

time for inspecting concealed loss or damage.

[51 FR 24342, July 3, 1986; 51 FR 27539, Aug. 2, 1986, as amended at 52 FR 21034, June 4, 1987]

**§ 101-40.704 Disposition of damaged property.**

**§ 101-40.704-1 Transportation for account of the Government.**

(a) *Repair and utilization.* Where damaged property can be repaired economically and satisfactorily, arrangements shall be made by the Government agency paying the transportation charges, or its authorized representative, to have the repairs effected and to claim against the carrier for the costs thereof. Alternatively, the carrier may be allowed to perform the repairs or make the necessary arrangements therefor, subject to inspection and acceptance by Government agency inspectors or other designated representatives. However, in no case shall property subject to security regulations be released to the carrier or to any unauthorized personnel for repair.

(b) *Allowance for damage.* When the agency finds it not desirable or feasible to make repairs immediately, and the carrier does not make repairs, the amount of damage or the cost of making repairs in the future may be determined by appropriate means (e.g., by mutual agreement of representatives of the carrier and the Government or by estimates obtained from qualified and disinterested parties).

(c) *Rejection.* (1) Property may be rejected to the carrier and claim made for its full value only when it has been damaged to the extent that it has no salvage value or it is not economically repairable; that is, the cost of repairs would exceed the appraised value of the repaired item (see exception in paragraph (c)(3) of this section).

(2) When it is determined that property has been damaged to the extent that it has no salvage value or is not economically repairable, and that it can be abandoned, the carrier shall be notified promptly of the location of the rejected property and shall be requested to make appropriate disposition of it.

(i) If the carrier refuses to accept the rejected property, the agency shall re-

quest, in writing, that the carrier furnish a written statement of the reason for refusing the property. Upon receipt of the written refusal, the agency shall take appropriate action to dispose of the rejected property; or

(ii) If the carrier fails to make appropriate disposition of the rejected property within a reasonable length of time, the agency shall notify the carrier, in writing, that the property will be disposed of by the agency without further delay.

(3) Property which is designated Top Secret, Secret, or Confidential, or property which, for any reason, cannot be abandoned in the best interests of the Government, shall not be rejected to the carrier, regardless of the extent of damage.

[32 FR 8965, June 23, 1967, as amended at 51 FR 24342, July 3, 1986]

**§ 101-40.704-2 Transportation for account of the supplier.**

When the transportation is performed by the carrier for the supplier rather than for the Government (e.g., when property is purchased f.o.b. destination), accurate notations of discrepancies shall be made on the carrier's delivery receipt and the consignee's copy of the carrier's delivery receipt or freight bill to assist the supplier in filing claims for transportation losses. The carrier's driver or representative shall be requested to sign the notations of discrepancies. Prompt notification on SF 361 shall be furnished to the supplier or to the agency contracting officer as individual agency regulations may provide. The notification shall include supporting documents; i.e., a copy of the annotated delivery receipt, photos, carrier's inspection report, or written waiver. (See Discrepancies or Deficiencies in GSA or DOD Shipments, Material, or Billings (FPMR 101-26.8) with regard to damage to stock or nonstock items procured from GSA for direct delivery.)

[51 FR 24342, July 3, 1986]

**§ 101-40.705 Disposition of overages and astray or misconsigned shipments.**

(a) When the number of packages offered for delivery is more than that shown on the applicable bill of lading

or other transportation document and when all packages are marked for the consignee, the overages shall be accepted. The consignee shall attempt to reconcile overages and astray freight with corresponding shortages associated with other shipments received at that activity.

(b) If excess freight on one bill of lading is identical with a reported shortage on another bill of lading, the excess or overage shall be used to offset the reported shortage. If excess freight cannot be identified or used to offset other shortages within 7 calendar days after the date of discovery, the consignee shall use SF 361 to request disposition instructions from the consignor or shipper and shall convey these instructions to the delivering carrier.

(c) If a carrier attempts to deliver a shipment containing packages which are marked for another consignee or which cannot otherwise be identified, the misdirected or astray packages shall not be accepted.

[42 FR 25860, May 20, 1977, as amended at 51 24342, July 3, 1986]

**§ 101-40.706 [Reserved]**

**§ 101-40.707 Determining liability for discrepancies.**

**§ 101-40.707-1 Transportation for account of the supplier.**

When the transportation is performed by the carrier for the supplier rather than for the Government (e.g., when the property is purchased f.o.b. destination), determination of liability for discrepancies in shipment will be resolved between the carrier and the supplier. However, in such instances the Government receiving activity shall make accurate notations of discrepancies on the carrier's delivery receipt or freight bill, and shall use SF 361 to furnish a report of the discrepancies to the supplier, or to the agency contracting officer as individual agency regulations may provide, to assist the supplier in resolving the discrepancies. The report shall include supporting documents; i.e., a copy of the annotated delivery receipt, photos, inspection report, or written waiver.

[51 FR 24342, July 3, 1986]

**§ 101-40.707-2 Transportation for account of the Government.**

Determination of liability for discrepancies shall be the responsibility of the Government agency paying the transportation charges (a) in all instances where a shipment is made on a Government bill of lading, commercial bill of lading to be converted to a Government bill of lading, commercial bill of lading bearing a notation that charges will be borne by the U.S. Government, commercial bill of lading under commercial forms and procedures for small shipments (see § 101-41.304-2), or purchase order for local drayage, and (b) in other instances where the Government assumes the risk for loss and damage at origin; e.g., when property is purchased f.o.b. origin, freight prepaid. While no precise formula can be prescribed for agencies to follow in determining whether liability for loss and damage rests with the carrier, the shipper, or a third party, an analysis shall be made of all the pertinent factors and circumstances involved, including, when appropriate, consideration of the following:

(1) Type and adequacy of the packing and packaging.

(2) Adequacy of marking, including precautionary markings for fragile or dangerous cargo.

(3) Condition of the package, including any indications of rough handling or pilferage.

(4) In case of load lots:

(i) Condition of the vehicle, whether dirty, contaminated, unsafe, structurally defective, appropriate type, etc.;

(ii) Identification and condition of seals on conveyances and by whom applied;

(iii) Manner of loading, stowing, blocking, and bracing; and

(iv) Determination as to whether loading was performed by shipper or carrier.

(5) Tally records and how compiled.

(6) Photographic evidence.

(7) Expert or professional appraisals.

[32 FR 8965, June 23, 1967, as amended at 42 FR 25861, May 20, 1977]