

of lading of the carrier by water (this bill of lading being such bill of lading if the property is transported by such water carrier thereunder) and by and under the laws and regulations applicable to transportation by water. Such water carriage shall be performed subject to all the terms and provisions of, and all the exemptions from liability contained in the Act of Congress of the United States, approved on February 13, 1893, and entitled "An act relating to the navigation of vessels, etc." and of other statutes of the United States according carriers by water the protection of limited liability as well as the following subdivisions of this section: and to the conditions contained in this bill of lading not inconsistent with this section, when this bill of lading becomes the bill of lading of the carrier by water.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall be at liberty to call at any port or ports, in or out of the customary route, to tow and be towed, to transfer, trans-ship, or lighter, to load and discharge goods at any time, to assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

(d) General Average shall be payable according to the York-Antwerp Rules of 1924, sections 1 to 15, inclusive, and sections 17 to 22, inclusive, and as to matters not covered thereby according to the laws and usages of the Port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenance, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discov-

erable by the exercise of due diligence), the shippers, consignees and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(e) If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

(f) The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

Sec. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading, shall be without effect, and this bill 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.

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#### § 1037.3 Claims.

(a) In computing the amount of the loss for which the carrier will pay there will be deducted from the gross amount of the ascertained actual loss one-fourth of 1 percent of the established loading weight to cover invisible loss and waste; provided, however, that where grain and grain products heat in transit and investigation shows that the invisible loss resulting therefrom exceeded one-fourth of 1 percent of such other amount as may hereafter be fixed in the manner above stated, and that the carrier is not otherwise liable for said loss, then the ascertained actual amount of the invisible loss due to heating of the grain and grain products will be deducted.

(b) Where investigation discloses a defect in equipment, seal or seal record, or a transfer in transit by the carrier of a carload of bulk grain or grain products upon which the unloading weight is less than the loading weight and the shipper furnishes duly attested certificates showing the correctness of the claimed weight, and investigation fails to show that the discrepancy is due to defective scales or other shipper facilities, or to inaccurate weighing or other error at point