

Supplement No. 1 to Part 774 [Amended]

2. In Supplement No. 1 to part 774, the Commerce Control List, Category 9 (Propulsion Systems, Space Vehicles, and Related Equipment), Export Control Classification Number (ECCN) 9A004 is amended by revising the List of Items Controlled to read as follows:

9A004 "Spacecraft", (not including their payloads) and specially designed components therefor that are not subject to the authority of the Department of State. (See notes.)

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List of Items Controlled

Unit: Equipment in number; systems, components, parts and accessories in \$ value.

Related Controls: (1) The corresponding EU list number controls space launch vehicles (not including their payloads) and other "spacecraft" (not identified in this CCL entry). These items are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls (See 22 CFR part 121, Category XV). For the control status of products contained in "spacecraft" payloads, see the appropriate categories of the U.S. Munitions List (USML). (2) For the control status of items contained in "spacecraft" payloads subject to the EAR, see the appropriate entries on the CCL.

Related Definition: Transferring registration or operational control to any foreign person of any commercial communications satellite controlled by this entry must be authorized on a license issued by the Bureau of Export Administration. This requirement applies whether the commercial communications satellite is physically located in the United States or abroad.

Items

a. Commercial communications Satellites;

Technical Note: Commercial communications satellites are subject to Commerce licensing jurisdiction even if they include the individual munitions list systems, components, or parts identified in Category XV(f) of the United States Munitions List (USML). In all other cases, these Category XV(f) systems, components, or parts remain on the USML, except that satellite fuel, ground support equipment, test equipment, payload adapter/interface hardware, replacement parts for the preceding items, and non-embedded, solid propellant orbit transfer engines ("kick motors") are subject to Commerce licensing jurisdiction (and not controlled on the USML) when they are to be utilized for the specific commercial communications satellite launch, provided the solid propellant "kick motor" being utilized is not

specifically designed or modified for military use or capable of being restarted after achievement of mission orbit (such orbit transfer engines are always controlled under Category IV of the USML). Technical data (as defined in § 120.10 of the International Traffic in Arms Regulations (ITAR)) and defense services (as defined in § 120.9 of the ITAR) related to the systems, components, or parts referred to in Category XV(f) of the USML are always controlled under the USML, even when the satellite itself is licensed by the Department of Commerce.

Notes: 1. Military communication satellites or multi-mission satellites, including commercial communications satellites having additional non-communication mission(s) or payload(s) are under the jurisdiction of the Department of State.

2. As indicated in the Technical Note, under some circumstances a license application under 9A004 includes other items, which are necessary for the commercial communications satellite launch, but are normally subject to State Department jurisdiction. Certain of these items (e.g., kickmotors, satellite fuel, etc.) are controlled by the Missile Technology Control Regime (MTCR) Equipment and Technology Annex.

b. [Reserved]

c. Other "spacecraft" not subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls under 22 CFR part 121, Category XV.

Notes: 1. ECCN 9A004.c includes the international space station being developed, launched and operated under the supervision of the U.S. National Aeronautics and Space Administration. Exporters requesting a license from the Department of Commerce for spacecraft other than the international space station or a commercial communications satellite specified in 9A004 must provide a statement from the Department of State, Office of Defense Trade Controls, verifying that the item intended for export is under the licensing jurisdiction of the Department of Commerce.

2. All other spacecraft, including all other satellites not controlled under 9A004 and components, parts, accessories, attachments, associated equipment, and ground support equipment therefor are subject to the export licensing authority of the Department of State.

3. Items on Category XV(f) of the USML and certain other USML items designated in the technical note, above, that are included in a commercial communications satellite to be exported under a Commerce license must be specifically listed on the Commerce license application. Such USML items when not included in a specific commercial communications satellite are under the jurisdiction of the Department of State.

4. Technical data provided to the launch provider (form, fit, function, mass, electrical, mechanical, dynamic/environmental, telemetry, safety, facility, launch pad access, and launch parameters) for commercial communications satellites that describe the interfaces for mating of the satellite to the launch vehicle and parameters for launch

(e.g., orbit, timing) of the satellite, are under Commerce jurisdiction. Other technical data and all defense services and technical assistance for satellite and/or launch vehicles, including compatibility, integration, or processing data are controlled and subject to licensing by the Department of State, in accordance with 22 CFR parts 120 through 130. Approval for such technical assistance will require a Technical Assistance Agreement (TAA) and may require U.S. Government oversight.

