2. Cape May Court House, pop. 2,062,[1] is the seat of Cape May County, pop. 59,554. It has no local broadcast services. Cape May County is served by 4 FM and 2 AM stations.[2] The county is a popular tourist resort area with many beaches along the Atlantic Ocean.

3. In its comments, petitioner has sought to justify the assignment of a Class B channel to Cape May Court House, a community which would normally qualify only for a Class A assignment. The *Notice* requested that *Roanoke Rapids* [9 F.C.C. 2d 672 (1967)] and *Anamosa* [46 F.C.C. 2d 520 (1974)] showings be submitted to demonstrate whether a Class B channel would provide a first or second FM or aural service, respectively. Such showings are generally required to support the assignment of a wide-coverage channel to a community which would ordinarily be assigned a Class A channel.[3] Our policy, as expressed in *Revision of FM Broadcast Rules*, 40 F.C.C. 747, 758 (1963), is to assign Class A channels to smaller communities and Class B channels to larger urban centers. Thus, the *Notice* alternatively proposed the assignment of either a Class A or a Class B channel to Cape May Court House depending upon petitioner's *Roanoke Rapids* and *Anamosa* showings.

4. January Enterprises, Inc., has commented on our *Notice* by stating that petitioner has not demonstrated that the Commission's normal assignment criteria should be abandoned in favor of a Class B assignment to a community with a population of 2,062. It argues that petitioner has not answered the question of why a Class A frequency would not provide adequate service to the area. In January's opinion, petitioner's proposal for a Class B channel is really an attempt to compete with Atlantic City stations and to enter other outlying markets, as opposed to serving Cape May County which already has three Class A channels and one Class B channel.

5. Petitioner admits, in response to our *Notice*, that *Roanoke Rapids* and *Anamosa* studies would reveal that no land area would receive a first or second service. Nevertheless, petitioner insists that its prior showings indicate that substantial benefit would derive from a Class B assignment to Cape May Court House. Previously, petitioner asserted that a Class B station would serve 314,000 persons during the "off-season" and 547,000 persons during the summer while substantially fewer persons would be served by a Class A channel. However, we note that since no presently unserved or underserved areas would be reached by the proposed Class B assignment, it would be inefficient to employ a Class B channel to serve such a small community. Rather, if related changes were made in area assignments, Channels 225 could be more efficiently utilized in larger urban areas of New Jersey. We conclude that Channel 225 should not be assigned to Cape May Court House.[4] Thus, it is not necessary to consider the proposed substitution of channels at Rehoboth Beach, Delaware.

6. While there are arguments which could favor the assignment of a Class A channel to Cape May Court House, we note that petitioner has stated that it would not be interested in constructing and operating on a Class A channel if it were assigned. In view of our policy to require that an interested party must indicate its willingness to proceed to utilize a channel as a prerequisite for making the assignment, it is clear that the Class A assignment must also be rejected as no such party has stepped forward.

7. Authority for the action taken herein is contained in Sections 4(i), 5(d)(1), 303, and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules.

8. Accordingly, IT IS ORDERED, That the Petition for Rule Making submitted on behalf of the Triplett Broadcasting Co. IS DENIED.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Adopted: October 14, 1975.

Released: October 17, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.75-28456 Filed 10-21-75;8:45 am]

[Docket No. 20208]

PART 73—RADIO BROADCAST SERVICES

Television Table of Assignments

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Manassas, Virginia), Docket No. 20208, RM-2344.

1. The Commission has under consideration its *notice of proposed rule making* adopted October 9, 1974, 39 Fed. Reg. 37510, inviting comments on a proposal to assign Channel 66 to Manassas, Virginia. This proceeding was instituted in response to a petition filed by National Capital Christian Broadcasting, Inc. ("NCCBI"). The petitioner and the Association of Maximum Service Telecasters, Inc. ("AMST"), were the only parties to file comments in response to the *Notice*. No reply comments were filed.

