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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 12 and 163

[Docket No. USCBP-2016-0054; CBP Dec. 16-12]

RIN 1515-AE15

PROHIBITION ON IMPORTATION OF JADEITE OR RUBIES MINED OR EXTRACTED FROM BURMA, AND ARTICLES OF JEWELRY CONTAINING JADEITE OR RUBIES MINED OR EXTRACTED FROM BURMA

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

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (“CBP”) regulations to update the provisions relating to the prohibition on importation of jadeite or rubies mined or extracted from Burma, and articles of jewelry containing jadeite or rubies mined or extracted from Burma, following the expiration of the Burmese Freedom and Democracy Act of 2003, as amended by the Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act of 2008. The CBP regulations are amended to reflect the import prohibitions set forth in Executive Order 13651 of August 6, 2013.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

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SUPPLEMENTARY INFORMATION:

Background

On July 28, 2003, the President signed into law the Burmese Freedom and Democracy Act of 2003 (Pub. L. 108-61) (the “BFDA”) to sanction the military junta then ruling Burma. Among other provisions, the BFDA required the imposition, subject to annual renewal, of a ban on the importation into the United States of any article that is a product of Burma. To implement the BFDA, the President issued Executive Order (“E.O.”) 13310 (68 FR 44853, July 30, 2003). E.O. 13310 prohibited, among other things, the importation into the United States of any article that is a product of Burma.

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”), which,

among other things, amended the BFDA to require a prohibition on the importation into the United States of jadeite or rubies mined or extracted from Burma and articles of jewelry containing such jadeite or rubies, referred to in the statute as Burmese covered articles. It also imposed certain conditions on the importation into the United States of jadeite or rubies mined or extracted from a country other than Burma and articles of jewelry containing such jadeite or rubies, referred to in the statute as non-Burmese covered articles. Section 12.151 of the CBP regulations (Title 19, Code of Federal Regulations (“CFR”), section 12.151) currently reflects this prohibition on the importation of jadeite or rubies mined or extracted from Burma and articles of jewelry containing such jadeite or rubies as well as the imposition of certain conditions on the importation of jadeite or rubies mined or extracted from a country other than Burma and articles of jewelry containing such jadeite or rubies.

The BFDA, as amended by the JADE Act, required annual renewal, which did not occur in 2013. As a result, the prohibition on the importation of jadeite or rubies mined or extracted from Burma and articles of jewelry containing jadeite or rubies mined or extracted from Burma and the corresponding conditions on the importation of 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 expired on July 28, 2013. Subsequently, on August 6, 2013, the President signed E.O. 13651, titled “Prohibiting Certain Imports of Burmese Jadeite and Rubies” which prohibits the importation of any jadeite or rubies mined or extracted from Burma as well as any articles of jewelry containing jadeite or rubies mined or extracted from

Burma. See 78 FR 48793. E.O. 13651 also revoked the sections of E.O. 13310 imposing a prohibition on the importation into the United States of any article that is a product of Burma. As a result, there is no longer a general ban on importing into the United States any article that is a product of Burma; however, the specific ban on jadeite and rubies mined or extracted from Burma as well as articles of jewelry containing jadeite or rubies mined or extracted from Burma was reinstated by E.O. 13651.

Explanation of Amendments

Part 12

Section 12.151 is amended to reflect the expiration of the BFDA, as amended by the JADE Act, and the issuance of E.O. 13651. The specific authority citation for section 12.151 is amended accordingly by removing references to the BFDA, as amended by the JADE Act, Presidential Proclamation 8294, signed on September 26, 2008, and Additional U.S. Note 4 to Chapter 71 of the U.S. Harmonized Tariff Schedule (HTSUS), and adding a reference to the current authority, E.O. 13651, of August 6, 2013 (78 FR 48793). While E.O. 13651 re-imposes the prohibition on the importation of jadeite and rubies mined or extracted from Burma and articles of jewelry containing such jadeite and rubies, it does not impose any conditions on the importation of jadeite and 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 as the BFDA, as amended by the JADE Act, did. Accordingly, section 12.151 is amended by removing

paragraphs (c) through (f) which detail the certification and recordkeeping requirements for non-Burmese covered articles (referred to in section 12.151 as “regulated articles”).

In addition, the heading to section 12.151 is revised to reflect the expiration of conditions on non-Burmese covered articles by removing the words “and conditions”. The heading is further revised to more specifically refer to jadeite or rubies mined or extracted from Burma and articles of jewelry containing jadeite or rubies mined or extracted from Burma.

