

of the penalty if the order includes an agreement to pay a penalty.

(b) If the order includes an agreement to pay a penalty and the penalty is not paid within the time designated in such a stipulation, the amount of the penalty shall not be relevant in any respect to the penalty which may be assessed after issuance of a complaint.

Done at Washington, D.C., this 27th day of June, 1983.

K. R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 83-17667 Filed 6-29-83; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-AWA-2]

Correction to Alteration of Santa Barbara, CA, and Control 1176 Additional Control Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: An error was noted in the description of Additional Control Area 1176 as published in the *Federal Register* on June 6, 1983 (48 FR 25169) and this action corrects that error.

EFFECTIVE DATE: August 4, 1983.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations and Obstructions Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

In FR Doc. 83-14995 published in the *Federal Register* on June 6, 1983, amended the description of the Santa Barbara, CA, and Control 1176 Additional Control Areas. An error was noted in the description of Control 1176. The description was technically correct; however, where the amendment was placed in the current text, it actually deleted that portion of airspace, where our intention was to add to that portion of airspace, and this action corrects that mistake.

List of Subjects in 14 CFR Part 71

Additional control areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, FR Document 83-14995, as published in the *Federal Register* on June 6, 1983 (48 FR 25169) is corrected to read as follows:

Control 1176 [Amended]

After the words "Oakland Oceanic CTA/FIR boundary", insert the words "and that airspace extending upward from 1,200 feet MSL bounded by a line beginning at lat. 34°24'00"N., long. 120°30'00"W.; to lat. 34°06'45"N., long. 120°30'00"W.; to lat. 34°03'59"N., long. 120°33'08"W.; to lat. 34°18'36"N., long. 120°45'34"W.; to point of beginning."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on June 20, 1983.

B. Keith Potts,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 83-17668 Filed 6-29-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 83-ASO-24]

Alteration of Control Zone; Raleigh, N.C.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the Raleigh, North Carolina, control zone by revising the coordinates of Raleigh-Durham Airport, reducing the size of three control zone arrival extensions and redesignating radials upon which the arrival extensions are predicated. The geographical coordinates of the airport are improperly listed and this action will correct the deficiency. The control zone arrival extensions are

larger than required and will be reduced in both length and width. The extensions will be realigned one degree to coincide with the instrument approach procedures serving the airport.

DATES: Effective date: 0901 G.m.t., September 29, 1983. Comments must be received on or before August 29, 1983.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO-530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 852, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves technical corrections to the description of the control zone and a reduction in size and realignment of arrival extensions and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the Raleigh, North Carolina, control zone by revising the geographical coordinates of the airport and realigning and reducing the size of arrival extensions. This action will raise the floor of controlled airspace in areas northeast, southeast, and southwest of

the airport from the surface to 700 feet. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983. Under the circumstances presented, the FAA concludes that there is a need to alter the control zone by listing the proper coordinates of the airport and realigning and reducing the size of arrival extensions so that they are not in excess of needs. As these changes relieve a burden on the public, I find that notice or public procedure under 5 U.S.C. 533(b) is unnecessary.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zone.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Raleigh, North Carolina, control zone under § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 G.m.t., September 29, 1983, to read as follows:

Raleigh, NC [Revised]

Within a 5-mile radius of Raleigh-Durham Airport (Lat. 35°52'19"N., Long. 76°47'07"W.); within 3 miles each side of Raleigh VORTAC 034°, 128° and 231° radials, extending from the 5-mile radius zone to 8.5 miles northeast, southeast and southwest of the VORTAC.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on June 21, 1983.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 83-17088 Filed 6-29-83; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 373 and 399

[Docket No. 30617-110]

Exports of Spectrum Analyzers: No Special Licensing Procedures Available

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Temporary suspension of interim rule.

SUMMARY: This rule temporarily suspends an interim rule (48 FR 25174, June 6, 1983) regarding the unavailability of special licensing procedures for exports of spectrum analyzers. This suspension will provide exporters an orderly transition from special licenses to shipments under individual validated licenses. The text of the Export Administration Regulations affected by the June 6 rule is reinstated and is effective until August 29, 1983. On August 29, 1983, the temporarily suspended June 6 rule will take effect.

