

Authority: 5 U.S.C. 8716, unless otherwise noted.

4. In § 873.204, paragraph (b) is revised to read as follows:

**§ 873.204 Declination.**

(b) A cancellation of family optional insurance becomes effective and family optional insurance stops at the end of the pay period in which the declination or waiver is properly filed, except that at the request of the employee or annuitant and upon proof satisfactory to the employing office that there was no family member eligible for coverage, the cancellation may be made effective at the end of the pay period in which there were no eligible family members.

[FR Doc. 86-13313 Filed 6-11-86; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Ch. I

#### [Summary Notice No. PR-86-7]

#### Summary of Rulemaking Petitions Received and Dispositions of Petitions Denied or Withdrawn; Correction

[Summary Notice No. PR-86-7]

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn; Correction.

**SUMMARY:** The issue of the Federal Register on May 21, 1986, in FR DOC. (18599) 86-11362, on page 18600 Docket No. 24824, Air Transport Association, under the heading "Description of the petition" revise the remainder of the sentence beginning with "Must Be Scheduled To Begin" to read as follows: "Must be Scheduled to Begin no later than 24 hours after the commencement of the reduced rest period but must begin no later than 28 hours after the commencement of the reduced rest period."

Issued in Washington, DC, on June 6, 1986.  
Donald P. Byrne,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 86-13224 Filed 6-11-86; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 922

[Docket No. 60469-6069]

#### National Marine Sanctuary Program Regulations

**AGENCY:** Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** These proposed regulations are designed to implement the provisions of the Marine Sanctuaries Amendments of 1984, Title I of Pub. L. 98-498 (16 U.S.C. 1431 *et seq.*) (the Act or the Amendments). While the Amendments build upon the foundation established in the existing Marine Sanctuary Program regulations (48 FR 24296 (1983)), revisions are necessary to reflect procedural and some policy changes of the Amendments.

**DATES:** Comments will be accepted until August 11, 1986. After the close of the comment period, and review of comments received, final regulations will be published in the Federal Register.

**ADDRESS:** Send comments to Dr. Nancy Foster, Chief, Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 3300 Whitehaven Street, NW., Washington, DC 20235.

**FOR FURTHER INFORMATION CONTACT:** Dr. Nancy Foster at (202) 673-5122.

#### SUPPLEMENTARY INFORMATION:

##### I. Authority

This notice of proposed rulemaking is issued under the authority of Title III of the Marine Protection, Research and Sanctuaries Act, as amended in 1984, 16 U.S.C. 1431 *et seq.*

##### II. General Background

On October 19, 1984, President Reagan approved Pub. L. No. 98-498; Title I, referred to as the Marine Sanctuaries Amendments of 1984 (the Act or the Amendments), which authorizes appropriations through FY 1988 for, and makes revisions to, Title III of the Marine Protection, Research and Sanctuaries Act 16 U.S.C. 1431 *et seq.* The National Marine Sanctuary Program is administered by the Sanctuary Programs Division, National Oceanic and Atmospheric Administration, Department of Commerce. The

Amendments set out the purposes and policies of the National Marine Sanctuary Program, establish specific criteria and procedures for designating and implementing National Marine Sanctuaries, and provide for greater participation by the Congress, the Regional Fishery Management Councils (established by the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*), and other affected agencies or persons. The designation standards set forth in the Amendments basically track the site identification and selection standards and active candidate criteria NOAA currently uses to identify potential Marine Sanctuaries and evaluate sites for designation. Thus, the Amendments modify the existing regulations in relatively minor ways. These modifications, and how they are reflected in the proposed regulations, are briefly discussed below.

##### A. Findings, Purposes, and Policies

The amendments add findings which recognize that certain areas of the marine environment possess "conservation, recreational, ecological, historical, research, educational or esthetic qualities which give them special national significance" (sec. 301(a)). This differs from the original Act which provided, in section 302(a), that National Marine Sanctuaries should be designated only for their "conservation, recreational, ecological, or esthetic qualities" (16 U.S.C. 1432(a)(1983)). To reflect the addition of historical qualities, NOAA's working list of potential sites is being amended (See III.A of the Preamble and Subpart B of the regulations). Consistent with the Amendment's Purposes and Policies, the National Marine Sanctuary Program provides for comprehensive management and conservation; the support and coordination of scientific research involving the resources of marine sanctuaries; stresses efforts to enhance public awareness, understanding, appreciation, and wise use of the marine environment, and encourages public and private uses of such resources consistent with the Program's primary objective to protect them (sec. 301(b)(3)-(5)). These policies are reflected in the Program's mission and goals at § 922.1.

