

§ 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