Exporters should be aware of the following special considerations, which apply only to those exports that had formerly been allowed under special license procedures but will require individual validated licenses after August 29, 1983. Exporters should apply as soon as possible for individual validated licenses or reexport authorizations for spectrum analyzers that will not be shipped from either the U.S. special license holder or the foreign approved consignee within the 60-day period. International Import Certificates need not be obtained for applications submitted on or before August 15, 1983, and forms ITA-629 need not be obtained for applications submitted on or before July 29, 1983, but the applicant should furnish any evidence available that will support the applicant's representations (see 375.7(b)). Yugoslav End-Use Certificates and Swiss Blue Import Certificates must be furnished with all applications to export or reexport to those countries.

EFFECTIVE DATES: Effective on June 30, 1983, the interim amendments to Supplement 1 to Part 373 and to Supplement 1 to 399.1 as published at 48 FR 25174 are suspended until August 29, 1983. Also effective on June 30, 1983, the text affected by those amendments is reinstated to read as it did prior to June 6, 1983. The reinstated text expires on August 29, 1983.

FOR FURTHER INFORMATION CONTACT: Archie Andrews, Director, Exporters'

Service Staff (Telephone: (202) 377-4811).

Public comments are invited on the suspended interim rule (48 FR 25174, June 6, 1983) regarding the unavailability of special licensing procedures for exports of spectrum analyzers. Those wishing to comment should follow the procedures stated in the June 6 Federal Register Notice.

List of Subjects in 15 CFR Parts 373 and 399

Exports.

PARTS 373 AND 399 [AMENDED]

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

The interim amendments to Supplement No. 1 to Part 373 and Supplement No. 1 to § 399.1, as published at 48 FR 25174, June 6, 1983, involving export controls of ECCN 1529A in the Commodity Control List are suspended until August 29, 1983. The former text of Supplement No. 1 to Part 373 and Supplement No. 1 to § 399.1 affected by the June 6 rule is reinstated on a temporary basis to be effective on June 30, 1983 and to expire on August 29, 1983.

The reinstated text reads as follows:

1. Supplement No. 1 to Part 373

Commodities Excluded From Certain Special License Procedures

1522 only those lasers and laser systems and specially designed components and parts therefor, as follows: machine tools containing or which are designed to contain lasers described on the Commodity Control List under entry No. 1522; single aperture lasers with an output greater than one thousand joules per nanosecond; and tunable diode lasers.

4530 UF_x mass spectrometers. [Entire entry.]

2. Supplement No. 1 to § 399.1

Commodity Control List

1529A Electronic measuring, calibrating counting, testing, and/or time interval measuring equipment, whether or not incorporating frequency standards.

CONTROLS FOR ECCN 1529A

Special Licenses Available: See Part 373.

(Secs. 13 and 15, Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*; E. O. No. 12214 (45 FR 29783, May 6, 1980)

Dated: June 27, 1983.

John K. Boidock,

Director, Office of Export Administration,
International Trade Administration.

[FR Doc. 83-17723 Filed 6-28-83; 11:23 am]

BILLING CODE 3510-25-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 148 and 171

[T.D. 83-145]

Guidelines for Disposition of Violations of 19 U.S.C. 1497

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document sets forth revised guidelines used by the Customs Service and Treasury Department for the disposition of liabilities incurred under section 497, Tariff Act of 1930 (19 U.S.C. 1497), for the failure to declare articles to Customs upon entry into the United States. The document also amends the Customs Regulations to include the guidelines as an appendix and to reflect their issuance. Customs believes it is in the interest of the efficient and effective administration of its enforcement responsibility that the public be aware of the guidelines.

EFFECTIVE DATE: August 1, 1983. The interim guidelines, published as T.D. 82-35 in the *Federal Register* on February 19, 1982 (47 FR 7408), will remain in effect until the effective date of this document.

FOR FURTHER INFORMATION CONTACT: Kathryn C. Peterson, Miscellaneous Penalties Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5740).

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of section 498, Tariff Act of 1930, as amended (19 U.S.C. 1498), and section 148.11, Customs Regulations (19 CFR 148.11), persons arriving in the United States from a foreign place are generally required to declare to Customs officers, at the port of first arrival in the United States, all articles which they are bringing in with them.

