

Surface Transportation Board, DOT

§ 1037.2

of lading shall be enforceable according to its original tenor.

PART 1037—BULK GRAIN AND GRAIN PRODUCTS—LOSS AND DAMAGE CLAIMS

Sec.

1037.1 Weights and weighing.

1037.2 Cars.

1037.3 Claims.

AUTHORITY: 49 U.S.C. 721.

SOURCE: 40 FR 49342, Oct. 22, 1975, unless otherwise noted.

§ 1037.1 Weights and weighing.

(a) How determined—Accuracy of the weights used in determining the quantity of grain and grain products received for transportation by carriers and delivered by them to consignees being of primary and fundamental importance, the use of estimated weights based upon the cubical contents of the load and the test weight per bushel of the grain and grain products, or otherwise, will not be accepted. All shipments shall be carefully weighed by competent weighers upon scales that are known to be accurate within the limits of tolerance stated in scale specifications.

(b) Inspection of scales—Before weighing grain and grain products to and from cars, the scale and all other facilities to be used must be thoroughly inspected to ascertain whether they are in proper working condition, necessary adjustments or repairs, if any required, must be made, and an accurate and complete record thereof shall be entered at the time of inspection.

(c) Shipping weights—Where the shipper weighs the grain or grain products for shipment and a claim for loss and damage is subsequently filed on that shipment, the shipper shall furnish the carrier with whom the claim is filed certificates of weight showing car initials and number; the kind of grain or grain products; the total scale weight; the type and house number of the scale used; the number of drafts and weight of each draft; the date and time of weighing; whether the weight is official, board-of-trade, grain-exchange, State, or other supervised weight; and the number of grain doors

used. This information should be furnished at the time the claim is filed.

(d) Destination weights—Where the consignee weighs a shipment of grain or grain products and a claim for loss and damage is subsequently filed on the shipment, the consignee shall furnish the carrier with whom the claim is filed certificates of weight showing the car initials and number; the kind of grain or grain products; the total scale weight; the type and house number of the scale used; the number of drafts and weight of each draft, and the date and time of weighing; and whether the weight is official, board-of-trade, grain-exchange, State, or other supervised weight. This information should be furnished at the time the claim is filed.

(e) A difference in weights at origin and destination, both of which are based on supervised scales, establishes *prima facie* that the loss occurred in transit and that the railroad is liable. When a difference in weights is based in part on an unsupervised weight, which nevertheless, was accepted by the railroad as the basis for assessing freight charges, such unsupervised weight in combination with a supervised weight establishes *prima facie* that the loss occurred in transit and the railroad is liable. When a difference in weights is based in part on an unsupervised weight, with the above exception, a *prima facie* case of railroad liability for loss in transit has *not* been established. Such difference in weights is a factor, however, to be considered in connection with other evidence that a clear-record car arrived at destination with seals intact and unbroken or that the shipper made a written complaint that any car placed for loading was defective, in response to which the railroad filed a written report after investigation of the complaint. See paragraph (c) of § 1037.3.

§ 1037.2 Cars.

A car is not in suitable condition for the transportation of bulk grain and grain products when it is defective. The rules prescribed in this part 1037 apply on shipments transported solely in railroad-owned and railroad-leased cars.

[57 FR 54334, Nov. 18, 1992]