

§ 102.21(e)(i), must be determined by application of § 102.21(e)(2)(iii).

For example, if a man-made fiber scarf of HTSUS subheading 6117.10 consisted of two or more component parts and all of the fabric from which the component parts were formed was dyed and printed and finished as specified in § 102.21(e)(2)(i), the origin of the scarf would be ascertained under § 102.21(e)(2)(i); that is, it would be the country in which the fabric was dyed and printed and finished. However, if the fabric of the scarf was only dyed and finished, then § 102.21(e)(2)(i) would not apply and origin would be determined pursuant to § 102.21(e)(2)(iii).

In order to clarify the application of the rules set forth in § 102.21(e)(2), Customs is amending § 102.21(e)(2)(iii) as set forth in T.D. 01-36 to provide that § 102.21(e)(2)(iii) should be applied if the country of origin cannot be determined under § 102.21(e)(2)(i).

Non-substantive editorial changes are also made to paragraph (e)(2)(ii), and the introductory text to paragraph (e)(2)(iii) of the interim rule, whereby the references to "(i) above" in both paragraphs are replaced by the more specific cite to "paragraph (e)(2)(i) of this section."

It has also come to Customs attention that there may be some confusion as to whether certain finishing operations qualify under § 102.21(e)(2)(i) for purposes of determining the country of origin of certain goods. The finishing operations listed in § 102.21(e)(2)(i) are listed in section 405(a)(3) of the Act and Customs has no authority to deviate from this list to allow other processes to effect an origin determination. However, Customs does recognize that different terms may be used in the textile industry to refer to the same process. Accordingly, Customs will entertain arguments through the rulings procedure as to whether finishing processes referred to by different terms are identical to the named processes.

Conclusion

In accordance with the discussion set forth above, Customs has determined to adopt as a final rule the interim rule published in the **Federal Register** (66 FR 21660) on May 1, 2001, as T.D. 01-36, with the correction published in the **Federal Register** (66 FR 23981) on May 10, 2001, and the interim rule published in the **Federal Register** (67 FR 51751) on August 9, 2002, as T.D. 02-47.

Inapplicability of Delayed Effective Date

These regulations serve to align the Customs Regulations with the statutory

amendments to section 334 of the URAA, as set forth in section 405 within title IV of the Act, which went into effect May 18, 2000, and with the 2002 Harmonized Tariff Schedule of the United States. The regulatory amendments inform the public of changes to the processing operations deemed necessary to confer country of origin status to certain textile fabrics or made-up articles by way of amendment to the tariff shift rules applicable to select textile goods. For these reasons, Customs has determined, pursuant to the provisions of 5 U.S.C. 553(d)(3), that there is good cause for dispensing with a delayed effective date.

The Regulatory Flexibility Act and Executive Order 12866

Because these amendments serve to conform the Customs Regulations to reflect statutory amendments, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that these amendments will not have a significant impact on a substantial number of small entities. Further, these amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Ms. Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 102

Customs duties and inspection, Imports, Rules of Origin, Trade agreements.

Amendment to the Regulations

For the reasons stated above, the interim rule amending § 102.21 of the Customs Regulations (19 CFR 102.21) which was published at 66 FR 21660—21664 on May 1, 2001, and corrected at 66 FR 23981 on May 10, 2001, and the interim rule which was published at 67 FR 51751—51752 on August 9, 2002, are adopted as a final rule with the changes set forth below.

PART 102—RULES OF ORIGIN

1. The authority citation for part 102 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

2. In § 102.21, paragraph (e)(2)(ii) and the introductory text to paragraph (e)(2)(iii) are revised to read as follows:

§ 102.21 Textile and apparel products.

* * * * *
(e) *Specific rules by tariff classification.* * * *
(2) * * *

(ii) If the country of origin cannot be determined under paragraph (e)(2)(i) of this section, except for goods of HTSUS subheading 6117.10 that are knit to shape or consist of two or more component parts, the country of origin is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process; or

(iii) For goods of HTSUS subheading 6117.10 that are knit to shape or consist of two or more component parts, if the country of origin cannot be determined under paragraph (e)(2)(i) of this section:

* * * * *

Robert C. Bonner,
Commissioner of Customs.

Approved: February 19, 2003.

Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.
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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141 and 142

[T.D. 03-09]

RIN 1515-AC91

Single Entry for Split Shipments

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to allow an importer of record, under certain conditions, to submit a single entry to cover a single shipment which was split by the carrier into multiple portions which arrive in the United States separately. These amendments implement statutory changes made to the merchandise entry laws by the Tariff Suspension and Trade Act of 2000.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: *For operational or policy matters:* Robert Watt, Office of Field Operations, (202) 927-0279.

For legal matters: Gina Grier, Office of Regulations and Rulings, (202) 572-8730.

SUPPLEMENTARY INFORMATION:

Background

Section 1460 of Public Law 106-476, popularly known as the Tariff Suspension and Trade Act of 2000, amended section 484 of the Tariff Act of 1930 (19 U.S.C. 1484) by adding a new paragraph (j) in order to provide for the treatment of certain multiple shipments of merchandise as a single entry.

The new paragraph (j) involves two scenarios. First, section 1484(j)(1) addresses a problem long encountered by the importing community in entering merchandise whose size or nature necessitates that the merchandise be shipped in an unassembled or disassembled condition on more than one conveyance. Second, section 1484(j)(2) offers relief to importers whose shipments which they intended to be carried on a single conveyance are divided at the initiative of the carrier. As to both these matters, the legislation is silent as to the affected modes of transportation, thus indicating that the new law is to apply to merchandise shipped by air, land or sea.

By a document published in the **Federal Register** (66 FR 57688) on November 16, 2001, Customs proposed regulations to implement 19 U.S.C. 1484(j)(2) relating to shipments which are divided by carriers; these shipments are referred to as "split shipments". These final regulations today concern such split shipments.

