

requests that the \$1,000 filing fee for Item (56), Formal complaints, and Item (58)(i), Petitions for declaratory orders, which are comparable to complaints, and the \$1,400 filing fee for Item (58)(ii), All other petitions for declaratory order, be eliminated for rail employees and their unions.

In addition, he seeks elimination of the new \$7,600 filing fee for Item (60), Labor arbitration proceedings, and the new \$150 filing fee for Item (61), Appeals to a Surface Transportation Board decision and petitions to revoke an exemption pursuant to 49 U.S.C. 10502(d). Previously, at 61 FR 48639 (September 16, 1996) the effective date for those two fee items was delayed by Chairman Morgan to allow the Board sufficient time to consider the issues raised in this petition to reopen.

We find that there is no basis for granting petitioner's request that the fees for formal complaints and petitions for declaratory order be eliminated for rail employees or their unions. Based on the new evidence submitted by the labor officials who support Mr. Szabo's petition, we conclude that the \$7,600 filing fee for Item (60), Labor arbitration proceedings, should be reduced to \$150. After reviewing petitioner's arguments we conclude that the \$150 filing fee for Item (61), Appeals to Surface Transportation Board decisions and petitions to revoke exemption under 49 U.S.C. 10502(d), is appropriate.

While we had indicated that the filing fee for formal complaints should be increased, the current \$1,000 filing fee for Item (56), Formal complaints, was maintained until the on-going legislative debate regarding that filing fee was completed. That legislative debate has now been resolved by enactment of section 1219 of the Federal Aviation Authorization Act of 1996, Pub. L. 104-264, 110 Stat. 3213 (Oct. 9, 1996), which prohibits any increase in the filing fee for complaints filed by small shippers in connection with rail maximum rates complaints until after September 30, 1998. Therefore, we will maintain the filing fee for formal complaints under Item 56(ii) at \$1,000 for small shippers. For all other shippers, we will adopt the filing fee of \$23,300 for Item (56)(i), Formal complaints filed under the coal rate guidelines, and a filing fee of \$2,300 for Item 56(iii), All other formal complaints.

Additional information is contained in the Board's decision. To obtain a copy of the full decision, write, call, or pick up in person from DC News & Data, Inc., Room 2229, 1201 Constitution Ave. N.W., Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is

available through TDD services (202) 927-5721.)

The Board affirms its previous finding that the fee changes adopted here will not have a significant economic impact on a substantial 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 in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: December 5, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commission

Vernon A. Williams, Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701; and 49 U.S.C. 721(a).

2. The new effective date for 49 CFR 1002.2(f), fee item (61), is January 16, 1997.

3. In section 1002.2 (f) fee items (56) and (60) are revised to read as follows:

§ 1002.2 Filing fees.

* * * * *
(f) * * *

Type of Proceeding	Fee
(56) A formal complaint alleging unlawful rates or practices of rail carriers, motor carriers of passengers or motor carriers of household goods:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1) except a complaint filed by a small shipper	\$23,300
(ii) A formal complaint involving rail maximum rates filed by a small shipper	1,000
(iii) All other formal complaints	2,300
(60) Labor arbitration proceedings	150

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49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 34)]

Rail General Exemption Authority; Exemption of Hydraulic Cement

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rule.

SUMMARY: The Board is exempting from regulation the transportation by rail of hydraulic cement (STCC No. 32-4) including shipments from the South Dakota State Cement Plant Commission ("Dacotah") facility at Rapid City, SD (herein, the "Dacotah Cement Plant"). Those shipments had been excepted when cement was exempted from regulation. The exception for the Dacotah Cement Plant is now removed. Hydraulic cement, without the Dacotah exception, is added to the list of exempt commodities as set forth below. This exemption does not embrace exemptions from the regulation of car hire and car service.

EFFECTIVE DATE: This final rule is effective on January 16, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927-5660. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Public Law No. 104-88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10701 and 10502. Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. However, because of the nature of the action in this proceeding—adoption of a class exemption with application to future transportation and related future filings—we have considered both the new and the old law in issuing our decision here. Citations are to the current sections of the statute, unless otherwise indicated.

On July 26, 1995, at 60 FR 38280, the ICC requested comments on whether the Dacotah cement facilities at Rapid City, SD, are rail captive and the effect, if any, of the ICC's decision in *Union Pacific*

Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control—Chicago and North Western Transportation Company and Chicago and North Western Railway Company, Finance Docket No. 32133 (ICC served Mar. 7, 1995) on this matter.

The comments have been received and analyzed. We are removing the exception in 49 CFR part 1039 for shipments of hydraulic cement from the Dacotah Cement Plant at Rapid City, SD.

For further information, see the Board's printed decision. To obtain a copy of the full decision, write to, call, or pick up in person from DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services: (202) 927-5721.]

We affirm the ICC's initial finding that the exemption will not significantly affect either the quality of the human

environment or the conservation of energy resources. We also affirm the ICC's initial finding that the exemption will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: December 4, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner 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 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, the table in paragraph (a) is amended by revising the entry for STCC No. 32-4 to read as follows:

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * *

STCC No.	STCC tariff	Commodity
* * *	* * *	* * *
32-4do	Hydraulic cement.
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