5. Once a satellite is launched, items remaining unlaunched are required to be returned immediately to the United States. If the satellite launch is canceled or unduly delayed, the satellite and all support equipment must be returned immediately to the United States.

6. Detailed design, development, production, or manufacturing data for all spacecraft, including satellites, regardless of which agency has jurisdiction over the export, and all systems components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for articles under Category XV on the United States Munitions List (including software source code and operating algorithms) are subject to licensing by the Department of State. This does not include that level of technical data (including marketing data) necessary and reasonable for a purchaser to have assurance that a U.S.-built item intended to operate in space has been designed, manufactured and tested in conformance with specified contract requirements (e.g., operational performance, reliability, lifetime, product quality, or delivery expectations) as well as data necessary for normal in-orbit satellite operations, to evaluate in-orbit anomalies, and to operate and maintain associated ground station equipment (except encryption hardware).

Dated: September 17, 1997.

William V. Skidmore,
Acting Assistant Secretary for Export Administration.

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DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****25 CFR Part 247****Use of Columbia River Treaty Fishing Access Sites**

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Indian Affairs (BIA) is promulgating regulations for application to the Columbia River Fishing Access Sites. The current regulations in part 248 do not apply to these new fishing sites which are being

transferred to the Bureau from the U.S. Army Corps of Engineers. This proposed rule gives the Bureau the authority to manage and maintain these fishing sites for tribal fishermen. Part 248 is still required for the maintenance of the in-lieu fishing sites.

DATES: Interim rule effective September 29, 1997. Comments must be submitted on or before November 28, 1997.

ADDRESSES: Submit comments on this rule to Mr. Chuck James, Area Archeologist, Portland Area Office, Bureau of Indian Affairs, 911 N.E. 11 Ave., Portland, OR 97232, (503) 231-6229.

FOR FURTHER INFORMATION CONTACT: Chuck James (Area Archeologist), (503) 231-6229.

SUPPLEMENTARY INFORMATION: On November 1, 1988, the President signed into law Pub. L. 100-581, Title IV—Columbia River Treaty Fishing Access Sites. This bill, provides that certain designated Federal lands shall be administered to provide access to usual and accustomed fishing areas and ancillary fishing facilities for members of the Nez Perce, Umatilla, Warm Springs, and Yakima Indian Tribes. The law directs the Secretary of the Army to make various specified improvements to both existing and additional lands, with the Secretary of the Army maintaining such lands until they are transferred to the Secretary of the Interior.

One of the sites will be transferred to BIA jurisdiction at the time these regulations are published. Without a final rule, the BIA would not have regulations to follow in administering the sites.

Related regulations which cover the existing In-Lieu Fishing Sites appear at 25 CFR 248, and are being revised into plain English and published as a proposed rule at a future date. Because Treaty Fishing Access Sites are authorized through separate legislation and have different constraints than the In-Lieu Sites, different regulations are necessary.

The Bureau agreed that the States do not have regulatory jurisdiction or authority over the in-lieu fishing sites. The sites are federal properties held by the United States for the benefit of the Indian Tribes with treaty fishing rights in the Columbia River. The Bureau regulates and manages the sites as a matter of federal law, but, in the absence of specific Bureau regulations governing health, sanitation and safety requirements, the regulation provides for the incorporation by reference of state or U.S. Public Health Service standards. We addressed the issue of non-fish oriented commercial

enterprises, as questions have arisen on that subject since the promulgation of the 248 regulations.

In August 1990, the United States Court of Appeals for the Ninth Circuit issued its opinion in *Sohappy v. Hodel*, 911 F.2d 1312 (9th Cir. 1990). In that opinion the court, focused on the 1945 law which authorized the in-lieu sites. The court determined that in enacting the 1945 Act, Congress intended that the existing conditions at the in-lieu sites were to continue. The court found that these conditions included year-round dwellings. Because the regulations published here cover sites authorized not under the 1945 Act, but under the 1988 Act, the Bureau believes that the *Sohappy* decision does not apply to the new fishing access sites. These regulations, therefore, address the limitations on constructing dwellings on the new sites.