It is noted that by a separate document published in the **Federal Register** (67 FR 16664) on April 8, 2002, Customs proposed regulations to implement 19 U.S.C. 1484(j)(1) concerning the entry of shipments of unassembled or disassembled entities that arrive on more than one conveyance. This latter proposed rule will be the subject of a final rule document that should be published in the **Federal Register** in the near future.

Split Shipment Defined

Generally speaking, a split shipment consists of merchandise that is capable of being transported on a single conveyance, and that is delivered to and accepted by a carrier in the exporting country as one shipment under one bill of lading or waybill, and is thus intended by the importer to arrive as a single shipment. However, the shipment is thereafter divided by the carrier into different parts which arrive in the United States at different times, often days apart.

In practice, shipments often become split after being delivered intact to a carrier. The movement of cargo as a split shipment on multiple conveyances appears to be a regular and routine

industry practice when shipped by air. There are various reasons for a shipment to be split by a carrier, such as limited space, the need to balance weight distribution on a conveyance, and offloading for safety concerns.

The Customs Regulations ordinarily require, with certain exceptions not here relevant, that all merchandise arriving on one conveyance and consigned to one consignee be included on one entry (see § 141.51, Customs Regulations (19 CFR 141.51)). While today's final regulations permit the acceptance of a single entry in the case of such a split shipment, importers may, of course, continue to file a separate entry for each portion of a split shipment as it arrives, if they so choose.

Filing of Single Entry for Split Shipment Under Proposed Rule

In principal part, the November 16, 2001, **Federal Register** document proposed to permit the filing of a single entry to cover a split shipment provided that: (1) The subject shipment was capable of being transported on a single conveyance, and was delivered to and accepted by a carrier in the exporting country under one bill of lading or waybill and was thus intended by the importer to be a single shipment; (2) the shipment was thereafter split or deconsolidated by the carrier, acting on its own; (3) the split-portions of the shipment remain consigned to the same party in the United States to whom they were destined in the original bill of lading or waybill; and (4) those portions of the split shipment that could be covered under the entry arrived directly from abroad at the same port of importation in the United States within 10 calendar days of the date of the portion that arrived first.

Specifically, to implement 19 U.S.C. 1484(j)(2) under which an importer could make a single entry for a split shipment, it was proposed to add a new § 141.57 to the Customs Regulations (19 CFR 141.57), in addition to making certain amendments to § 142.21 of the Customs Regulations (19 CFR 142.21). Also, a minor conforming change was to be made as well to § 141.51 of the Customs Regulations (19 CFR 141.51).

By a document published in the **Federal Register** (67 FR 3135) on January 23, 2002, the period of time within which public comments could be submitted in response to the proposed rule was re-opened until February 14, 2002.

Discussion of Comments

A total of twenty-two commenters responded to the notice of proposed rulemaking. A description of the issues

raised by these commenters, together with Customs response to these issues is set forth below.

General Comments on the Proposed Rule

Comment: It is improper for Customs to propose regulations for split shipments and for unassembled and disassembled entities in two separate regulation packages.

Customs Response: Although 19 U.S.C. 1484(j)(1) and (j)(2) allow for the filing of a single entry for shipments which arrive at different times, sections 1484(j)(1) and 1484(j)(2) ultimately address two very different situations. As a result, and to minimize confusion between the two provisions, Customs decided to address each provision in separate rulemakings.

Comment: The proposed regulations providing for a single entry for shipments split by the carrier do not reflect an agreement that Customs reached prior to the enactment of 19 U.S.C. 1484(j)(2) on the manner in which such split shipments would be regulated.

Customs Response: The legislation supersedes any informal agreements that Customs and the trade may have made prior to its enactment. In the proposed rule, Customs endeavored to reflect the intent of Congress in enacting 19 U.S.C. 1484(j)(2). Customs thoroughly reviewed the comments that were received in response to the proposed rule and, in this final rule, has made a number of changes to the regulations as initially proposed for split shipments.

Comment: The split shipment procedures followed by Customs at Los Angeles International Airport and at John F. Kennedy Airport in New York are preferable to those reflected in the proposed rule.

Customs Response: Customs reviewed the split shipment procedures at these airports. In developing the proposed regulations, Customs included the most operationally feasible features of the procedures for handling split shipments at those locations.

Comment: It was asked whether entries of split shipments may be processed through the Pre-Arrival Processing System (PAPS). The PAPS system allows electronic entries to be submitted prior to the time a truck arrives at the United States border.

Customs Response: Customs plans to issue a Federal Register notice on PAPS shortly and will address this comment then.

Comment: It is contended that, by allowing for a single entry for merchandise arriving on separate

conveyances at different times, 19 U.S.C. 1484(j) will enable the circumvention of laws restricting the importation of softwood lumber.

Customs Response: Customs does not believe that 19 U.S.C. 1484(j)(2) will have an adverse impact on United States lumber interests; section 1484(j)(2) merely allows an importer to file one entry to cover a single shipment which is split by the carrier and which arrives in the United States separately.

Comment: The proposed rule will interfere with the Government's collection of waterborne commerce statistics, because the ability to match arriving commodities with the actual transporting vessel will be compromised. For this reason, it is recommended that vessel shipments be eliminated from the proposed rule.

Customs Response: This comment appears to address the fact that statistical information is collected on the CF 7501 entry summary, which currently can accommodate data pertaining to only one conveyance. Customs will endeavor to design future information collection systems which capture more comprehensive data. As 19 U.S.C. 1484(j)(2) is silent as to the modes of transportation involved, Customs concluded that the legislation implicitly intended to include within its scope all modes of transportation. Thus, vessel shipments may not be excluded from the split shipment rulemaking. However, Customs anticipates that split shipments should occur infrequently in the vessel environment, because it is unlikely that oceangoing carriers, most of which have large cargo capacities, will need to split shipments due to space, weight or other logistical concerns.

Comment: The proposed split shipments program may compromise the quality of statistics, particularly with respect to freight charges, which will be obtained from Customs Form (CF) 7501. As such, Customs should develop a means of collecting multiple carrier information under ACE (Automated Commercial Environment). Furthermore, in this same vein, it is remarked that numerous, albeit unidentified, issues relating to automation exist in connection with split shipments that warrant further discussion prior to implementation of final regulations concerning such shipments.

