

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 proce-

dures 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]

§ 101-40.708 [Reserved]

§ 101-40.709 Time limitations for filing claims.

Government agencies shall take prompt action to recover amounts due the United States as a result of discrepancies in delivery, in accordance with time limitations established by the bill of lading or other contracts of carriage, or by statute. The following are examples of such time limitations:

(a) *Domestic shipments.* (1) Claims for loss or damage to shipments transported by carriers subject to the Revised Interstate Commerce Act (49

U.S.C. 10101, *et seq.*, Pub. L. 95-473, October 17, 1978, as amended) shall be filed within the specified limits required by law, the terms of the bill of lading or other contract of carriage, and all tariff provisions applicable thereto. Pursuant to 49 U.S.C. 11707(e), bills of lading normally issued by rail and motor carriers specify that written claim be made upon the carrier within 9 months after delivery of property damaged or within 9 months following the time when delivery of property should have been made, and that suit shall be instituted within 2 years from the date the carrier or its agent notifies the claimant in writing that the specified claim is disallowed in whole or in part. Neither limitation is applicable to shipments made on Government bills of lading, or commercial bills of lading to be converted to Government bills of lading, or commercial bills of lading subject to the terms of the Government bill of lading. (See § 101-41.302-3(g) for exemption authority.)

(2) Claims for loss or damage to shipments moving by domestic air carriers shall be filed within the limits prescribed on individual carrier's air waybills.

(b) *Ocean shipments.* The Carriage of Goods by Sea Act (46 U.S.C. 1303(6), as amended) imposes a 1-year limitation for bringing court action against ocean carriers for loss or damage.

(c) *International air shipments.* Complaints of loss or damage shall be submitted in writing to the international air carrier within the following time limits set by Article 26 of the Warsaw Convention (49 Stat. 3020, as amended):

(1) Claims for visible damage to goods must be filed as soon as possible following discovery of the damage but within 14 days from receipt of the goods;

(2) Claims for other damage to goods must be filed within 14 days from the receipt of goods;

(3) Claims for nondelivery of goods must be filed within 120 days from the date of the issue of the air waybill; and

(4) A 2-year limitation is imposed by Article 29 of the Warsaw Convention (49 Stat. 3021) for bringing court action against the carrier for loss or damage to international air shipments.

(d) *International air shipments.* A 2-year limitation is imposed by Article 29 of the Warsaw Convention (49 Stat. 3000) for bringing court actions against air carriers for loss or damage to international air shipments.

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

§ 101-40.710 Processing claims against carriers.

(a) When the transportation is for the account of the Government (see § 101-40.707-2) and when it is determined that the carrier is responsible for loss or damage to a shipment (other than household goods), a claim shall be prepared on Standard Form 362, U.S. Government Freight Loss/Damage Claim, and forwarded in duplicate to the appropriate carrier with the necessary supporting documents; e.g., delivery receipts, photographs, inspection reports, except as otherwise provided in § 101-40.711. (See 49 CFR parts 1005 and 1056 for additional regulations concerning processing of claims against carriers subject to the Revised Interstate Commerce Act.) Standard Form 362 (see § 101-40.4901) is approved by the Office of Management and Budget under OMB control number 3090-0113.

(b) Claims for loss and damage to household goods shipments moving on a GBL shall be prepared on claim forms furnished by the carriers.

(c) The appropriate carrier against which the claim shall be filed is—

(1) Usually the destination line-haul carrier (not the drayage company or switching carrier performing the delivery service for the destination line-haul carrier) in instances of domestic freight shipments made on Standard Form 1103 or a commercial bill of lading converted to a Government bill of lading or subject to the terms and conditions of the Government bill of lading;

(2) The household goods carrier specified on Standard Form 1203; or

(3) Usually the origin carrier on ocean or international air shipments.

When it is conclusively known on which carrier's line the loss or damage occurred, the claim may be filed against that carrier. When no part of the shipment has been delivered, the claim would normally be filed against