

U.S. Customs and Border Protection

CBP Decisions

DEPARTMENT OF THE TREASURY

19 CFR Parts 12 and 163

CBP Dec. 09-01

USCBP-2008-0111

RIN 1505-AC06

PROHIBITIONS AND CONDITIONS FOR IMPORTATION OF BURMESE AND NON-BURMESE COVERED ARTICLES OF JADEITE, RUBIES, AND ARTICLES OF JEWELRY CONTAINING JADEITE OR RUBIES

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

ACTION: Interim final rule; solicitation of comments.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations in title 19 of the Code of Federal Regulations (19 CFR) in order to implement the provisions of the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (Public Law 110-286) (the "JADE Act") and Presidential Proclamation 8294 of September 26, 2008, which includes new Additional U.S. Note 4 to Chapter 71 of the Harmonized Tariff Schedule of the United States ("HTSUS"). These amendments are made to implement certain provisions of the JADE Act and the Presidential Proclamation by prohibiting the importation of "Burmese covered articles" (jadeite, rubies, and articles of jewelry containing jadeite or rubies, mined or extracted from Burma), and by setting forth conditions for the importation of "non-Burmese covered articles" (jadeite, rubies, and articles of jewelry containing jadeite or rubies, mined or extracted from a country other than Burma).

DATES: This interim final rule is effective January 16, 2009. Comments must be received on or before March 17, 2009.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2008-0111 .
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U. S. Customs and Border Protection, 799 9th Street, N.W. (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, N.W., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Cathy Saucedo, Director, Import Safety and Interagency Requirements Division, Office of International Trade (202) 863-6556, or Brenda Brockman Smith, Executive Director, Trade Policy and Programs, Office of International Trade (202) 863-6406.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim final rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim final rule. Comments that will provide the most assistance to CBP will reference a specific portion of the interim final rule, explain the reason for any recommended change, and include

data, information, or authority that support such recommended change. See ADDRESSES above for information on how to submit comments.

Background

On July 29, 2008, the President signed into law the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (Public Law 110–286) (the “JADE Act”). Section 6 of the JADE Act amends the Burmese Freedom and Democracy Act of 2003 (Public Law 108–61) (as so amended, the “BFDA”) by adding a new section 3A that prohibits the importation of jadeite and rubies mined or extracted from Burma, and articles of jewelry containing jadeite or rubies mined or extracted from Burma, and by regulating the importation of jadeite and rubies mined or extracted from a country other than Burma, and articles of jewelry containing jadeite or rubies mined or extracted from a country other than Burma. Presidential Proclamation 8294 of September 26, 2008 implements the prohibitions and conditions of the JADE Act. (See Annex of Presidential Proclamation 8294 for Additional U.S. Note 4 to Chapter 71, Harmonized Tariff Schedule of the United States (“HTSUS”).

Burmese Covered Articles

Section 3A(b)(1) of the BFDA, as implemented by Presidential Proclamation 8294, provides that “Burmese covered articles” are prohibited from importation into the United States. Burmese covered articles are defined in section 3A(a)(2) of the BFDA as jadeite or rubies mined or extracted from Burma, or articles of jewelry containing jadeite or rubies mined or extracted from Burma. Section 3A(a)(4) of the BFDA defines “jadeite” as any jadeite classifiable under heading 7103 of the HTSUS; “rubies” as rubies classifiable under heading 7103 of the HTSUS; and “articles of jewelry containing jadeite or rubies” as any article of jewelry classifiable under heading 7113 of the HTSUS that contains jadeite or rubies, or any article of jadeite or rubies classifiable under heading 7116 of the HTSUS. The prohibition on the importation of the Burmese covered articles will also be set forth in the regulations of the Office of Foreign Assets Control (OFAC) at 31 CFR Part 537.

Non-Burmese Covered Articles

Sections 3A(c)(1) and (2) of the BFDA set forth the conditions for importation into the United States of “non-Burmese covered articles,” which are defined in section 3A(a)(3) of the BFDA as jadeite or rubies mined or extracted from a country other than Burma, or articles of jewelry containing jadeite or rubies mined or extracted from a country other than Burma.

Presidential Proclamation 8294 requires that as a condition for the importation into the United States of any non-Burmese covered article, the importer and exporter of such article must meet the conditions set forth in section 3A(c)(1) of the BFDA. The Proclamation also modified the HTSUS by including Additional U.S. Note 4 to Chapter 71, HTSUS.

Certifications

Additional U.S. Note 4(a), Chapter 71, HTSUS, provides that if an importer chooses to enter any good (or withdraws such good from warehouse for consumption) under heading 7103, 7113, or 7116, HTSUS, the presentation of this entry at the time of importation shall be deemed to be a certification by the importer that any jadeite or rubies contained in such good were not mined or extracted from Burma. As such, the entry of any such article under one of the three specified headings is considered to be the "importer's certification."

Under section 3A(c)(1) of the BFDA, another condition for importation is that the exporter of the non-Burmese covered article has implemented measures that have substantially the same effect and achieve the same goals as the measures described in section 3A(c)(2)(B)(i) through (iv) or their functional equivalent to prevent the trade in Burmese covered articles. To achieve this requirement, CBP is amending the regulations to require that, at the time of importation into the United States, the importer have in his possession a written certification from the exporter ("exporter's certification") certifying that the jadeite or rubies were not mined or extracted from Burma, with verifiable evidence from the exporter that tracks the jadeite or rubies as follows: with respect to exportation from the country of jadeite or rubies in rough form, from mine to exportation; with respect to exportation from the country of finished jadeite or polished rubies, from mine to the place of final finishing; and with respect to exportation from the country of articles of jewelry containing jadeite or rubies, from mine to the place of final finishing of the article of jewelry.

Exceptions

Sections 3A(d)(1) and (2) of the BFDA set forth the two instances in which the prohibitions and conditions of the JADE Act do not apply. These exceptions are as follows: (1) jadeite, rubies, and articles of jewelry containing jadeite or rubies that are reimported into the United States after having been previously exported from the United States, including those that accompanied an individual outside the United States for personal use, if they are reimported into the United States by the same person who exported them, without having been advanced in value or improved in condition by any process or other means while outside the United States, and (2) jadeite or ru-

bies mined or extracted from a country other than Burma, and articles of jewelry containing jadeite or rubies mined or extracted from a country other than Burma, that are imported by or on behalf of an individual for personal use and accompanying an individual upon entry into the United States.

Recordkeeping Requirements

Under section 3A(c)(1) of the BFDA, a specific condition for importation of non-Burmese covered articles is that the importer of non-Burmese covered articles maintain for a period of not less than 5 years from the date of entry of the non-Burmese covered article a full record of, in the form of reports or otherwise, complete information relating to any act or transaction related to the purchase, manufacture, or shipment of the non-Burmese covered article. The importer is further required to produce such information to the relevant United States authorities upon request. CBP, to comply with the statute, is requiring the importer to keep in its possession a certification from the exporter certifying that the jadeite or rubies were not mined or extracted from Burma, with verifiable evidence from the exporter that tracks the sourcing from mine to either exportation or place of final finishing. Because the importer of record must have in his possession at the time of entry a certification from the exporter (“exporter’s certification”) and any underlying records supporting its certified entry of articles under heading 7103, 7113 or 7116, HTSUS, that any such articles were not mined or extracted from Burma, CBP is amending its (a)(1)(A) list (found in the Appendix to 19 CFR part 163). In this rulemaking, CBP is adding this new recordkeeping requirement in Section IV of the (a)(1)(A) list in the Appendix to 19 CFR part 163.

Explanation of Amendments

These amendments implement certain provisions of the JADE Act and the Presidential Proclamation with regard to the prohibition on importations of Burmese covered articles, and incorporate into the regulations the conditions for importation of non-Burmese covered articles. CBP is adding a new section 12.151 to part 12 of title 19 of the Code of Federal Regulations (19 CFR) to reflect the new conditions as described above. CBP is also amending the Interim (a)(1)(A) list in the Appendix to part 163 of title 19 CFR to add to the list of documents that importers must retain for a period of 5 years the “exporter’s certification” as well as other supporting documentation in Section IV of the Appendix.

Inapplicability of Prior Public Notice and Delayed Effective Date

This document incorporates into the regulations a provision setting forth the conditions necessary for importation of non-Burmese

covered articles. This document further amends the Appendix to part 163 for the list of records required for the entry of merchandise to implement the statutory mandate contained in the JADE Act and Presidential Proclamation 8294 of September 26, 2008 and inform the public of the conditions necessary to comply with the statutory requirements. Because this regulation merely implements statutory requirements, CBP has determined, pursuant to the provisions of 5 U.S.C. 553(b)(B), that prior public notice and comment procedures on this regulation are impracticable and contrary to the public interest and that there is good cause for this rule to become effective immediately upon publication as the JADE Act is already in effect. For these reasons, pursuant to the provisions of 5 U.S.C. 553(d)(3), CBP finds that there is good cause for dispensing with a delayed effective date.

Executive Order 12866 and Regulatory Flexibility Act

This document does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993). In addition, because a notice of proposed rulemaking is not required under 5 U.S.C. 553(b) for the reasons described above, CBP notes that the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, CBP also notes that this rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information in this document are contained in § 12.151(d) (19 CFR 12.151(d)). This information is used by CBP to fulfill its information collection obligations under section 3A(c)(1) of the BFDA, as amended, and Additional U.S. Note 4, Chapter 71, HTSUS, which requires that when an importer of non-Burmese covered articles certifies on the entry summary form, CBP Form 7501, that the articles entered under heading 7103, 7113 or 7116, HTSUS were not mined or extracted from Burma, the importer must have in his possession a written certification from the exporter that such articles were not mined or extracted from Burma and other documentation to support such certification at the time of entry under § 12.151(d). The likely respondents are business organizations including importers and brokers. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This collection of information falls under the approved collection OMB Control No. 1651-0133.

Estimated annual reporting and/or recordkeeping burden: 74,005 hours.

Number of responses per respondent and/or recordkeeper: 20.

Estimated number of respondents and/or recordkeepers: 22,197.

Estimated annual total responses: 443,940.

Estimated time per response: 10 minutes (.1667 hours).

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 799 9th Street, N.W. (Mint Annex), Washington, D.C. 20229.

Signing Authority

This document is being issued in accordance with section 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Economic sanctions, Entry of merchandise, Foreign assets control, Imports, Licensing, Prohibited Merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Sanctions.

List of Subjects in 19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Penalties, Reporting and Recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

For the reasons set forth above, parts 12 and 163 of title 19 of the Code of Federal Regulations (19 CFR parts 12 and 163) are amended as set forth below:

PART 12 – SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12, CBP regulations, continues to read, and a new specific authority citation for § 12.151 is added to read, 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;

* * * * *

Section 12.151 also issued under The Burmese Freedom and Democracy Act of 2003 (Public Law 108–61) (the “BFDA”), as amended by the Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act of 2008 (Public Law 110–286) (the “JADE Act”); Presidential Proclamation 8294, signed on September 26, 2008; Additional U.S. Note 4 to Chapter 71, HTSUS.

* * * * *

2. In part 12, a new § 12.151 is added to read as follows:

§ 12.151 Prohibitions and conditions on importations of jadeite, rubies, and articles of jewelry containing jadeite or rubies.

(a) General. The importation into the United States of jadeite, rubies, and articles of jewelry containing jadeite or rubies is prohibited or conditioned as described in this section pursuant to the Tom Lantos Block Burmese JADE Act of 2008 (Pub. L. 110–286). For purposes of this section, the following definitions apply:

(1) Jadeite. “Jadeite” means any jadeite classifiable under heading 7103 of the Harmonized Tariff Schedule of the United States (HTSUS);

(2) Rubies. “Rubies” means any rubies classifiable under heading 7103 of the HTSUS;

(3) Articles of jewelry containing jadeite or rubies. “Articles of jewelry containing jadeite or rubies” means any article of jewelry classifiable under heading 7113 of the HTSUS that contains jadeite or rubies, or any article of jadeite or rubies classifiable under heading 7116 of the HTSUS; and

(4) United States. “United States” means the 50 states, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(b) Prohibited Articles. The following articles are prohibited from importation into the United States (see 31 CFR Part 537):

(1) Jadeite mined or extracted from Burma;

(2) Rubies mined or extracted from Burma; and

(3) Articles of jewelry containing jadeite or rubies mined or extracted from Burma.

(c) Regulated Articles. Jadeite, rubies, or articles of jewelry containing jadeite or rubies may not be imported into the United States unless the importer certifies (see paragraph (d) of this section) that those jadeite or rubies were mined or extracted from a country other than Burma and possesses the documents described in paragraph (e) of this section.

(d) Certification of importer. Pursuant to Additional U.S. Note 4(a), Chapter 71, HTSUS, if an importer enters any good (or withdraws any good from warehouse for consumption) under heading 7103, 7113, or 7116 of the HTSUS, the presentation of the entry

serves as a certification by the importer that any jadeite or rubies contained in such good were not mined or extracted from Burma.

(e) Certification of exporter. If an importer enters (or withdraws from warehouse for consumption) jadeite, rubies, or jewelry containing jadeite or rubies:

(1) The importer must have in his possession a certification from the exporter (exporter certification) certifying that the jadeite or rubies were not mined or extracted from Burma, with verifiable evidence from the exporter that tracks the jadeite or rubies: in rough form, from mine to exportation; and for finished jadeite, polished rubies, and articles of jewelry containing jadeite or rubies, to the place of final finishing; and

(2) The importer must maintain, for a period of not less than 5 years from the date of entry of the good, a full record of, in the form of reports or otherwise, complete information relating to any act or transaction related to the purchase, manufacture, or shipment of the good.

(f) Requirement to provide information. An importer who enters any good (or withdraws any good from warehouse for consumption) under heading 7103, 7113, or 7116 of the HTSUS must provide all documentation to support the certifications described in paragraphs (d) and (e) of this section to CBP upon request or be subject to recordkeeping penalties under part 163 of the chapter.

(g) Inapplicability. This section does not apply to the following articles:

(1) Jadeite, rubies, and articles of jewelry containing jadeite or rubies that are reimported into the United States after having been previously exported from the United States, including those that accompanied an individual outside the United States for personal use, if they are reimported into the United States by the same person who exported them, without having been advanced in value or improved in condition by any process or other means while outside the United States; and

(2) Jadeite or rubies mined or extracted from a country other than Burma, and articles of jewelry containing jadeite or rubies mined or extracted from a country other than Burma that are imported by or on behalf of an individual for personal use and accompanying an individual upon entry into the United States.

PART 163 - RECORDKEEPING

3. The general authority citation for part 163, CBP regulations, 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 under section IV in numerical order to read as follows:

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

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IV. * * *

§ 12.151 Documentation supporting importer's certification on jadeite, rubies, or articles of jewelry containing jadeite or rubies, including an exporter's certification.

* * * * *

JAYSON P. AHERN,
Acting Commissioner,
U.S. Customs and Border Protection.