##### B. Designation Standards

The Secretary of Commerce may designate a discrete area of the "Marine Environment" as a National Marine Sanctuary, if he finds that:

(a) The area is of special national significance due to its resources or human-use values;

(b) Existing state and federal authorities are inadequate to ensure coordinated and comprehensive management of the area, including resource protection, scientific research and public education;

(c) Designation of the area as a National Marine Sanctuary will facilitate the objectives in subparagraph (b); and

(d) The area is of a size and nature that will permit comprehensive and coordinated conservation and management.

(Sec. 303(a)).

These findings are reflected in the proposed regulations at § 922.33(a).

#### C. Consultation

In making the above findings, the Secretary must consult with the House Committee on Merchant Marine and Fisheries; the Senate Committee on Commerce, Science, and Transportation; the Secretaries of State, Defense, Transportation, and the Interior; the Administrator of the Environmental Protection Agency; and the heads of other interested Federal agencies; the responsible officials or relevant heads of the appropriate state or local government entities, including the coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a National Marine Sanctuary; the appropriate officials of any Regional Fishery Management Councils established by section 302 of the Magnuson Act (16 U.S.C. 1852) that may be affected by a proposed designation; and other interested persons. The consultation process for a potential designation is discussed in the proposed regulations at § 922.31.

Further, the Secretary of Commerce must prepare, as part of an environmental impact statement, a resource assessment report regarding the commercial and recreational uses in the area proposed for designation. The Secretary must consult with the Secretary of the Interior with respect to any uses in the area subject to the primary jurisdiction of the Department of the Interior (See sec. 303(b) (2) & (3)). The preparation of the resource assessment report is described in the regulations at § 922.31(f).

#### D. Fishery Regulations

Where fishery regulations are necessary, the Secretary must provide the appropriate Regional Fishery Management Council the opportunity to recommend draft sanctuary fishery regulations. Fishery regulations are discussed at § 922.31(d). The comment

to this section of the regulations notes that President Reagan, in signing the Amendments, specified that the Councils will only make recommendations regarding the proposed regulations. The President states that the Secretary of Commerce, not the Councils, must make the final decision on regulatory actions (29 *Weekly Comp. Pres. Doc.* 1578 [October 19, 1984]).

#### E. Effectiveness of Designation

A proposed designation of a National Marine Sanctuary will become effective after the close of a review period of forty-five (45) days of continuous session of Congress, commencing with the publication of a notice of the designation and final implementing regulations in the *Federal Register*, unless:

(1) The designation or any of its terms is disapproved by enactment of a joint resolution of disapproval by Congress (sec. 304(b)(1)(A)); or

(2) In the case of a proposed sanctuary located partially or entirely within state boundaries, the Governor of the affected state objects to the designation or any of its terms (sec. 304(b)(1)(B)).

The regulations address the taking effect of designation at § 922.33(c).

#### F. Valid Rights

Leases, permits, and rights of subsistence use or access either in existence on October 19, 1984 (the date of enactment of Pub. L. No. 98-498) for then existing National Marine Sanctuaries, or in existence on the date new national marine sanctuaries are designated pursuant to the Amendments, may not be terminated by the Secretary, although such leases, permits or rights are subject to regulation by the Secretary "consistent with the purposes for which the sanctuary is designated" (sec. 304(c)). The regulations address this provision at § 922.1(g). The comment to that section notes that there were six (6) National Marine Sanctuaries in existence on the effective date of the Amendments: the MONITOR, Key Largo, Channel Islands, Point Reyes-Farallon Islands, Gray's Reef, and Looe Key.

#### G. Research and Education

The Amendments, at section 306, specify that the Secretary may conduct research and education programs to carry out the purposes of the Act. The regulations specifically discuss research and education at § 922.33(e).

### III. Sanctuary Designation Process

The revisions contained in the Amendments, discussed above, make several modifications to the sanctuary designation process provided in the existing Program regulations. This section describes the revised designation process, which is depicted in Figure 1.