One distinguishing feature of the 1988 Act is that different Tribes are included than those that Congress included under the 1945 Act. The 1988 Act, in addition to the Yakima, Warm Springs, and Umatilla Tribes, includes the Nez Perce Tribe. The 1945 Act includes only the Yakima, Umatilla, Warm Springs and other Columbia River Indians. If the existing regulations at 25 CFR 248 were to apply to these new fishing access sites, the Nez Perce Indians, although they may be able to fish in the area, would not have a legal basis for using these new sites.

Archaeologic and historic evidence indicates that some fishing areas have been used through historic and prehistoric times. Section 247.5(c) is intended to protect the historic and archaeological resources. Authority for this regulatory activity comes from Archeological Resources Protection Act of 1979, as amended 16 U.S.C. 470, Pub. L. 96-95, and amendments (ARPA).

Section 247.13(a) explains that the Area Director may close temporarily, facilities at the sites for necessary maintenance during the winter or at other times if necessary, and that before closing the facilities, the Area Director will consult with delegated tribal representatives, if possible. The BIA intends to ensure access to fishing sites even during periods in which the facilities might be closed for maintenance. The BIA intends not to interfere with ceremonial fishing activities. If tribal members require the use of a facility during a period of planned closure, then a delegated tribal representative should contact the Area Director to arrange if possible for a particular facility to be opened during that time.

Interested parties involved in this rulemaking include: The Yakima Indian Nation, the Confederated Tribes of the Warm Springs Reservation of Oregon, The Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, and the Columbia River Inter Tribal Fisheries Commission (CRITFC). The legislation was passed for the benefit of the named tribes. Together, these tribes comprise CRITFC's constituency. CRITFC is a coordinating entity for Columbia River fisheries issues and law enforcement. The interested parties sent representatives to monthly task force meetings from 1989 through the present. Draft regulatory language was distributed at these meetings, and mailed to the tribal representatives, and the tribal governments. In addition to the task force meetings, the Portland Area Director and staff, and a Solicitor's office attorney met with the tribes on their reservations as requested.

We are publishing this interim rule by the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Our policy is to give the public an opportunity to participate in the rulemaking process by submitting written comments. We will consider all comments received during the public comment period. We will determine necessary revisions and publish those in the **Federal Register**. Please refer to this preamble's **ADDRESSES** section for where you must submit your written comments on this interim rule.

We certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

This rule is not a significant rule under Executive Order 12866 and does not require approval by the Office of Management and Budget.

We determined this proposed rule:

(a) Does not constitute a major Federal action significantly affecting the human environment, and no detailed statement is needed under the Environmental Policy Act of 1969;

(b) Does not have significant takings implications in accordance with Executive Order 12630;

(c) Does not have significant Federalism effects;

(d) Does not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*); and

(e) Does not contain collections of information requiring approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

(f) Does not impose an unfunded mandate upon the public or state or local governments.

List of Subjects in 25 CFR Part 247

Fisheries, Fishing, Indians, Indians—claims, Indians—law.

For the reasons set out in the preamble, part 247 is added to 25 CFR as follows:

PART 247—USE OF COLUMBIA RIVER TREATY FISHING ACCESS SITES

Sec.

- 247.1 What definitions apply to this part?
- 247.2 What lands are subject to these regulations?
- 247.3 Who is eligible to use the sites?
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- 247.19 Can a site be used for commercial enterprises other than fishing enterprises by the tribes?
- 247.20 What are the road and trail prohibitions?
- 247.21 Can I appeal an administrative action?

Authority: 25 U.S.C. 2 and 9; Pub. L. 100–581, Title IV.

§ 247.1 What definitions apply to this part?

Abandoned property means property left at a site while the owner of the property is not actively engaged in fishing or drying or processing fish. Abandoned property may include:

- (1) Vehicles;
- (2) Mobile trailers;
- (3) Campers;
- (4) Tents;
- (5) Tepees;
- (6) Boats, or;
- (7) Other personal property.

Archaeological Resource means material remains of prehistoric or historic human life or activities that are of archaeological interest and are at least 50 years of age, and the physical site,

location, or context in which they are found.

Area Director means the position responsible for administration of the Portland Area of the Bureau of Indian Affairs.

Campfire means fire, not within any building, motor home or trailer, which is used for cooking, personal warmth, lighting, ceremonial or aesthetic purposes.