Approved: January 12, 2009

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, January 16, 2009 (74 FR 2844)]

8 CFR Parts 100, 212, 214, 215, 233, and 235

19 CFR Parts 4 and 122

USCBP-2009-0001

CBP Dec. No. 09-02

RIN 1651-AA77

Establishing U.S. Ports of Entry in the Commonwealth of the Northern Mariana Islands (CNMI) and Implementing the Guam-CNMI Visa Waiver Program

AGENCY: Customs and Border Protection, DHS.

ACTION: Interim final rule; solicitation of comments.

SUMMARY: Section 702 of the Consolidated Natural Resources Act of 2008 (CNRA) extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and provides for a visa waiver program for travel to Guam and the CNMI. This rule implements section 702 of the CNRA by amending U.S. Customs and Border Protection (CBP) regulations to replace the current Guam Visa Waiver Program with a new Guam-CNMI Visa Waiver Program. Accordingly, this interim final rule sets forth

the requirements for nonimmigrant visitors who seek admission for business or pleasure and solely for entry into and stay on Guam or the CNMI without a visa for a period of authorized stay of no longer than forty-five days. In addition, this rule establishes six ports of entry in the CNMI in order to administer and enforce the Guam-CNMI Visa Waiver Program and to allow for immigration inspections in the CNMI, including arrival and departure controls, under the Immigration and Nationality Act (INA).

DATES: Effective Date: This interim final rule is effective January 16, 2009.

Implementation Date: Beginning June 1, 2009, Customs and Border Protection (CBP) will begin operation of this program and required compliance with this interim final rule will begin. The existing Guam Visa Waiver Program remains in effect for travel to Guam until the start of the transition period.

Comment date: Comments must be received by March 17, 2009.

ADDRESSES: Please submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2009-0001.
- Mail:** Border Security Regulations Branch, Office of International Trade, Customs and Border Protection, Mint Annex, 799 9th Street, NW, Washington, DC 20001.
- Instructions:** All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.
- Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and 19 CFR 103.11(b) on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Border Security Regulations Branch, Office of International Trade, Customs and Border Protection, 799 9th Street, NW, 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Cheryl C. Peters, Office of Field Operations, at (202) 344-1438.

SUPPLEMENTARY INFORMATION:

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List of Subjects

I. PUBLIC COMMENTS

Interested persons are invited to submit written comments on all aspects of this interim final rule. Customs and Border Protection (CBP) also invites comments on the economic, environmental or fed-

eralism effects of this rule. We urge commenters to reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authorities that support such recommended change.

II. BACKGROUND AND PURPOSE

This interim final rule establishes the Guam-Commonwealth of the Northern Mariana Islands (CNMI) Visa Waiver Program as authorized under section 702(b) of the Consolidated Natural Resources Act of 2008 (CNRA), Pub. L. No. 110–229, 122 Stat. 754, 860. As explained in more detail below, this rule replaces the current Guam Visa Waiver Program with a new Guam-CNMI Visa Waiver Program. Under this rule, CBP also is establishing six ports of entry in the CNMI to enable DHS to administer and enforce the Guam-CNMI Visa Waiver Program, and to allow for the application of U.S. immigration laws in the CNMI as directed under section 702 of the CNRA.

A. Current Requirements for the Guam Visa Waiver Program

Pursuant to section 212(l) of the Immigration and Nationality Act (INA) and DHS regulations, aliens who are citizens of eligible countries or geographic areas (hereinafter countries) may apply for admission to Guam at a Guam port of entry as nonimmigrant visitors for a period of fifteen days or less, for business or pleasure, without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements.¹ See 8 U.S.C. 1182(l) and 8 CFR 212.1(e). The alien must be a citizen of a country that: (i) has a visa refusal rate of 16.9% or less, or is a country whose visa refusal rate exceeds 16.9% and has an established preinspection or preclearance program, pursuant to a bilateral agreement with the United States; (ii) is within geographical proximity to Guam unless the country has a substantial volume of nonimmigrant admissions to Guam as determined by the Commissioner of CBP and extends reciprocal privileges to citizens of the United States; (iii) is not designated by the Department of State as being of special humanitarian concern; and (iv) poses no threat to the welfare, safety or security of the United States, its territories or commonwealths. 8 CFR 212.1(e)(2). The existing regulations also provide that any potential threats to the welfare, safety, or

¹ Establishment of the Guam Visa Waiver Program was predicated upon the Attorney General, in consultation with the Secretary of State and the Secretary of the Interior, and after consultation with the Governor of Guam, making a joint determination that: (i) an adequate arrival and departure control system has been developed on Guam, and (ii) such a waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths. See section 212(l) of the INA, 8 U.S.C. 1182(l).

security of the United States, its territories, or commonwealths will be dealt with on a country by country basis, and a determination by the Secretary that a threat exists will result in the immediate deletion of the country from the listing of eligible countries.

Currently, the determination as to which countries may participate in the Guam Visa Waiver Program is based on the countries' geographical proximity to Guam on the premise that they maintain a traditional interchange with Guam. Countries that are not in geographic proximity to Guam may be included if they have a substantial volume of nonimmigrant admissions to Guam and extend reciprocal privileges to citizens of the United States. The following countries meet these eligibility requirements and are currently members of the Guam Visa Waiver Program: Australia, Brunei, Indonesia, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, Solomon Islands, Taiwan (residents who begin travel in Taiwan and fly to Guam without an intermediate layover or stop en route), the United Kingdom (including citizens of Hong Kong), Vanuatu, and Western Samoa. See 8 CFR 212.1(e)(3)(i).

An alien from one of these eligible countries currently may be admitted into Guam under the Guam Visa Waiver Program if the alien: (i) is classifiable as a visitor for business or pleasure; (ii) is solely entering and staying on Guam for a period not to exceed fifteen days; (iii) is in possession of a round-trip nonrefundable and nontransferable transportation ticket bearing a confirmed departure date not exceeding fifteen days from the date of admission to Guam; (iv) is in possession of a completed and signed Guam Visa Waiver Information Form (CBP Form I-736); (v) waives any right to review or appeal under the INA of an immigration officer's determination as to the admissibility of the alien at the port of entry into Guam; and (vi) waives any right to contest other than on the basis of an application for asylum, any action for deportation of the alien. See 8 CFR 212.1(e)(1).

B. The Consolidated Natural Resources Act of 2008

On May 8, 2008, the President signed into law the Consolidated Natural Resources Act of 2008 (CNRA), Pub. L. No. 110-229, 122 Stat. 754. Section 702(a) of the CNRA extends U.S. immigration laws to the CNMI and authorizes DHS to create a Guam-CNMI Visa Waiver Program. See sections 212 and 214 of the INA, 8 U.S.C. 1182 and 1184.

This interim final rule establishes the Guam-CNMI Visa Waiver Program and sets forth the requirements for nonimmigrant visitors seeking admission into Guam or the CNMI under the Guam-CNMI Visa Waiver Program. These amendments ensure that the regulations conform to current border security needs and facilitate CBP's

dual core missions of protecting our nation's borders and fostering legitimate international travel.

Section 702(b) of the CNRA requires the Secretary of Homeland Security to consult with the Secretary of State and the Secretary of the Interior, the Governor of Guam and the Governor of the CNMI in the development of these regulations. Accordingly, representatives of DHS, including CBP, during a July 10–16, 2008 visit to Guam and the CNMI, met with officials of the Guam Government, the CNMI Government and representatives of the Marianas Visitors Authority, the Guam Visitors Bureau, the Hotel Association of the Northern Mariana Islands, and the Saipan Chamber of Commerce. At the request of the Governor of Guam, DHS officials met with Governor Camacho, his staff, and members of the Guam Visitor's Bureau on September 15, 2008, in Washington, D.C. Representatives of DHS also met on November 21, 2008 with Delegate-elect Gregorio "Kilili" Sablan, the first Delegate from the CNMI to the U.S. House of Representatives, as well as with members of the Hotel Association of the Northern Mariana Islands (HANMI) on December 5, 2008. Additionally, interagency meetings were held on September 9, October 21, 2008 and December 5, 2008, between DHS, the Department of State, and the Department of the Interior, among others, in order to come to an agreement over the implementation of the Guam-CNMI Visa Waiver Program.

III. Establishing the Guam-CNMI Visa Waiver Program

The following are the eligibility criteria for countries and aliens.

A. Program Countries

1. General Eligibility Criteria

The country eligibility requirements established in this rulemaking under the Guam-CNMI Visa Waiver Program differ from those under the Guam Visa Waiver Program. The new requirements take into account the provisions and purposes of the CNRA and ensure that the regulations conform to current border security needs. In determining the criteria for making country eligibility determinations for the Guam-CNMI Visa Waiver Program, DHS considered a variety of factors to ensure that the new Guam-CNMI Visa Waiver Program reflected Congress' stated purposes of the CRNA to, among others : (1) ensure effective border control procedures; (2) properly address national security and homeland security concerns in extending U.S. immigration law to the CNMI; and (3) maximize the CNMI's potential for future economic and business growth. See § 701(a)(1).

Section 702 of the CRNA provides that "[i]n determining whether to grant or continue providing the waiver under this subsection to nationals of any country, the Secretary of Homeland Security, in consultation with the Secretary of the Interior and the Secretary of

State, shall consider all factors that the Secretary deems relevant, including electronic travel authorizations, procedures for reporting lost and stolen passports, repatriation of aliens, rates of refusal for nonimmigrant visitor visas, overstays, exit systems, and information exchange.” In determining country eligibility for participation in the Guam-CNMI Visa Waiver Program under this rule, the Secretary of Homeland Security found relevant, and thus considered, each of these enumerated factors.

This rulemaking also provides for these new eligibility conditions to ensure the safety, security, and welfare of the United States. Under these new requirements a country’s nationals may not participate in the Guam-CNMI Visa Waiver Program if: (1) the country poses a threat to the welfare, safety or security of the United States, its territories or commonwealths; (2) the country is designated by the Department of State as being of special humanitarian concern; or (3) if the country does not accept for repatriation any citizen, former citizen, or national admitted into Guam or the CNMI under the Guam-CNMI Visa Waiver Program within three weeks after issuance of a final order of removal.

2. “Significant Economic Benefit” Criteria

Section 702(b) of the CNRA requires the Secretary to include in the list of participating countries, a list of those countries from which the CNMI has received a “significant economic benefit” from the number of visitors for pleasure within the one-year period preceding the date of enactment of the CNRA. However, if the Secretary determines that such a country’s inclusion represents a threat to the welfare, safety, or security of the United States, or determines that such country is not eligible based on other factors the Secretary deems relevant, then that country will not qualify as an eligible country.

DHS has determined that, during the relevant timeframe, visitors for pleasure from the People’s Republic of China (PRC) and the Russian Federation (Russia) provided a significant economic benefit to the CNMI. This determination is based on the economic analysis below and takes into account the total on-island spending of these visitors on a per country basis, calculated by the Marianas Visitors Authority. During the period of May 2007 through April 2008, DHS calculated visitor arrivals to the CNMI by country of residence. PRC nationals represented ten percent of visitor arrivals and Russian nationals represented one percent of visitor arrivals. The total on-island spending by PRC nationals was \$38 million and for Russian nationals was \$20 million. Per person on-island spending was equal to \$967 for PRC nationals and \$4,323 for Russian nationals.

At this time, however, due to political, security, and law enforcement concerns, including high nonimmigrant visa refusal rates and concerns with cooperation regarding the repatriation of citizens, sub-

jects, nationals and residents of the country subject to a final order of removal, nationals of the PRC and Russia are not eligible to participate in the Guam-CNMI Visa Waiver Program when the program is implemented.

After additional layered security measures, which may include, but are not limited to, electronic travel authorization to screen and approve potential visitors prior to arrival in Guam and the CNMI, and other border security infrastructure, DHS will make a determination as to whether nationals of the PRC and Russia can participate in the Guam-CNMI Visa Waiver Program. In making such a determination, DHS will consider the welfare, safety, and security of the United States and its territories, as well as other considerations deemed relevant by the Secretary.

If DHS determines that nationals from the PRC and/or Russia may participate in the Guam-CNMI Visa Program, DHS will amend the regulations as necessary.

3. Determination of Country Eligibility

This rulemaking includes a listing of all countries that have been determined to be eligible to participate in the Guam-CNMI Visa Waiver Program, and whose nationals may apply for admission into Guam or the CNMI under the Guam-CNMI Visa Waiver Program. The new Guam-CNMI Visa Waiver Program list includes all of the countries that were included in the Guam Visa Waiver Program, except for Indonesia, the Solomon Islands, Vanuatu, and Western Samoa. The Solomon Islands are not included on the list of eligible countries for the Guam-CNMI Visa Waiver Program in consideration of ongoing civil and political instability. Indonesia, Vanuatu, and Western Samoa are not included on the list of eligible countries due to very high rates of refusal for nonimmigrant visitor visas. In addition, these four countries do not provide a “significant economic benefit” to the CNMI. Therefore, DHS does not find their removal from the program country list, based on such factors as ongoing civil and political instability, or high nonimmigrant visa refusal rates, to outweigh any existing economic benefits from their past inclusion under the Guam Visa Waiver Program. The following countries are designated for participation in the Guam-CNMI Visa Waiver Program: Australia, Brunei, Hong Kong (Hong Kong Special Administrative Region (SAR) passport and Hong Kong identification card is required), Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, Taiwan, and the United Kingdom.

4. Suspension of Program Countries

This rule also incorporates the provisions in the CNRA regarding the suspension of countries from the Guam-CNMI Visa Waiver Program. Section 702(b) of the CNRA requires the Secretary to monitor the admission of nonimmigrant visitors to Guam and the CNMI, and

to suspend the admission of nationals from a country if the Secretary determines that admissions from that country have resulted in an unacceptable number of overstays, unlawful entry into other parts of the United States, or visitors seeking withholding of removal or seeking asylum.

The CNRA also requires the Secretary to suspend admissions from a country if the Secretary determines that visitors from that country pose a risk to the law enforcement or security interests of Guam, the CNMI, or the United States, including the interest in the enforcement of U.S. immigration laws. Any designated country that fails to meet the country eligibility criteria under new section 212.1(q) shall be removed for good cause. In determining whether to continue to grant the waiver, consistent with the statutory factors listed in section 702(b) of the CNRA, designated countries must, within three weeks after the issuance of a final order of removal, accept for repatriation any citizen, former citizen or national admitted into Guam or the CNMI under this program. Failure to accept for repatriation may result in suspension of that country from the program. The CNRA also provides that the Secretary may suspend the Guam-CNMI Visa Waiver Program on a country-by-country basis for other good cause.

B. Alien Eligibility Criteria

1. Requirements for Admission

The CNRA authorizes the Secretary to allow an alien to enter Guam or the CNMI as a nonimmigrant visitor for business or pleasure for a period not to exceed forty-five days after the Secretary of Homeland Security, in consultation with the Secretaries of State and the Interior and the Governors of Guam, and the CNMI determines that: (i) adequate arrival and departure control systems have been developed in Guam and the CNMI, and (ii) such a waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths.

