

## § 1039.16

## 49 CFR Ch. X (10–1–11 Edition)

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 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.

(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]