2. The comments of NCCBI support the proposed assignment and summarize many of the arguments contained in the original petition for rule making. AMST, while not opposing the requested assignment, does note that the Manassas reference point is short spaced to the co-channel, Fairmont, West Virginia, reference point. Because of this, AMST specifically requests the Commission to insure that any use of the channel would be at a site which would meet the mileage separation requirements. Since this is required by Section 73.610(a) of our rules, and it is our expectation that a site meeting the spacing would be utilized, there is no need to include in our action here any additional requirement.

3. Channel 66 is the last remaining assignment which can be made in this area of northern Virginia. Because the area is adjacent to the Washington, D.C., Urbanized Area it was necessary to determine whether the requested assignment was warranted in terms of the service it would provide to Manassas and vicinity rather than to the already well served Washington area. We were persuaded by NCCBI's showing. The industrial and residential sectors of the Manassas area have been growing and are expected to continue to do so and to produce a concomitant increase in the number of residents within the proposed service area. In fact, the county's population more than doubled between 1960 and 1970. Thus, the requested assignment offers the potential not only of becoming an outlet for local expression of this growing area but also represents the last opportunity of providing service suited to the particular needs of the people residing there. For these reasons, the Commission has concluded that the proposed assignment would benefit the public interest.

4. In view of the foregoing and pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, It is ordered, That effective November 28, 1975, the Television Table of Assignments contained in § 73.606(b) of the Commission's Rules and Regulations IS AMENDED with respect to the city listed below:

City	*Channel No.*
Manassas, Virginia	66+

5. It is further ordered, That this proceeding is TERMINATED.

Adopted: October 14, 1975.

Released: October 15, 1975.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.75-28453 Filed 10-21-75;8:45 am]

[1] All population figures are taken from the 1970 U.S. Census.

[2] Cape May County is presently served by FM Stations WCMC-FM (Channel 264), Wildwood, N.J.; WSLT-FM (Channel 292A), Ocean City, N.J.; WRIO-FM (Channel 272A), Cape May, N.J.; and WWOC(FM) (Channel 232A), Avalon, N.J. (construction permit issued). In addition, two AM stations presently serve the county: Stations WSLT(AM), Ocean City, and WCMC(AM), Wildwood. Relative to Cape May Court House, Avalon is 6.5 miles east-northeast; Ocean City, 20 miles northeast; Cape May, 12 miles southsouthwest, and Wildwood, 6.5 miles south.

[3] *See, e.g., Gregory, S.D., 45 F.C.C. 2d 471, 473 (1973); Jacksonville, N.C.*, 35 F.C.C. 2d 50 (1972); and *Bolivar, Mo.*, 3 F.C.C. 2d 671, 674 (1966).

[4] In view of the action taken herein, we need not consider the other arguments which have been made regarding the availability of a suitable site for a Class B station nor the possibility that the FAA may object to the construction of a 500 foot tower at the proposed transmitter site.

Title 49—Transportation

CHAPTER III—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. MC-68; Notice No. 75-16]

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Coiled Nylon Brake Tubing

● Purpose. This document amends the Federal Motor Carrier Safety Regulations to allow the use of coiled nylon brake tubing as hose on commercial semitrailers and full trailers. ●

Section 393.45(c) of the Federal Motor Carrier Safety Regulations (49 CFR 393.45(c)) is being amended to permit the use of coiled nylon brake tubing between the frame of a towed vehicle and an adjustable unsprung subframe of an adjustable axle of that towed vehicle. Motor carriers, operating motor vehicles in interstate or foreign commerce, will be permitted to use coiled nylon tubing that meets the requirements of Type 3B nylon tubing in SAE Standard J844C.

This rule change follows a notice of proposed rule making published in the Federal Register (40 FR 37045) on August 25. There were seven responses to the docket, four from trailer manufacturers, two from nylon tubing manufacturers, and one from a manufacturer of component parts for heavy duty vehicles. All but one commenter supported the proposed rule. Commenters supporting the proposal generally agreed that using coiled nylon brake tubing as prescribed in this document enhances highway safety by reducing the potential of air-brake hose failure.