Damage means to injure, mutilate, deface, destroy, cut, chop, girdle, dig, excavate, kill or in any way harm or disturb.

Secretary means the Secretary of the Interior or his designee.

Sites means Treaty Fishing Access Sites.

Treaty Fishing Access Sites means all Federal lands acquired by the Secretary of the Army and Transferred to the Secretary of the Interior pursuant to Public Law 100–581, Title IV, November 1, 1988, to be administered to provide access to usual and accustomed fishing areas and ancillary fishing facilities.

Vehicle means any device in, upon, or by which any person or property is or may be transported, and including any motor, frame, chassis, or body of any motor vehicle, or camper shell, except devices used exclusively upon stationary rails or tracks.

§ 247.2 What lands are subject to these regulations?

(a) Any treaty fishing access sites and ancillary fishing facilities.

(b) These sites and facilities are managed for the exclusive use of members of the Nez Perce Tribe, the Confederated Tribes of the Umatilla Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakima Indian Reservation.

(c) The Area Director may suspend or withdraw the privileges of use of any or all of the facilities at the sites for any violation of the regulations in this part or of any rules issued under the regulations in this part.

§ 247.3 Who is eligible to use the sites?

(a) You may use the sites for access to usual and accustomed fishing areas and ancillary fishing facilities if you are a member of the Confederated Tribes and Bands of the Yakima Indian Nation (Yakima), the Confederated Tribes of the Warm Springs Reservation of Oregon (Warm Springs), the Confederated Tribes of the Umatilla Indian Reservation (Umatilla), and the Nez Perce Tribe (Nez Perce).

(b) The general public or people fishing who do not belong to the tribes listed above cannot use these sites.

(c) Families of such Indians may camp on the sites.

(d) You may not deny access to these sites to any eligible user.

§ 247.4 How can eligible users be identified?

(a) In order to use these sites you must possess an identification card issued by your tribe identifying you as a member of that tribe.

(b) You must exhibit the identification upon request of authorized Federal, State, local or tribal officials.

§ 247.5 What laws and regulations apply to the people who use these sites?

You may use access sites only if you obey the following rules:

(a) You may not use any of the sites for any activity that is contrary to the provisions of your tribe or contrary to Federal law or regulation, or in the absence of Federal law or regulation governing health, sanitation, and safety requirements, State or U.S. Public Health Service standards.

(b) The Area Director may suspend or withdraw the privileges of use of any or all of the facilities at the sites for any violation of the regulations in this part or for any violation of any rules issued under the regulations in this part. You cannot dig in, destroy, or remove any portion of a prehistoric or historic archaeological site or artifact.

(c) Nothing contained in the regulations in this part is intended or shall be construed as limiting or affecting any treaty rights of any tribe nor as subjecting any Indian properly exercising tribal treaty rights to State fishing laws or regulations that are not compatible with those rights.

§ 247.6 What will happen if I damage Government-owned property?

If you commit any act of vandalism, depredation, destruction, theft, or misuse of the land, buildings, fences, signs, or other structures that are the property of the United States you will be subject to prosecution under applicable Federal or State law.

§ 247.7 Can I build a structure?

(a) You may not build any structures at the sites except as allowed under paragraph (d) of this section.

(b) You may use the camping facilities that have been constructed at the sites.

(c) In addition to these structures, you may camp in tents, tepees, campers, and mobile trailers. You must remove any tents, tepees, campers, temporary drying sheds, and mobile trailers from the sites at any time you are not actively engaged in fishing, drying fish, or processing fish by other means, and during the time a site is closed for maintenance.

(d) Where the Area Director has designated areas for the construction of temporary drying sheds, you may construct a temporary drying shed where space is available. You must remove any temporary drying shed you build.

(e) If you erect or maintain a structure in violation of this section, the Area Director may order it removed at any time.

(f) The Area Director:

(1) Is not required to notify you before removing the structure; and

(2) Will charge you the cost of disposing of the structure.

§ 247.8 What am I responsible for if I use the facilities?

You are responsible for:

(a) Campsites, drying sheds and other facilities during the time you occupy or use them; and

(b) Any personal property that you erect, place, or maintain on the site during the time you occupy the site, including:

- (1) Tents;
- (2) Tepees;
- (3) Campers;
- (4) Mobile trailers;
- (5) Temporary drying sheds;
- (6) Fishing platforms;
- (7) Boats; and
- (8) Other fishing equipment.