#### A. Site Evaluation List

To identify sites for future consideration as national marine sanctuaries, NOAA instituted a site evaluation process in 1982; this process culminated in a list of sites, the site evaluation list (SEL), which was published in 1983 (48 FR 35568). As established, the SEL consists of twenty-nine (29) natural resource sites. The SEL serves NOAA's working list for future marine sanctuary sites, and is discussed in subpart B of the regulations. The qualities expressed in the original Act were used in establishing the SEL; thus, the SEL was focused on sites of conservation, recreational, ecological, or esthetic qualities.

While the Amendments add historical, research, and educational qualities, sites possessing research and educational qualities were solicited and considered in the original SEL process. Research and educational qualities are inherent in sites possessing significant conservation, recreational, ecological, and esthetic values; consequently, sites possessing research and educational qualities of special national significance are included on the current SEL. Sites of nationally significant historical quality were not, however, considered in the SEL process; the evaluation teams did not include maritime archeologists or historians or any person schooled in submerged cultural resources. There are no historical sites on the SEL. Thus, the SEL will be amended to include discrete marine areas possessing nationally significant historical qualities for possible conservation and management as provided by the Act (See § 922.21 of the proposed regulations).

#### B. Designation of National Marine Sanctuaries

Selection of a site from the SEL as an active candidate represents the second phase in evaluating a site for potential designation; it begins the environmental impact statement process. Notice of selection as an active candidate and intent to prepare a draft environmental impact statement is placed in the *Federal Register*. At any time a site can be dropped from consideration if it is determined that a site does not meet the

standards and criteria as set forth in the Act.

After selection as an active candidate, a draft management plan (including necessary regulations) is prepared along with a draft environmental impact statement (DEIS). The DEIS evaluates the impacts of sanctuary designation and management plan implementation. During the preparation of the DEIS, a resource assessment report will be prepared documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial or recreational uses. In consultation with the Secretary of the Interior, a resource assessment section should be prepared regarding any commercial or recreational resource uses in the area under consideration

that are subject to the primary jurisdiction of the Department of the Interior (sec. 303(b)(3)). After the DEIS and draft plan are published, a notice of proposed designation is published in the **Federal Register** and media serving communities which may be affected by the designation. On the same day that the **Federal Register** notice is issued, a detailed Congressional prospectus (which includes the draft EIS and the draft plan), as discussed in § 922.32(a), is sent to the House Merchant Marine and Fisheries Committee and the Senate Commerce, Science, and Transportation Committee for review for a forty-five (45) day period of continuous session.

After preparation of a final EIS and final management plan, including proposed final regulations, the Secretary of Commerce must determine whether to designate the area as a National Marine

Sanctuary. Section 922.33(a) of the regulations sets forth the factors to consider in making this determination. Notice of designation is published in the **Federal Register**. The designation becomes effective after the close of a second Congressional review period (and Governor's review for sites including state waters) of forty-five (45) days of continuous session of Congress, dating from the **Federal Register** notice of designation (See § 922.33(c)). If the terms of the designation are found acceptable by Congress and Governor(s), for sites including any state waters, the Secretary will implement the management plan, including carrying out surveillance and enforcement activities, and conducting such research and education programs as necessary and reasonable to carry out the purposes and policies of the Act.

FIGURE 1.—SANCTUARY DESIGNATION PROCESS

| Process Stage  | Site Evaluation List (SEL) established | Action final SEL   | Notice FEDERAL REGISTER notice   |
|--|--|--|--|
| Proposed Designation Selection as Active Candidate (Starts NEPA Process) |  | NOAA selects site from SEL as "Active Candidate", notice of intent to prepare DEIS<br>Consultations with Congress, affected Regional Fishery Management Councils, states, Federal agencies, and other interested persons<br>Preparation of DEIS, Draft Management Plan, Proposed Regulations<br>Prospectus to Congress (including Draft EIS and Draft Management Plan, proposed regulations) for review under Sec. 304(a) of the Act<br>Public Hearing<br>Prepare Final EIS and Final Management Plan<br>Recommendation to Secretary for designation | FR Notice Public Notice of selection   |
| Designation  |  | If site meets criteria, Secretary then designates marine sanctuary<br><br>After 45-day period for Congressional and gubernatorial review under Sec. 304(b) of the Act, Designation and final regulations become effective<br>Implementation of Management Plan   | FR Notice (including proposed regulations and summary of Draft Management Plan) published concurrently with EPA notice of Draft EIS availability and transmission of Prospectus to Congress Public Notice.<br><br>Occurs within 3 years of selection as Active Candidate.<br>FR Notice (Designation, final regulations, availability to Final EIS and Final Management Plan Notice to Congress (304(b))) |