The introductory text in paragraph (a) of section 12.151 is amended to remove the reference to the Tom Lantos Block Burmese JADE Act of 2008 (Pub. L. 110-286) and to cite

instead to the current authority, E.O. 13651 of August 6, 2013 (78 FR 48793). Paragraph (a) is also amended to reflect the expiration of conditions on non-Burmese covered articles by removing the words “or conditioned”. Given that E.O. 13651 does not impose any conditions on jade or rubies mined or extracted from a country other than Burma or articles of jewelry containing jade or rubies mined or extracted from a country other than Burma, it is no longer necessary to distinguish between “prohibited articles” and “regulated articles”. As a result of the amendments described in this document, the list of prohibited articles, which is currently set forth in paragraph (b), is set forth in revised paragraph (a). Paragraph (b) is revised to set forth the exception currently found in paragraph (g)(1) as E.O. 13651 retains the exception for prohibition on the import of Burmese jadeite or rubies or articles of jewelry containing Burmese jadeite or rubies that were previously exported from the United States, including those that accompanied an individual outside the United States for personal use, provided that they are reimported to 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 (E.O. 13651 (78 FR 48793)). Given that E.O. 13651 does not impose any conditions on jade or rubies mined or extracted from a country other than Burma or articles of jewelry containing jade or rubies mined or extracted from a country other than Burma, subparagraph (g)(2) is removed.

CBP advises parties who plan to temporarily export any jadeite or rubies or any article of jewelry containing jadeite or rubies, whether of Burmese origin or not, to register those articles prior to export through CBP Form 4455 (Certificate of Registration), CBP Form 4457

(Certificate of Registration for Personal Effects Taken Abroad), or a carnet issued by the U.S. Council for International Business. If one of these three documents is not presented to CBP at the time of re-importation into the United States, the importer must present documentary evidence that supports the claim that the subject articles were exported and reimported by the same person without having been advanced in value or improved in condition by any process or other means while outside the United States. Without such documentation, the articles are subject to seizure by CBP.

Part 163

The list of records and information required for the entry of merchandise appearing in the Appendix to Part 163 (commonly known as the (a)(1)(A) List) is amended to remove the records

previously required to support the certification of non-Burmese covered articles under section 3A(c)(1) of the BFDA.

Inapplicability of Prior Public Notice and Delayed Effective Date

This document amends the regulations to reflect Executive Order 13651 of August 6, 2013. Because this regulation merely removes expired statutory requirements and inserts the new legal authority for the continuing import prohibition, 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. For these reasons, pursuant to the provision of 5 U.S.C. 553(d)(3), CBP finds that there is good cause for dispensing with a delayed effective date.

Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches

that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. As a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 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 OMB control number. The collections of information in this final rule were previously approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651-0133. However this information collection and control number were discontinued in 2014 when the requirement for submission of the certification from the exporter was eliminated.

Signing Authority

This regulation is being issued in accordance with 19 CFR § 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his 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, Jadeite, Jewelry, Imports, Licensing, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Rubies Sanctions.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Penalties, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the CBP Regulations

For the reasons set forth in the preamble, 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 continues to read, and the specific authority citation for § 12.151 is revised 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 E.O. 13651 of August 6, 2013, 78 FR 48793.

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2. In § 12.151:

- a. The heading is revised;
- b. Paragraph (a) introductory text is revised;
- c. Paragraph (b) is revised; and
- d. Paragraphs (c) through (g) are removed.

The revisions read as follows:

§ 12.151 Prohibition on importations of jadeite or rubies mined or extracted from Burma, and articles of jewelry containing jadeite or rubies mined or extracted from Burma.

(a) General. Except as provided in paragraph (b) of this section, the importation into the United States of jadeite or rubies mined or extracted from Burma, and articles of jewelry containing jadeite or rubies mined or extracted from Burma is prohibited pursuant to Executive Order (EO) 13651 of August 6, 2013. For purposes of this section, the following definitions apply:

* * * * *

(b) Inapplicability. This section does not apply to Burmese jadeite, rubies, and articles of jewelry containing Burmese 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.

PART 163 - RECORDKEEPING

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

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

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Appendix to Part 163 [Amended]

4. In the Appendix to part 163, within section IV, the listing for § 12.151 is removed.

R. Gil Kerlikowske
Commissioner
U.S. Customs and Border Protection

Approved: August 17, 2016

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

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