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**W. Ralph Basham,**

Commissioner, U.S. Customs and Border Protection.

Approved: January 12, 2009.

**Timothy E. Skud,**

Deputy Assistant Secretary of the Treasury.  
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## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

## 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 (Pub. L. 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, NW., (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, 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:** Cathy Sauceda, 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 (Pub. L. 110-286) (the "JADE Act"). Section 6 of the JADE Act amends the Burmese Freedom and Democracy Act of 2003 (Pub. L. 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 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.

#### *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 § 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, DC 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, NW., (Mint Annex), Washington, DC 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

##### 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.

##### 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 (Pub. L. 108-61) (the "BFDA"), as amended by the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (Pub. L. 110-286) (the "JADE Act"); Presidential Proclamation 8294, signed on September 26, 2008; Additional U.S. Note 4 to Chapter 71, HTSUS.

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■ 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.

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Jayson P. Ahern,

*Acting Commissioner, U.S. Customs and Border Protection.*

Approved: January 12, 2009

Timothy E. Skud,

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. E9-786 Filed 1-15-09; 8:45 am]

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## INTERNATIONAL TRADE COMMISSION

### 19 CFR Part 207

#### Revised Procedures and Requests for Information During Adequacy Phase of Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Final rulemaking.

**SUMMARY:** The United States International Trade Commission ("the Commission") amends its Rules of Practice and Procedure to require that responses to notices of institution of

five-year reviews be filed within 30 days of publication of the notice, as opposed to the 50-day response period specified in its current rules. It also provides notice of its decision, which does not require a change in its rules, to seek additional information from interested parties at the institution of five-year reviews, and to seek information from purchasers during the adequacy phase of five-year reviews in certain circumstances.

**DATES:** *Effective Date:* This regulation is effective February 17, 2009.

*Applicability Date:* This regulation and the other changes to Commission procedures described in this notice will be applicable to five-year reviews instituted on or after March 1, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Marc A. Bernstein, Office of General Counsel, U.S. International Trade Commission, telephone 202-205-3087, or John Ascienzo, Office of Investigations, U.S. International Trade Commission, telephone 202-205-3175. Hearing-impaired individuals can obtain information on this matter by contacting the Commission's TDD terminal at 202-205-1810. General information concerning the Commission may also be obtained by visiting its Web site at <http://www.usitc.gov>.

**SUPPLEMENTARY INFORMATION:** On July 17, 2008, the Commission published a notice of the proposed rulemaking (NOPR) in the *Federal Register*. 73 FR 40992 (July 17, 2008). In that notice the Commission proposed two sets of changes to the procedures it uses during the adequacy phase of five-year reviews that it conducts pursuant to 19 U.S.C. 1675(c). First, the Commission proposed modifying the information it requests interested parties furnish in their responses to the notice of institution it publishes pursuant to section 207.60(d) of the Commission's Rules of Practice and Procedure, 19 CFR 207.60(d), and proposed issuing short questionnaires to purchasers in some circumstances. This set of proposals did not require any amendment to the Commission's regulations. The second proposal sought to amend section 207.61(a) of the Commission's Rules of Practice and Procedure to require that responses to the notice of institution be filed within 30 days after its publication.

Although the Commission considers these rules to be procedural rules that are excepted from the notice and comment requirements of 5 U.S.C. 553(b)(3)(A), the Commission invited the public to comment on the proposed rule amendment and the other proposed changes to its procedures within 60 days of publication of the NOPR in the

**Federal Register.** The Commission received substantive comments from the following: (1) The law firm of Wiley Rein on behalf of the Steel Manufacturers Ass'n (SMA); (2) the law firm of Skadden, Arps, Slate, Meagher & Flom (Skadden); (3) the law firm of Kelley Drye & Warren (Kelley); and (4) the law firm of Stewart and Stewart (Stewart).

In adopting these changes to its rules and procedures, the Commission has fully considered the concerns expressed in the comments with respect to the potential burden on parties to reviews and the usefulness of the additional information sought by the Commission. These comments, and the Commission's responses thereto, are discussed comprehensively below. In light of the comments, the Commission intends to review its new information requests and changes to its procedures once it has had sufficient experience with them. In particular, the Commission intends to examine the changes' utility and relevance in attaining the desired objectives, as well as the rate of response by purchasers to the adequacy phase questionnaires.

As required by the Regulatory Flexibility Act, the Commission certifies that the amendment to its regulation will not have a significant impact on small business entities.

#### Changes in Commission Data Collection

The Commission has decided to adopt the changes in data collection proposed in the NOPR. Accordingly, each notice of institution the Commission issues will contain the additional information requests indicated in Appendix A to the NOPR, and in those reviews in which the Commission does not receive responses to the notice of institution from both domestic interested parties and respondent interested parties, the Commission will transmit brief questionnaires to purchasers, in the format indicated in Appendix B to the NOPR, shortly after it receives responses to the notice of institution. These changes will become effective for reviews instituted on or after March 1, 2009.

The commenters opposed both of the Commission's data collection proposals. With respect to the proposal to seek additional information in the notice of institution, commenters questioned the appropriateness of the Commission's stated objective of obtaining a more complete record to better enable it to decide whether to expedite a review. Skadden contended that the Commission should expedite reviews whenever responses from an interested party group are inadequate and that