As provided by section 497, Tariff Act of 1930 (19 U.S.C. 1497), failure to declare articles subjects the undeclared articles to forfeiture to the Government, and the individual who fails to declare the articles to a personal penalty equal to the value of the undeclared articles.

Ordinarily, the full statutory liability would be imposed only by judicial

process. Section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), provides for an administrative process which permits the person interested in any seized articles, or who has incurred, or is alleged to have incurred, any fine or penalty, to petition for resolution of these liabilities for amounts less than the full statutory liability. This provision authorizes the Secretary of the Treasury to remit or mitigate any fine, penalty, or forfeiture, incurred under customs or navigation laws when he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances to justify such action. Part 171, Customs Regulations (19 CFR Part 171), contains provisions for the filing of petitions for relief from fines, penalties, and forfeitures incurred for violations of customs and other laws. Section 171.11, Customs Regulations (19 CFR 171.11), requires that petitions for relief be filed with the Customs Service.

The overwhelming majority of violations of section 497 are disposed of administratively pursuant to the provisions of section 618. The various district directors of Customs throughout the United States have been delegated authority by § 171.21, Customs Regulations (19 CFR 171.21), to resolve cases in which the statutory liability does not exceed \$25,000, on such terms and conditions as, under the law and in view of the circumstances, they deem appropriate. The Commissioner of Customs exercises jurisdiction over cases between \$25,000 and \$100,000. The Secretary of the Treasury has retained authority to decide petitions for relief from liabilities arising under section 497 when those liabilities exceed \$100,000.

National guidelines were developed for use in mitigating and thereby disposing of violations of sections 497 administratively, in part, because many different Customs officers have authority to act on petitions for relief. Guidelines were issued in 1964, and were revised and reissued in 1974.

The primary objective of the guidelines is to encourage compliance with the entry declaration requirements. They should be sufficiently punitive to deter future violations without being overly harsh, penalties should reflect all of the circumstances surrounding the violation in order to effect substantial justice.

Customs experience with the 1974 guidelines has been that they were too inflexible to serve these objectives. Furthermore, the 1974 guidelines failed

to provide adequate guidance for certain categories of violations.

As a result, numerous Customs districts have developed practices of taking amounts less than those specified in the 1974 guidelines, when factors justifying such mitigation were found. Although guidelines are not absolute rules and the Customs field officers acted within their discretionary authority, these actions emphasized the need for attention to uniform guidelines on a national basis.

In response to this situation, projects were commenced at the Department of Treasury and Customs to reexamine the section 497 guidelines. By T.D. 82-35, published in the *Federal Register* on February 19, 1982 (47 FR 7408), interim guidelines developed as a result of these projects were set forth and made effective immediately. However, public comment on the interim guidelines was invited. This document sets forth the final revised section 497 guidelines, which will be an appendix to Part 171, Customs Regulations and sets forth an amendment to section 148.18, Customs Regulations, (19 CFR 148.18).

With respect to dutiable articles, the guidelines are duty-based in that the statutory liability is remitted upon payment of an amount that is a multiple (1 times, 2 times, 3 times, etc.) of the duty that would have been owed on the articles had they been properly declared. The 1974 guidelines also used a duty-based approach. The new guidelines differ from the 1974 guidelines in that some of the multiples are different, and in that the new guidelines list certain mitigating and aggravating factors which, if applicable, may be used to vary the multiple of the duty.

The new guidelines also state the disposition of the statutory liability with respect to the non-declaration of duty-free articles, a topic which was not addressed in the 1974 guidelines. Violations involving articles entitled to conditional duty-free entry are subject to a duty-based disposition, while violations involving articles absolutely entitled to duty-free entry are subject to disposition based upon a percentage of the domestic value of the articles. Mitigating and aggravating factors may apply to violations involving duty-free articles.

The guidelines also include numerous other rules relating to the disposition of liabilities incurred pursuant to section 497.