**III. Other Actions Associated with the Notice of Proposed Rulemaking**

*(A) Classification Under Executive Order 12291*

NOAA has concluded that these regulations are not major "rules" within section 1(b) of Executive Order 12291 because they will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These proposed rules amend existing procedures by providing greater selectivity and specificity in initially

identifying and designating potential National Marine Sanctuaries in accordance with the Marine Sanctuaries Amendments of 1984, 16 U.S.C. 1431-1439. These rules establish a revised process for identifying, designating and managing National Marine Sanctuaries. They will not result in any direct economic or environmental effects nor will they lead to any major indirect economic or environmental impacts. They are intended to reduce delay and uncertainty in the site selection and approval process. All subsequent marine sanctuary designations and implementing regulations including any regulations recommended by the Fishery Management Councils will be reviewed for compliance with Executive Order 12291.

*(B) Regulatory Flexibility Act Analysis*

A Regulatory Flexibility Analysis is not required for this notice of proposed

rulemaking. The regulations set forth procedures for identifying, selecting, and, if designated, managing National Marine Sanctuaries. Because the notice and comment requirements of Section 553 of Title 5 of the U.S. Code are not applicable to this proposed procedural rule (5 U.S.C. 553(b)(A)), the Regulatory Flexibility Act also does not apply (5 U.S.C. 603(a)). All subsequent marine sanctuary designations and implementing regulations will be reviewed for compliance with the Regulatory Flexibility Act.

*(C) Paper Work Reduction Act of 1980 (Pub. L. 96-511)*

These regulations will impose no information collection requirements of the type covered by Pub. L. 96-511.

*(D) National Environmental Policy Act*

NOAA has concluded that publication of these proposed rules does not

constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

#### List of Subjects in 15 CFR Part 922

Administrative practice and procedure. Coastal zone. Environmental protection. Marine resources. Natural resources.

(Federal Domestic Assistance Catalog Number 11-429 Marine Sanctuary Program)

Dated June 6, 1986.

Paul M. Wolff,

Assistant Administrator for Ocean Sciences and Coastal Zone Management.

Accordingly, it is proposed that 15 CFR Part 922 be revised as follows:

### PART 922—NATIONAL MARINE SANCTUARY PROGRAM

#### Subpart A—General

Sec.

922.1 Mission and goals.

922.2 Definitions.

922.10 Effect of national marine sanctuary designation.

#### Subpart B—Site Evaluation List (SEL)

922.20 Purpose of the Site Evaluation List.

922.21 Site selection for sites with historical qualities of special national significance.

922.22 Effect of placement on the SEL or selection as an active candidate.

922.23 SEL time frame and consideration of new sites.

922.24 Important new discoveries and new information.

#### Subpart C—Designation of National Marine Sanctuaries

922.30 Selection of active candidates.

922.31 Development of designation materials.

922.32 Congressional findings.

922.33 Designation and implementation.

#### Subpart D—Enforcement

922.40 Applicable procedures.

Appendix 1—National Marine Sanctuary Program Site Identification and Selection Criteria for Sites with Historical Qualities of Special National Significance

Authority: Pub. L. 98-498, as amended (16 U.S.C. 1431-1439).

#### Subpart A—General

##### § 922.1 Mission and goals.

(a) The mission of the National Marine Sanctuary Program (Program) is to identify, designate and manage as National Marine Sanctuaries discrete areas of the marine environment of special national significance due to their conservation, recreational, ecological, historical, research, educational, or esthetic qualities. Designated sanctuaries should be illustrative of the

nation's marine areas and allow for coordinated and comprehensive management. Decisions to designate areas as National Marine Sanctuaries are based on an evaluation of the area's intrinsic natural or cultural resource and human-use values; the effects of present and future uses on these values and the effects of designation on these uses; the adequacy of existing state and federal management of the area; whether designation will ensure comprehensive management; the area's size and manageability; the fiscal capability to designate and operate any given area; and the public benefits to be derived from designation.