In addition to the requirements that aliens currently seeking admission to Guam under the current Guam Visa Waiver program must meet, DHS is adding three new admission requirements. Under this interim final rule, to be considered eligible for admission into Guam or the CNMI under the Guam-CNMI Visa Waiver Program, nonimmigrant aliens must also: (i) be in possession of a valid unexpired passport that meets the standards of the International Civil Aviation Organization (ICAO) for machine readability and which is issued by a country that meets the eligibility requirements as determined by the Secretary; (ii) have not previously violated the terms of any prior admissions to the United States under the Guam-CNMI Visa Waiver Program, the prior Guam Visa Waiver Program, or the Visa Waiver Program as described in section 217(a) of the Act and admissions pursuant to any immigrant or nonimmigrant visa;

and (iii) present a valid completed and signed CBP Form I-94, known as the Arrival-Departure Record Form (Form I-94).

Although not specifically required under the Guam Visa Waiver Program regulations, pursuant to operational practices, nonimmigrant visitors currently must present a valid completed and signed CBP Form I-94 to enter Guam under the Guam Visa Waiver Program. This rulemaking explicitly requires completion of an I-94 to enter Guam and the CNMI under the Guam-CNMI Visa Waiver Program.

Additionally, consistent with existing Guam Visa Waiver Program regulations, an alien will not be admitted under the Guam-CNMI Visa Waiver Program unless the alien (i) has waived any right to review or appeal under the INA of an immigration officer's determination as to the admissibility of the alien and (ii) has waived any right to contest any action for removal of the alien, other than on the basis of an application for withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), or withholding or deferral of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or an application for asylum if permitted under section 208 of the INA, 8 U.S.C. 1158.

2. Inadmissibility and Deportability

This rule provides DHS with the authority to remove aliens and to make determinations as to admissibility and deportability under 8 CFR 212.1(q)(8). CBP may remove an alien seeking admission under the Guam-CNMI Visa Waiver Program upon a determination that the alien is inadmissible to Guam or the CNMI under one or more of the grounds of inadmissibility (other than for lack of visa) listed under section 212 of the INA. See 8 U.S.C. 1182. This rule also provides that an immigration officer may remove a Guam-CNMI Visa Waiver Program applicant who presents fraudulent or counterfeit travel documents. Likewise, DHS will have the authority to remove an alien admitted under the Guam-CNMI Visa Waiver Program who has violated his/her status under one or more grounds of deportability as listed under section 237 of the INA. See 8 U.S.C. 1227. Accordingly, aliens who have been determined to be inadmissible or deportable will not be referred to an immigration judge for further inquiry, examination or hearing, except that an alien admitted to Guam under the Guam-CNMI Visa Waiver Program, who applies for asylum or withholding of removal under section 241(b)(3) of the INA or withholding or deferral of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must be issued a Form I-863 for a proceeding in accordance with 8 CFR 208.2(c)(1) and (2).

The CNRA provides that, during the transition period, section 208 of the INA, 8 U.S.C. 1158, which provides for asylum, does not apply to aliens physically present in the CNMI. See Pub. Law 110-229, 122 Stat. 754, § 702(a). Therefore, prior to January 1, 2015, an alien who is physically present in the CNMI under the Guam-CNMI Visa Waiver Program may not apply for asylum and an immigration judge will not have jurisdiction over asylum applications filed by an alien physically present in the CNMI under the Guam-CNMI Visa Waiver Program. Aliens physically present in the CNMI during the transition period who express a fear of persecution or torture only may establish eligibility for withholding of removal pursuant to INA 241(b)(3) or pursuant to the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

This rule amends 8 CFR 214.1, regarding ineligibility for extensions of stay to add a limitation regarding extensions of stay for any Guam-CNMI Visa Waiver Program nonimmigrants. Currently, nonimmigrants who were admitted into the United States as visitors for business or pleasure pursuant to the Visa Waiver Program (section 217 of the INA) are ineligible for an extension of stay. This amendment will provide that nonimmigrants admitted pursuant to the Guam-CNMI Visa Waiver Program are ineligible for an extension of stay. Additional technical changes to 8 CFR 233.5 to include references to the CNMI also are made where appropriate.

3. Bond Provision

Section 702(b) of the CNRA also requires that the regulations include any bonding requirements for nationals of some or all of those countries who may present an increased risk of overstaying their period of authorized stay or other potential problems. See section 702(b). This rule implements this new bonding provision in new section 212.1(q), which provides that the Secretary may require a bond on behalf of an alien seeking admission under the Guam-CNMI Visa Waiver Program when the Secretary deems it appropriate.

4. Maintenance of Status

This rule includes a provision allowing an alien admitted to Guam or the CNMI under the Guam-CNMI Visa Waiver Program to seek a period of satisfactory departure. Under this rule, CBP and U.S. Citizenship and Immigration Services (USCIS) have the discretion to grant a period of satisfactory departure to an alien admitted under the Guam-CNMI Visa Waiver Program in the event of an emergency. Under new section 212.1(q)(7), this rule provides that if an alien admitted under the Guam-CNMI Visa Waiver Program is prevented from departing within the period of his or her authorized stay due to an emergency, CBP or USCIS may grant satisfactory departure to permit the alien to delay departing Guam or the CNMI for a period

not to exceed fifteen days. If the alien departs within the extended time period, the alien will be regarded as having departed within the required time period and will not be considered as having overstayed his period of authorized stay.

5. Applicability of Section 212 of the INA – Passport and Visa Requirement

Another result of applying the U.S. immigration laws to the CNMI, is that, pursuant to section 212 of the INA, 8 U.S.C. 1182, nonimmigrant visitors who seek admission to the CNMI must possess a valid passport and a valid visa, unless they are applying for entry under a visa waiver program. This means that nonimmigrant visitors who are not eligible for either the Visa Waiver Program under 8 CFR part 217 (VWP) or the Guam-CNMI Visa Waiver Program must possess a valid passport and must obtain a visa from a U.S. Embassy or Consulate. They will no longer be able to visit the CNMI using the CNMI Visitor Entry Permit.²

6. Applicability of Section 217 of the INA – Visa Waiver Program

The CNRA extends the immigration laws of the United States to the CNMI. Thus, the admission of aliens to the CNMI is governed by the provisions of the INA. As indicated above, this rule amends 8 CFR 215.1 to add the CNMI to the definition of the United States to ensure that the INA applies to the CNMI.

Section 217 of the INA, 8 U.S.C. 1187, establishes the VWP. Under the VWP, nationals of designated countries can apply for admission to the United States at ports of entry for business or pleasure for up to 90 days without first obtaining a nonimmigrant visa. The regulations implementing the VWP are at 8 CFR part 217. Under this interim final rule, both the VWP and the Guam-CNMI Visa Waiver Program will be in operation in the CNMI. Thus, nonimmigrant visitors may be able to apply for admission to the CNMI under one or both programs, depending on the eligibility status of the nonimmigrant visitors' country of nationality or citizenship. The permitted length of stay will depend on whether the nonimmigrant visitors are admitted under the VWP (up to 90 days) or under the Guam-CNMI Visa Waiver Program (up to 45 days).³

²Nonimmigrant visitors who seek admission to Guam already must possess a valid passport and a valid visa, or a valid passport (and no visa) if they are applying for entry under a visa waiver program. This will not change under this interim final rule.

³The immigration laws of the United States already apply to Guam. Thus, nonimmigrant visitors from designated countries already can apply for admission to Guam under the VWP under section 217 of the INA or the Guam Visa Waiver Program under section 212(1) of the INA. Under this interim final rule, visitors from participating countries will be able to apply for admission to Guam or the CNMI under the VWP or the Guam-CNMI Visa Waiver Program. The permitted length of stay depends on whether they are admitted under the VWP (up to 90 days) or under the Guam-CNMI Visa Waiver Program (up to 45 days).

IV. Conforming Changes and Amendments

A. Changes to CBP Form I-736 “Guam Visa Waiver Information” and to CBP Form I-760 “Guam Visa Waiver Agreement”

Under the current Guam Visa Waiver Program, an alien seeking admission must present a completed CBP Form I-736 “Guam Visa Waiver Information” (I-736) in order to be admitted into Guam without a visa. The alien must also present a completed and signed CBP Form I-94/Arrival-Departure Record Form (I-94). The I-736 will be revised so that it will be entitled: “Guam-CNMI Visa Waiver Information Form.” Additionally, the portion of the form allowing for a maximum stay of 15 days visit will be changed to allow for a maximum stay of 45 days. The amended forms will not be available until after the effective date of the regulation, and not required until the start of the transition period, currently June 1, 2009.

Currently, transportation lines transporting nonimmigrant visitors under the Guam Visa Waiver Program into Guam from foreign territories must enter into a contract with CBP by executing CBP Form I-760 “Guam Visa Waiver Agreement” (I-760). Form I-760 will be revised so that it will be titled “Guam-CNMI Visa Waiver Agreement” and references to the CNMI will be inserted, where appropriate.⁴ A conforming change that adds a new provision at 8 CFR 233.6 has been made to include transportation lines bringing aliens to the CNMI in addition to Guam.

B. Conforming Changes to Title 8 of the Code of Federal Regulations

Part 215 of title 8 of the CFR describes the procedures concerning aliens who depart from the United States. Section 215.1 sets forth the definitions for 8 CFR Part 215. This rule amends 8 CFR 215.1 to add the CNMI to the definition of the United States to ensure that the INA applies to the CNMI beginning June 1, 2009.

To conform the amendments to existing laws, this rule deletes both “Canal Zone” and “Trust Territory of the Pacific” from the definitions of the United States, under 8 CFR 215.1, paragraphs (e), (g), and (j).

This rule also makes a conforming change in paragraph (e) of section 212.1 by adding the phrase “Until June 1, 2009,” to the beginning of the first sentence. This change will allow the existing Guam

⁴The current provisions of the Guam Visa Waiver Program set forth in 8 CFR 212.1(e) will apply to nonimmigrant visitors seeking admission to Guam under the Guam Visa Waiver Program until the start of the transition period – currently June 1, 2009, when the new Guam-CNMI Visa Waiver Program is implemented. The current CBP Forms I-736 and I-760 are to be used for purposes of the Guam Visa Waiver Program through this date.

Visa Waiver Program to continue until the Guam –CNMI Visa Waiver program takes effect on the transition date.

The deletion of “the Canal Zone” from 8 CFR 215.1 is being made to reflect that the United States no longer has control over the Canal Zone, pursuant to the Panama Canal Zone Act of 1979, Pub. L. No. 96–70. Similarly, the term “Trust Territory of the Pacific Islands” is being removed from 8 CFR 215.1 to update the regulations to reflect current law.⁵

C. Conforming Changes to Title 19 of the Code of Federal Regulations

This rule amends 19 CFR 4.7b(a) and 122.49a(a) to add the CNMI to the definition of the term “United States” for purposes of the filing of electronic passenger and crew arrival manifests prior to the arrival of vessels and aircraft in the United States.

V. Establishing Ports of Entry in the CNMI

Currently, CBP does not have a presence in the CNMI. In order to implement section 702 of the CNRA, CBP must establish operations in the CNMI to allow for immigration inspections, including arrival and departure controls, under the INA. Such operational controls are also necessary to establish the Guam-CNMI Visa Waiver Program. Therefore, the Secretary is designating six ports of entry in the CNMI for immigration purposes only. The CNMI will continue to enforce and administer its own customs and agriculture laws. This rule amends 8 CFR part 100 to establish Ports-of-Entry, as defined in 8 CFR section 100.4(c), to provide air and sea ports in close proximity to the CNMI facilities on the islands of Saipan, Tinian, and Rota.⁶

VI. Effective Date

These regulations will be effective January 16, 2009. Beginning June 1, 2009, unless the start of the

⁵The “Trust Territory of the Pacific Islands” (TTPI) is no longer in existence. On November 3, 1986, President Reagan announced by Proclamation that the TTPI agreement between the CNMI and the United States was terminated after the Trusteeship Council of the United Nations concluded that the United States satisfactorily discharged its obligations under the agreement. See Proclamation No. 5564, 51 FR 40399 (November 7, 1986). As announced by President Reagan’s Proclamation, the United States fully established its agreement with CNMI. This agreement is entitled “Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States,” Pub. L. 99–239, 48 U.S.C. 1801. With regard to the CNMI, the CNMI then became a self-governing Commonwealth in political union with and under the sovereignty of the United States. Therefore, DHS is deleting the term “Trust Territory of the Pacific Islands” to conform the regulations to existing law.

⁶Because the INA already applies to Guam and ports of entry have already been established in Guam to administer and enforce the INA, no amendments to 8 CFR part 100 are needed with respect to Guam. Guam will continue to administer its own customs laws.

transition period is delayed, U.S. immigration law applies to the CNMI and the Guam-CNMI Visa Waiver Program will be implemented. The immediate effective date of this rule allows nationals from the designated participating countries to prepare for their travel to either Guam or the CNMI under the program. In addition, CBP will have the necessary time to establish ports of entry in the CNMI and to set up the necessary infrastructure to implement the Guam-CNMI Visa Waiver Program and enforce U.S. immigration laws. Beginning June 1, 2009, DHS will begin operating ports-of-entry in the CNMI for immigration inspection of arriving aliens and establish departure control for certain flights leaving the CNMI. In addition, on that date, DHS will begin the administration and enforcement of the Guam-CNMI Visa Waiver Program.

The date of June 1, 2009, may be delayed by the Secretary of Homeland Security, in consultation with the Secretary of the Interior, the Secretary of Labor, the Secretary of State, the Attorney General, and the Governor of the Commonwealth of the CNMI, for up to 180 days if the date for application of the immigration laws to the CNMI is delayed pursuant to section 702(b) of the CNRA. Any delay in the implementation date of the Guam-CNMI Visa Waiver Program will be published in the **Federal Register**. Prior to the start of the transition period, currently June 1, 2009, the current requirements pertaining to the Guam Visa Waiver Program will apply to nonimmigrant visitors seeking admission into Guam. Additionally, section 702(b) directs that the promulgation of the regulations shall be considered a foreign affairs function for purposes of the notice and comment and 30-day delayed effective date requirements under the Administrative Procedure Act. See 5 U.S.C. 553(a).

VII. Statutory and Regulatory Requirements

A. Administrative Procedure Act

Section 702(b) of CNRA directs that all regulations necessary to implement the Guam-CNMI Visa Waiver Program shall be considered a foreign affairs function for purposes of section 553(a) of the Administrative Procedure Act (APA). Accordingly, this interim final rule is exempt from the notice and comment and 30-day effective date requirements of the APA. Although DHS is not required to provide prior public notice or an opportunity to comment, DHS is nevertheless providing the opportunity for public comments. In accordance with section 702(a) of the CNRA, this rule is effective January 16, 2009. Implementation and compliance with this interim final rule will begin on the date that begins the transition period, which is currently June 1, 2009.