The document amends § 148.18 by revising paragraph (b) to reflect these new guidelines, and by removing paragraph (c). Section 148.18(a) is

revised to conform with these amendments. Revised § 148.18(b) states that when an article is not declared as required by subpart B of Part 148, the penalty and forfeiture may be remitted in accordance with these new guidelines. To have present § 148.18(b) and (c) in effect at the same time as the new guidelines could create confusion and uncertainty. Present § 148.18(b) and (c) apply when: (1) An article was not declared as required; (2) the article would have been free of duty and internal revenue tax if it had been properly declared; (3) its importation was not prohibited or restricted; and (4) the failure to declare was not due to willful negligence or fraudulent intent. "Willful negligence" is not addressed specifically in the new guidelines, and "intent" is addressed only as an aggravating factor, so that present § 148.18(b) and (c) are not totally consonant with the new guidelines. Furthermore, the disposition of certain liabilities is different in present § 148.18(b) and (c) new guidelines. Present § 148.18(b) and (c) provide for the complete remission of the penalty and forfeiture with respect to certain duty-free articles when the requirements of section 148.18(b) were met, while the new guidelines provide for a penalty based upon the domestic value of the articles for absolutely duty-free articles.

We believe that the new guidelines provide for additional deterrence, flexibility, consistency, and guidance.

Discussion of Comments

Numerous comments were received in response to the publication of the interim guidelines.

The fact that the undeclared articles were commercial articles was stated to be an aggravating factor in the interim guidelines. One commenter thought that those failing to declare commercial articles should be held to a higher standard because of the higher degree of knowledge of Customs requirements imputed to those importing articles for commercial purposes. Another thought that commercial violators should be treated more harshly than ordinary, non-commercial violators. Customs agrees with both of these comments and has created a separate category for violations involving commercial articles.

Some commenters observed that there were several places in the interim guidelines where it would be possible, in the case of low-value goods, to have a less severe penalty for a violation where aggravating factors are present, than for a violation where aggravating factors are not present. Customs agrees with these comments, and minimum amounts or a reference to the domestic value

have been added to the guidelines to correct this problem.

One commenter correctly pointed out a conflict between the mitigating factors set forth in I.A.2.a. of the interim guidelines and § 148.16(b), Customs Regulations. As a result, that mitigating factor has been deleted from the guidelines.

Two commenters disapprove of considering informant information as an aggravating factor. Customs believes that the fact that a person other than the violator had knowledge of the violation tends to establish specific intent on the part of the violator. However, the language of this aggravating factor has been amended to clearly set forth its purpose.

Two commenters state that the examples given of "extreme lack of cooperation," which is an aggravating factor, are inappropriate. As a result of this comment "rude behavior" has been deleted from this factor, and the language of the factor has been rephrased to emphasize the "lack of respect for law and authority."

One commenter opines that the guidelines should specifically state that aggravating factors may be offset by mitigating factors. Although this was intended in the guidelines, it has been added in the "Other Applicable Rules" section as suggested.

Two commenters suggest referencing in the guidelines an internal Customs directive that the rate of duty to be used in computing the penalty amount is the appropriate rate from Schedules 1-7, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), and not the flat rate from Schedule 8, TSUS. This suggestion has been adopted.

One commenter recommended that the guidelines provide for the collection of internal revenue tax, when it is owed. Customs agrees and has added a statement that duty includes any internal revenue tax which would have attached upon importation (see also section 101.1(i), Customs Regulations (19 CFR 101.1(i)), which defines "duties").

One commenter believes that minimum amounts are confusing and may produce inequitable results. Customs believes that minimum amounts are important from the standpoint of providing a meaningful penalty that will deter future violations, and does not think they will create administrative problems. The minimum amounts have been retained and, in some places, added.

One commenter maintains that the guidelines fail to address the situation in which the violator has no knowledge of the declaration requirements. Customs makes every effort to inform a traveler

of the declaration requirements. Failure of an individual to read the written material advising him of his responsibility does not excuse a subsequent violation of section 497.

A commenter contends that a traveler who establishes contributory Customs error should be entitled to complete remission of the liability, rather than merely being given the benefit of a mitigating factor. If Customs error is the sole reason for an improper declaration, a liability will not be incurred by the traveler. However, if incorrect advice given by Customs merely contributes to a violation of section 497, the Customs official should have the ability to assess a penalty, and consider the incorrect advice as a mitigating factor.