Customs Response: Customs is aware of the concerns relating to the collection of statistics under the ACE and will address these issues in developing and refining the ACE system. In this regard, however, the collection of statistics under the ACE system as well as any

issues related to automation fall outside the scope of this rulemaking.

Comment: Customs should utilize a new type of entry for handling split shipments. It is recommended in this context that the importer enter the entire value of the shipment when the first portion arrives, and then flag the entry for reconciliation following the arrival of all portions of the shipment that are covered under the entry.

Customs Response: Customs disagrees. The introduction of a new type of entry to handle split shipments is unnecessary for the successful implementation of the split shipment program. Resort to the reconciliation method for processing split shipments would defeat the purpose of the legislation, which is to allow the filing of a single entry for a shipment whose portions arrive separately. Under the suggested reconciliation approach, a minimum of two entries would have to be filed—a consumption entry and a reconciliation entry. Of course, importers who file single entries for shipments which have been split may flag those entries for reconciliation if the entries have unresolved issues of the kind which are entitled to be resolved under the established entry reconciliation program.

Comment: Customs should adopt an alternative procedure under which it would grant blanket permission to importers to file the entry summary for an air split shipment in its entirety at the time of the arrival of the first portion; then allow incremental release for that portion and all portions that thereafter arrive; followed by the submission of a final accounting or report by the importer. Any total quantity variances would be reported through standard reconciliation procedures.

Customs Response: Customs lacks the operational ability at the present time to implement the type of procedure described. Also, as indicated in the response to the previous comment, Customs disagrees with the general use of the reconciliation procedure as a method for processing split shipments.

Comment: Customs should eliminate the three-year restriction on the reuse of air waybill numbers and should allow the unique identifier for the bill of lading to be composed of six elements rather than two. Also, Customs should allow the air waybill number to be used as the in-bond control record for each arrival of a shipment.

Customs Response: These suggestions are outside the scope of this rulemaking. However, it is noted that Customs in a recently published rulemaking amended

its regulations to allow air waybill numbers to be reused after one year.

Comment: It is asked whether Customs will post the release of each part of a split shipment in the Air Automated Manifest System (AMS).

Customs Response: To enable Customs to post release information for each part of a split shipment, the entry filer will need to inform the appropriate Customs personnel where the entry is filed in order for such personnel to make the necessary corrections and manually enter the relevant information for each arrival in the Air AMS. Customs Office of Information and Technology (OIT) intends to implement programming changes so that release information may be posted in the AMS system automatically.

Comment: A question is posed as to how split shipments would be processed if they require inspection by the U.S. Department of Agriculture (USDA).

Customs Response: Split shipments requiring inspection by other Government agencies will be processed in the same manner as regular (non-split) shipments that require such inspection.

Comment: The proposed split shipment regulations should provide for the amendment of certificates of origin that are used in preferential trade programs so as to eliminate the need to obtain revised certificates from the importer or producer covering each portion of a split shipment that arrives.

Customs Response: Customs does not believe this is necessary. Most certificates of origin are blanket certificates, designed to cover merchandise appearing on many entries. When a certificate of origin covering a single entry pertains to merchandise in a shipment which is split, and separate entries covering different portions of the shipment are filed (either by choice or because a portion of the shipment arrives too late to be covered under the split-shipment entry), copies of the certificate may be made to apply to any additional entries.

General Rule—Amendment of § 141.51

Comment: Given that importers prefer filing a single entry when a split shipment occurs, § 141.51 should be revised to treat separate entries in such circumstances as the exception rather than the rule.

Customs Response: Customs disagrees. Allowing an importer to file one entry for shipments which arrive at different times is an exception to the longstanding general rule that all merchandise consigned to one consignee which arrives on one vessel,

aircraft or vehicle must be included in one entry. The exception carved out for split shipments is simply one of several exceptions to this general rule, and applies only to a limited number of entries. The general rule itself has not been changed as the result of the enactment of 19 U.S.C. 1484(j).

Definition of Split Shipment—Proposed § 141.57(b)

Comment: Customs should broaden the types of split shipments which are eligible for single entry treatment. It is advocated, for example, that the proposed rule cover shipments that are split at the port of arrival for transportation separately to the port where entry is to be made. It is stated that this situation can result when merchandise which arrives in the United States on a single conveyance is split at the port of arrival into separate portions because an insufficient number of vehicles are available at the time of arrival to simultaneously transport the entire shipment to the port where entry is made.

Customs Response: Customs disagrees. The purpose of 19 U.S.C. 1484(j)(2) is to furnish a mechanism by which one entry may be filed for a shipment that is split by the original carrier to which the shipment was delivered at the foreign port for transportation to the United States. To expand coverage under the law to shipments that are split after importation into the United States would exceed the purview of the statute.

Comment: It is a distortion of the intent of the statute to define a split shipment as being a shipment which is delivered to and accepted by the carrier as a single shipment under one bill of lading. It is contended that the definition of a split shipment to this effect fails to take into account situations in which the importer delivers goods to the carrier as a single shipment, but the carrier then informs the importer that the shipment must be carried on several conveyances due to insufficient cargo space remaining on currently available ships. Under the proposed rule, such a shipment would not qualify as a split shipment because it would not have been accepted by the carrier as a single shipment.

Customs Response: Customs does not believe that the definition of a split shipment under § 141.57(b) distorts the intent of the statute. Rather, it is Customs' view that the purpose of 19 U.S.C. 1484(j)(2) is to offer relief to importers whose shipments have been split by the carrier after the carrier has accepted the shipment with the

importer's understanding that the shipment would be transported on a single conveyance. Under those circumstances, the importer would have a realistic expectation that the shipment would arrive at one time and that the importer would thus be able to file one entry. However, as described in the comment, the importer would already know prior to concluding shipping arrangements with the carrier that the shipment would be transported on different conveyances and would arrive in the United States at different times.