B. Executive Order 12866

This interim final rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and

Review, due to the foreign affairs exemption described above. Accordingly, the Office of Management and Budget has not reviewed this regulation under that Executive Order.

DHS has, however prepared an economic analysis of the potential impacts of this interim final rule. A summary of the analysis is presented below. The complete details of the analysis can be found in the Economic Analysis in the public docket for this rule.

The most significant change for admission to the CNMI as a result of the rule will be for visitors from those countries who are not included in either the existing Visa Waiver Program under 8 CFR part 217 or the Guam-CNMI Visa Waiver Program established by the rule. These visitors must apply for U.S. visas, which require in-person interviews at U.S. embassies or consulates and higher fees than the CNMI currently assesses for its visitor entry permits. For admission to Guam, the primary change will be the extension of the maximum allowable period of stay from fifteen days to forty-five days for visitors of countries included in the Guam-CNMI Visa Waiver Program and the opportunity for visitors admitted under the Guam-CNMI Visa Waiver Program to travel between Guam and the CNMI without the requirement to obtain a visa or a visitor entry permit.

In this analysis, we estimate the incremental costs associated with the interim final rule. Specifically, we assess and estimate the potential impact of implementing the Guam-CNMI Visa Waiver Program on the economies of the CNMI and Guam, with particular focus on their tourism sectors. While tourism impacts are “indirect” effects of the rule (where the impacts to visitors are the “direct” effect because visitors are directly regulated), we consider these impacts because tourism represents a major component of the economies of both the CNMI and Guam.

We anticipate that the CNMI will experience most of the economic impact of this rule because the rule federalizes the entry and exit procedures for nonimmigrant visitors to the CNMI. We first estimate the changes in the travel demand of nonimmigrant visitors to the CNMI (i.e., the reduction in visitors due to implementation of the Guam-CNMI Visa Waiver Program) had the Guam-CNMI Visa Waiver Program been implemented in our baseline year of analysis (May 2007 to April 2008). We then estimate the associated changes in the total amount of visitor spending in the CNMI. Next, we estimate the associated changes in net economic output, income, and employment in the CNMI. Finally, we project these economic impacts to each year of our five-year analysis period (May 2009 through April 2014) and calculate the present value of these cost impacts.

For Guam, we do not anticipate that the interim final rule will significantly affect its economy because the Guam-CNMI Visa Waiver Program only modifies the existing Guam visa waiver program by

extending the allowable duration of stay from fifteen days to forty-five days. Thus, we qualitatively assess two of the three issues that may arise as a result of implementing the Guam-CNMI Visa Waiver Program, namely: 1) the impact of extending the allowable period of stay from fifteen days to forty-five days on visitor behavior, spending, and the Guam economy in general; 2) the impact of adding the CNMI to the existing Guam Visa Waiver Program on visitor decisions to visit the CNMI instead of or in addition to Guam; and 3) the impact of excluding Indonesia, the Solomon Islands, Vanuatu, and Western Samoa in the list of program-eligible countries (these four countries currently are participating countries in the Guam Visa Waiver Program).

Because of limitations in the data, we cannot reliably predict and quantify what percentages of visitors to Guam would elect to stay in Guam longer than fifteen days, by how many additional days, and the resulting impact on Guam's economy. On-island tourist expenditures in Guam are quite substantial, and additional days of stay on the island would have a positive impact on Guam's economy. Conversely, adding the CNMI to the existing Guam Visa Waiver Program to establish the Guam-CNMI Visa Waiver Program could divert visitor travel away from Guam to the CNMI. Under the interim final rule, nationals from those countries included in the Guam-CNMI Visa Waiver Program, which includes all the countries currently included in the Guam Visa Waiver Program, may now enter the CNMI without having to apply for and obtain a CNMI visitor entry permit. Such a change may increase the potential for visitors from these countries to travel to the CNMI instead of or in addition to Guam. The Guam-CNMI Visa Waiver Program will facilitate travel between Guam and the CNMI, and packaged tours of both islands may appeal to some tourists, especially visitors that have already visited Guam. However, we do not have sufficient data to reliably predict and quantify the extent to which visitors from countries included in the Guam-CNMI Visa Waiver Program would elect to spend part or all of a planned visit in the CNMI instead of, or in addition to, Guam and how this change would affect the Guam economy.

Finally, we present the costs CBP expects to incur to develop and administer the Guam-CNMI Visa Waiver Program.

Impacts to the CNMI

The two largest foreign markets for visitors to the CNMI in the baseline year of our analysis (May 2007 to April 2008) are Japan and the Republic of Korea. Because this rule does not change the baseline conditions for Japanese visitors and will ease requirements for Korean visitors, we do not estimate any significant changes in visitation levels for these two countries.

To estimate the impacts on tourism from other affected countries, we use an “elasticity of demand” for long-haul international leisure trips available from the published literature to compare the change in cost (both in out-of-pocket expenses as well as the value of time burden) that obtaining a visa represents to the trip cost to the CNMI. In this analysis, we estimate out-of-pocket expenses of \$187 (including the fee, photos, travel costs, and other miscellaneous expenses) plus an average time of five hours to obtain the visa (including completing the necessary Department of State forms and having an interview at a U.S. embassy). Applying a demand elasticity of -1.04 , we find that if the rule had been in effect in the baseline year of analysis (May 2007 to April 2008) the potential impact of this regulation would have been a reduction of approximately 5,017 tourist arrivals from the PRC, 194 tourist arrivals from Russia, and 618 tourist arrivals from the Philippines to the CNMI. We estimate that a strong majority of travelers from these countries would continue traveling to the CNMI even with the implementation of the rule. These visitors represent the three largest tourist markets that primarily will be affected by the rule because they are not included on the list of eligible countries for the Guam-CNMI Visa Waiver Program and, therefore, will now be required to obtain U.S. visas to visit the CNMI (previously PRC and Russia, but not the Philippines, were eligible for admission to the CNMI under its visitor entry permit program).

Based on visitor spending data provided by the Marianas Visitors Authority, we estimate that the associated reductions in spending would have been \$4.9 million from the Chinese, \$0.8 million from the Russians, and \$0.5 million from the Filipinos. In sum, the total visitor spending in the CNMI could potentially have declined by \$6.2 million, or 2.0 percent of the \$317 million in total visitor spending. Using economic multiplier data available from the published literature, we estimate that the potential reduction in visitor spending of \$6.2 million leads to a reduction of between \$8.3 million and \$12.5 million in economic output, \$2.1 million and \$2.4 million in income, and between 131 and 162 jobs in the CNMI.

Applying these baseline year estimates to our five-year period of analysis (2009 to 2014), assuming no growth in the number of visitors or the amounts they spend in the CNMI, results in a total present value estimate of \$29.2 million (3 percent discount rate) and \$27.1 million (7 percent discount rate) in lost CNMI visitor spending. We estimate that the total present value losses in CNMI economic output and income are between \$36.4 million and \$59.1 million, and \$9.4 million and \$11.4 million, respectively, depending on the discount rate applied. Tables 1 and 2 summarize the results of our analysis.

Table 1. Impacts to Visitors, CNMI Economic Analysis, \$2008

Country	Potential number of lost visitors annually	Annual lost CNMI visitor spending (undiscounted) (\$M)	Estimated total on-island spending (\$M)	% of on-island spending lost
Japan	0	\$0.0	\$162	0.0%
Korea	0	0.0	65	0.0%
China	5,017	4.9	38	12.9%
Russia	194	0.8	20	4.2%
Philippines	618	0.5	3	18.3%
Others	0	0.0	29	0.0%
Total	5,829	\$6.2	\$317	2.0%

Table 2. Summary of Economic Impacts, CNMI Economic Analysis

	Lost CNMI visitor spending (\$M)	Estimated lost CNMI economic output (\$M)	Estimated lost CNMI income (\$M)
Total, May 2007–Apr 2008 (undiscounted)	\$6.2	\$8.3 to \$12.5	\$2.1 to \$2.4
Total (2009–2014), 3% discount rate	\$29.2	\$39.1 to \$59.1	\$10.1 to \$11.4
Total (2009–2014), 7% discount rate	\$27.1	\$36.4 to \$54.9	\$9.4 to \$10.6

We have not quantified the losses associated with excluding Indonesia, the Solomon Islands, Vanuatu, and Western Samoa from the Guam-CNMI Visa Waiver Program because the Marianas Visitors Authority did not report statistics for these countries individually; they are captured in the “other” category in Table 1. Because their current number of visits is low (too low to be reported by the Marianas Visitors Authority), any potential economic losses would also be small.

Impacts to Guam

We attempted to quantify the potential economic impact of the interim final rule on Guam, although we anticipate it to be minimal. Because of limitations in the available data, we could not reliably predict and quantify how many Guam-CNMI Visa Waiver Program-eligible visitors would elect to stay in Guam longer than the current fifteen day limit and by how many days, or elect to spend part or all

of their planned visit in the CNMI instead of or in addition to Guam. Additional days of stay on the island would have a positive impact on Guam's economy. However, visitors diverting their travel plans from Guam to the CNMI and visitors from Indonesia, the Solomon Islands, Vanuatu, and Western Samoa forgoing travel to Guam would have a negative impact. The net economic effect of these two factors is unknown.

Government Costs

Finally, CBP estimates that it will incur costs to establish and administer six new air and sea ports of entry in the CNMI. The costs consist of two primary categories: 1) non-recurring capital costs and other initial or one-time expenses incurred in the first year or prior to implementation of the Guam-CNMI Visa Waiver Program, and 2) recurring operating, maintenance, and personnel costs expected to be incurred each year. CBP will need to build, operate, and maintain the infrastructure needed at the six ports of entry to achieve the requisite level of security (e.g., arrival and departure control) and operational efficiency commensurate with other CBP-operated ports. CBP estimates a capital cost of approximately \$25.8 million to develop this infrastructure, and a recurring cost of \$153,100 per year for port operation and maintenance. CBP plans to staff these ports initially with experienced temporary duty assignment staff on a short-term basis, gradually replacing them with permanent staff. CBP estimates initial costs of approximately \$3.7 million for personnel relocation as well as recurring costs of approximately \$7.8 million per year for personnel salary and benefits and \$5.3 million per year for associated temporary duty costs (e.g., airfare, per diem food and housing allowances, vehicle rental). Applying these estimated costs to the applicable years of our 5-year analysis period results in total present value cost for government implementation of \$87.3 million to \$91.7 million, depending on the discount rate applied.

Sources of Uncertainty

Because the Commonwealth of the Northern Mariana Islands is small and remote, the quality and quantity of prior economic data and analyses are very limited. We have relied on the best available data in estimating the economic impact of implementing the Guam-CNMI Visa Waiver Program. Nonetheless, we recognize that there are significant limitations and uncertainties in our analysis.

The key sources of uncertainty in our analysis are the value of time and demand elasticity for Chinese, Russian, and Filipino visitors. These data are key inputs into our estimates of the reduction in the number of these visitors to the CNMI. To estimate the value of time, we apply the wages from the highest paid industry category among all industries reported in an International Labor Organization (ILO) database; however, we recognize that these data are im-

perfect. First, comparing wages, and by extension opportunity costs, across countries is notoriously difficult. In addition, it is likely that only the more affluent citizens of these countries would engage in international travel to the CNMI and, therefore, we likely understate their value of time. We test the sensitivity of our wage estimates and find that the estimated loss in CNMI visitor spending could increase by about 40 percent assuming a much higher wage rate (\$20 per hour).

The demand elasticity value we use (-1.04) is also a significant source of uncertainty because it may not be representative of visitor demand to the CNMI (demand elasticities for specifically the CNMI or other Pacific Islands are not available). On the one hand, for the more affluent travelers, the additional travel (visa) costs may not currently represent a significant portion of their household budget or travel cost and thus may not be a major factor influencing their travel decisions (less elastic). There may not be very many travelers from the PRC, Russia, and the Philippines for whom the visa costs and burden are particularly meaningful – they are either wealthy enough that it does not matter, or their economic status is such that international travel is out of reach regardless of the additional travel costs. On the other hand, other alternative destinations exist that would provide these visitors with a comparable experience to that of the CNMI. As a result, some of these visitors may simply choose to forgo travel to the CNMI because of the additional burden associated with the visa requirements and instead seek other alternative destinations (more elastic).

Finally, in applying an own-price elasticity of travel demand, we have presented a binary choice for a traveler based solely on price – “go” or “do not go.” In reality, travelers are faced with complex decisions and myriad substitutes for particular trips. There is evidence in the travel literature that price may not be a very big determinant of destination selection. Additionally, a traveler could still choose to visit the CNMI but may spend less while on the islands. This would still be a loss to the CNMI economy, but it would be less than what we have estimated in this analysis. We have chosen to estimate direct costs using demand elasticities to avoid deliberately misrepresenting these costs (we would not want to assume that travelers’ decisions will be completely unaffected by the new entry requirements), knowing that we may then be overstating the simplicity of the traveler’s decision-making process. In doing this, we have likely overstated indirect costs.

Another source of uncertainty is in the multipliers used to calculate lost economic output, income, and employment as a result of lost tourist spending. Although we use a range of values, the actual total economic impact could be significantly lower or higher than the results presented in this analysis.

A final source of uncertainty is our assumption that the number of visitors or the amounts they spend in the CNMI will remain constant over the five-year analysis period. The historic year-to-year trends in the number of visitors from the PRC, Russia, and the Philippines on which we could estimate a future growth rate vary widely from negative growth (-69.0 percent) to positive growth (118.7 percent). We also cannot reliably predict future growth (or loss) rates given the ever-changing global economy and political climate, airline and tourism industries, the volatility of the CNMI economy, and other factors affecting international travel.

C. Regulatory Flexibility Act

Because this rule is being issued as an interim final rule on the foreign affairs function of the United States, as set forth above, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601-612).

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Pub. L. No. 104-4, 109 Stat. 48, on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the UMRA, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the UMRA is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the UMRA, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule would not impose a significant cost or uniquely affect small governments. The economic impacts of this rule are presented in the Executive Order 12866 discussion of this document.

E. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States,

or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

The collections of information encompassed within this rule have been submitted to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under OMB Control Number 1651-0109 (Guam Visa Waiver Information) for CBP Form I-736 and OMB Control Number 1651-0111 for Form I-94 (Arrival and Departure Record).

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. The burden estimates for the two forms affected by this rule are presented below.

OMB Control Number 1651-0109 (Guam-CNMI Visa Waiver Information)

Estimated annual average reporting and/or recordkeeping burden:
30,000 hours

Estimated annual average number of respondents: 360,000

Estimated average burden per respondent: 5 minutes

Estimated frequency of responses: once per year.

OMB Control Number 1651-0111 (Arrival and Departure Record)

Estimated annual average reporting and/or recordkeeping burden:
60,000 hours

Estimated annual average number of respondents: 360,000

Estimated average burden per respondent: 10 minutes

Estimated frequency of responses: once per year.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Border Security Regulations Branch, Customs and Border Protection, Mint Annex, 799 Ninth Street, NW, Washington, DC 20001.

