

time of filing, and that a further steel license will not be required for shipments from FTZs into the commerce of the United States.

In order to reflect the standard regarding FTZ transactions set forth in the Commerce regulation referred to above, Customs in this final rule document has redrafted proposed § 12.145 to accommodate a reference to inclusion of the appropriate license number on Customs Form 214 at the time of filing with Customs. Thus, under the revised text, the import license number must be provided to Customs in two basic circumstances: (1) on Customs Form 7501 (or an electronic equivalent) in the case of entered merchandise; and (2) on Customs Form 214 in the case of merchandise admitted into an FTZ. In addition, the opening exception clause regarding informal entry that was included in the proposed text has not been retained in the revised § 12.145 text because it is covered in the license issuance standards promulgated by Commerce and thus does not have to be repeated here.

Comment: A commenter stated that in administrative message 02–0910 dated July 19, 2002, Customs presented a proposed methodology for enforcing compliance with the proposed licensing system subject to the August 9, 2002, Customs notice of proposed rulemaking. Under this methodology, foreign steel subject to licensing may enter a Customs bonded warehouse or be covered by a temporary importation bond (TIB) without a license; the license would be optional for both the warehouse and TIB entries. Stating that this optional treatment is inconsistent with the purpose of the licensing system, this commenter argued that all foreign steel subject to the licensing requirements should be treated identically, regardless of whether the steel is placed in a bonded facility, covered by a TIB, or admitted into an FTZ, and that this identical treatment should require the steel to be licensed and counted when it is admitted into an FTZ, entered into a bonded warehouse, or entered on a TIB.

Customs response: As regards the administrative message referred to by this commenter, Customs notes that it was intended only to advise the trade on the system requirements for filing the steel license information (number) when entry filing is effected electronically in the Automated Commercial System (ACS) through the automated broker interface (ABI). The administrative message was issued in recognition of the considerable lead time that is necessary in order to reprogram ABI user software and reflected the best information

available at that time from the Department of Commerce regarding the steel import licensing program requirements, that is, the proposals published by Commerce on July 18, 2002.

As indicated in the preceding comment discussion regarding FTZs, the primary responsibility for the steel import licensing program rests with the Department of Commerce and, accordingly, Customs has no authority to impose standards that are at variance with the program requirements properly established by Commerce. Customs further notes that, in the final regulations published by Commerce on December 31, 2002, § 360.101(e) provides that import licenses are not required in the case of TIB entries, transportation and exportation (T&E) entries, and entries into a bonded warehouse, and that a license is required at the time of entry summary in the case of a covered steel product that is withdrawn from a bonded warehouse. In view of this regulatory standard, Customs cannot adopt the “identical” treatment principle suggested by this commenter, and the text of § 12.145 set forth in this final rule document has been modified to refer specifically to merchandise “entered, or withdrawn from warehouse for consumption, in the customs territory of the United States” in order to exclude from coverage TIB, T&E, and warehouse entry transactions.

Comment: A commenter referred to a statement that “[a]ll imports of steel products * * * will be required to obtain a steel import license and provide the license number to U.S. Customs on the entry summary.” This commenter raised the issue regarding the point at which a material is considered to be “imported” and suggested that, in the case of warehouse entries, that point should be when the material is withdrawn from the warehouse and a consumption entry is filed and not when the material is off-loaded under a warehouse entry and maintained in the bonded warehouse.

Customs response: The statement referred to by this commenter appeared in the proposed rule document published by the Department of Commerce on July 18, 2002, rather than in the notice of proposed rulemaking published by Customs on August 9, 2002. The statement was not set forth in that document as proposed regulatory text and therefore appears to have been directed to the general thrust of the steel import licensing program. Customs further notes that under the program as developed by Commerce, the mere fact of importation is not controlling as

regards the licensing and license number reporting requirements. Rather, as already indicated in this comment discussion, the Department of Commerce proposals and final regulatory texts, as well as the text of § 12.145 as proposed and as set forth in this final rule document, make it clear that those requirements do not arise at the time of entry into a bonded warehouse but rather only upon withdrawal from the warehouse when Customs Form 7501 will be filed.

Comment: A commenter recommended that the Customs entry number not be a requirement at the time of applying for a license unless it is available at the time of filing. This commenter referred to two situations in which it would not be possible to provide the proper entry number when applying for the license. One situation involves Customs bonded warehouses, where the entry number assigned at the time of arrival in the United States is not the same as the entry number that applies when duty is eventually paid. The other situation involves split shipment situations where a portion of the cargo covered by one invoice or bill of lading is discharged and moved overland separately from the rest of the cargo, with the result that multiple entries will be filed for the merchandise covered by the one invoice or bill of lading.

Customs response: Customs first notes that the observations made by this commenter relate to the license issuance process which is controlled by the Department of Commerce regulations and not by the regulations promulgated by Customs. Moreover, Customs notes that, in the final regulations published by Commerce on December 31, 2002, § 360.103(b) provides that license filers are not required to report a Customs entry number to obtain an import license but are encouraged to do so if the entry number is known at the time of filing for the license. Accordingly, the concern expressed by this commenter has been addressed in the Commerce final regulations.

Comment: A commenter referred to a statement that “[t]he applicable license number(s) must cover the total quantity of steel entered and should match the information provided on the Customs entry summary.” This commenter argued that it would be difficult to meet this requirement in some cases involving warehouse entries. For example, where goods are withdrawn for export to Canada, the inclusion of those quantities on an application for a license at the time of “entry” into the port would have an impact on the validity of the data collected. This