

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

## DEPARTMENT OF THE TREASURY

### 19 CFR Parts 12 and 163

[CBP Dec. 07–05 and USCBP–2006–0020]

RIN 1505–AB68

### Entry of Certain Cement Products From Mexico Requiring a Commerce Department Import License

**AGENCIES:** Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends title 19 of the Code of Federal Regulations (19 CFR) to set forth special requirements for the entry of certain cement products from Mexico requiring a United States Department of Commerce import license. The cement products in question are those listed in the Agreement on Trade in Cement, entered into between the Office of the United States Trade Representative, the United States Department of Commerce, and Mexico's Secretaria de Economia, on March 6, 2006. The changes implemented by this document require an importer to submit to Customs and Border Protection (CBP) an import license number on the entry summary (CBP Form 7501) or on the application for foreign trade zone (FTZ) admission and/or status designation (CBP Form 214), for any cement product for which the United States Department of Commerce requires an import license under its cement licensing and import monitoring program. Additionally, an importer must submit a hard copy of the original valid Mexican export license with the entry documentation or provide such document to the FTZ operator, unless directed otherwise by CBP.

**EFFECTIVE DATE:** April 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** Alice Buchanan, Office of International Trade, Tel: (202) 344–2697.

#### SUPPLEMENTARY INFORMATION:

#### Background

On March 6, 2006, the Office of the United States Trade Representative (USTR), the United States Department of Commerce (Commerce), and the Ministry of Economy of the United Mexican States (Secretaria de Economia) signed a bilateral Trade in Cement Agreement (Agreement) concerning

trade in cement between the United States and Mexico. The Agreement applies only to cement from Mexico as defined in Section I.L. of the Agreement. A copy of the Agreement is available on the Commerce Web site: <http://www.ia.ita.doc.gov/download/mexico-cement/cement-final-agreement.pdf>. The Agreement requires the creation of an Export Licensing Program by Mexico and an Import Licensing Program by Commerce to enforce certain quantitative restrictions contained in the Agreement.

On May 31, 2006, the International Trade Administration of the Department of Commerce published a document in the **Federal Register** (71 FR 30836) proposing a rule, set forth at §§ 360.201 through 360.205 of the Code of Federal Regulations (19 CFR 360.201 through 360.205) (changed to §§ 361.101 through 361.105 in ITA's final rule), that would establish a cement licensing and import monitoring program as directed under the terms of the Agreement. Although Commerce was vested with primary responsibility for the Mexican Cement import licensing and monitoring procedures, the Secretary of the Treasury, through the Bureau of Customs and Border Protection (CBP), is primarily responsible for the promulgation and administration of regulations regarding the importation and entry of merchandise into the United States. Accordingly, in conjunction with the Department of Commerce, on June 1, 2006, CBP published in the **Federal Register** (71 FR 31125) a proposal to add a new § 12.155 to title 19 of the CFR (19 CFR 12.155) which requires the inclusion of a cement import license number on the entry summary (CBP Form 7501) or the application for admission to a FTZ (CBP Form 214), and the submission of a valid Mexican export license with the entry summary documentation, in any case in which a cement import license is required to be obtained under the Commerce regulations. It was proposed that the entry (unless otherwise directed by CBP) must be a paper filing, and the license number must be included: on the entry summary (CBP Form 7501), at the time of filing, in the case of merchandise entered or withdrawn from warehouse for consumption in the customs territory of the United States; or, on CBP Form 214, at the time of filing under part 146 of this chapter, in the case of merchandise admitted into a foreign trade zone.

Comments were solicited on the proposal.

## Discussion of Comments

Two comments were received in response to the solicitation of public comment in 71 FR 31125. A description of the comments received, together with CBP's analyses, is set forth below.

### Comment

Two commenters inquired as to where on the CBP Form 7501 the import license number should be identified.

### CBP Response

The import license number must be reported in column 33 of the newly reformatted CBP Form 7501 (or column 34 of the previous version of the CBP Form 7501, which remains valid). If the entry summary requires more than one cement import license, each license number must be reported within the column on the line item covering the subject cement. On the CBP Form 214, the import license number must be reported in box 16. If the CBP Form 214 is submitted in an electronic format (CBP Form e-214), the import license number must be reported as per instructions provided to the trade and made available for public viewing at <http://www.cbp.gov/>.

### Comment

One commenter inquired as to how long an importer must maintain copies of the import license, and in what format the records must be maintained (*i.e.*, hard copy or electronic), in order to comply with CBP regulations.

### CBP Response

Copies of Mexican Cement Import Licenses must be retained pursuant to the provisions set forth in part 163 of title 19 of the CFR. Section 163.4 (19 CFR 163.4) prescribes a record retention period of 5 years from the date of entry. Section 163.5 (19 CFR 163.5) prescribes methods for the storage of records. Specifically, § 163.5(a) states that persons required to maintain records (as per § 163.2) must retain the original, whether paper or electronic, for the prescribed retention period. The term "original," when used in the context of the maintenance of records, is defined in § 163.1(h) (19 CFR 163.1(h)) as pertaining to records that are "in the condition in which they were made or received." The import license numbers at issue are to be generated via an automated Mexican Cement Import Licensing System (for a complete description, see 71 FR 30837, dated May 31, 2006), which provides a single opportunity to print the electronically generated import license number. For security reasons, the system does not allow users to retrieve previously issued

licenses from the license system. Accordingly, the original hard copy print-out of the Mexican Cement Import License must be retained for the 5 year retention period.