(b) The goals of the Program are to carry out this mission by designating national Marine Sanctuaries to:

(1) Enhance resource protection through comprehensive and coordinated conservation and management that complements existing regulatory authorities and is tailored to the specific resources;

(2) Support, promote and coordinate scientific research on, and monitoring of, the site-specific marine resources to improve management decisionmaking in national marine sanctuaries;

(3) Enhance public awareness, understanding, and wise use of the marine environment through educational and recreational programs; and

(4) Facilitate, to the extent compatible with the primary goal of resource protection, multiple use of these marine areas.

(c) In meeting the Program's mission and goals, particular attention will be paid to the establishment and management of sites for the protection of habitat values, particularly for economically important or threatened species or species assemblages.

(d) Consistent with the overall mission, the Program will coordinate its efforts to manage marine areas of special national significance with other countries managing marine protected areas.

(e) In carrying out the mission of the National Marine Sanctuary Program, priority will be given to offshore areas where there are no existing special area protection mechanisms.

(f) Sanctuary size, while highly dependent on the nature of the site's resources, will be no larger than necessary to ensure the sanctuary's effective management. Sanctuaries will be limited to relatively small, geographically discrete marine areas. NOAA intends that the maximum size will not exceed that of the largest existing marine sanctuary, the Channel Islands National Marine Sanctuary. The

Channel Islands sanctuary is 1252 square nautical miles in size.

(Comment: Size considerations are specifically discussed in the Act. Section 303(a)(2)(D) provides that the Secretary, in deciding whether to designate an area as a National Marine Sanctuary, must find that "the area is of a size and nature that will permit comprehensive and coordinated conservation and management." In making this determination, the Secretary must consider, among other factors, the manageability of the area, its size and ability to be identified as a discrete ecological unit (Sec. 303(b)(1)(F)). The criteria for active candidate selection explicitly include size considerations in § 922.30(b)(6)).

(g) Consistent with section 304(c) of the Act, leases, permits, licenses, or rights of subsistence use or access either (i) in existence on October 19, 1984 (the date of enactment of Pub. L. No. 98-498), with respect to existing designated National Marine Sanctuaries; or

(ii) in existence on the date of designation of any new National Marine Sanctuary designated after October 19, 1984, may not be terminated by the Secretary. The Secretary can, however, regulate such leases, permits, licenses, or rights consistent with the purposes for which the sanctuary was designated.

(Comment: Senate Report No. 260, 98th Cong. 1st Sess. 7 (1983), provides that the Secretary should "respect such leases, permits, licenses, right of subsistence use, or right of access, in recognition of the variety of uses within marine areas. The Secretary should use regulatory approaches that accommodate these uses, consistent with the purposes for which the Sanctuary is designated." With respect to subparagraph (i) above, at the time of the effective date of the Amendments (October 19, 1984) there were six (6) designated National Marine Sanctuaries: the Monitor, Key Largo, Channel Islands, Point Reyes-Farallon Island, Gray's Reef, and Looe Key).

##### § 922.2 Definitions.

(a) "Act" means Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*

(b) "Active Candidate" means a site selected by NOAA from the Site Evaluation List for further consideration leading to sanctuary designation.

(c) "Historical resources" means those areas of the marine environment possessing historical, cultural, archaeological, or paleontological significance (sec. 303(b)(1)(B)), including sites, structures, districts, and objects significantly associated with or representative of earlier people, cultures, and human activities and events. An alternative or substitute term is cultural resources.

(d) "Marine environment" means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, consistent with international law [See 16 U.S.C. 1432(3)].

[Comment: The term "marine environment" is intended to be consistent with the general marine jurisdiction of the United States and with international law. It specifies that the authority of the Secretary to designate marine sanctuaries and to regulate uses in the sanctuaries extends to the outer limit of the Fishery Conservation Zone (FCZ) for the purposes of the water column, and to 200 miles or to the outer limit of the Continental Shelf, whichever is further, for the purposes of the continental margin and seabed. Thus, it is a definition which covers both water and submerged land areas. First, the water areas to which the Act applies extend to the outer limit of the FCZ, as defined by section 101 of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1811. Secondly, the submerged land areas to which Title III applies include the lands beneath navigable waters described in section 2(a)(2) of the Submerged Lands Act of 1953 (43 U.S.C. 1301), the areas beneath the Great Lakes and their connecting waters, as well as the areas of the U.S. Outer Continental Shelf that extend beyond 200 miles [See H. Rep. 109, 98th Cong. 1st Sess. 19-20 (1983)].