H. Privacy

DHS will publish a Privacy Impact Assessment (PIA) on its

website. In addition, DHS is also preparing a separate Systems of Records Notice (SORN) in conjunction with this interim final rule.

LIST OF SUBJECTS

8 CFR part 100

Organization and functions (Government agencies)

8 CFR part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR part 215

Administrative practice and procedure, Aliens, Travel restrictions.

8 CFR part 233

Air carriers, Maritime carriers, Aliens, Government Contracts.

8 CFR part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

19 CFR part 4

Customs duties and inspection, Reporting and recordkeeping requirements, Vessels.

19 CFR part 122

Administrative practice and procedure, Air carriers, Aircraft, Customs duties and inspection, Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

For the reasons stated in the preamble, DHS amends parts 100, 212, 214, 215, 233 and 235 of title 8 of the Code of Federal Regulations and parts 4 and 122 of title 19 of the Code of Federal Regulations as set forth below:

8 CFR CHAPTER 1—AMENDMENTS

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for part 100 continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

2. Section 100.4 is amended in paragraph (c)(2) by revising the entry for “Class A” under “District No. 17 – Honolulu, Hawaii” and in paragraph (c)(3) by revising the entry under “District No. 17—Honolulu, Hawaii” to read as follows:

§ 100.4 Field Offices.

* * * * *

(c) * * *

(2) * * *

DISTRICT NO. 17—HONOLULU, HAWAII

Class A

*Agana, Guam, M.I (including the port facilities of Apra Harbor, Guam)

Honolulu, HI, Seaport (including all port facilities on the island of Oahu)

Rota, the Commonwealth of the Northern Mariana Islands

Saipan, the Commonwealth of the Northern Mariana Islands

Tinian, the Commonwealth of the Northern Mariana Islands

* * * * *

(3) * * *

DISTRICT NO. 17—HONOLULU, HAWAII

Agana, Guam, Guam International Airport Terminal

Honolulu, HI, Honolulu International Airport

Honolulu, HI, Hickam Air Force Base

Rota, the Commonwealth of the Northern Mariana Islands

Saipan, the Commonwealth of the Northern Mariana Islands

Tinian, the Commonwealth of the Northern Mariana Islands

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANT; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The general authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note,

1184, 1187, 1223, 1225, 1226, 1227, 1359; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295).

Section 212.1(q) also issued under section 702, Pub. L. 110–229, 100 Stat. 842.

4. In section 212.1, paragraph (e)(1) introductory text is revised and a new paragraph (q) is added to read as follows:

§ 212.1 Documentary Requirements for Nonimmigrants.

* * * * *

(e) Aliens entering Guam pursuant to section 14 of Pub. L. 99–396, “Omnibus Territories Act.” (1) Until June 1, 2009, a visa is not required of an alien who is a citizen of a country enumerated in paragraph (e)(3) of this section who:

* * *

(q) Aliens admissible under the Guam-CNMI Visa Waiver Program. (1) Eligibility for Program. In accordance with Public Law 110–229, beginning June 1, 2009, the Secretary, in consultation with the Secretaries of the Departments of Interior and State, may waive the visa requirement in the case of a nonimmigrant alien who seeks admission to Guam or to the Commonwealth of the Northern Mariana Islands (CNMI) under the Guam-CNMI Visa Waiver Program. To be admissible under the Guam-CNMI Visa Waiver Program, prior to embarking on a carrier for travel to Guam or the CNMI, each nonimmigrant alien must:

(i) Be a national of a country or geographic area listed in paragraph (q)(2) of this section;

(ii) Be classifiable as a visitor for business or pleasure;

(iii) Be solely entering and staying on Guam or the CNMI for a period not to exceed forty-five days;

(iv) Be in possession of a round trip ticket that is nonrefundable and nontransferable and bears a confirmed departure date not exceeding forty-five days from the date of admission to Guam or the CNMI. “Round trip ticket” includes any return trip transportation ticket issued by a participating carrier, electronic ticket record, airline employee passes indicating return passage, individual vouchers for return passage, group vouchers for return passage for charter flights, or military travel orders which include military dependents for return to duty stations outside the United States on U.S. military flights;

(v) Be in possession of a completed and signed Guam-CNMI Visa Waiver Information Form (CBP Form I–736);

(vi) Be in possession of a completed and signed I–94, Arrival-Departure Record (CBP Form I–94);

(vii) Be in possession of a valid unexpired ICAO compliant, machine readable passport issued by a country that meets the eligibility requirements of paragraph (q)(2) of this section;

(viii) Have not previously violated the terms of any prior admissions. Prior admissions include those under the Guam-CNMI Visa Waiver Program, the prior Guam Visa Waiver Program, the Visa Waiver Program as described in section 217(a) of the Act and admissions pursuant to any immigrant or nonimmigrant visa;

(ix) Waive any right to review or appeal an immigration officer's determination of admissibility at the port of entry into Guam or the CNMI;

(x) Waive any right to contest any action for deportation or removal, other than on the basis of: an application for withholding of removal under section 241(b)(3) of the INA; withholding or deferral of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; or, an application for asylum if permitted under section 208 of the Act; and

(xi) If a resident of Taiwan, possess a Taiwan National Identity Card and a valid Taiwan passport with a valid re-entry permit issued by the Taiwan Ministry of Foreign Affairs.

(2) Program Countries and Geographic Areas. (i) General Eligibility Criteria.

(A) A country or geographic area may not participate in the Guam-CNMI Visa Waiver Program if the country or geographic area poses a threat to the welfare, safety or security of the United States, its territories, or commonwealths;

(B) A country or geographic area may not participate in the Guam-CNMI Visa Waiver Program if it has been designated a Country of Particular Concern under the International Religious Freedom Act of 1998 by the Department of State, or identified by the Department of State as a source country of refugees designated of special humanitarian concern to the United States;

(C) A country or geographic area may not participate in the Guam-CNMI Visa Waiver Program if that country, not later than three weeks after the issuance of a final order of removal, does not accept for repatriation any citizen, former citizen, or national of the country against whom a final executable order of removal is issued. Nothing in this subparagraph creates any duty for the United States or any right for any alien with respect to removal or release. Nothing in this subparagraph gives rise to any cause of action or claim under this paragraph or any other law against any official of the United States or of any State to compel the release, removal or reconsideration for release or removal of any alien.

(D) DHS may make a determination regarding a country's eligibility based on other factors including, but not limited to, rate of refusal for nonimmigrant visas, rate of overstays, cooperation in infor-

mation exchange with the United States, electronic travel authorizations, and any other factors deemed relevant by DHS.

(ii) Eligible Countries and Geographic Areas. Nationals of the following countries and geographic areas are eligible to participate in the Guam-CNMI Visa Waiver Program for purposes of admission to both Guam and the CNMI: Australia, Brunei, Hong Kong (Hong Kong Special Administrative Region (SAR) passport and Hong Kong identification card are required), Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, Taiwan (residents thereof who begin their travel in Taiwan and who travel on direct flights from Taiwan to Guam or the CNMI without an intermediate layover or stop except that the flights may stop in a territory of the United States enroute), and the United Kingdom.

(iii) Significant Economic Benefit Criteria. If, in addition to the considerations enumerated under paragraph (q)(2)(i) of this section, DHS determines that the CNMI has received a significant economic benefit from the number of visitors for pleasure from particular countries during the period of May 8, 2007 through May 8, 2008, those countries are eligible to participate in the Guam-CNMI Visa Waiver Program unless the Secretary of Homeland Security determines that such country's inclusion in the Guam-CNMI Visa Waiver Program would represent a threat to the welfare, safety, or security of the United States and its territories.

(iv) Additional Eligible Countries or Geographic Areas Based on Significant Economic Benefit. [Reserved.]

(3) Suspension of Program Countries or Geographic Areas. (i) Suspension of a country or geographic area from the Guam-CNMI Visa Waiver Program may be made on a country-by-country basis for good cause including, but not limited to if: the admissions of visitors from a country have resulted in an unacceptable number of visitors from a country remaining unlawfully in Guam or the CNMI, unlawfully obtaining entry to other parts of the United States, or seeking withholding of removal or seeking asylum; or that visitors from a country pose a risk to law enforcement or security interests, including the enforcement of immigration laws of Guam, the CNMI, or the United States.

(ii) A country or geographic area may be suspended from the Guam-CNMI Visa Waiver Program if that country or geographic area is designated as a Country of Particular Concern under the International Religious Freedom Act of 1998 by the Department of State, or identified by the Department of State as a source country of refugees designated of special humanitarian concern to the United States, pending an evaluation and determination by the Secretary.

(iii) A country or geographic area may be suspended from the Guam-CNMI Visa Waiver Program by the Secretary of Homeland Security, in consultation with the Secretary of the Interior and the Secretary of State, based on the evaluation of all factors the Secre-

tary deems relevant including, but not limited to, electronic travel authorization, procedures for reporting lost and stolen passports, repatriation of aliens, rates of refusal for nonimmigrant visitor visas, overstays, exit systems and information exchange.

(4) Admission under this section renders an alien ineligible for:

(i) Adjustment of status to that of a temporary resident or, except under the provisions of section 245(i) of the Act, to that of a lawful permanent resident;

(ii) Change of nonimmigrant status; or

(iii) Extension of stay.

(5) Requirements for transportation lines. A transportation line bringing any alien to Guam or the CNMI pursuant to this section must:

(i) Enter into a contract on CBP Form I-760, made by the Commissioner of Customs and Border Protection on behalf of the government;

(ii) Transport an alien who is a citizen or national and in possession of a valid unexpired ICAO compliant, machine readable passport of a country enumerated in paragraph (q)(2) of this section;

(iii) Transport an alien only if the alien is in possession of a round trip ticket as defined in paragraph (q)(1)(iv) of this section bearing a confirmed departure date not exceeding forty-five days from the date of admission to Guam or the CNMI which the carrier will unconditionally honor when presented for return passage. This ticket must be:

(A) Valid for a period of not less than one year,

(B) Nonrefundable except in the country in which issued or in the country of the alien's nationality or residence, and

(C) Issued by a carrier which has entered into an agreement described in paragraph (q)(5) of this section.

(iv) Transport an alien in possession of a completed and signed Guam-CNMI Visa Waiver Information Form (CBP Form I-736), and

(v) Transport an alien in possession of completed I-94, Arrival-Departure Record (CBP Form I-94).

(6) Bonding. The Secretary may require a bond on behalf of an alien seeking admission under the Guam-CNMI Visa Waiver Program, in addition to the requirements enumerated in this section, when the Secretary deems it appropriate. Such bonds may be required of an individual alien or of an identified subset of participants.

(7) Maintenance of status. (i) Satisfactory departure. If an emergency prevents an alien admitted under the Guam-CNMI Visa Waiver Program, as set forth in this paragraph (q), from departing from Guam or the CNMI within his or her period of authorized stay, an immigration officer having jurisdiction over the place of the alien's temporary stay may, in his or her discretion, grant a period of satisfactory departure not to exceed 15 days. If departure is accom-

plished during that period, the alien is to be regarded as having satisfactorily accomplished the visit without overstaying the allotted time.

(8) Inadmissibility and Deportability. (i) Determinations of inadmissibility. (A) An alien who applies for admission under the provisions of the Guam-CNMI Visa Waiver Program, who is determined by an immigration officer to be inadmissible to Guam or the CNMI under one or more of the grounds of inadmissibility listed in section 212 of the Act (other than for lack of a visa), or who is in possession of and presents fraudulent or counterfeit travel documents, will be refused admission into Guam or the CNMI and removed. Such refusal and removal shall be effected without referral of the alien to an immigration judge for further inquiry, examination, or hearing, except that an alien who presents himself or herself as an applicant for admission to Guam under the Guam-CNMI Visa Waiver Program, who applies for asylum, withholding of removal under section 241(b)(3) of the INA or withholding or deferral of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must be issued a Form I-863, Notice of Referral to Immigration Judge, for a proceeding in accordance with 8 CFR 208.2(c)(1) and (2). The provisions of 8 CFR 208 subpart A shall not apply to an alien present or arriving in the CNMI seeking to apply for asylum prior to January 1, 2015. No application for asylum may be filed pursuant to section 208 of the Act by an alien present or arriving in the CNMI prior to January 1, 2015; however, aliens physically present in the CNMI during the transition period who express a fear of persecution or torture only may establish eligibility for withholding of removal pursuant to INA 241(b)(3) or pursuant to the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(B) The removal of an alien under this section may be deferred if the alien is paroled into the custody of a Federal, State, or local law enforcement agency for criminal prosecution or punishment. This section in no way diminishes the discretionary authority of the Secretary enumerated in section 212(d) of the Act.

(C) Refusal of admission under this paragraph shall not constitute removal for purposes of the Act.

(ii) Determination of deportability. (A) An alien who has been admitted to either Guam or the CNMI under the provisions of this section who is determined by an immigration officer to be deportable from either Guam or the CNMI under one or more of the grounds of deportability listed in section 237 of the Act, shall be removed from either Guam or the CNMI to his or her country of nationality or last residence. Such removal will be determined by DHS authority that has jurisdiction over the place where the alien is found, and will be

effected without referral of the alien to an immigration judge for a determination of deportability, except that an alien admitted to Guam under the Guam-CNMI Visa Waiver Program who applies for asylum or other form of protection from persecution or torture must be issued a Form I-863 for a proceeding in accordance with 8 CFR 208.2(c)(1) and (2). The provisions of 8 CFR part 208 subpart A shall not apply to an alien present or arriving in the CNMI seeking to apply for asylum prior to January 1, 2015. No application for asylum may be filed pursuant to section 208 of the INA by an alien present or arriving in the CNMI prior to January 1, 2015; however, aliens physically present or arriving in the CNMI prior to January 1, 2015, may apply for withholding of removal under section 241(b)(3) of the Act and withholding and deferral of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture, Inhuman or Degrading Treatment or Punishment.

(B) Removal by DHS under paragraph (b)(1) of this section is equivalent in all respects and has the same consequences as removal after proceedings conducted under section 240 of the Act.

(iii) Removal of inadmissible aliens who arrived by air or sea. Removal of an alien from Guam or the CNMI under this section may be effected using the return portion of the round trip passage presented by the alien at the time of entry to Guam and the CNMI. Such removal shall be on the first available means of transportation to the alien's point of embarkation to Guam or the CNMI. Nothing in this part absolves the carrier of the responsibility to remove any inadmissible or deportable alien at carrier expense, as provided in the carrier agreement.

PART 214 – NONIMMIGRANT CLASSES

5. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; Title VII of Pub. L. 110–229; 8 CFR part 2.

6. Section 214.1 is amended by adding paragraph (c)(3)(viii), to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *
 (c) * * *
 (3) * * *

(viii) Any nonimmigrant admitted pursuant to the Guam-CNMI Visa Waiver Program, as provided in section 212(l) of the Act.