Comment: The proposed requirement that all portions of a split shipment arrive within 10 calendar days of the date of arrival of the first portion does not square with modern shipping realities. The 10 calendar day arrival time should be extended to 30 or 90 days, in order to more accurately reflect the Congressional intent that split shipments can occur over a period of time. In the alternative, if the portions of a split shipment are to be limited to arriving within 10 calendar days of one another, Customs should change 10 calendar days to 10 business days.

Customs Response: Customs believes that the overwhelming majority of split shipment transactions which may occur may be easily accommodated within the 10 calendar day period as originally proposed. Furthermore, the use of a 10 calendar day arrival window affords an importer sufficient time to file an entry summary within 10 working days from the time the first portion of the split shipment is released, given that a 10 working day period will always be longer than a 10 calendar day period.

Comment: A question is raised as to whether there is a limit to the number of portions into which a carrier may split a master shipment.

Customs Response: There is no limit to the number of portions into which a carrier may split a shipment.

Comment: The proposed requirement that all conveyances carrying a split shipment initially arrive at the same port of importation in the United States should be eliminated because routing merchandise from one United States port to another is a standard business practice exercised by carriers.

Customs Response: Customs agrees. Accordingly, proposed § 141.57(b)(3) is revised in this final rule by eliminating the requirement that all portions of a split shipment arrive at the same port of importation in the United States. Instead, all portions of the split shipment must timely arrive at the same port of entry in the United States, as listed on the original bill of lading. Any portion of a split shipment that arrives at a different port must be transported

in-bond to the port of destination where entry will be made; and such in-bond transportation to the port of destination must occur before the transported merchandise may be released by Customs. In conformance with this requirement, proposed §§ 141.57(d)(1), (d)(2), (e), (i), (j)(1), and 142.21(g) are appropriately changed in this final rule.

Notice to Customs That Shipment Has Been Split—Proposed § 141.57(c)

Comment: It is asked how the importer would know whether the carrier has informed Customs of a split shipment.

Customs Response: Under § 141.57(c), it is expressly the responsibility of the importer, not the carrier, to notify Customs that the importer's shipment has been split by the carrier. To this end, the adequacy of communication between the importer and the carrier is a private matter between those parties.

Comment: Proposed § 141.57(c) should be revised to simply require that the importer notify Customs of a split shipment prior to the filing of the entry summary, in recognition that the importer's knowledge of the circumstances may be limited or nonexistent.

Customs Response: Customs disagrees. Section 141.57(c) requires that notification be given as soon as the importer becomes aware that the shipment has been split, but that in all cases such notification must be made before the entry summary is filed. This requirement is specifically designed to give an importer maximum flexibility in informing Customs of the intention to file a single entry for a split shipment, in recognition of the fact that an importer may learn of a split shipment at different times.

Comment: Further details are requested concerning the form of the notification. It is asked whether an electronic message (e-mail) would be sufficient.

Customs Response: Section 141.57(c) requires that such notification be given to Customs in writing. To this end, Customs would prefer that the notice be written on the front of Customs Form (CF) 3461 or that notice be submitted in the form of a letter if an electronic CF 3461 is filed. The letter could also be faxed to the applicable port.

Customs is currently incapable of accepting e-mail at all ports. Provision for electronic notification will be made in the Automated Commercial Environment (ACE) system.

Comment: Under the current systems for handling split shipments employed at Los Angeles International Airport and at John F. Kennedy Airport in New

York, the carrier is required to include each split portion on the manifest. Hence, it is asserted that the manifest should constitute the advance notification to Customs that the shipment has been split. If the importer does not file a separate entry for each arriving portion, it should be understood that the importer intends to file a single entry for the entire split shipment.

Customs Response: Customs disagrees. The advance notice is a statutory requirement which lets Customs know that the importer has elected to file a single entry for all portions of the split shipment. Mere notification that the shipment has been split is not notification by the importer that a single entry will be filed for the shipment.

Entry or Permit for Immediate Delivery—Proposed § 141.57(d)

Comment: It appears that the immediate delivery procedures for a split shipment require that the merchandise in the shipment be delivered to the carrier in the foreign country under one invoice. However, it is a common business practice for a shipment to contain merchandise covered by multiple invoices. As long as the merchandise is tendered to the carrier at the same time, there should be no limitation on the number of invoices involved.

Customs Response: Customs agrees. Provided the merchandise is delivered to the carrier as set forth in proposed § 141.57(b)(1), there should be no limitation on the number of invoices involved. Paragraphs (d)(1) and (d)(2) of proposed § 141.57 are amended accordingly in this final rule; and a conforming change to proposed § 142.21(g) is made as well in this final rule.

Comment: The release procedures in proposed § 141.57(d)(1) and (d)(2) should allow for one Customs Form (CF) 3461 to be filed and applied against all portions of the shipment. Then, if any portion of the shipment still has not arrived within the prescribed 10 day period, such portion would be deducted from the invoice(s) used on the entry summary for the shipment, and that portion would then be entered separately. In the alternative, should Customs determine that adjusted CF 3461 copies are necessary, it is suggested that Customs allow the electronic filing of the adjusted CF 3461s.

Customs Response: It is initially noted that under the release procedure in § 141.57(d)(1), only one CF 3461 will need to be filed. By contrast, under the

procedure in § 141.57(d)(2) which provides for the separate release of each portion of a split shipment as it arrives, Customs finds that requiring an adjusted copy of the CF 3461 to be submitted for each portion of the shipment is necessary in order to afford a mechanism by which the importer and Customs may easily and effectively keep track of the specific merchandise contained in any given portion of the shipment. However, Customs agrees that multiple CF 3461 copies are unnecessary when both the carrier and the importer are automated. In the case of such automation, adjustments may be made electronically to show the quantity of merchandise contained in each portion of the shipment as it arrives. Proposed § 141.57(d)(2) is thus amended in this final rule to reflect that if both the carrier and the importer are automated, such adjustments may be made electronically through the Customs ACS (Automated Commercial System).