(e) "National historic landmark" means a district, site, building, structure or object designated under the National Historic Landmarks (NHL) Program consistent with 36 CFR Part 65. The NHL Program is administered by the Department of the Interior.

(f) "National marine sanctuary" means an area of the marine environment, as defined above in paragraph (d) of this section, of special national significance due to its natural or cultural resource values, which is designated to ensure its conservation and management.

(g) "Person" means any private individual, partnership, corporation, or other entity; any officer, employee, agency, department, agency or instrumentality of the federal government; or any state, local or regional unit of government.

(h) "Regional fishery management council" means any fishery council established under section 302 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

(i) "Secretary" means the Secretary of the United States Department of Commerce.

(j) "Site Evaluation List" (SEL) means a list of selected natural and cultural resource sites qualifying for further evaluation as National Marine Sanctuaries.

(k) "State" means each of the several states, the District of Columbia, the

Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States [See 16 U.S.C. 1432(5)].

(l) "Subsistence use" means the customary and traditional use by rural residents of areas near or in the marine environment for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles; and for barter, if for food or nonexchange items other than money if the exchange is of a limited and noncommercial nature.

#### § 922.10 Effect of national marine sanctuary designation.

The designation of a National Marine Sanctuary, and the regulations implementing it, are binding on any person subject to the jurisdiction of the United States. Designation does not constitute any claim to territorial jurisdiction on the part of United States for designated sites beyond the U.S. territorial sea, and the regulations implementing the designation shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to a person who is not a citizen, national, or resident alien of the United States, unless in accordance with—

(a) Generally recognized principles of international law;

(b) An agreement between the United States and the foreign state of which the person is a citizen; or

(c) An agreement between the United States and the flag state of the foreign vessel, if the person is a crewmember of the vessel.

#### Subpart B—Site Evaluation List (SEL)

##### § 922.20 Purpose of the Site Evaluation List.

(a) The first Site Evaluation List (SEL) was established in 1983 (See 48 FR 35568). The SEL consists of twenty-nine (29) highly-qualified natural resource sites identified and recommended to NOAA by regional resource evaluation teams in accordance with the Program's mission and goals and site identification and selection criteria.

(b) The SEL serves as NOAA's working list for future marine sanctuary sites; only sites on the SEL may be considered for subsequent review as active candidates for designation. Thus, the SEL provides a pool from which potential sanctuaries are considered.

(c) The SEL established in 1983 was based on the then existing Act which provided that national marine sanctuaries could be designated for their conservation, recreational, ecological, or esthetic values. The 1984 Amendments add additional qualities—historical, research, or education—which must also be considered when selecting sanctuary sites (sec. 301(a)(2)). Areas of nationally significant research and educational qualities were considered as part of the original site evaluation process. These qualities are inherent in sites possessing significant conservation, recreational, ecological, or esthetic values. Areas of significant research and educational qualities are represented on the present SEL. Therefore, areas of significant research and educational values will not be reconsidered at this time, except as provided in § 922.24. Sites possessing nationally significant historical or cultural resources were not specifically considered in the initial SEL; there are no historical sites on the SEL. Because the 1984 Amendments require the consideration of marine areas possessing historic values of special national significance, the existing SEL will be amended using revised identification and selection criteria, as discussed in § 922.21, to evaluate areas of the marine environment in light of their historical properties. As noted in § 922.2(c), historical resources include those of historical, cultural, archaeological, or paleontological significance.

##### § 922.21 Site selection for sites with historical qualities of special national significance.

(a) To identify areas of the marine environment possessing historical and cultural resources of special national significance, the Sanctuary Programs Division will use the criteria found in Appendix 1 which are consistent with all existing Federal cultural resource legislation and regulations. The Sanctuary Programs Division will then establish a Marine Cultural Resource Evaluation Team and will direct and coordinate this team of experts in identifying sites of special national significance. Each proposed historical and cultural site will be evaluated against the selection criteria and guidelines. The sites selected as having historical qualities of special national significance shall also be eligible for nomination as a National Historic Landmark. The Team will submit a list of sites having historical qualities of special national significance as recommendations to NOAA for review.

