

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