Comment: Under the incremental release procedure in proposed § 141.57(d)(2), clarification is needed as to what is meant by the quantity of merchandise that must be reflected on the adjusted Customs Form (CF) 3461 that is submitted to Customs upon the arrival of each portion of a split shipment.

Customs Response: The quantity means the number of pieces, boxes, cartons, and the like, which are contained in the particular portion of the split shipment as it arrives, relative to the total number delivered by the shipper to the foreign carrier. To minimize confusion in this regard, proposed § 141.57(d)(2) is revised in this final rule to make clear that the adjusted quantity will reflect the quantity in that particular portion relative to the quantity contained in the entire shipment as delivered to and accepted by the carrier in the exporting country.

Comment: It is contended that 19 U.S.C. 1484(j)(2) represents a statutory exception to the well established principle that entry may only be made after merchandise has been imported. As such, instead of the procedure in proposed § 141.57(d)(2), which requires a special permit for immediate delivery for portions of a split shipment that are released incrementally following their arrival, Customs should allow the entire shipment to be entered at the time that the first portion of the shipment is imported.

Customs Response: Customs disagrees. Section 1484(j)(2) is not an exception to the general rule that importation must precede entry. Rather,

the law simply allows one shipment which is split by the carrier and which arrives in the United States at different times to be covered under one entry. Previously, each portion would have required a separate entry. Under section 1484(j)(2), however, importers of merchandise whose shipments have been split by the carrier may either continue to file a separate entry for each portion, or they may file a single entry for all of the portions which arrive within a prescribed period of time.

Nevertheless, resort to the immediate delivery procedure of § 141.57(d)(2) is only necessary when the importer wishes to file one entry, but wants each portion to be released as it arrives. Under this immediate delivery procedure, since the time of entry occurs, not upon release, but upon the filing of the entry summary, § 141.57(d)(2) ensures that all portions of the split shipment are imported prior to the entry being filed. Importers who want to file one entry but who object to using the immediate delivery procedure in § 141.57(d)(2) may instead opt to use the procedure in § 141.57(d)(1), under which one entry may be filed but release of the merchandise is delayed until all portions of the shipment have arrived.

Necessary Manifest Data to Secure Release of Shipment—Proposed § 141.57(e)

Comment: Further elaboration is requested concerning the process by which a carrier would make adjustments to the quantity set forth in the manifest as necessary to secure the incremental release of the shipment under proposed § 141.57(d)(2). It is specifically asked how such adjustments would be administered.

Customs Response: Carriers are required under § 141.57(e) to present manifest information to Customs which reflects exact information for each portion of a split shipment in order to qualify the split shipment for incremental release, pursuant to § 141.57(d)(2), as each portion of the shipment arrives. Carriers may accomplish the presentation of this adjusted manifest information either on a paper manifest or electronically if both the carrier and the importer are operational on the Customs Automated Commercial System (ACS), as noted above.

Filing of Entry Summary for Split Shipment—Proposed § 141.57(g)

Comment: Proposed § 141.57(g)(2)(ii) contains a technical contradiction in requiring the entry summary to be filed no later than 10 working days after the first cargo release, while in effect not

allowing summary filing before the arrival of the last portion of the split shipment which is to be included on the entry.

Customs Response: There is no contradiction. Since all portions of the shipment must arrive within 10 calendar days of the portion that arrives first, and the entry summary must be filed under § 141.57(g)(2)(ii) within 10 working days from the date of first release of a portion of the shipment, there should be sufficient time for all portions of the split shipment to arrive before the entry summary is required to be filed. However, should any portions not arrive within 10 calendar days of the portion that arrived first, such late-arriving portions would need to be separately entered, as prescribed in § 141.57(i).

Separate Entries Required—Proposed § 141.57(i)

Comment: Regarding portions of a shipment that do not arrive within the required 10 calendar day period, it was asked whether the consignee or agent would be responsible for paying full duty on the entire shipment before it is complete.

Customs Response: The importer of record will only be responsible for paying duty based on the value and/or quantity of merchandise contained in those portions of the split shipment that arrive within the required 10 calendar day time frame and are thus included in the split-shipment entry. As such, when a portion of a split shipment does not arrive within the prescribed 10 calendar day period, that portion will not be included on the entry, and thus no duty will yet be due on that portion. Duty on any delayed portion will become due when the portion does arrive and a separate entry for that portion is filed.

Comment: Merchandise classifiable under the same subheading of the Harmonized Tariff Schedule of the United States (HTSUS) may nevertheless be subject to different rates of duty if the applicable rate already applied against one portion of a split shipment changes and the changed rate is thereafter assessed against a second portion. It is stated in particular that this problem could arise where a change in the duty rate occurs after any portion of the split shipment is accepted for transportation in-bond to the port of destination.

Customs Response: Customs agrees. Under 19 CFR 141.69(b), the duty rate applied to merchandise in any portion of a split shipment that is transported in-bond to the port of destination would be the duty rate in effect for such merchandise when Customs accepts the

in-bond transportation entry; merchandise in any other portion of the shipment, however, would thereafter generally be subject to the rate of duty in effect at the time of entry pursuant to 19 CFR 141.68(a)(1) or (c), as applicable. As a result, if merchandise classifiable under the same subheading of the HTSUS arrives in the United States at different times as part of a split shipment, a change in the rate of duty that occurs during this time with respect to such merchandise could result in two different rates of duty being assessed against the merchandise on the same split shipment entry.

This would present an administrative/operational problem for Customs because current Customs systems are incapable of accepting different duty rates on one entry for merchandise that is classifiable under the same HTSUS subheading. Hence, a separate entry will be required for any portion of a split shipment in those rare instances where necessary to preclude the application of different rates of duty on a split shipment entry for merchandise that is identically classifiable under the HTSUS. Proposed § 141.57(i) is changed in this final rule to add a provision to this effect.

Importer Review of Entry; Evidence of Split Shipment—Proposed § 141.57(j)

Comment: Under proposed § 141.57(j)(1), Customs should rely primarily upon carriers, rather than importers, to obtain timely and accurate split shipment information because it is the carriers' decision to split the shipments in the first place.