### Department of Commerce Final Regulations

In another document published in today's edition of the **Federal Register**, the Department of Commerce has finalized its proposal of May 31, 2006.

### Conclusion

In conjunction with the final regulations adopted by the Department of Commerce, CBP, after analysis of the comments received in response to CBP's proposed rule and upon further consideration, has determined to adopt as a final rule the amendments proposed in the Notice of Proposed Rulemaking published in the **Federal Register** (71 FR 31125) on June 1, 2006 with modifications as set forth below.

In the final rule, CBP will permit importers to report the import license number on either a paper or electronic version of the application for admission to a FTZ (CBP Form 214/e-214). This change from the proposal is being made to reflect that certain CBP ports are currently accepting electronic versions of the application for FTZ admission and/or status designation (CBP Form e-214) in lieu of paper copies. Paper copies of the CBP Form 214 will still be accepted; however, CBP is urging all members of the trade community to file electronic versions of the CBP Form e-214 where possible. Existing operational ports are listed at the CBP Web site located at <http://www.cbp.gov/>. The site will be updated to reflect new CBP Form e-214 operational ports. Any questions regarding the CBP Form e-214 admission should be directed to the local CBP Port Director.

Section 12.55 is restructured in this final rule to present a more logical organization. The recordkeeping provision in paragraph (c) is retitled as "Import license information" in the final rule. Paragraph (d), entitled, "Export license information," now includes a reference to recordkeeping requirements relevant to export licenses.

The language of § 12.155(d) in the proposed rule is changed in the final rule to clarify that importers of Mexican cement must submit an original, physical copy of a valid Mexican export license to CBP with the entry summary documentation, unless otherwise directed by CBP. This language is added in the event CBP is able to process these types of entries electronically in the future. This provision is also changed in the final rule to clarify that the original

physical copy of a valid Mexican export license must be provided to the FTZ operator with the CBP Form 214 in the case of a FTZ admission (unless otherwise directed by CBP) and, in such case, upon withdrawal from the FTZ no paper export license will be required to be submitted to CBP with the merchandise's subsequent entry summary documentation. Similarly, the language in proposed § 12.155(b)(1) is changed in the final rule to clarify that no import license will be required on the CBP Form 7501 for Mexican cement that was previously admitted to a FTZ and for which an import license number was already provided to CBP on the CBP Form 214.

The "List of Records Required for the Entry of Merchandise" set forth in the Appendix to part 163 of title 19 of the CFR (19 CFR part 163) is also amended by this document to reflect the entry document requirements mandated by the Agreement. This document amends section IV of the Appendix by adding a new § 12.155 that lists the Mexican Cement export license and import license as new entry records.

### The Regulatory Flexibility Act

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. The amendment, which involves the addition of one data element, at the time of entry, to either one of two existing required CBP forms and a submission of a Mexican export license, as required by the Agreement and the Department of Commerce regulations, will have a negligible impact on importer operations. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

### Executive Order 12866

This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

### Signing Authority

This document is being issued in accordance with 19 CFR 0.1(a)(1).

### List of Subjects

#### 19 CFR Part 12

Bonds, Customs duties and inspection, Entry of merchandise, Imports, prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise.

#### 19 CFR Part 163

Customs duties and inspection, Reporting and recordkeeping requirements.

### Amendment to CBP Regulations

■ For the reasons stated above, parts 12 and 163 of title 19 of the Code of Federal Regulations (19 CFR part 12) are amended as follows:

### PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The authority citation for part 12 continues to read in part as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

\* \* \* \* \*

■ 2. A new center heading and new § 12.155 are added to read as follows:

#### Mexican Cement Products

#### § 12.155 Entry or admission of Mexican cement products.

(a) *In general.* On March 6, 2006, the United States Trade Representative, United States Department of Commerce and Mexico's Secretaria de Economia entered into an "Agreement on Trade in Cement" (Agreement). Pursuant to the Agreement, the United States Department of Commerce will administer an import licensing system that covers imports of Mexican cement as defined in section I.L. of the Agreement. The Secretary of the Treasury, through the Bureau of Customs and Border Protection (CBP), is responsible for the promulgation and administration of regulations regarding the entry of the subject merchandise into the United States. The Agreement will terminate on March 31, 2009, unless it has been terminated prior to that date.

(b) *Reporting the import license number.* For every entry of merchandise for which a Mexican cement import license is required to be obtained under regulations promulgated by the U.S. Department of Commerce, set forth at 19 CFR 361.101 through 361.205, the entry (unless otherwise directed by CBP) must be a paper filing and the license number must be included:

(1) On the entry summary, at the time of filing, in the case of merchandise entered or withdrawn from warehouse for consumption in the customs territory of the United States, except for Mexican cement that was previously admitted to a FTZ and for which an import license number was already provided to CBP on the CBP Form 214. If the entry summary requires more than one cement import

license, each license number must be reported within the column on the line item covering the subject cement; or

(2) On CBP Form 214 or on an electronic version of CBP Form 214 (CBP Form e-214), as required by CBP, at the time of filing under part 146 of this chapter, in the case of an application for foreign trade zone (FTZ) admission and/or status designation.