§ 247.9 What other rules apply while I am using the facilities?

(a) You cannot construct, take possession of, occupy or otherwise use any access site or structure for residential purposes at an access site.

(b) Neither the United States nor any officer or employee thereof warrants, makes any representation, or is responsible for the safety or condition of any personal property.

§ 247.10 What will happen if I abandon property?

If you abandon property at a site, it may be removed without your consent and disposed of at your expense, if the Area Director approves.

§ 247.11 What other restrictions apply to use of the sites?

The Area Director may prescribe and post at the sites regulations covering:

- (a) Camping;
- (b) Picnicking;
- (c) Use of alcoholic beverages;
- (d) Setting or use of fires;
- (e) Use of the sites for cleaning fish;
- (f) Deposit of garbage, paper, cans, bottles, or rubbish of any kind; or

(g) Use of the sites for any commercial activity (including commercial purchase of fish).

§ 247.12 Will I have to pay to use a site?

No. Neither you nor any member of your family will be charged for using a site in accordance with this part.

§ 247.13 Are the facilities available year around?

(a) The Area Director may close facilities at the sites for necessary maintenance during the winter or at other times if necessary. Before closing the facilities, the Area Director will consult with delegated tribal representatives, if possible.

(b) You will still be able to access your treaty fishing rights on the Columbia River through these sites while they are closed.

(c) If any sites are closed or restricted, any affected tribe can contact the Area Director and ask that the sites be opened. The Area Director will work together with the tribes to consider these requests.

§ 247.14 Can I hook up a campsite to on-site or off-site utilities?

(a) You must share access to all on-site facilities.

(b) Because there are a limited number of faucets available, only short-term hose use is allowed to ensure that others have access to water.

(c) You may not tap into electrical lines or outlets, or have electrical power brought in from an outside source for campsite use.

§ 247.15 May I reserve a campsite or drying shed?

No. You may not reserve a campsite, drying shed, or other facility.

(a) You must use campsites, drying sheds, and other facilities on a first-come, first-served basis.

(b) You may not occupy one or more campsites solely for the purpose of reserving a site for another tribal member.

§ 247.16 What fire is permitted?

(a) You may have a fire in designated fire places, and other areas designated for fires.

(b) You may have a fire inside a drying shed in a manner that does not jeopardize the structure.

§ 247.17 What are the restrictions on fires?

(a) You cannot burn timber, trees, slash, brush or grass unless you have a permit issued by the Area Director or his designee.

(b) You cannot build a fire in an unsafe location or leave a fire without completely extinguishing it.

(c) You must control all fire and not allow it to escape.

§ 247.18 What are the sanitation prohibitions?

(a) You cannot deposit in any toilet, toilet vault, or plumbing fixture anything that could damage or interfere with the operation or maintenance of the fixture.

(b) You must dispose of all garbage, including any paper, cans, bottle, sewage, waste water or material, either by removal from the site, or by depositing it into receptacles or at places provided for such purposes.

(c) You may not bring refuse, debris, or toxic or hazardous materials to the sites for disposal.

(d) All toxic or hazardous materials must be properly removed from the sites. You may not dispose of such materials in a sewer line, tank, drain, storm drain, or on the ground.

(e) You must not place in or near the river or other water any substance that pollutes or may pollute the water.

(f) If dumping stations are not available, you must transport sewage off site.

§ 247.19 Can a site be used for commercial enterprises other than fishing enterprises by the tribes?

(a) You may operate commercial activities during commercial fishing seasons, and subsistence activities, incidental to treaty fishing on the site.

(b) You may not construct or operate other types of commercial enterprises, such as firework stands.

§ 247.20 What are the road and trail prohibitions?

(a) You cannot damage or leave in a damaged condition any road, trail, or segment thereof.

(b) You cannot block, restrict, or otherwise interfere with the use of a road, trail, or gate.

§ 247.21 Can I appeal an administrative action?

You may appeal any decision made by the Area Director under this part to the Commissioner of Indian Affairs. You may appeal any decision of the Commissioner of Indian Affairs to the Secretary of the Interior in accordance with part 2 of this chapter.

Dated: September 16, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

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