

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]

§ 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 of origin or destination, or to fraud, then the resulting claim will be adjusted subject to the deductions authorized in the immediately preceding paragraph (a) of this § 1037.3; provided, however, that the clear record of either the carrier's or shippers' facilities shall not be interpreted as affecting or changing the burden of proof now lawfully resting upon either party. Therefore, movement in a clear-record car is not conclusive evidence of the fact that the car is not defective. It must be considered along with other evidence to determine liability. See paragraph (e) of § 1037.1.

(c) In case of a disputed claim, the records of both the carrier and the claimant affecting the shipment involved shall be available to both parties. These records shall include a written complaint, if any, filed by the shipper with the railroad at the time the car was placed for loading that the car was defective, and the written report of an investigation of the complaint, filed

by the railroad with the shipper, if made.

PART 1039—EXEMPTIONS

- Sec.
- 1039.10 Exemption of agricultural commodities except grain, soybeans, and sunflower seeds.
- 1039.11 Miscellaneous commodities exemptions.
- 1039.12 Long and short haul transportation exemption.
- 1039.13 Rail intermodal transportation exemption.
- 1039.14 Boxcar transportation exemptions and rules.
- 1039.16 Exemption of new highway trailers or containers.
- 1039.17 Protective service contracts exemption.
- 1039.20 Storage leases.
- 1039.21 International joint through rates.
- 1039.22 Exemption of certain payments, services, and commitments from the Elkins Act and related provisions.

AUTHORITY: 49 U.S.C. 10502, 13301.

SOURCE: 47 FR 50262, Nov. 5, 1982, unless otherwise noted.

§ 1039.10 Exemption of agricultural commodities except grain, soybeans, and sunflower seeds.

The rail transportation of the commodities listed below is exempt from the provisions of subtitle IV of title 49, except that carriers must continue to comply with Board accounting and reporting requirements, including a brief statement in their annual reports of operations under this exemption, and must maintain copies of rates, charges, rules or regulations, for traffic moved under this exemption, at their principal office, subject to inspection, and send a letter of notification to the docket [Ex Parte No. 346 (Sub-No. 14)], within 30 days, of the fact that they are using the exemption. All tariffs pertaining to the transportation of these miscellaneous commodities will no longer apply except to the extent adopted by carrier quotations. The categories of commodities which are exempt under this decision, by Standard Transportation Commodity Code (STCC) number are:

- 01 Farm products, with the exception of grain (STCC No. 0113), soybeans (STCC No. 01144), and sunflower seeds (STCC No. 0114940).
- 09 Fresh fish and other marine products.

- 20-11 Fresh meat.
- 20-15 Fresh dressed poultry.
- 20-17 Processed poultry.
- 20-21 Creamery Butter.
- 20-23 Condensed, Evaporated or Dried Milk.
- 20-25 Cheese and Special Dairy Products.
- 20-26 Processed Whole Milk.
- 20-141 Hides and Skins.
- 20-144 Animal refuse, tankage, or meat meal.
- 20-421-27 Citrus pomace.
- 20-712-12 Shelled walnuts.
- 20-914-25 Cottonseed hulls.
- 20-915 Cotton linters.
- 20-999-29 Butter and honey mixed.
- 20-999-41 Honey, comb, granulated or strained, or heat treated to retard granulation.
- 20-999-76 Freeze-dried poultry.
- 20-999-77 Freeze-dried meat.
- 20-999-78 Freeze-dried salad ingredients.
- 20-999-93 Fresh and salted meat and products mixed, not hung.
- 20-999-94 Fresh and salted meat and products mixed, hung and not hung.
- 21-4 Stemmed or redried tobacco.
- 22-811-30 Cotton, carded, dyed or not dyed, but not spun, woven or knitted, but including cotton lap.
- 22-911-63 Mattress felt, nec, ciors, not finished.
- 22-911-74 Felts, cotton, nec.
- 22-971-35 Wool, nec, scoured.
- 22-995-22 Flax fibre.
- 22-999-26 Cotton linters, bleached or dyed.
- 28-423-37 Beeswax.

and shall embrace all articles assigned additional digits. The STCC shall be those code numbers in effect as of January 1, 1979, as shown in Standard Transportation Commodity Code Tariff 1-G, STB STCC 6001-C. Nothing in this exemption shall be construed to affect our jurisdiction under section 10502 or our ability to enforce this decision or any subsequent decision made under authority of this exemption section. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Board.

[48 FR 9277, Mar. 4, 1983; 49 FR 22095, May 25, 1984, as amended at 49 FR 26745, June 29, 1984; 49 FR 27321, July 3, 1984; 64 FR 53267, Oct. 1, 1999; 69 FR 58365, Sept. 30, 2004]

§ 1039.11 Miscellaneous commodities exemptions.

(a) *Commodities exempted.* Except as indicated in paragraph (b) of this section, the rail transportation of the commodities listed below is exempt from the provisions of 49 U.S.C. subtitle IV. The Standard Transportation Commodity Code (STCC) numbers that identify the exempted commodities are those in effect on the effective date of the tariff cited, and shall embrace all commodities assigned additional digits.