(c) *Import license information.* There is no requirement to present physical copies of the import license to CBP at the time of filing either the CBP Form 7501 or CBP Form 214; however, importers must maintain copies in accordance with the applicable recordkeeping provisions set forth in the chapter.

(d) *Export license information.* Under regulations promulgated by the U.S. Department of Commerce, set forth at 19 CFR 361.101(d), importers of Mexican cement must submit an original, physical copy of a valid Mexican export license to CBP with the entry summary documentation (unless otherwise directed by CBP). In the case of an application for FTZ admission and/or status designation, the original physical copy of a valid Mexican export license must be provided to the FTZ operator with the CBP Form 214 (unless otherwise directed by CBP) and, in such case, upon withdrawal from the FTZ no paper export license will be required to be submitted to CBP with the merchandise's subsequent entry summary documentation. For multiple shipments at multiple ports, or multiple entries at one port, the original physical copy of the Mexican export license must be submitted to CBP (unless otherwise directed by CBP) with the first entry summary or to the FTZ operator with the CBP Form 214 or CBP Form e-214, as required by CBP, and a copy of the export license must be presented with each subsequent entry summary or CBP Form 214/e-214. Importers must also retain copies of the export license issued by the Mexican Government pursuant to the recordkeeping requirements set forth in part 163 of this title.

(e) *Duration of requirements.* The provisions set forth in this section are applicable for as long as the Agreement remains in effect.

## PART 163—RECORDKEEPING

■ 3. The authority citation for part 163 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

■ 4. The Appendix to part 163 is amended by adding a new listing, in

numerical order, for § 12.155 under section IV to read as follows:

### Appendix to Part 163—Interim (a)(1)(A) List

\* \* \* \* \*

#### IV. \* \* \*

#### § 12.155 Export license and import license for Mexican Cement.

\* \* \* \* \*

**Deborah J. Spero,**

*Acting Commissioner, Bureau of Customs and Border Protection.*

Approved: February 28, 2007.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### 19 CFR Part 361

[Docket Number: 060316072-5251-02]

**RIN 0625-AA70**

#### Mexican Cement Import Licensing System

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** Import Administration (IA) issues this final rule to add new regulations implementing the Mexican Cement Import Licensing System in accordance with the Agreement between the Office of the United States Trade Representative and the Department of Commerce of the United States of America and the Ministry of Economy of the United Mexican States (Secretaría de Economía) on Trade in Cement (Agreement), signed March 6, 2006. This final rule requires all importers of cement from Mexico covered by the scope of the Agreement to obtain an import license from the Department of Commerce (Commerce) prior to completing their U.S. Customs and Border Protection (CBP) entry summary documentation. To obtain the import license, the importer, or the importer's broker or agent, must complete a form supplying certain information to Commerce about the Mexican Cement importation. The import license number will be generated immediately upon submitting the information and will be needed to complete the CBP entry documentation. IA will use the information recorded on the import

license form as the basis for monitoring compliance with the Agreement.

In addition, IA informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections.

**DATES:** This final rule is effective April 5, 2007. Filers will be able to obtain their user identification numbers on or after March 16, 2007 and apply for import licenses on or after April 5, 2007.

#### FOR FURTHER INFORMATION CONTACT:

Sally C. Gannon (202) 482-0162; Judith Wey Rudman (202) 482-0192; or Jonathan Herzog (202) 482-4271. Additional information is available on Commerce's import licensing Web site <http://ia.ita.doc.gov/cement-agreement/index.html>.

**SUPPLEMENTARY INFORMATION:** IA issues this final rule to add new regulations implementing the Mexican Cement Import Licensing System (MCILS) in accordance with the Agreement, signed March 6, 2006. This final rule requires all importers of cement from Mexico covered by the scope of the Agreement to obtain an import license from Commerce prior to completing their CBP entry summary documentation. To obtain an import license, the importer, or the importer's broker or agent, must complete a form providing certain information to Commerce about the Mexican Cement importation. The import license number will be generated immediately upon submitting the information and will be needed to complete the CBP entry summary documentation. IA will use the information recorded in the import license form as the basis for monitoring compliance with the Agreement.

The proposed rule was published on May 31, 2006 (71 FR 30836) ("proposed rule"), inviting parties to submit comments through June 30, 2006. The rationale and authority for the program were provided in the preamble to the proposed rule and are not repeated here.

**Comments on the Proposed Rule:** Comments received during the public comment period set forth in the proposed rule are addressed in this final rule. Four parties submitted comments on the proposed rule. Most of the comments supported the licensing program and focused on a particular aspect of the licensing program concerning which the party wanted clarification or an adjustment. The comments are summarized below, with comments raised by more than one party addressed first. Please note that the numbering used in the proposed