

STB EX PARTE NO. 548¹

EXEMPTION FROM REGULATION BOXCAR TRAFFIC

49 CFR Part 1039

Decided May 15, 1996

AGENCY: Surface Transportation Board.

ACTION: Final Rule.

SUMMARY: The Surface Transportation Board (the Board) is eliminating an obsolete provision of a regulation pertaining to rates on nonferrous recyclable commodities by broadening the exemption for traffic moving in boxcars.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927-7513. [TDD for the hearing impaired: (202) 927-5721.]

¹ The notice of proposed rulemaking issued on March 26, 1996 was designated as STB Ex Parte No. 346 (Sub-No. 8). In a notice served on May 2, 1996, the docket number was changed to STB Ex Parte No. 548.

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA) abolished the Interstate Commerce Commission (ICC) and established the Board. Section 204 of the ICCTA provides that "[t]he Board shall promptly rescind all regulations established by the [ICC] that are based on provisions of law repealed and not substantively reenacted by this Act." In *Removal of Obsolete Recyclables Regulations*, 1 S.T.B. 7 (1996) (*Obsolete Regulations*), the Board removed, *inter alia*, obsolete recyclable regulations at 49 CFR 1134 and 49 CFR 1145, pertaining to discrimination against recyclables and rates on recyclables, because Congress repealed former 49 U.S.C. 10710 and 10731, the statutory bases for these regulations. We stated that we would separately consider the disposition of 49 CFR 1039.14(b)(5), which excludes rates on nonferrous recyclable commodities from the exemption of boxcar traffic from rate regulation.

Consequently, on March 26, 1996, we served a notice of proposed rulemaking (NPR) in this proceeding and published at 61 Fed. Reg. 13,146 (1996), proposing to remove 49 CFR 1039.14(b)(5) and to redesignate paragraphs (6) and (7). The only comment in response to the NPR was filed by AAR. Noting the substantial intermodal and intramodal competition for nonferrous recyclables, as evidenced by the decline in rail market share and the fact that, from 1981 through 1994, revenue per ton mile for nonferrous recyclables fell 49 percent in constant (inflation-adjusted) dollars, AAR supports the proposal and asks that it be adopted expeditiously.

We will grant the broader exemption by removing the exclusion for nonferrous recyclables from the boxcar exemption. The ICC has already found that an exemption from rate regulation for transportation by boxcars was warranted. Now that the special statutory provisions for recyclables traffic are gone, there is no basis for excluding it from the exemption. The current record, moreover, warrants granting an exemption.

We find that a broadened exemption will meet the standards of new section 10502. Regulation is generally not necessary to carry out the transportation policy of new 49 U.S.C. 10101. *See* 49 U.S.C. 10101(1), (2), (3), (5), and (9). Furthermore, given the competitive nature of transportation of nonferrous recyclables, regulation is not necessary to protect shippers from abuse of market power.

The Board certifies that this rule will not have a significant economic effect on a substantial number of small entities. This rule will reduce regulation; it imposes no new reporting or other requirements directly or indirectly on small entities. While there may be an impact on some small entities because recyclables no longer will be excepted from the boxcar exemption, it appears that such an impact will not be significant nor will it likely affect a significant number of small entities.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

APPENDIX

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is amended as set forth below:

PART 1039--EXEMPTIONS

1. The authority citation for part 1039 continues to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 721 and 10502.

§ 1039.14 [Amended]

2. Section 1039.14 is amended by removing paragraph (b) (5) and redesignating paragraphs (b) (6) and (b) (7) as paragraphs (b) (5) and (b) (6).