Three commenters make mention of § 148.18, Customs Regulations. One commenter states that the guidelines should cite § 148.18 and its applicability. Another contends that the guidelines have the effect of amending § 148.18. A third commenter believes that § 148.18 should apply in certain situations covered by the guidelines. As stated previously, § 148.18 is being amended to be consistent with the guidelines and to refer to them.

A commenter disagrees with the use of domestic value as a basis for calculating the penalty when absolutely duty-free articles are involved. He states that in most instances Customs simply doubles the foreign value to arrive at domestic value, and that this may result in a penalty sum exceeding the amount that would have been imposed had the articles been dutiable. Customs is developing instructions for its officers on how to compute domestic value which should resolve any problems in this regard.

Another commenter contends that a flat sum penalty is more equitable for a failure to declare absolutely duty-free articles. Customs disagrees. A percentage of the domestic value is most appropriate for a violation of this type. A percentage of the domestic value relates more equitably to the statutory liability than a flat sum does. A flat sum would encourage the non-declaration of high value duty-free articles (where non-declaration is part of a criminal scheme) because of the low risk.

A commenter states that normal disposition of a first offense should result in a penalty of up to three times the duty, rather than three times the duty. Customs believes that this proposal would result in confusion and a lack of uniformity.

A commenter maintains that, if an individual who has cleared customs without discovery of any undeclared

articles returns and declares the articles, the individual should be permitted to pay the duty, rather than a penalty equal to the duty. This determination is subject to the discretion of the Customs officer, with the decision to be made after consideration of all of the facts.

A commenter states that the guidelines focus only on the guilt of the traveler and do not recognize that there may not have been a violation. In the absence of a violation Customs will not assess a penalty. The guidelines are only to be used if it has been determined that there is a violation. If there is no violation, the guidelines have no application.

One commenter states that the interim guidelines are defective in that they do not comply with the requirements of the Administrative Procedure Act (5 U.S.C. 551-559), because there was no notice of proposed rulemaking, no invitation in advance of issuance to submit written data, and no delayed effective date.

The guidelines are not subject to the above-stated requirements of the Administrative Procedure Act inasmuch as notice and public procedures thereon are unnecessary and contrary to the public interest. Customs believes that it was in the public interest for the interim guidelines to become effective when published because they conferred a benefit on the public since they generally provide for lesser penalty amounts than the 1974 guidelines. Furthermore, there was a need for uniformity and immediate guidance in this area. While the guidelines became effective immediately, the public was given an opportunity to comment on them and the comments were thoroughly considered in the formulation of the final guidelines, which will be an appendix to Part 171, Customs Regulations.

Notice and Public Procedure

Matter similar to the subject covered in § 148.18 was published as part of the interim guidelines. As pointed out by one of the commenters, existing § 148.18 is inconsistent with the guidelines. Since public comment was solicited on the guidelines, no purpose would be served by soliciting public comments on an amendment to § 148.18 to conform it to the guidelines. Accordingly, pursuant to 5 U.S.C. 553(b)(3), notice and public procedure are unnecessary.

As stated previously, the guidelines are not subject to the notice and public procedure requirements of the Administrative Procedure Act inasmuch as notice and public procedure thereon are unnecessary and contrary to the public interest.

Executive Order 12291

These amendments do not constitute a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

These amendments are not subject to the provisions of Pub. L. 96-354, the Regulatory Flexibility Act (5 U.S.C. 601-612), because publication of a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or any other law.

Drafting Information

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects

19 CFR Part 148

Customs duties and inspection, Imports.

19 CFR Part 171

Customs duties and inspection, Imports, Administrative practice and procedure, Law enforcement, Penalties, Seizures and forfeitures.

Amendments to the Regulations

Parts 148 and 171, Customs Regulations (19 CFR Parts 148, 171), are amended as set forth below.

William von Rabb,
Commissioner of Customs.

Approved: June 14, 1983.
John M. Walker, Jr.,
Assistant Secretary of the Treasury.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

Section 148.18 is revised to read as follows:

§ 148.18 Failure to declare.