Customs Response: Customs disagrees. While it is the case that shipments are split at the initiative of the carrier, it is the importer, not the carrier, who elects to file a single entry for all portions of a split shipment. Since the importer files the entry, it is properly the responsibility of the importer to ensure that the entry is correct and that it accurately reflects the actual amount, value, correct classification and rate of duty of the merchandise covered under the entry, as required in § 141.57(j)(1).

Comment: It is unnecessary to require in proposed § 141.57(j)(2) that the importer maintain sufficient documentary evidence to substantiate that the splitting of a shipment was done by the carrier acting on its own. Importers do not want their shipments to be split because this causes their shipments to be delayed.

Customs Response: Customs disagrees. Under 19 U.S.C. 1484(j)(2), the use of the single entry procedure for separate portions of a split shipment is

contingent upon the shipment having been split at the instruction of the carrier. The importer must therefore maintain suitable documentary evidence to substantiate that the shipment was split by the carrier on its own initiative.

Comment: In proposed § 141.57(j)(2), the requirement that an importer maintain a copy of the originating bill of lading or air waybill is essentially impossible as carriers by law do not make documents of this nature available to the importer due to the fact that such documents contain confidential freight rate information. An importer should not even be required to obtain a letter from the carrier as proof that the carrier split the shipment on its own initiative because carriers would generally not be timely in providing such letters. It is contended that the carrier should be the party responsible for keeping records of the shipments which they have chosen to split.

Customs Response: It is again emphasized that since the importer is the party who elects to file a single entry covering multiple portions of a split shipment, it is properly the responsibility of the importer to substantiate its right to do so. However, Customs agrees that an importer who elects to file a single entry for a split shipment but who never receives a copy of the originating bill of lading or air waybill cannot be required to maintain or produce what he does not receive. However, Customs does need evidence that the splitting of the shipment was done at the carrier's initiative. Accordingly, proposed § 141.57(j)(2) is amended in this final rule to provide that the importer must keep a copy of the originating bill of lading or air waybill or, in the absence of such document, any other supporting documentary evidence, such as a letter, from the carrier confirming that the splitting of the shipment was done by the carrier on its own initiative. An importer will have to insist that a carrier provide the necessary documentary evidence.

Denial of Incremental Release; Quota; Other Goods—Proposed § 141.57(k)

Comment: Proposed § 141.57(k)(1) wrongly excludes merchandise subject to quota and/or visa requirements from the incremental release procedure in proposed § 141.57(d)(2).

Customs Response: Customs finds that quota and/or visa merchandise is of such a sensitive nature as to warrant its exclusion from the incremental release procedure of § 141.57(d)(2). Nevertheless, by precluding the use of the incremental release procedure in

§ 141.57(d)(2), Customs is not preventing importers of merchandise subject to quota or visa requirements from availing themselves of the benefits of the law. Under the procedure in § 141.57(d)(1), importers may still file a single entry under 19 U.S.C. 1484(j)(2) for a shipment of quota/visa merchandise which has been split by the incoming carrier. The procedure in § 141.57(d)(1) provides for the filing of a single entry after all portions of a split shipment have arrived. Under this procedure, the portions of the split shipment are not released incrementally, as each portion arrives, but are held until all portions have arrived and the single entry covering those portions has been filed.

Comment: With respect to proposed § 141.57(k)(2), a port director should not have the unfettered discretion to deny incremental release under proposed § 141.57(d)(2) as circumstances warrant. Also, the port director should not have the discretion to deny incremental release for purposes of examination, as provided in proposed § 141.57(f). In the alternative, an importer whose shipment is denied incremental release should be able to appeal such a denial.

Customs Response: Customs believes that there may be circumstances under which the incremental release procedure is inappropriate and should not be allowed. In such circumstances, Customs has the authority to examine all of the merchandise included on an entry before allowing the release of any portion of the shipment.

In addition, Customs does not believe that an appeals process for a denial of incremental release is practicable, for two reasons. First, most of the portions of a split shipment will have arrived before an appeals process could be completed. Second, importers who are denied the use of incremental release under § 141.57(d)(2) for a particular split shipment are not deprived of the benefit conferred by the statute, that is, they may still file one entry for portions of a shipment which arrive separately in accordance with the release procedure set forth in § 141.57(d)(1).

Additional Change

In addition, proposed § 141.57(e) is clarified in this final rule to provide that the carrier responsible for splitting a shipment must notify any other obligated entities (such as another carrier or a freight forwarder) that have submitted electronic manifest information to Customs about the shipment that was split so that these parties can update their manifest information to Customs.

Conclusion

After careful consideration of the comments received and further review of the matter, Customs has concluded that the proposed amendments should be adopted with the modifications discussed above.

Regulatory Flexibility Act and Executive Order 12886

This final rule implements the statutory law and engenders cost savings by reducing paperwork for importers, and by reducing the number of entries required for split shipments. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor do these final regulations result in a "significant regulatory action" under E.O. 12866.

Paperwork Reduction Act

The collections of information encompassed within this final rule have already been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515-0065 (Requirement to make entry unless specifically exempt; Requirement to file entry summary form); 1515-0167 (Statement processing and Automated Clearinghouse); 1515-0214 (General recordkeeping and record production requirements); and 1515-0001 (Transportation manifest; cargo declaration). This rule does not make any material change to the existing approved information collections. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

List of Subjects

19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 142

Computer technology, Customs duties and inspection, Entry of merchandise, Reporting and recordkeeping requirements.

Amendments to the Regulations

Parts 141 and 142, Customs Regulations (19 CFR parts 141 and 142), are amended as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.
* * * * *

2. Section 141.51 is revised to read as follows:

§ 141.51 Quantity usually required to be in one entry.

All merchandise arriving on one conveyance and consigned to one consignee must be included on one entry, except as provided in § 141.52. In addition, a shipment of merchandise that arrives by separate conveyances at the same port of entry in multiple portions, as a split shipment, may be processed under a single entry, as prescribed in § 141.57.

3. Subpart D of part 141 is amended by adding a new § 141.57 to read as follows:

§ 141.57 Single entry for split shipments.

