

commenter also noted the possibility that a warehouse entry could be open for an extended period of time, requiring the government to monitor the open license for months or even years.

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, and this statement was not set forth in that document as proposed regulatory text. A similar statement does appear as regulatory text in the final rule document published by Commerce on December 31, 2002: The last sentence of § 360.101(a)(2) reads “[t]he applicable license(s) must cover the total quantity of steel entered and should cover the same information provided on the Customs entry summary.” This sentence appears in the context of a discussion of when a single license may cover multiple products and when separate licenses for steel entered under a single entry are required, and it immediately follows the statement that “[a]s a result, a single Customs entry may require more than one steel import license.” The regulatory text in question thus relates to the scope of the licensing procedure and therefore falls directly under the authority of Commerce rather than that of Customs.

Customs would also suggest that the potential problem outlined by the commenter regarding goods withdrawn from warehouse for shipment to Canada could be avoided by controlling the point at which application for the license is made. In other words, even though under 19 CFR 181.53 goods withdrawn from a U.S. duty-deferral program (such as a Customs bonded warehouse) for exportation to Canada must be treated as entered or withdrawn for consumption, and thus a Customs Form 7501 must be filed as a consequence of that exportation, the potential problem outlined by this commenter could be avoided simply if the importer did not apply for the license when the steel is entered in the warehouse but rather only when it, or any part of it, is withdrawn for shipment to Canada. This approach would also address the “open license” issue raised by this commenter.

Comment: One commenter raised an issue regarding the impact of the proposal on quota monitoring. The commenter specifically asked whether the licenses will play a role in tracking the quota for products excluded from the safeguard action that include a quota mechanism. This commenter suggested that the answer to this question would

greatly impact both the timing for filing the license application and what information might need to be included on the application.

Customs response: Customs is simply responsible for collecting the license number and any related quota or other data required at the time of entry and for providing that data to the Department of Commerce. Responsibility for all other tracking aspects of the data collected lies with the Commerce and therefore is outside the regulatory authority exercised by Customs.

Comment: A commenter stated that the sole enforcement authority that Customs has regarding the proposed rule is the liquidated damages provision under 19 CFR 113.62. This commenter further argued that since Customs can mitigate liquidated damage claims, Customs must design its mitigation guidelines with respect to steel import licenses to ensure that importers will have a strong incentive to comply with the regulatory requirements. The commenter also referred to the preamble discussion in the August 9, 2002, notice of proposed rulemaking regarding future mitigation guidelines that would include a reduction of liquidated damage claims to \$50 for a late filing of the required information or \$100 in the case of a complete failure to file the information. Arguing that these amounts are negligible, the commenter stated that Customs should adopt guidelines similar to those which governed the entry of products from Canada under the 1996 Softwood Lumber Agreement, that is, mitigation to between 25 and 50 percent of the claim, but not less than \$500 and not more than \$3,000 per entry, and no mitigation if the importer completely failed to provide the required information.

Customs response: Customs does not agree that the mitigation standards applied to cases involving softwood lumber from Canada are appropriate in the present context. Subject to any changes that may be reflected in any published mitigation guidelines regarding the steel import license program, Customs remains of the opinion that the mitigated amounts reflected in the August 9, 2002, notice of proposed rulemaking are generally appropriate in this context.

Conclusion

Based on the final regulations adopted by the Department of Commerce and the analysis of the comments received as set forth above, Customs believes that proposed § 12.145 should be adopted as a final regulation with the changes to the text as discussed above.

Executive Order 12866

This document does not meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that this amendment will not have a significant economic impact on a substantial number of small entities. Customs believes that the amendment, which involves the addition of only one data element to each of two existing required Customs forms, 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.

Paperwork Reduction Act

The collections of information in the current regulations have already been 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 number 1515-0065 (Entry summary and continuation sheet) and OMB control number 1515-0086 (Application for foreign-trade zone admission and/or status designation). This rule does not involve any material change to the existing approved information collections.

An agency may not conduct or sponsor, 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.

Drafting Information

The principal author of this document was Francis W. Foote, 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 12

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

Amendment to the Regulations

For the reasons stated in the preamble, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

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