* * * * *

PART 215—CONTROLS OF ALIENS DEPARTING FROM THE UNITED STATES

7. The general authority citation for part 215 is revised to read as follows:

Authority: 8 U.S.C. 1101; 1104; 1184; 1185 (pursuant to Executive Order 13323, published January 2, 2004); 1365a note. 1379, 1731–32.

8. Section 215.1 is revised by amending paragraphs (e), (g), and (j) to read as follows:

§ 215.1 Definitions.

* * * * *

(e) The term United States means the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, Swains Island, the Commonwealth of the Northern Mariana Islands (beginning June 1, 2009), and all other territory and waters, continental and insular, subject to the jurisdiction of the United States.

* * * * *

(g[e1]) The term geographical part of the United States means: (1) The continental United States, (2) Alaska, (3) Hawaii, (4) Puerto Rico, (5) the Virgin Islands, (6) Guam, (7) American Samoa, (8) Swains Island, or (9) the Commonwealth of the Northern Mariana Islands (beginning June 1, 2009).

* * * * *

(j) The term port of departure means a port in the continental United States, Alaska, Guam, Hawaii, Puerto Rico, the Commonwealth of the Northern Mariana Islands (beginning June 1, 2009), or the Virgin Islands, designated as a port of entry by the Secretary, or in exceptional circumstances such other place as the departure-control officer may, in his discretion, designate in an individual case, or a port in American Samoa, or Swains Island, designated as a port of entry by the chief executive officer thereof.

* * * * *

PART 233—CONTRACTS WITH TRANSPORTATION LINES

9. The authority for part 233 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1221, 1228, 1229, 8 CFR part 2.

10. Add § 233.6 to read as follows:

§ 233.6 Aliens entering Guam or the Commonwealth of the Northern Mariana Islands pursuant to Title VII of Public Law 110-229, “Consolidated Natural Resources Act of 2008.”

A transportation line bringing aliens to Guam or the Commonwealth of the Northern Mariana Islands under the visa waiver provisions of § 212.1(q) of this chapter must enter into an agreement on CBP Form I-760. Such agreements must be negotiated directly by Customs and Border Protection and head offices of the transportation lines.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

11. The authority for Part 235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, published January 2, 2004), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731-32; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458).

12. Section 235.5(a) is revised to read as follows:

§ 235.5 Preinspection.

(a) **In United States territories and possessions.** In the case of any aircraft proceeding from Guam, the Commonwealth of the Northern Mariana Islands (beginning June 1, 2009), Puerto Rico, or the United States Virgin Islands destined directly and without touching at a foreign port or place, to any other of such places, or to one of the States of the United States or the District of Columbia, the examination of the passengers and crew required by the Act may be made prior to the departure of the aircraft, and in such event, final determination of admissibility will be made immediately prior to such departure. The examination will be conducted in accordance with sections 232, 235, and 240 of the Act and 8 CFR parts 235 and 240. If it appears to the immigration officer that any person in the United States being examined under this section is prima facie removable from the United States, further action with respect to his or her examination will be deferred and further proceedings regarding removability conducted as provided in section 240 of the Act and 8 CFR part 240. When the foregoing inspection procedure is applied to any aircraft, persons examined and found admissible will be placed aboard the aircraft, or kept at the airport separate and apart from the general public until they are permitted to board the aircraft. No other person will be permitted to depart on such aircraft until and

unless he or she is found to be admissible as provided in this section.

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19 CFR CHAPTER 1—AMENDMENTS

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

13. The general authority for part 4 continues, and the specific authority citation for § 4.7b is revised to read as follows:

Authority: 5 U.S.C 301; 19 U.S.C. 66; 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.7b also issued under 8 U.S.C. 1101, 1221;

* * * * *

14. In § 4.7b(a), the definition of “United States” is revised to read as follows:

§ 4.7b Electronic passenger and crew arrival manifests.

(a) * * *

United States. “United States” means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands (beginning June 1, 2009).

* * * * *

PART 122—AIR COMMERCE REGULATIONS

15. The general authority for part 122 continues, and the specific authority citation for § 122.49a is revised to read as follows:

Authority: 5 U.S.C 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

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Section 122.49a also issued under 8 U.S.C. 1101, 1221, 19 U.S.C. 1431, 49 U.S.C. 44909.

* * * * *

16. In § 122.49a(a), the definition of “United States” is revised to read as follows:

§ 122.49a Electronic manifest requirement for passengers onboard commercial aircraft arriving in the United States.

(a) * * *

United States. “United States” means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands (beginning June 1, 2009), and the Virgin Islands of the United States.

* * * * *

PAUL A. SCHNEIDER,
Deputy Secretary.

[Published in the Federal Register, January 16, 2009 (74 FR 2824)]

19 CFR Part 12

CBP Dec. 09-03

RIN 1505-AC08

**IMPORT RESTRICTIONS IMPOSED ON CERTAIN
ARCHAEOLOGICAL MATERIAL FROM CHINA**

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

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Customs and Border Protection (CBP) regulations to reflect the imposition of import restrictions on certain archaeological material from the People’s Republic of China (China). These restrictions are being imposed pursuant to an agreement between the United States and China that has been entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The final rule amends CBP regulations by adding China to the list of countries for which a bilateral agreement has been entered into for imposing cultural property import restrictions. The final rule also contains the designated list that describes the types of archaeological articles to which the restrictions apply.

EFFECTIVE DATE: January 16, 2009.

FOR FURTHER INFORMATION CONTACT: For legal aspects, George Frederick McCray, Esq., Chief, Intellectual Property Rights and Restricted Merchandise Branch, Regulations and Rulings, Office of International Trade, (202) 325-0082. For operational aspects, Michael Craig, Chief, Interagency Requirements Branch, Trade Policy and Programs, Office of International Trade, (202) 863-6558.

SUPPLEMENTARY INFORMATION:

Background

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and results in their illegal export and import.

The United States shares in the international concern for the need to protect endangered cultural property. The appearance in the United States of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the United States to join with other countries to control illegal trafficking of such articles in international commerce.

The United States joined international efforts and actively participated in deliberations resulting in the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the "Convention on Cultural Property Implementation Act" (Pub. L. 97-446, 19 U.S.C. 2601 *et seq.*) (the Act). This was done to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance to the nations from where they originate and contribute to greater international understanding of our common heritage.

Since the Act entered into force, import restrictions have been imposed on the archaeological and ethnological materials of a number of signatory nations. These restrictions have been imposed as a result of requests for protection received from those nations. More in-

formation on import restrictions can be found on the International Cultural Property Protection Web site (<http://culturalheritage.state.gov>).

This document announces that import restrictions are now being imposed on certain archaeological materials from China (for a definition of China, please see <http://www.state.gov/s/inr/rls/4250.htm>).

Determinations

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). On May 13, 2008, the Assistant Secretary for Educational and Cultural Affairs, Department of State, made the determinations required under the statute with respect to certain archaeological materials originating in China that are described in the designated list set forth below in this document. These determinations include the following: (1) that the cultural patrimony of China is in jeopardy from the pillage of irreplaceable archaeological materials representing China's cultural heritage from the Paleolithic Period (c. 75,000 B.C.) through the end of the Tang Period (A.D. 907) and irreplaceable monumental sculpture and wall art at least 250 years old (19 U.S.C. 2602(a)(1)(A)); (2) that the Chinese government has taken measures consistent with the Convention to protect its cultural patrimony (19 U.S.C. 2602(a)(1)(B)); (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage and remedies less drastic are not available (19 U.S.C. 2602(a)(1)(C)); and (4) that the application of import restrictions as set forth in this final rule is consistent with the general interests of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes (19 U.S.C. 2602(a)(1)(D)). The Assistant Secretary also found that the materials described in the determinations meet the statutory definition of "archaeological material of the state party" (19 U.S.C. 2601(2)).

The Agreement

On January 14, 2009, the United States and China entered into a bilateral agreement pursuant to the provisions of 19 U.S.C. 2602(a)(2). The agreement enables the promulgation of import restrictions on certain archaeological materials representing China's cultural heritage from the Paleolithic Period through the end of the Tang Period (A.D. 907) and monumental sculpture and wall art at least 250 years old. For the purposes of the agreement, the restricted Paleolithic objects date from approximately c. 75,000 BC. A list of the categories of archaeological materials subject to the import restrictions is set forth later in this document.

Restrictions and Amendment to the Regulations

In accordance with the Agreement, importation of materials designated below are subject to the restrictions of 19 U.S.C. 2606 and § 12.104g(a) of the Customs and Border Protection (CBP) Regulations (19 CFR 12.104g(a)) and will be restricted from entry into the United States unless the conditions set forth in 19 U.S.C. 2606 and § 12.104c of the regulations (19 CFR 12.104c) are met. CBP is amending § 12.104g(a) of the CBP Regulations (19 CFR 12.104g(a)) to indicate that these import restrictions have been imposed.

Material Encompassed in Import Restrictions

The bilateral agreement between the United States and China includes, but is not limited to, the categories of objects described in the designated list set forth below. These categories of objects are subject to the import restrictions set forth above, in accordance with the above explained applicable law and the regulation amended in this document (19 CFR 12.104(g)(a)).

Designated List of Archaeological Material of China

Simplified Chronology

Paleolithic period (c. 75,000 – 10,000 BC)
Neolithic period (c. 10,000 – 2000 BC)
Erlitou and other Early Bronze Age cultures (c. 2000 – 1600 BC)
Shang Dynasty and other Bronze Age Cultures (c. 1600 – 1100 BC)
Zhou Dynasty (c. 1100 – 256 BC)
Qin Dynasty (221 – 206 BC)
Han Dynasty (206 BC – AD 220)
Three Kingdoms (AD 220 – 280)
Jin Dynasty (AD 265 – 420)
Southern and Northern Dynasties (AD 420 – 589)
Sui Dynasty (AD 581 – 618)
Tang Dynasty (AD 618 – 907)

I. Ceramic.

The ceramic tradition in China extends back to at least the 6th millennium B.C. and encompasses a tremendous variety of shapes, pastes, and decorations. Chinese ceramics include earthenwares, stonewares and porcelains, and these may be unglazed, glazed, underglazed, painted, carved, impressed with designs, decorated with applied designs or a combination of all of these. Only the most distinctive are listed here. Vessels are the most numerous and varied types of ceramics. Ceramic sculptures include human, animal, mythic subjects, and models of scenes of daily life. Architectural elements include decorated bricks, baked clay tiles with different glaze colors, and acroteria (ridge pole decorations).

A. Vessels.

1. Neolithic Period.

Archaeological work over the past thirty years has identified numerous cultures of the Neolithic period from every part of China, all producing distinctive ceramics. Early Neolithic cultures (c. 7500–5000 BC) include such cultures as Pengtoushan (northern Hunan Province), Peiligang (Henan Province), Cishan (Hebei Province), Houli (Shandong Province), Xinglongwa (eastern Inner Mongolia and Liaoning Province), Dadiwan and Laoguantai (Gansu and Shaanxi Province), Xinle (Liaodong peninsula, Liaoning Province), among others. Examples of Middle Neolithic cultures (c. 5000–3000 BC) include Yangshao (Shaanxi, Shanxi, and Henan Provinces), Daxi (eastern Sichuan and western Hubei Provinces), Hemudu (lower Yangzi River valley, Zhejiang Province), Majiabang (Lake Tai/Taihu area to Hangzhou Bay, Zhejiang and southern Jiangsu Provinces), Hongshan (eastern Inner Mongolia, Liaoning, and northern Hebei Provinces), Dawenkou (Shandong Province), among others. Later Neolithic cultures (c. 3500–2000 BC) include Liangzhu (lower Yangzi River Valley), Longshan (Shandong and Henan Provinces), Taosi (southern Shanxi Province), Qujialing (middle Yangzi River valley in Hubei and Hunan Provinces), Baodun (Chengdu Plain, Sichuan Province), Shijiahe (western Hubei Province), and Shixia (Guangdong Province, among many others. Neolithic vessels are sometimes inscribed with pictographs. When present, they are often single incised marks on vessels of the Neolithic period, and multiple incised marks (sometimes around the rim) on late Neolithic vessels.

a. Yangshao: The “classic” form of Neolithic culture, c. 5000–3000 BC in Shanxi, Shaanxi, Gansu, Henan, and adjacent areas. Hand-made, red paste painted with black, sometimes white motifs, that are abstract and depict plants, animals, and humans. Forms include bulbous jars with lug handles, usually with a broad shoulder and narrow tapered base, bowls, open mouth vases, and flasks (usually undecorated) with two lug handles and a pointed base.

b. Shandong Longshan: Vessels are wheel-made, black, very thin-walled, and highly polished, sometimes with open cut-out decoration. Forms include tall stemmed cups (dou), tripods (li and ding), cauldrons, flasks, and containers for water or other liquids.

2. Erlitou, Shang, and Zhou Vessels.

a. Vessels are mostly utilitarian gray paste cooking tripod basins, cooking and storage jars, wide mouth containers, pan circular dishes with flat base, and broad three legged version of pan. The latter also appear in fine gray and black pastes. The forms of these include the kettle with lid (he), tripod liquid heating vessel with pouring spout

(jue), tripod cooking pot (ding), goblet or beaker (gu), tripod water heater without pouring spout (jia).

b. Shang and Zhou: Vessels may be wheel-made or coiled. Vessels can be utilitarian gray paste cooking vessels, often cord-impressed, or more highly decorated types. Surfaces can be impressed and glazed yellow to brown to dark green. White porcelain-like vessels also occur. Forms include those of the Erlitou plus wide-mouth containers and variously shaped jars and serving vessels.

3. Qin through Southern and Northern Vessels.

Most vessels are wheel-made. The main developments are in glazing. Earthenwares may have a lead-based shiny green glaze. Grey stonewares with an olive color are called Yue ware.

4. Sui and Tang Vessels.

Note: Most vessels are wheel-made.

a. Sui: Pottery is plain or stamped.

b. Tang: A three-color glazing technique is introduced for earthenwares (sancai). Green, yellow, brown, and sometimes blue glazes are used together on the same vessel. For stoneware, the olive glaze remains typical.

B. Sculpture.

1. Neolithic: Occasional small figurines of animals or humans. From the Hongshan culture come human figures, some of which appear pregnant, and human faces ranging from small to life size, as well as life-size and larger fragments of human body parts (ears, belly, hands, and others).

2. Shang through Eastern Zhou: Ceramic models and molds for use in the piece-mold bronze casting process. Examples include frontal animal mask (taotie), birds, dragons, spirals, and other decorative motifs.

3. Eastern Zhou, Qin and Han: Figures are life-size or smaller. They are hand and mold-made, and may be unpainted, painted, or glazed. Figures commonly represent warriors on foot or horseback, servants, acrobats, and others. Very large numbers date to the Han Dynasty. In some cases, the ceramic male and female figurines are anatomically accurate, nude, and lack arms (in these cases, the figures were originally clad in clothes and had wooden arms that have not been preserved). Other ceramic objects, originally combined to make scenes, take many forms including buildings, courtyards, ships, wells, and pig pens.