(a) *Penalty incurred.* Any article in the baggage of a passenger arriving from a foreign country which is not declared as required by this subpart shall be seized if it is available for seizure at the time the violation is detected, and the personal penalty prescribed by section 497, Tariff Act of 1930 (19 U.S.C. 1497), shall be demanded from the passenger. If the article is not seized, a claim for the personal penalty shall be made against the person who imported the article without declaration. No duty shall be collected, because undeclared articles are treated as smuggled.

(b) *Remission of liability.* When an article not declared as required by this subpart is found in the baggage of a

person arriving in the United States, the personal penalty and forfeiture may be mitigated or remitted in accordance with the Guidelines for Disposition of Violations of 19 U.S.C. 1497 in the Appendix to Part 171 of this chapter.

(R.S. 251, as amended, sec. 498, 46 Stat. 728, as amended, sec. 618, 46 Stat. 757, as amended, sec. 624, 46 Stat. 759 [19 U.S.C. 66, 1498, 1618, 1624])

PART 171—FINES, PENALTIES, AND FORFEITURES

Part 171 is amended by adding the following as Appendix A.

Appendix A—Guidelines for Disposition of Violations of 19 U.S.C. 1497

Liabilities incurred under section 497, Tariff Act of 1930 (19 U.S.C. 1497), shall be mitigated or remitted in accordance with the following guidelines (see also Part 148, Customs Regulations):

1. Violations Involving Dutiable Articles.

For violations involving articles subject to duty and for which there is no applicable exemption from duty, the following rules apply:

1. *Mitigated Penalty for First Offense.* For violations which are the first offense, where there is knowledge of the declaration requirements, and where the undeclared articles are discovered by the Customs officers, the liabilities shall be remitted upon payment of Three Times the Duty (but not less than \$50), or the domestic value, whichever is lower.

2. *Mitigating Factors.* When one or more of the following mitigating factors are present, the deciding officer may, within his discretion, remit the liabilities upon payment of Between One and One-Half and Three Times the Duty or the domestic value, whichever is lower:

a. Communications with the violator are impaired because of language barrier, mental condition, or physical ailment;

b. Violator cooperates with Customs officers after discovery of the violation by providing additional information which facilitates conclusion of the case;

c. Violator is an inexperienced traveler;

d. There is contributory Customs error (for example, violator demonstrates he was given incorrect advice by a Customs officer).

3. *Aggravating Factors.* When one or more of the following aggravating factors are present, the deciding officer may, within his discretion, remit the liabilities upon payment of Between Three and Six Times the Duty (but not less than \$100), or the domestic value, whichever is lower:

a. Documentary or other evidence discovered establishes violator's intent;
 b. Informant provides information which tends to establish violator's intent and leads to discovery of the violation after the violator has been given an opportunity to properly declare;
 c. Violator is an experienced traveler;
 d. Undeclared articles are concealed to evade U.S. law;

e. There is behavior, including extreme lack of cooperation, verbal or physical abuse, or attempted escape, which tends to demonstrate a lack of respect for law and authority.

4. *Commercial Articles.* When the undeclared articles are brought in for commercial purposes, the liabilities shall be remitted upon the payment of Six Times the Duty (but not less than \$100), or the domestic value, whichever is lower. Mitigating factors may be used to lower this amount to as little as Three Times the Duty; aggravating factors may be used to increase this amount up to Eight Times the Duty.

5. *Extraordinary Mitigating Factor.*

a. When an individual who has been cleared through Customs without discovery of any undeclared article returns to the examination area and declares that article, the deciding officer may, within his discretion, remit the liabilities upon payment of One Times the Duty.

b. An individual who declares articles some time later (hours, days, weeks, etc.) may be treated similarly.

6. *Extraordinary Aggravating Factors.*

a. When the offense is a second or subsequent violation, the deciding officer may, within his discretion, remit the liabilities upon payment of Between Six and Eight Times the Duty (but not less than \$250), or the domestic value, whichever is lower.

b. When the offense is a second or subsequent violation, and there are aggravating factors present, generally there shall either be a denial of relief or mitigation to No Less Than Eight Times the Duty or the domestic value, whichever is lower.

c. When there is evidence of an ongoing scheme to defraud the revenue involving multiple entries without declaration of articles subject to declaration, the deciding officer shall act in accordance with the preceding paragraph.

