

the merchandise shall be made on Customs Form 4647, Notice of Redelivery, or other appropriate form or by letter. A copy of the demand with the date of mailing or delivery noted thereon, shall be retained by the port director and made part of the in-bond entry record. Entry of the merchandise may be accepted if the merchandise can be recovered intact without any of the packages having been opened. In such cases, any shortage from the invoice quantity shall be presumed to have occurred while the merchandise was in the possession of the bonded carrier.

(c) If the merchandise cannot be recovered intact, as specified above, entry shall be accepted in accordance with §141.4 of this chapter for the full manifested quantity unless a lesser amount is otherwise permitted in accordance with subpart A of part 158. Except as provided in paragraph (d) of this section, if the merchandise is not returned to Customs custody within 30 days of the date of mailing or date of delivery of the demand for redelivery, there shall be sent to the initial bonded carrier a demand for liquidated damages on Customs Form 5955-A, in the case of nondelivery of an entire shipment or on Customs Form 5931, in the case of a partial shortage.

(d) If merchandise covered by a carnet cannot be recovered intact, as specified in paragraph (b) of this section, entry shall not be accepted; there shall be sent to the appropriate guaranteeing association a demand for liquidated damages, duties, and taxes as prescribed in §18.8(e); and, if appropriate, there shall also be sent to the initial bonded carrier a demand for any excess, as provided in §114.22(d) of this chapter. Demands shall be made on the forms specified in paragraph (c) of this section.

(e) An allowance in duty on merchandise reported short at destination, including merchandise found by the appraising officer to be damaged and worthless, and animals and birds found by the discharging officer to be dead on arrival at destination, shall be made in the liquidation of the entry.

(f) In the case of shipments arriving in the United States by rail or seatrian which are forwarded under Customs in-bond seals under the provisions of sub-

part D of part 123 of this chapter, and §18.11, or §18.20, a notation shall be made by the carrier or shipper on the in-bond manifest, Customs Form 7512, to show whether the shipment was transferred to the car designated in the manifest or whether it was laden in the car in the foreign country, which shall be named.

[T.D. 71-70, 36 FR 4487, Mar. 6, 1971, as amended by T.D. 82-116, 47 FR 27261, June 24, 1982; T.D. 82-158, 47 FR 37881, Aug. 27, 1982; T.D. 84-213, 49 FR 41168, Oct. 19, 1984; T.D. 85-180, 50 FR 42517, Oct. 21, 1985; T.D. 97-82, 62 FR 51770, Oct. 3, 1997]

**§18.7 Lading for exportation, verification of.**

(a) Promptly, but no more than 2 working days, after arrival of any portion of the in-bond shipment at the port of exportation, the delivering carrier shall surrender the in-bond manifest (the in-bond document and related Customs Form 7512-C (destination) or the carnet) to the port director as notice of arrival of the merchandise. If the in-bond manifest is lost in transit, the in-bond carrier shall report the arrival of the merchandise within the prescribed period and shall be responsible for obtaining copies of the original in-bond manifest. Failure to surrender the in-bond manifest or report the arrival of bonded merchandise within the prescribed period shall constitute an irregular delivery and the initial bonded carrier shall be subject to applicable penalties (see §18.8).

(b) The port director shall require only such supervision of the lading for exportation of merchandise covered by an entry or withdrawal for exportation or for transportation and exportation as is reasonably necessary to satisfy him that the merchandise has been laden on the exporting conveyance.

(c) Whenever the circumstances warrant, and occasionally in any event, port directors shall request the Office of Enforcement to check export entries and withdrawals against the records of the exporting carriers. Such check or verification shall include an examination of the carrier's records of claims and settlement of export freight charges and any other records which may relate to the transaction. The exporting carrier shall maintain these

records for 5 years from the date of exportation of the merchandise.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 79-159, 44 FR 31967, June 4, 1979; T.D. 84-212, 49 FR 39047, Oct. 3, 1984; T.D. 91-77, 56 FR 46114, Sept. 10, 1991]

**§18.8 Liability for shortage, irregular delivery, or nondelivery; penalties.**

(a) The initial bonded carrier shall be responsible for shortage, irregular delivery, or nondelivery at the port of destination or exportation of bonded merchandise received by it for carriage. An acceptable proof of proper delivery of bonded merchandise to Customs at the port of destination or exportation is a properly receipted copy of the in-bond document (the appropriate Customs Form 7512 or 7520, or the carnet). When sealing is waived, any loss found to exist at the port of destination or exportation shall be presumed to have occurred while the merchandise was in the possession of the carrier, unless conclusive evidence to the contrary is produced.

(b) Carriers shall be liable for payment of liquidated damages under the carriers bond for any shortage, failure to deliver, or irregular delivery, as provided in such bond.

(c) In addition to the penalties described in paragraph (b) of this section, the carrier shall pay any internal-revenue taxes, duties, or other taxes accruing to the United States on the missing merchandise, together with all costs, charges, and expenses caused by the failure to make the required transportation, report, and delivery.

(d) In any case in which liquidated damages imposed in accordance with this section do not aggregate over \$100,000 and the Fines, Penalties, and Forfeitures Officer is satisfied by evidence submitted to him with an application for relief from the payment thereof filed as provided in part 172 of this chapter that any shortage, irregular delivery, nondelivery, or any failure to obtain Customs supervision was without any intent to evade any law or regulation, the Fines, Penalties, and Forfeiture Officer may cancel such claim upon the payment of any lesser amount or without the payment of any amount, as he may deem appropriate

under the law and in view of the circumstances.

(e)(1) The domestic guaranteeing association shall be jointly and severally liable with the initial bonded carrier for duties and taxes accruing to the U.S., and any other charges imposed, in lieu thereof, as the result of any shortage, irregular delivery, or nondelivery at the port of destination or port of exit of merchandise covered by a TIR carnet. The liability of the domestic guaranteeing association is limited to \$50,000 per TIR carnet for duties, taxes, and sums collected in lieu thereof. Penalties imposed as liquidated damages on the initial bonded carrier, and sums assessed the guaranteeing association in lieu of duties and taxes for any shortage, irregular delivery, or nondelivery shall be in accordance with this section. If a TIR carnet has not been discharged or has been discharged subject to a reservation, the guaranteeing association shall be notified within 1 year of the date upon which the carnet is taken on charge, including time for receipt of the notification, except that if the discharge shall have been obtained improperly or fraudulently the period shall be 2 years. However, in cases which become the subject of legal proceedings during the above-mentioned period, no claim for payment shall be made more than 1 year after the date when the decision of the court becomes enforceable.

(2) Within 3 months from the date demand for payment is made by the port director as provided by §18.6(d), the guaranteeing association shall pay the amount claimed, except that if the amount claimed exceeds the liability of the guaranteeing association under the carnet (see §114.22(d) of this chapter), the carrier shall pay the excess. The amount paid shall be refunded if, within a period of 1 year from the date on which the claim for payment was made, it is established to the satisfaction of the Commissioner of Customs that no irregularity occurred. The Fines, Penalties, and Forfeitures Officer may cancel liquidated damages assessed against the guaranteeing association to the extent authorized by paragraph (d) of this section.

(3) The domestic guaranteeing association shall be jointly and severally