gloversville Railroad Corporation  
Lackawaxen and Stourbridge Railroad Corporation  
New York, Susquehanna & Western Railway Corporation  
Rahway Valley Railroad Company  
Staten Island Railway Corporation.

## 49 CFR Ch. X (10-1-07 Edition)

(d) Carriers must continue to comply with Board accounting and reporting requirements. Railroad tariffs pertaining to the exempted transportation of commodities in boxcars will no longer apply. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Board.

[48 FR 20415, May 6, 1983, as amended at 50 FR 20419, May 16, 1985; 51 FR 32656, Sept. 15, 1986; 51 FR 32922, Sept. 17, 1986; 52 FR 37971, Oct. 13, 1987; 55 FR 41339, Oct. 11, 1990; 57 FR 53451, Nov. 10, 1992; 57 FR 56641, Nov. 30, 1992; 61 FR 26847, May 29, 1996]

### § 1039.16 Exemption of new highway trailers or containers.

The rail transportation of new highway trailers or containers (which is not otherwise exempt) is exempt from the provisions of 49 U.S.C. Subtitle IV, except that carriers must continue to comply with the Board's accounting and reporting requirements. This exemption will remain in effect unless modified or revoked by subsequent order of this Board.

[52 FR 17404, May 8, 1987]

### § 1039.17 Protective service contracts exemption.

Contracts for protective services against heat or cold, provided to or on behalf of rail carriers and express companies, are exempt from the requirements of 49 U.S.C. 11105. Nothing in this exemption shall be construed to affect our jurisdiction under section 10505 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.

[49 FR 19025, May 4, 1984]

### § 1039.20 Storage leases.

Storage leases for all equipment for all carriers are exempt from the provisions of 49 U.S.C. subtitle IV except for 49 U.S.C. 11123. Nothing in this exemption should 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