4. Tang: Figures depicting Chinese people, foreigners, and animals may be glazed or unglazed with added paint. Approximately 15 cm to 150 cm high.

C. Architectural Decoration and Molds.

1. Han: Bricks having a molded surface with geometric or figural design. These depict scenes of daily life, mythic and historical stories, gods, or demons.

2. Three Kingdoms through Tang: Bricks may be stamped or painted with the same kinds of scenes as in the Han Dynasty.

3. Han through Tang: Roof tiles may have a corded design. Eaves tiles with antefixes have Chinese characters or geometric designs. Glazed acroteria (ridge pole decorations) in owl tail shape.

II. Stone.

A. Jade.

Ancient Chinese jade is, for the most part, the mineral nephrite. It should be noted, however, that many varieties of hard stone are sometimes called “jade” (yu) in Chinese. True nephrite jade can range in color from white to black, and from the familiar shades of green to almost any other color. Jade has been valued in China since the Neolithic period. Types commonly encountered include ornaments, amulets, jewelry, weapons, insignia, and vessels.

1. Ornaments and jewelry.

a. Neolithic (Hongshan): Types are mostly hair cylinders or pendant ornamental animal forms such as turtles, fish-hawks, cicadas, and dragons. One common variety is the so-called “pig-dragon” (zhulong), a circular ring form with a head having wrinkled snout (the “pig”) and long dragon-like body.

b. Neolithic (Liangzhu): Types include awl-shaped pendants, three-prong attachments, openwork crown-shapes, beads, birds, fishes, frogs.

c. Neolithic (Shandong Longshan) and Erlitou: Ornaments for body and clothing such as stick pins and beads.

d. Shang and Zhou: earrings, necklaces, pectorals, hair stickpins, ornaments, sometimes in the shape of small animals, dragons, or other forms; belt buckles, and garment hooks. During the Zhou Dynasty, there appear elaborate pectorals made of jade links, and jade inlay on bronze.

e. Qin, Han and Three Kingdoms: pectoral ornaments and small-scale pendants continue to be produced. Types include pectoral slit earrings, large disks (bi), openwork disks (bi), openwork plaques

showing a mythic bird (feng), and various types of rings. Entire burial suits of jade occur during the Han Dynasty. More frequently occurring are Han Dynasty belthooks, decorated with dragons, and garment hooks.

2. Weapons, Tools, and Insignia.

a. Neolithic (Liangzhu): Types include weapons such as broad-bladed axes (yue), long rectangular or trapezoidal blades (zhang), often with holes along the back (non-sharpened) edge for hafting; tools such as hoe, adze, knife blades.

b. Neolithic (Shandong Longshan) and Erlitou: Broad axe (yue) and halberd or “dagger axe” (ge).

c. Shang and Zhou: Broad axes (yue) and halberd (ge) may be attached to turquoise inlaid bronze shafts.

d. Neolithic (Liangzhu) to Zhou: Tools types include hoe, adze, knife blades.

e. Neolithic (Shandong Longshan) to Zhou: Insignia blades based on tool shapes such as long hoe, flat adze, and knife.

3. Ceremonial paraphernalia.

Neolithic – Han: Types include flat circular disks (bi) with a cut-out central hole and prismatic cylindrical tubes (cong), usually square on the outside with a circular hole through its length, often with surface carving that segments the outer surface into three or more registers. The cong tubes are often decorated with a motif on each corner of each register showing abstract pairs of eyes, animal and/or human faces. Cong tubes, while most closely linked with the Liangzhu culture, were widely distributed among the many late Neolithic cultures of China.

4. Vessels.

a. Shang through Han: Types include eared cups and other tableware.

b. Qin through Tang: Tableware forms such as cups, saucers, bowls, vases, and inkstones.

5. Other.

Chimes from all eras may be rectangular or disk-shaped.

B. Amber.

Amber is used for small ornaments from the Neolithic through Tang dynasties.

C. Other Stone.

1. Tools and Weapons.

- a. Paleolithic and later eras: Chipped lithics from the Paleolithic and later eras including axes, blades, scrapers, arrowheads, and cores.
- b. Neolithic and later eras: Ground stone from the including hoes, sickles, spades, axes, adzes, pestles, and grinders.
- c. Erlitou through Zhou: As with jade, weapon types include blades, broad axes (yue), and halberds (ge).

2. Sculpture.

Stone becomes a medium for large-scale images in the Qin and Han. It is put to many uses in tombs. It also plays a major role in representing personages associated with Buddhism, Daoism, and Confucianism.

a. Sculpture in the round.

Note: This section includes monumental sculpture at least 250 years old.

- i. Shang: Sculpture includes humans, often kneeling with hands on knees, sometimes with highly decorated incised robes, owls, buffalo, and other animals. The Jinsha site near Chengdu, Sichuan, dating to the late Shang Dynasty, has yielded numerous examples of stone figurines in a kneeling position, with carefully depicted hair parted in the center, and with hands bound behind their back.
- ii. Han to Qing: The sculpture for tombs includes human figures such as warriors, court attendants, and foreigners. Animals include horse, tiger, pig, bull, sheep, elephant, and fish, among many others.
- iii. The sculpture associated with Buddhism is usually made of limestone, sandstone, schist and white marble. These be covered with clay, plaster, and then painted. Figures commonly represented are the Buddha and disciples in different poses and garments.
- iv. The sculpture associated with Daoism is usually sandstone and limestone which may be covered and painted. Figures commonly represented are Laozi or a Daoist priest.
- v. The sculpture associated with Confucianism represents Confucius and his disciples.

b. Relief Sculpture.

- i. Han: Relief sculpture is used for all elements of tombs including sarcophagi, tomb walls, and monumental towers. Images include hunting, banqueting, historical events, processions, scenes of daily life, fantastic creatures, and animals.

ii. Tang: Tomb imagery now includes landscapes framed by vegetal motifs.

c. Art of cave or grotto temples.

Han – Qing: Note that this section includes monumental sculpture at least 250 years old. These temples, mostly Buddhist, combine relief sculpture, sculpture in the round, and sometimes mural painting. The sculptures in the round may be stone or composites of stone, wood, and clay and are painted with bright colors.

d. Stelae.

Han – Qing: Note that this section includes monumental sculpture at least 250 years old. Tall stone slabs set vertically, usually on a tortoise-shaped base and with a crown in the form of intertwining dragons. Stelae range in size from around 0.60m to 3m. Some include relief sculpture consisting of Buddhist imagery and inscription, and others are secular memorials with long memorial inscription on front and back faces.

3. Architectural Elements.

a. Erlitou through Zhou: Marble or other stone is used as a support for wooden columns and other architectural or furniture fixtures.

b. Qing: Note that this section includes monumental sculpture at least 250 years old. Sculpture is an integral part of Qing Dynasty architecture. Bridges, archways, columns, staircases and terraces throughout China are decorated with reliefs. Colored stones may be used, including small bright red, green, yellow and black ones. Statue bases are draped with imitations of embroidered cloths. Stone parapets are carved with small, elaborately adorned fabulous beasts.

4. Musical Instruments.

Neolithic through Han, and later: Chimestones, chipped and/or ground from limestone and other resonant rock. They may be highly polished, carved with images of animals or other motifs, and bear inscriptions in Chinese characters. They usually have a chipped or ground hole to facilitate suspension from a rack.

III. Metal.

The most important metal in traditional Chinese culture is bronze (an alloy of copper, tin and lead), and it is used most frequently to cast vessels, weapons, and other military hardware. Iron artifacts are not as common, although iron was used beginning in the middle of the Zhou Dynasty to cast agricultural tool types, vessels, weapons and measuring utensils. As with ceramics, only the most distinctive are listed here.

A. Bronze.

1. Vessels.

Note: Almost any bronze vessel may have an inscription in archaic Chinese characters.

a. Erlitou: Types include variations on pots for cooking, serving and eating food including such vessels as the cooking pot (ding), liquid heating vessel with open spout (jue), or with tubular spout (he), and water heater without spout (jia).

b. Shang: Bronze vessels and implements include variations on the ceramic posts used for cooking, serving, and eating including but not limited to the tripod or quadripod cooking pot (ding), water container (hu), and goblet (gu). Animal-shaped vessels include the owl, mythic bird, tiger, ram, buffalo, deer, and occasionally elephant and rhinoceros. Most types are decorated with symbolic images of a frontal animal mask (taotie) flanked by mythical birds and dragons, or with simpler images of dragons or birds, profile cicadas, and geometric motifs, including a background “cloud and thunder” pattern of fine squared spirals.

c. Zhou: Types include those of previous eras. Sets begin to be made with individual vessels having similar designs. Late innovations are made to surface treatment: relief decorations of intertwined dragons and feline appendages; inlay with precious stones and gems; inlay with other metals such as gold and silver; gilding; pictorial narratives featuring fighting, feasting and rituals; and various geometric designs.

d. Qin and Han: All vessel types and styles popularized of the immediately preceding era continue.

2. Sculpture.

a. Shang and other Bronze Age Cultures through Zhou: Wide variety of cast human and animal sculptures. Particularly distinctive are the bronze sculptures from the Sanxingdui Culture in Sichuan which include life-sized human heads (often with fantastic features and sometimes overlaid with gold leaf) and standing or kneeling figurines ranging in size from 5cm to more than 2 meters; tree-shaped assemblages; birds, dragons, and other real and fantastic animals. Bronze sculpture from Chu and related cultures include supports for drums and bell sets (often in the shape of guardian figures, fantastic animals, or intertwined snakes).

b. Qin and Han: Decorative bronze types include statues of horses, lamps in the shape of female servants, screen supports in the shape of winged immortals, incense burners in the shape of mountains, mirrors, and inlaid cosmetic boxes.

c. Buddhist: In the Han there first appear small portable images of Sakyamuni Buddha. During the next historical eras, such images proliferate and become more varied in terms of size and imagery. Most of these are free-standing, depicting such subjects as the historical Buddha Sakyamuni, Buddhas associated with paradises, Buddha's disciples, and scenes from the Lotus Sutra. Gilt bronzes are made from the Han to Tang.

3. Coins.

a. Zhou Media of Exchange and Tool-shaped Coins: Early media of exchange include bronze spades, bronze knives, and cowrie shells. During the 6th century BC, flat, simplified, and standardized cast bronze versions of spades appear and these constitute China's first coins. Other coin shapes appear in bronze including knives and cowrie shells. These early coins may bear inscriptions.

b. Later, tool-shaped coins began to be replaced by disc-shaped ones which are also cast in bronze and marked with inscriptions. These coins have a central round or square hole.

c. Qin: In the reign of Qin Shi Huangdi (221–210 BC) the square-holed round coins become the norm. The new Qin coin is inscribed simply with its weight, expressed in two Chinese characters ban liang. These are written in small seal script and are placed symmetrically to the right and left of the central hole.

d. Han through Sui: Inscriptions become longer, and may indicate that inscribed object is a coin, its value in relation to other coins, or its size. Later, the period of issue, name of the mint, and numerals representing dates may also appear on obverse or reverse. A new script, clerical (lishu), comes into use in the Jin.

e. Tang: The clerical script becomes the norm until 959, when coins with regular script (kaishu) also begin to be issued.

4. Musical Instruments.

a. Shang: Instruments include individual clapper-less bells (nao), singly and in sets. Barrel drums lay horizontally, have a saddle on top, and rest on four legs.

b. Zhou through Tang: Bells and bell sets continue to be important. The bells vary considerably in size in shape. Other instruments include mouth organs (hulu sheng), gongs, cymbals, and a variety of types of drums, including drums (chunyu) and large "kettledrums" from south and southwest China.

5. Tools and Weapons.

Tools and implements of all eras include needles, spoons, ladles, lifting poles, axes, and knives. Weapons and military gear include the

broad axe, dagger axe, knives, spear points, arrowheads, helmets, chariot fittings, combination of spear and dagger (ji), cross-bow, and horse frontlets.

6. Miscellaneous.

Other bronze items include but are not limited to mirrors, furniture parts, and utensils such as belt buckles, garment hooks, weights, measuring implements, incense burners, lamps, spirit trees, tallies, seals, rings, bells, and cosmetic containers.

B. Iron.

Iron is used for such utilitarian objects as axes, hammers, chisels, and spades. At the end of the Zhou, steel swords with multi-faceted metal inlay are produced.

1. Zhou through Han: Bimetallic weapons such as iron-bladed swords and knives with a bronze hilt.

2. Three Kingdoms through Sui: Small scale Buddhist images are cast.

3. Tang: Large scale castings include Buddhist statues, bells, lions, dragons, human figures, and pagodas.

C. Gold and Silver.

During the Shang and Zhou Dynasties, gold is used to produce jewelry and a limited number of vessel types, and as gilding, gold leaf, or inlay on bronze. Gold and silver become widely used in the Han Dynasty and remain so through the Tang Dynasty. Objects include vessels such as cups, ewers, jars, bowls; utensils such as lamps, containers, jewelry, liturgical wares, furniture parts; and Buddhist sculpture such as images of Buddha and reliquaries.

IV. Bone, Ivory, Horn, and Shell.

Neolithic through Tang: The most important uses of these materials is for vessels, seals, small-scale sculptures, and personal ornaments. In the Neolithic period, Erlitou culture, and Shang Dynasty bone (bovine scapula and tortoise plastrons, or lower shells) is used for divination: a carefully prepared bone or shell was thinned by drilling series of holes almost through the bone, to which heat was applied to make the bone crack. In some cases from the Late Shang Dynasty, the bones carry inscriptions revealing the date and nature of the question asked and, occasionally, the outcome of the event. The cowrie shells used as money in the Shang Dynasty and later periods show signs of use. Worked shell imitations of cowries are also known. Ivory and horn are used to craft tableware utensils such as cups and containers as early as the Shang Dynasty; these are sometimes inlaid with turquoise or other stones.

V. Silks and textiles.

Neolithic through Tang: Silk worms are domesticated in China as early as the Neolithic. Silk cloth is preserved as garments and parts thereof, as a covering for furniture, and as painted or embroidered banners. Techniques include flat weave, moiré, damask, gauze, quilting, and embroidery.

VI. Lacquer and Wood.

Neolithic through Tang: Lacquer is a transparent sap collected from the lac tree. When dissolved, it may be repeatedly applied to a wood or fabric form. The resulting product is sturdy and light. Lacquer vessels first appear in the Neolithic period, and become highly sophisticated and numerous by the middle Zhou through Han Dynasties. In the Sui and Tang Dynasties the practice is invented of creating a hard, thick surface of lacquer with the application of many thin layers. The resulting object may be carved and or inlaid before it hardens completely. Common colors for lacquer are red and black. Object types include: vessels such as bowls, dishes, and goblets; military gear such shields and armor; musical instruments such as zithers (qin) and drums, related supports for drums and for bell sets; and boxes and baskets with painted or carved lids.

Wooden objects from this era are mainly preserved when painted with lacquer. These include architectural elements, utensils, coffins, musical instruments, and wood sculptures.