The one objection to the proposal was based upon the fact that coiled nylon airbrake tubing results in a slightly slower air delivery in the airbrake system than when rubber airbrake hosing is used. However, the slower reaction times from brake application or brake release, when using the coiled nylon tubing, is measured in milliseconds, and are well within the National Highway Traffic Safety Administration requirements. See 49 CFR 571.121, 40 FR 38160 (August 27, 1975). Therefore, the difference is insignificant and there is no measurable compromise of safety in operation.

In consideration of the foregoing—and pursuant to section 204 of the Interstate Commerce Act, as amended (49 U.S.C. 304), section 6 of the Department of Transportation Act (49 U.S.C. 1655), and the delegations of authority by the Secretary of Transportation and the Federal Highway Administrator at 49 CFR 1.48 and 49 CFR 389.4, respectively—§ 393.45 (c) of the Federal Motor Carrier Safety Regulations is amended as stated below, effective April 1, 1976. However, compliance is authorized immediately.

Issued on October 15, 1975.

ROBERT A. KAYE,
Director,
Bureau of Motor Carrier Safety.

Section 393.45(c) introductory text is revised to read as follows:

§ 393.45 Brake tubing and hose adequacy.

* * * * *

(c) *Nylon brake tubing.* Coiled nylon brake tubing may be used for connections between towed and towing vehicles or between the frame of a towed vehicle and the unsprung subframe of an adjustable axle of that vehicle if—

* * * * *

[FR Doc.75-28390 Filed 10-21-75;8:45 am]

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 75-9; Notice 02]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Used Components in Manufacture of a Motor Vehicle

This notice amends 49 CFR 571.7, Applicability, by the addition of a new paragraph to specify the conditions under which a truck assembled by combining major new components with some used components will be considered used for the purpose of the motor vehicle safety standards, associated regulations, and the National Traffic and Motor Vehicle Safety Act.

The NHTSA proposed a modification of its existing interpretation of what constitutes the manufacture of a new motor vehicle when used components from an existing vehicle are involved (40 FR 19485, May 5, 1975). Up to this time, the NHTSA has considered that the addition of new components such as a truck body) to the chassis of a used vehicle does not constitute the manufacture of a new vehicle, but that the addition of used components to a new chassis which has never been certified in a vehicle constitutes the manufacture of a new vehicle, subject to the safety standards in effect for that vehicle class on the date of manufacture. This criterion has been relied on in the area of chassis-cab multistage manufacture.

Two truck manufacturers, the American Trucking Associations and the National Automobile Dealers Association, requested reconsideration of this criterion, because the high value of some components of a chassis make their reuse feasible although the entire chassis may not be reusable. They stressed the savings to an owner in combining a "glider kit" (typically a cab, frame rails, and front suspension) and the used power train of a wrecked or badly worn vehicle instead of purchasing a complete new vehicle from a truck manufacturer. Standard No. 121, *Air Brake Systems*, has heightened the importance of the question of what constitutes a new vehicle, since bringing vehicles with pre-121 axles into conformity with the standard appears to be economically impracticable.

The NHTSA proposed a statement of what constitutes manufacture of a vehicle in these cases which agreed with the suggestions of the two petitioning manufacturers, International Harvester and White Motor Corporation. The agency considered it important that the retention of a minimum number of valuable used components be required as a justification in each case, and that retention of the identity of the used vehicle, with respect to model year and identification number, be required as evidence that the reassembly is a bona fide salvage operation, to avoid creating any undue economic incentives for evasion of Standard No. 121.

Manufacturers and users supported the clarification that permits the continued use of glider kits in combination with pre-121 rear axles, but International Harvester, Mack, PACCAR, Transpac, and the State of California objected to the second criterion that vehicles be identified as the old vehicle. The comments indicate that requiring the identity of the old vehicle to continue in the rebuilt vehicle would have real and unintended disadvantages in the area of vehicle registration by the States. As proposed by the NHTSA, the registration would reflect a vehicle identification number that would not appear on the new vehicle frame or in the new vehicle cab, with resulting difficulty in verifying the true identity of the vehicle. The external identification on the cab would, in many cases, also disagree with the vehicle identification documents. The NHTSA agrees that State registration practices to avoid this confusion should be supported as long as the practice does not encourage the salvage of old vehicle components in order to avoid safety standards. Therefore, the NHTSA issues the provision in a form which includes only the requirement for at least two used drive train components.