(a) *At election of importer of record.* At the election of the importer of record, Customs may process a split shipment, pursuant to section 484(j)(2), Tariff Act of 1930 (19 U.S.C. 1484(j)(2)), under a single entry, as prescribed under the procedures set forth in this section.

(b) *Split shipment defined.* A "split shipment", for purposes of this section, means a shipment:

(1) Which may be accommodated on a single conveyance, and which is delivered to and accepted by a carrier in the exporting country under one bill of lading or waybill, and is thus intended by the importer of record to arrive in the United States as a single shipment;

(2) Which is thereafter divided by the carrier, acting on its own, into different portions which are transported and consigned to the same party in the United States; and

(3) Of which the first portion and all succeeding portions arrive at the same port of entry in the United States, as listed in the original bill of lading or waybill; and all the succeeding portions arrive at the port of entry within 10 calendar days of the date of the first portion. If any portion of the shipment arrives at a different port, such portion must be transported in-bond to the port of destination where entry of the shipment is made.

(c) *Notification by importer of record.* The importer of record must notify Customs, in writing, that the shipment

has been split at the carrier's initiative, that the remainder of the shipment will arrive by subsequent conveyance(s), and that an election is being made to file a single entry for all portions. The required notification must be given as soon as the importer of record becomes aware that the shipment has been split, but in all cases notification must be made before the entry summary is filed.

(d) *Entry or special permit for immediate delivery.* In order to make a single entry for a split shipment or obtain a special permit for the release of a split shipment under immediate delivery, an importer of record may follow the procedure prescribed in paragraph (d)(1) or (d)(2) of this section, as applicable.

(1) *Entry or special permit after arrival of entire shipment.* An importer of record may file an entry at such time as all portions of the split shipment have arrived at the port of entry (see paragraph (b)(3) of this section). In the alternative, again after the arrival of all portions of a split shipment at the port of entry, the importer of record may instead file a special permit for immediate delivery provided that the merchandise is eligible for such a permit under § 142.21(a)—(f) and (h) of this chapter. In either case, the importer of record must file Customs Form (CF) 3461 or CF 3461 alternate (CF 3461 ALT) as appropriate, or electronic equivalent, with Customs. The entry or special permit must indicate the total number of pieces in, as well as the total value of, the entire shipment as reflected on the invoice(s) covering the shipment.

(2) *Special permit prior to arrival of entire shipment.* As provided in § 142.21(g) of this chapter, an importer of record may also file a special permit for immediate delivery after the arrival of the first portion of a split shipment at the port of entry (see paragraph (b)(3) of this section), but before the arrival of the entire shipment at such port, thus qualifying the split shipment for incremental release, under paragraph (e) of this section, as each portion of the shipment arrives at the port of entry (see paragraph (g)(2)(ii) of this section). In such case, a CF 3461 or CF 3461 ALT as appropriate, or electronic equivalent, must be filed with Customs. As each portion arrives at the port of entry, the importer of record must submit a copy of the CF 3461/CF 3461 ALT, adjusted to reflect the quantity of that particular portion relative to the quantity contained in the entire split shipment (see paragraph (b)(1) of this section); however, if both the carrier and the importer of record are automated, such adjustments may instead be made

electronically through the Customs ACS (Automated Commercial System). In the event that an entry has been pre-filed with Customs (see § 142.2(b) of this chapter), notification to Customs by the importer of record that a single entry will be filed for shipments released incrementally will serve as a request that the pre-filed entry be converted to an application for a special permit for immediate delivery (see § 142.21(g) of this chapter). The special permit must indicate the total number of pieces in, as well as the total value of, the entire shipment as reflected on the invoice(s) covering the shipment. Customs may limit the release of each portion of the split shipment upon arrival at the port of entry, as permitted under this paragraph, due to the need to examine the merchandise in accordance with paragraph (f) of this section.

(e) *Release.* To secure the separate release upon arrival of each portion of a split shipment at the port of destination under paragraph (d)(2) of this section, the carrier responsible for initially splitting the shipment must present to Customs, either on a paper manifest or through an authorized electronic data interchange system, manifest information relating to the shipment that reflects exact information for each portion of the split shipment. The carrier responsible for splitting the shipment must notify other obligated entities (such as another carrier or freight forwarder) that have submitted electronic manifest information to Customs about the shipment that was split so that these parties can update their manifest information to Customs.

(f) *Examination.* Customs may require examination of any or all parts of the split shipment. For split shipments subject to the immediate delivery procedure of paragraph (d)(2) of this section, Customs reserves the right to deny incremental release should such an examination of the merchandise be necessary. The denial of incremental release does not preclude the use of the procedures specified in paragraph (d)(1) of this section.

(g) *Entry summary.*— (1) *Entry.* For merchandise entered under paragraph (d)(1) of this section, the importer of record must file an entry summary within 10 working days from the time of entry.

(2) *Release for immediate delivery.*— (i) *Release under paragraph (d)(1) of this section.* For merchandise released under a special permit for immediate delivery pursuant to paragraph (d)(1) of this section, the importer of record must file the entry summary, which serves as both the entry and the entry summary, within 10 working days after the

merchandise or any part of the merchandise is authorized for release under the special permit or, for quota class merchandise, within the quota period, whichever expires first (see § 142.23 of this chapter).

(ii) *Release under paragraph (d)(2) of this section.* For merchandise released under a special permit for immediate delivery pursuant to paragraph (d)(2) of this section, the importer of record must file the entry summary, which serves as both the entry and the entry summary, within 10 working days from the date of the first release of a portion of the split shipment. The filed entry summary must reflect all portions of the split shipment which have been released, to include quantity, value, correct classification and rate of duty. The entry summary cannot include any portions of the split shipment which have not been released.

(3) *Duty payment.* With the entry summary filed under paragraphs (g)(1) and (g)(2)(i) and (g)(2)(ii) of this section, the importer of record must attach estimated duties, taxes and fees applicable to the released merchandise. If the entry summary is filed electronically, the estimated duties, taxes and fees must be scheduled for payment at such time pursuant to the Automated Clearinghouse (see § 24.25 of this chapter).