II. *Violations Involving Absolutely or Conditionally Free Articles.* For violations involving articles either entitled to entry free of duty absolutely (classifiable under a duty-free provision in Schedules 1-7, Tariff Schedules of the

United States (TSUS); (19 U.S.C. 1202)), or entry free of duty conditionally (entitled to treatment under the Generalized System of Preferences (see §§ 10.171-10.178, Customs Regulations) or Schedule 8, TSUS), the following rules apply:

1. *Mitigated Penalty for First Offense.*

a. For violations which are first offense, and involve articles entitled to the benefit of GSP or Schedule 8, TSUS, the liabilities shall be remitted upon payment of One Times the Duty which would have been due if the articles had not been entitled to the benefit.

b. For violations which are first offense, and involve absolutely duty-free articles, the liabilities shall be remitted upon payment of Between One and Five Percent of the Domestic Value, but not less than \$50 (or the domestic value, whichever is less) nor more than \$1,000.

2. *Mitigating Factors.* When mitigating factors such as those outlined above are present, the deciding officer may, in his discretion, reduce the mitigated amount to a lower figure.

3. *Aggravating Factors.*

a. When aggravating factors such as those outlined above are present, the deciding officer may, in his discretion, remit the liabilities for conditionally free articles upon the payment of Between One and Two Times the Duty (but not less than \$100), or the domestic value, whichever is lower.

b. For absolutely free articles, the deciding officer may remit the liabilities upon payment of Between Five and Ten Percent of the Domestic Value, but not less than \$100.

4. *Commercial Merchandise.*

The fact that undeclared duty-free articles are imported for commercial purposes may be considered an aggravating factor under section II.3. of these guidelines.

III. *Other Applicable Rules.*

1. These guidelines provide a framework and procedure by which violations of 19 U.S.C. 1497 are to be analyzed. They are not mandatory in the sense that they must be absolutely applied. Customs officers varying from these guidelines must provide reasons for doing so in the case record.

2. Customs officers shall document mitigating and aggravating factors found in each case in the case file. There must be a basis shown for mitigated amounts.

3. It is intended that mitigating and aggravating factors shall be considered together and used to offset each other where appropriate.

4. The rate of duty to be used in

calculating the mitigated penalty shall be the appropriate rate from Schedules 1-7, TSUS, and not the flat rate from Schedule 8, TSUS.

5. "Duty" means Customs duties and any internal revenue taxes which would have attached upon importation (see section 101.1(i), Customs Regulations). Therefore, multiples will also be applied to internal revenue taxes which would have been due.

6. Customs officers may, within their discretion, consider other factors not here delineated as aggravating or mitigating and apply the guidelines accordingly. These additional factors must also be documented in the case file.

7. These guidelines are not authority for admitting into the commerce of the United States articles which are conditionally or absolutely prohibited from entry.

8. The presence of one or more extraordinary aggravating factors, including but not limited to those set forth in section I.B. of these guidelines, may within the discretion of the deciding officer be a basis for denial of relief.

9. If the violator is being prosecuted criminally, the civil (19 U.S.C. 1497) liability generally is administratively settled only after completion of the prosecution or with the express approval of the appropriate U.S. attorney. Criminal prosecution of the violator, however, is insufficient grounds to delay indefinitely determination of the civil liability. The district director or area director should contact the Regional Counsel of Customs to determine the best course of action to follow with respect to the civil liability. Regional Counsel will consult with the U.S. attorney and the Miscellaneous Penalties Branch at Customs Headquarters. Because of time delay problems, all seizures involving criminal prosecutions must be promptly coordinated in this manner, and consideration should be given to immediate referral of the forfeiture action to the U.S. attorney for the institution of a judicial proceeding.

(R.S. 251, as amended, sec. 498, 46 Stat. 728, as amended, sec. 618, 46 Stat. 757, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1498, 1618, 1624))

[FR Doc. 83-17990 Filed 6-29-83; 8:45 am]

BILLING CODE 4820-02-M