Rockwell International cautioned the NHTSA against a decision that would encourage the reuse of unsafe components on the highway. The NHTSA always considers the possibility its regulations might encourage continued use of vehicles on the highway after they would normally be replaced. As in other cases the NHTSA will monitor the effect of its decision on glider kits to ensure that their use without requiring compliance with all applicable standards does not result in a pattern of conscious avoidance of Standard No. 121 or other standards. In the event the agency should discover evidence of such abuse, it will move decisively to appropriately revise the new statement of applicability.

Oshkosh Truck Corporation and Mack Trucks, Inc., both suggested that the scope of the proposal be modified to broaden its coverage. Oshkosh concluded that because a new cab was mentioned, the provision would prohibit the use of used cabs in vehicle assembly operations. Mack believed that the term "glider kits" would better describe the rebuilding operation being described?

The NHTSA would like to make clear to Oshkosh and others that the proposed paragraph (e) is not intended to regulate all truck rebuilding operations, but only those in which so many major new components are utilized (such as a glider

kit) that the vehicle is in many respects a newly-manufactured vehicle. This provision is intended to distinguish the legitimate rebuilding operation in which many new vehicle components are used from the typical assembly-line production of new vehicles. Oshkosh and other manufacturers may rebuild trucks with used components without falling under § 571.7(e).

In consideration of the foregoing, a new paragraph (e) is added to 49 CFR 571.7 to read as follows:

§ 571.7 Applicability.

* * * * *

(e) *Combining new and used components.* When a new cab is used in the assembly of a truck, the truck will be considered newly manufactured for purposes of paragraph (a) of this section, the application of the requirements of this chapter, and the Act, unless the engine, transmission, and drive axle(s) (as a minimum) of the assembled vehicle are not new, and at least two of these components were taken from the same vehicle.

Effective date: Because this amendment has the effect of relaxing a requirement for the compliance of vehicles to applicable motor vehicle safety standards, it is found for good cause shown that an immediate effective date is in the public interest.

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.51).

Issued on October 16, 1975.

GENE G. MANNELLA,
Acting Administrator.

[FR Doc.75-28417 Filed 10-17-75;10:22 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[No. 35220]

PART 1037—RULES FOR THE HANDLING OF BULK GRAIN AND GRAIN PRODUCTS IN INTERSTATE COMMERCE, AND THE FILING, INVESTIGATION, AND DISPOSITION OF CLAIMS FOR LOSS AND DAMAGE INCIDENT THERETO, WHICH SUPERSEDE THE RULES PRESCRIBED IN EX PARTE NO. 263, LOSS AND DAMAGE CLAIMS, 340 I.C.C. 515 (37 FR 20943)

PRACTICES AND POLICIES IN THE SETTLEMENT OF LOSS AND DAMAGE CLAIMS ON GRAIN AND GRAIN PRODUCTS

Order

At a Session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D.C., on the 16th day of October 1975.

Upon consideration of the record in the above-entitled proceeding, and,

It appearing, That the Commission convened a conference in this proceeding on July 15, 1975 (40 FR 28886) at which time interested parties were invited to and did express their views as to the workability of the grain and grain product loss and damage rules prescribed in our prior report and order (346 I.C.C. 33);

It further appearing, That inasmuch as repair or replacement of defective equipment is either not possible or not practical, the interested parties agree that the written complaint requirement can and should be eliminated by deleting the last two sentences of Paragraph 3 of § 1037.3, 49 CFR 1037.3(c);

It further appearing, That the designation of open-top lined box cars as defective equipment may aggravate car supply problems during peak demand periods and has not resulted in the closing of interior linings, and that the interested parties agree that cars with open-top interior linings should no longer be considered defective equipment, nor should the use of open-top lined equipment be the basis for denying loss and damage claims;