(h) *Classification.* For purposes of section 484(j)(2), Tariff Act of 1930 (19 U.S.C. 1484(j)(2)), the merchandise comprising the separate portions of a split shipment included on one entry will be classified as though imported together.

(i) *Separate entry required.*— (1) *Untimely arrival.* The importer of record must enter separately those portions of a split shipment that do not arrive at the port of entry within 10 calendar days of the portion that arrived there first (see paragraph (b)(3) of this section).

(2) *Different rates of duty for identically classified merchandise.* An importer of record will be required to file a separate entry for any portion of a split shipment if necessary to preclude the application of different rates of duty on a split shipment entry for merchandise that is classifiable under the same subheading of the Harmonized Tariff Schedule of the United States (HTSUS).

(j) *Requirement of importer of record to review entry and maintain evidence substantiating splitting of shipment.*— (1) *Review of entry.* The importer of record will be responsible for reviewing the total manifested quantity shown on the CF 3461/CF 3461 ALT, or electronic equivalent, in relation to all portions of the split shipment that arrived at the

port of entry under paragraph (b)(3) of this section within the specified 10 calendar day period. At the conclusion of the specified 10 calendar day period, the importer of record must make any adjustments necessary to reflect the actual amount, value, correct classification and rate of duty of the merchandise that was released incrementally under the split shipment procedures. If all portions of the split shipment do not arrive within the required 10 calendar day period, the importer of record must file an additional entry or entries as appropriate to cover any remaining portions of the split shipment that subsequently arrive (see paragraph (i)(1) of this section).

(2) *Evidence for splitting of shipment; recordkeeping.* The importer of record must maintain sufficient documentary evidence to substantiate that the splitting of the shipment was done by the carrier acting on its own, and not at the request of the foreign shipper and/or the importer of record. This documentation should include a copy of the originating bill of lading or waybill under which the shipment was delivered to the carrier in the country of exportation or other supporting documentary evidence, such as a letter from the carrier confirming that the splitting of the shipment was done by the carrier on its own initiative. This documentary evidence as well as all other necessary records received or generated by or on behalf of the importer of record under this section must be maintained and produced, if requested, in accordance with part 163 of this chapter.

(k) *Single entry limited; exclusions from single entry under incremental release procedure.*

(1) *Quota/visa merchandise.* Merchandise subject to quota and/or visa requirements is excluded from incremental release under the immediate delivery procedure set forth in paragraph (d)(2) of this section and § 142.21(g) of this chapter. Additionally, if by splitting a shipment any portion of it is subject to quota, no portion of the split shipment may be released incrementally.

(2) *Other merchandise.* In addition, the port director may deny the use of the incremental release procedure set forth in paragraph (d)(2) of this section and § 142.21(g) of this chapter, as circumstances warrant.

(3) *Limited single entry available.* For merchandise described in paragraphs (k)(1) and (k)(2) of this section, that is excluded from the immediate delivery procedure of paragraph (d)(2) of this section and § 142.21(g) of this chapter,

the importer of record may still file a single entry or special permit for immediate delivery under paragraph (d)(1) of this section covering the entire split shipment of such merchandise following, and to the extent of, its arrival within the required 10 calendar day period.

PART 142—ENTRY PROCESS

1. The authority citation for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 142.21 is amended as follows:

a. By removing the second sentence in paragraph (e)(1) and adding in its place two new sentences;

b. By removing the second sentence in paragraph (e)(2) and adding in its place two new sentences;

c. By redesignating paragraph (g) as paragraph (h) and adding a new paragraph (g); and

d. By revising newly redesignated paragraph (h).

The additions and revision read as follows:

§ 142.21 Merchandise eligible for special permit for immediate delivery.

* * * * *

(e) *Quota-class merchandise.* (1) *Tariff rate.* * * * However, merchandise subject to a tariff-rate quota may not be incrementally released under a special permit for immediate delivery as provided in paragraph (g) of this section. Where a special permit is authorized, an entry summary will be properly presented pursuant to § 132.1 of this chapter within the time specified in § 142.23, or within the quota period, whichever expires first. * * *

(2) *Absolute.* * * * However, merchandise subject to an absolute quota under this paragraph may not be incrementally released under a special permit for immediate delivery as provided in paragraph (g) of this section. Where a special permit is authorized, a proper entry summary must be presented for merchandise so released within the time specified in § 142.23, or within the quota period, whichever expires first. * * *

(g) *Incremental release of split shipments.* Merchandise subject to § 141.57(d)(2) of this chapter, which is purchased and delivered to the carrier as a single shipment, but which is shipped by the carrier in separate portions to the same port of entry as provided in § 141.57(b)(3), may be released incrementally under a special permit. Incremental release means

releasing each portion of such shipments separately as they arrive.

(h) *When authorized by Headquarters.* Headquarters may authorize the release of merchandise under the immediate delivery procedure in circumstances other than those described in paragraphs (a), (b), (c), (d), (e), (f) and (g) of this section provided a bond on Customs Form 301 containing the bond conditions set forth in § 113.62 of this chapter is on file.

3. Section 142.22 is amended by removing the first sentence of paragraph (a) and adding in its place two sentences to read as follows:

§ 142.22 Application for special permit for immediate delivery.

(a) *Form.* An application for a special permit for immediate delivery will be made on Customs Form 3461, Form 3461 ALT, or its electronic equivalent, supported by the documentation provided for in § 142.3. A commercial invoice will not be required, except for merchandise released under the provisions of 19 U.S.C. 1484(j). * * *

Robert C. Bonner,

Commissioner of Customs.

Approved: February 19, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03-4318 Filed 2-24-03; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

[Administrative Instruction 81]

Privacy Act; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense is exempting two systems of records in its inventory of systems of records pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

EFFECTIVE DATE: January 28, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 601-4722.

SUPPLEMENTARY INFORMATION: No comments were received during the public comment period, therefore, the rules are being adopted as published below.

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense