

**SUMMARY:** The Surface Transportation Board is discontinuing the rulemaking in Ex Parte No. 346 (Sub-No. 36).

**DATES:** This withdrawal is made on May 5, 1997.

**FOR FURTHER INFORMATION CONTACT:** Beryl Gordon, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

**SUPPLEMENTARY INFORMATION:** In a notice of proposed rulemaking (NPR) in this proceeding served on August 23, 1994, and published in the **Federal Register** on August 24, 1994 (59 FR 43529), the Interstate Commerce Commission (ICC) solicited comments on a proposal to exempt partially from regulation the rail transportation of 28 nonferrous recyclable commodities. After the issuance of the NPR, the ICC Termination Act of 1995 (ICCTA), Pub. L. No. 104-88, 109 Stat. 803 was enacted. The ICCTA significantly changed the basis for the NPR by eliminating former 49 U.S.C. 10731(e). Consequently, in *Rail General Exemption Authority—Nonferrous Recyclables*, STB Ex Parte No. 561 (published elsewhere in this section of the **Federal Register**), we are issuing a new NPR proposing a total exemption from regulation for 29 nonferrous recyclable commodities. Because we will consider a broader exemption in STB Ex Parte No. 561, we are discontinuing this proceeding. The comments previously filed in response to the NPR will be made part of the record in STB Ex Parte No. 561 and need not be refiled.

Decided: April 24, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

**Vernon A. Williams,**  
Secretary.

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### 49 CFR Part 1039

[STB Ex Parte No. 561]

#### Rail General Exemption Authority—Nonferrous Recyclables

**AGENCY:** Surface Transportation Board, Transportation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Interstate Commerce Commission (ICC) issued a notice of proposed rulemaking (NPR) in Ex Parte No. 346 (Sub-No. 36) on August 23, 1994, published in the **Federal Register** on August 24, 1994, to consider whether to exempt partially from regulation the rail transportation of certain nonferrous recyclables. The ICC Termination Act of 1995 significantly changed the basis for that notice. Consequently, we are issuing a new NPR proposing a total exemption from regulation for 29 nonferrous recyclable commodities. We are also announcing a policy for the interim to govern the 11 nonferrous recyclable commodities that were previously partially exempted. Finally, in a separate decision served today, Ex Parte No. 346 (Sub-No. 36) is being discontinued.

**DATES:** Persons interested in participating in this proceeding as a party of record by filing and receiving written comments must file a notice of intent to participate by May 26, 1997. We will issue a service list of the parties of record shortly thereafter. Comments and replies must be served on all parties of record. Comments are due on June 30, 1997 and replies are due on July 15, 1997.

**ADDRESSES:** Send an original plus 10 copies of notices of intent to participate and pleadings referring to STB Ex Parte No. 561 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001.

**FOR FURTHER INFORMATION CONTACT:** Beryl Gordon, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

**SUPPLEMENTARY INFORMATION:** The Board's decision proposing these regulations is available to all persons for a charge by phoning DC NEWS & DATA, INC., at (202) 289-4357.

#### Environmental and Energy Considerations

We preliminarily conclude that, if an exemption is granted, it will not significantly affect either the quality of the human environment or the conservation of energy resources. We invite comments in this area.

#### Initial Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), the Board preliminarily concludes that an exemption would not have a significant economic impact on a substantial number of small entities. No new regulatory requirements would be imposed, directly or indirectly, on such entities. The impact, if any, would be to reduce the amount of paperwork and regulation. If an exemption were granted, it would be based partly on a finding that regulation of this transportation is not necessary to protect shippers (including small shippers) from abuse of market power. See 49 U.S.C. 10502. Such a finding, if made, would indicate that a substantial number of small entities would not be significantly affected. We invite comments in this area.

#### List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: April 24, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

**Vernon A. Williams,**  
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, Part 1039 of the Code of Federal Regulations is proposed to be amended as follows:

#### 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. 10502 and 13301.

2. In § 1039.11, paragraph (a) is proposed to be amended by adding the following entries in numerical order to the table and by revising the first sentence to the undesignated text following the table to read as follows:

#### § 1039.11 Miscellaneous commodities exemptions.

(a) \* \* \*

STCC No.	STCC tariff	Commodity
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.

STCC No.	STCC tariff	Commodity
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.

Also excepted from this exemption  
are those commodities previously  
exempt, and any transportation service  
regarding which the Commission has  
made a finding of market dominance.

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