

**Surface Transportation Board, DOT**

**§ 1039.11**

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 section, 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 22-23 .....	.....do .....	Iron chloride, liquid.
28 195 27-30 .....	.....do .....	Iron sulphate.
28 195 68-69 .....	.....do .....	Ferrous sulphate.
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
		32 411 Hydraulic cement, natural, portland or masonry.
		32 741 Lime or lime plaster.
		32 95 Nonmetallic earths or minerals, ground or treated in any other manner except
		32 952 15 Cinders, clay, shale expanded shale), slate or volcanic (not pumice stone), or haydrite.
33 .....	.....do .....	Primary metal products, including galvanized.
34 .....	.....do .....	Fabricated metal products except
		34 6 Metal stampings.
		34 919 40 Radioactive material shipping containers, etc.
35 .....	.....do .....	Machinery except
		35 11 Steam engines, turbines, turbine generator sets, or parts.
		35 85 Refrigerators or refrigeration machinery or complete air-conditioning units.
36 .....	.....do .....	Electrical machinery, equipment or supplies except
		36 12 Power, distribution or specialty transformers.
		36 21 Motors or generators.
37 11 .....	.....do .....	Motor vehicles.

STCC No.	STCC tariff	Commodity
37 14	.....do	Motor vehicle parts or accessories.
38	.....do	Instruments, photographic goods, optical goods, watches or clocks.
39	.....do	Miscellaneous products of manufacturing.
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.
33398	.....do	Misc. nonferrous metal residues, including solder babbitt or type metal residues.
40112	.....do	Ashes.
40212	.....do	Brass, bronze, copper or alloy scrap, tailings, or wastes.
40213	.....do	Lead, zinc, or alloy scrap, tailings or wastes.
40214	.....do	Aluminum or alloy scrap, tailings or wastes.
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.
40221	.....do	Textile waste, scrap or sweepings.
40231	.....do	Wood scrap or waste.
40241	.....do	Paper waste or scrap.
40251	.....do	Chemical or petroleum waste, including spent.
40261	.....do	Rubber or plastic scrap or waste.
4029114	.....do	Municipal garbage waste, solid, digested and ground, other than sewage waste or fertilizer.
4029176	.....do	Automobile shredder residue.
4111434	.....do	Bags, old, burlap, gunny, istle (ixtle), jute, or sisal, NEC.
41115	.....do	Articles, used, returned for repair or reconditioning.
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.
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.
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.

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

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

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or revoked by a subsequent order of this Board.

[48 FR 24901, June 3, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1039.11, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

### § 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]

### § 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