It further appearing, That, in the absence of a contrary agreement between carrier and shipper or consignee, the forwarding of weight certificates and related data to carriers, as required by paragraphs 3 and 4 of § 1037.1, 49 CFR 1037.1 (c) and (d), is necessary only where a loss and damage claim is filed, and that the interested parties agree that the present rules should be changed to qualify a shipper's or consignee's data-forwarding obligation to those instances in which a claim is filed;

It further appearing, That the railroads have stipulated that estimated weights, along with any other evidence of the amount of grain shipped, constitute an acceptable indication of the amount of grain shipped where a shipment is lost or destroyed in transit before it is weighed, and that our proscription of the use of estimated weights in the settlement of loss and damage claims does not preclude the use of estimated weights in instances where a shipment is lost or destroyed in transit prior to weighing;

And it further appearing, That the parties participating in this proceeding have reached a consensus as to the necessity of modifying the present rules and as to the desirability of the modifications set out herein and agreed to by the parties at the August 14, 1975, conference (40 FR 33503), and that no substantial opposition has arisen in response to the Commission's Notice of Proposed Rulemaking and Modification of Regulations (40 FR 42221);

Wherefore, and good cause appearing therefor:

We find, That to a limited extent the rules prescribed in our prior report and order of March 12, 1974, do not fully reflect the realities of rail operations and grain loading practices throughout the Nation, that therefore the modifications discussed herein are necessary, and that the revised rules appended hereto should be prescribed for the handling of bulk grain and grain products in interstate commerce, and for the filing, investigation, and disposition of claims for loss and damage incident thereto; and,

It is ordered, That Part 1037, Subchapter A, Chapter X, Subtitle B, Title 49 of the Code of Federal Regulations be, and it is hereby, revised as follows:

1. Delete Paragraph 3 of Section 1037.1 (49 CFR 1037.1(c)), and in lieu thereof add,

3. 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.

2. Delete Paragraph 4 of Section 1037.1 (49 CFR 1037.1(d)), and in lieu thereof add,

4. Destination weights—Where the consignee weighs a shipment of grain or grain products and a claim for loss and damage is subsequently filed on that 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.

3. In Paragraph 1 of Section 1037.2 (49 CFR 1037.2(a)), delete the words "open-top interior linings or" appearing in line 3 of that paragraph.

4. Establish a new provision, Paragraph 3 of Section 1037.2 reading,

3. Cars with open-top linings tendered by the railroads may be used by the shipper without jeopardizing any subsequent claim which may be filed.

5. In Paragraph 3 of Section 1037.3 (49 CFR 1037.3(c)), delete the last two sentences of that paragraph so that the provision will read,

3. 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 railroads 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.

It is further ordered, That the revisions prescribed herein be, and they are hereby prescribed to become effective on the date of service of this order, and that the revised rules will apply for the handling of bulk grain and grain products and for the filing, investigation, and disposition of loss and damage claims for grain or grain products shipped on or after the said effective date;[1]

[1] Petitions for clarification relating to the effective date of the increased weight tolerance are pending and will be disposed of by separate order.

It is further ordered, That public notice of the disposition of the above-enumerated matters shall be given by depositing a copy of this order in the office of the Secretary of the Interstate Commerce Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

By the Commission, Division 2.

[SEAL] ROBERT L. OSWALD, *Secretary.*

§ 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 3 of Section 1037.3.

§ 1037.2 Cars.

(a) A car is not in suitable condition for the transportation of bulk grain and grain products when it is defective and a car is defective, among other reasons, when it has deteriorated doorposts to which grain doors cannot be securely attached by the use of retention straps.

(b) The rules prescribed in this part 1037, apply on shipments of bulk grain and grain products transported solely in railroad-owned and railroad-leased cars.

(c) Cars with open-top linings tendered by the railroads may be used by the shipper without jeopardizing any subsequent claim which may be filed.

§ 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 1 of this Section 1037.3; provided, however, that the clear record of either the carriers' 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 5 of section 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.

[FR Doc.75-28489 Filed 10-21-75;8:45 am]