VII. Bamboo and Paper.

Zhou through Tang: Types include texts on bamboo and wooden slips, and on paper. The slips may be found singly, or in groups numbering into the thousands. Some Buddhist sutras were printed with movable wooden type.

VIII. Glass.

Zhou through Tang: Glass types include mostly tablewares, such as cups, plates, saucers.

IX. Painting And Calligraphy.

A. Wall Painting

Note that this section includes wall art at least 250 years old. The painted bricks of the Han through Tang tomb walls have already been mentioned. That tradition is partially concurrent with a fresco tradition that runs from the Han through Qing Dynasties. Temples including those in caves or grottos have wall paintings with Buddhist, Confucian, and Daoist themes.

B. Other Painting

Han through Tang: Paintings, dating to as early as the Southern and Northern, are on such media as banners, hand-scrolls, and fans. Subjects are drawn from Buddhism, Confucianism, and Daoism. Other subjects include landscapes and hunting scenes.

**INAPPLICABILITY OF NOTICE AND DELAYED
EFFECTIVE DATE**

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

REGULATORY FLEXIBILITY ACT

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

EXECUTIVE ORDER 12866

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866.

SIGNING AUTHORITY

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

LIST OF SUBJECTS IN 19 CFR PART 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, Reporting and recordkeeping requirements.

AMENDMENT TO CBP REGULATIONS

For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read 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;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

2. In § 12.104g, paragraph (a), the table is amended by adding the People's Republic of China to the list in appropriate alphabetical order as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) * * *

State Party	Cultural Property	Decision No.
* * * *	* *	*
People's Republic of China	Archaeological materials representing China's cultural heritage from the Paleolithic Period (c. 75,000 B.C.) through the end of the Tang Period (A.D. 907) and monumental sculpture and wall art at least 250 years old	CBP Dec. 09-03
* * * *	* *	*

* * * * *

W. RALPH BASHAM,
Commissioner,
U.S. Customs and Border Protection.

Approved: January 12, 2009

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, January 16, 2009 (74 FR 2838)]

General Notices

AGENCY INFORMATION COLLECTION ACTIVITIES:

Entry Summary

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0022.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Entry Summary. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (73 FR 36545) on June 27, 2008, 2008, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before February 17, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION:

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Entry Summary

OMB Number: 1651-0022

Form Number: CBP Form-7501

Abstract: Form 7501 is used by CBP as a record of the import transaction, to collect proper duty, taxes, exactions, certifications and enforcement endorsements. New requirements have been added to the 7501 for entry filers importing softwood lumber into the U.S, in accordance with the provisions of the Softwood Lumber Act of 2008 (SLA 2008), Title VIII of the Tariff Act of 1930.

Current Actions: This submission is being made to extend the expiration date. The burden hours were increased to allow for the implementation of the Softwood Lumber Act of 2008.

Type of Review: Extension (with change)

Affected Public: Business or other for-profit institutions

7501 Formal Entry

Estimated Number of Respondents: 10,000

Estimated Number of Annual Responses per Respondent:
1,920

Estimated Total Annual Responses: 19,200,000

Estimated Time per Response: 20 minutes

Estimated Total Annual Burden Hours: 6,393,600

7501 Formal Entry w/Softwood Lumber Act of 2008

Estimated Number of Respondents: 210

Estimated Number of Annual Responses per Respondent:
1,905

Estimated Total Annual Responses: 400,050

Estimated Time per Response: 40 minutes

Estimated Total Annual Burden Hours: 266,433

7501 Informal Entry

Estimated Number of Respondents: 28,500

**Estimated Number of Annual Responses per Respondent:
98**

Estimated Total Annual Responses: 2,793,000

Estimated Time per Response: 5 minutes

Estimated Total Annual Burden Hours: 232,657

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: January 7, 2009

TRACEY DENNING,
*Agency Clearance Officer,
Customs and Border Protection.*

[Published in the Federal Register, January 15, 2009 [(74FR 2609)]



**COPYRIGHT, TRADEMARK, AND
TRADE NAME RECORDATIONS**

(No. 12 2008)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

SUMMARY: Presented herein are the copyrights, trademarks, and trade names recorded with U.S. Customs and Border Protection during the month of December 2008. The last notice was published in the CUSTOMS BULLETIN on December 18, 2008.

Corrections or updates may be sent to: Department of Homeland Security, U.S. Customs and Border Protection, Office of Regulations and Rulings, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Delois Johnson, Paralegal, Intellectual Property Rights Branch, (202) 325-0088.

Dated: January 16, 2009

GEORGE MCCRAY, ESQ.,
Chief,
Intellectual Property Rights Branch.

CBP IPR RECORDATION - DECEMBER 2008

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restrictive
TMK 05-01035	12/30/2008	9/15/2018	FREELANDER	LAND ROVER	No
TMK 06-00824	12/30/2008	11/10/2018	DESIGN ONLY (PIRATE SHIP) TAMPA BAY	BUCCANEERS LIMITED	No
TMK 08-01210	12/1/2008	7/8/2018	D601	FRICTION MATERIALS STANDARDS	No
TMK 08-01211	12/1/2008	7/8/2018	7259	FRICTION MATERIALS STANDARDS	No
TMK 08-01209	12/1/2008	2/7/2014	DANNER AND DESIGN	DANNER, INC.	No
TMK 08-01208	12/1/2008	9/15/2012	DESIGN ONLY	LACROSSE FOOTWEAR, INC.	No
TMK 08-01207	12/1/2008	9/8/2012	LACROSSE	LACROSSE FOOTWEAR, INC.	No
TMK 08-01190	12/1/2008	8/21/2017	DANNER	DANNER, INC.	No
TMK 08-01191	12/1/2008	7/8/2018	4515	FRICTION MATERIALS STANDARDS	No
COP 08-00134	12/30/2008	12/30/2028	PETER THE JUMPING BUNNY : NO. G3122.	INSTITUTE, INC.	No
TMK 08-01188	12/1/2008	8/26/2018	TREXMET	GLAXO GROUP LIMITED	No
TMK 08-01189	12/1/2008	4/22/2018	LOO LA LA MAMA	CINDY PARKER	No
TMK 08-01186	12/1/2008	6/17/2018	HARLEY DAVIDSON MOTOR CLOTHES AN	H-D MICHIGAN, INC.	No
TMK 08-01187	12/1/2008	2/3/2016	AMERICAN LEGEND AND DESIGN	FILA LUXEMBOURG S.A.R.L.	No
TMK 06-00905	12/1/2008	11/24/2018	F (STYLIZED)	TERRI LEE ASSOCIATES, LLC	No
TMK 07-00523	12/29/2008	8/31/2019	CHEEZ-IT	KELLOGG NORTH AMERICA COMPANY	No
TMK 08-01224	12/29/2008	1/17/2019	DETEX	DETEX CORPORATION	No
TMK 08-01195	12/1/2008	7/6/2014	SQUIRRELS	NOWSTALGIC TOYS, INC.	No
TMK 08-01200	12/1/2008	3/1/2018	VERAMYST	GLAXO GROUP LIMITED	No
TMK 08-01201	12/1/2008	3/28/2016	AVANDIA	SMITHKLINE BEECHAM (CORK) LIMITED	No
TMK 08-01237	12/30/2008	6/8/2009	SYMBOL CONSISTING OF THREE FISH IN OVERLAPPING PATTERN	MUTUAL FISH COMPANY, INC.	No
TMK 08-01238	12/30/2008	8/19/2013	HOMEDICS	HOMEDICS, INC.	No
TMK 08-01239	12/30/2008	10/22/2012	HOMEDICS	HOMEDICS, INC.	No
TMK 08-01241	12/30/2008	12/18/2011	HOMEDICS	HOMEDICS, INC.	No
TMK 08-01212	12/11/2008	10/30/2017	STOLICHNAYA ELIT	ALLIED DOMELQ INTERNATIONAL HOLDINGS BV	No
TMK 08-01226	12/29/2008	4/13/2014	DIAMOND SHAPED STONE (DESIGN)	VOLCOM, INC.	No
TMK 08-01225	12/29/2008	12/12/2016	DESIGN ONLY	MAST-JAGERMEISTER AG	No
TMK 08-01227	12/29/2008	5/7/2012	WHITE HOUSE BLACK MARKET	CHICO'S RETAIL SERVICES, INC.	No
TMK 08-01192	12/1/2008	11/12/2012	WHITE HOUSE BLACK MARKET	CHICO'S RETAIL SERVICES, INC.	No
TMK 08-01193	12/1/2008	8/26/2018	HARLEY-DAVIDSON	H-D MICHIGAN, INC.	No
TMK 08-01193	12/1/2008	12/15/2018	RDNY	CRESA, INC.	No

CBP IPR RECORDATION - DECEMBER 2008

TMK 08-01240	12/30/2008	9/29/2013	SPIDER-MAN	MARVEL CHARACTERS, INC.	No
TMK 08-01206	12/12/2008	9/23/2018	MAIL ENVY	OPI PRODUCTS, INC.	No
TMK 08-01205	12/12/2008	10/13/2018	OCEAN SHELL	OCEAN GARDEN PRODUCTS, INC.	No
TMK 08-01226	12/29/2008	4/18/2016	BLACK MAGIC	HUBLLOT, S.A.	No
TMK 08-01242	12/30/2008	7/13/2014	MICROFILL	BAYER HEALTHCARE LLC	No
TMK 08-01230	12/30/2008	8/6/2012	HOMEDICS	HOMEDICS, INC.	No
TMK 08-01234	12/30/2008	11/11/2013	HOMEDICS	HOMEDICS, INC.	No
TMK 08-01235	12/30/2008	12/4/2017	HOMEDICS	KA DISTRIBUTING CO. D/B/A HOMEDICS, INC.	No
TMK 08-01223	12/29/2008	6/1/2019	ETIENNE AIGNER WITH SYMBOL	ETIENNE AIGNER, INC.	No
TMK 08-01231	12/30/2008	10/14/2018	SMITH & WESSON	SMITH & WESSON CORP.	No
TMK 08-01204	12/1/2008	5/19/2018	COMBIVIR	GLAXO GROUP LIMITED	No
TMK 08-01232	12/30/2008	4/18/2018	H HUBLLOT	HUBLLOT, S.A.	No
TMK 08-01202	12/1/2008	6/24/2018	GREEN FOOD AND DESIGN	CHINA GREEN FOOD DEVELOPMENT CENTER	No
TMK 08-01220	12/29/2008	10/4/2013	HULK	MARVEL CHARACTERS, INC.	No
TMK 08-01222	12/29/2008	2/14/2014	SPIDER-MAN	MARVEL CHARACTERS, INC.	No
TMK 08-01236	12/30/2008	8/30/2013	HULK	MARVEL CHARACTERS, INC.	No
TMK 08-01221	12/29/2008	6/23/2013	HULK	MARVEL CHARACTERS, INC.	No
TMK 08-01213	12/29/2008	3/5/2012	HOMEDICS	HOMEDICS, INC.	No
TMK 08-01196	12/1/2008	6/23/2012	HOMEDICS	HOMEDICS, INC.	No
TMK 08-01203	12/1/2008	10/13/2018	PRIDE OF MEXICO	OCEAN GARDEN PRODUCTS, INC.	No
TMK 08-01199	12/1/2008	11/24/2018	CABALLITO	CRESA, INC.	No
TMK 08-01198	12/1/2008	12/14/2014	ORAL-B	PROCTER & GAMBLE BUSINESS SERVICES CANADA COMPANY	No
TMK 08-01214	12/29/2008	11/18/2018	MARLBORO SEVENTY-TWO'S FILTER	PHILIP MORRIS USA INC.	No
TMK 08-01197	12/1/2008	4/23/2012	CGARRETTES P/L USA	HOMEDICS, INC.	No
TMK 08-01194	12/1/2008	4/23/2012	HOMEDICS	HOMEDICS, INC.	No
TMK 08-01215	12/29/2008	11/27/2011	CUTEX	THE CUTEX COMPANY	No
TMK 08-01216	12/29/2008	9/23/2018	NISSAN GT-R	NISSAN JIDOSHKA KABUSHIKI KAISHA	No
TMK 08-01219	12/29/2008	10/21/2018	WII	NINTENDO OF AMERICA INC.	No
TMK 08-01217	12/29/2008	5/7/2012	HOMEDICS	HOMEDICS, INC.	No
TMK 08-01218	12/29/2008	3/11/2013	HOMEDICS	HOMEDICS, INC.	No
TMK 08-01233	12/30/2008	9/25/2017	BREEZE	BAYER HEALTHCARE LLC	No
TMK 98-00496	12/29/2008	12/6/2018	S (STYLIZED)	SPECIALIZED BICYCLE COMPONENTS	No
TMK 98-00500	12/29/2008	3/14/2019	SPECIALIZED	SPECIALIZED BICYCLE COMPONENTS	No
TMK 98-00655	12/29/2008	10/12/2018	SKF (STYLIZED LETTERING)	SKF USA INC.	No
TMK 98-00656	12/30/2008	11/12/2018	SKF (STYLIZED LETTERING)	SKF USA INC.	No
TMK 96-00145	12/30/2008	9/6/2018	EAST CAROLINA UNIVERSITY	EAST CAROLINA UNIVERSITY	Yes
TMK 99-00568	12/30/2008	9/12/2018	DESIGN ON SHOE	TREFORM ARTIEBOLAG	No
TMK 96-00766	12/30/2008	10/11/2018	HENRI BENDEL	HENRI BENDEL, INC.	No
TMK 05-00763	12/30/2008	2/1/2019	CATERPILLAR	CATERPILLAR, INC.	No

CBP IPR RECORDATION - DECEMBER 2008

TMK 00-00053	12/30/2008	10/19/2019	STUSSY, INC.	STUSSY, INC.	No
TMK 00-00374	12/1/2008	11/8/2018	SEIKO	SEIKO HOLDINGS KABUSHIKI KAISHA T/A SEIKO HOLDINGS CORPORATION	No
TMK 00-00388	12/30/2008	12/8/2018	SEIKO	SEIKO HOLDINGS KABUSHIKI KAISHA T/A SEIKO HOLDINGS CORPORATION	No
TMK 00-00559	12/30/2008	3/4/2019	YKK	YKK CORPORATION	No
TMK 00-00325	12/30/2008	8/9/2018	BUFFALINO	BUFFALINO U.S.A., INC.	No
TMK 00-00590	12/30/2008	10/20/2018	APPLIED PRECISION	APPLIED PRECISION INC.	No
TMK 03-00867	12/30/2008	10/25/2018	THE LIMITED	LIMCO, INC.	No
TMK 05-00215	12/30/2008	11/22/2018	MINNESOTA TIMBERWOLVES	MINNESOTA TIMBERWOLVES BASKETBALL	No
TMK 90-00329	12/30/2008	10/4/2018	PRE-VENT	STANT MANUFACTURING, INC.	No

Total Records: 80
Date as of: 1/7/2009