(b) After a preliminary analysis of the historical sites, NOAA will publish a notice of availability of the historical sites proposed for listing of a supplemental in the *Federal Register*. These sites will be subject to a thirty-day comment period. At the conclusion of the comment period, NOAA will publish the final list of historical sites in the *Federal Register*, based on the selection criteria and the public comments. For each historical site added to the SEL, NOAA will prepare written documentation describing the values qualifying it for the SEL.

**§ 922.22 Effect of placement on the SEL or selection as an active candidate.**

Placement of sites on the SEL or selection as an Active Candidate does not subject such sites to any regulatory controls under federal law. Such regulations may only be established after designation, as provided under § 922.33.

**§ 922.23 SEL time frame and consideration of new sites.**

(a) As sites are designated as marine sanctuaries, or rejected from further consideration, they will be removed from the SEL. Rejected sites will not be replaced on the SEL. Sites remaining on the original SEL after December 31, 1988 (five (5) years from establishment) will be reevaluated. Sites added to the SEL under the historical resource process described in § 922.21 will be subject to a separate five year review period beginning with the date of their addition to the list.

(b) If after the 5-year reevaluation (1988 for sites on the original SEL), it is determined that additional sites are necessary, notice of the initiation of a new site identification process will be published in the *Federal Register*, at least twelve (12) months in advance. NOAA will reevaluate the prior SEL process, including the team approach, and determine, after public comment, how best to modify that process, if necessary.

**§ 922.24 Important new discoveries and new information.**

Unless a new identification process is established as provided in § 922.23(b), the Secretary will consider future recommendations of potential sanctuary sites only if such sites are important new discoveries or if substantial new information previously unavailable establishes the national significance of a known site. The Secretary may determine, in consultation with other authorities, and after public review, whether such sites meet the selection criteria. Qualified sites will be added to

the Site Evaluation List for further evaluation as National Marine Sanctuaries, consistent with the procedures set forth in these regulations.

**Subpart C—Designation of National Marine Sanctuaries**

**§ 922.30 Selection of active candidates.**

(a) Only a limited number of sites at one time will be selected from the SEL as active candidates and further evaluated for sanctuary designation.

(b) The Secretary will select sites from the SEL for Active Candidate consideration based on a preliminary assessment of the designation standards discussed in § 922.33(a), below.

(c) Selection of a site as an active candidate begins the formal sanctuary designation-evaluation process. A notice of intent to prepare a draft environmental impact statement will be published in the *Federal Register* and in newspapers in the area(s) of local concern. A brief written analysis describing the site will be provided. At any time a site can be dropped from consideration if it is determined that the site does not meet the standards and criteria as set forth in the Act.

**§ 922.31 Development of designation materials.**

(a) After selecting a site as an Active Candidate, the Secretary shall prepare a draft designation document, including the terms of the designation, and draft management plan to implement the designation. The draft designation document shall be prepared in consultation with the House Merchant Marine and Fisheries Committee and the Senate Commerce, Science, and Transportation Committee; the Secretaries of State, Defense, Transportation, and the Interior, the Administrator of the Environmental Protection Agency, and the heads of other interested federal agencies; the responsible officials or relevant agency heads of the appropriate state or local government entities, including coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a national marine sanctuary; the appropriate officials of any Regional Fishery Management Council established by section 302 of the Magnuson Act (16 U.S.C. 1852) which may be affected by the proposed designation; and other interested persons.

(b) The terms of designation shall include the geographic area included within the sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic values;

and the types of activities that will be subject to regulation in order to protect those characteristics. The terms of the designation may be modified only by the same procedures through which the original designation was made. If regulations are promulgated, they shall be consistent with and implement the terms of the designation. Regulations relating to activities under the jurisdiction of one or more other federal agencies will be developed in consultation with these agencies. All amendments to these regulations must remain consistent with the original designation.

(c) (1) Management plans generally shall include sections on: goals and objectives, management responsibilities, resource studies and research, enforcement, including surveillance activities, interpretive and educational programs, and regulations (where applicable). A draft environmental impact statement (DEIS) will be prepared on the designation document/management plan, including draft regulations if applicable. The DEIS will also include the resource assessment report, discussed in subsection (f), below, and maps depicting the boundaries of the proposed area, and the existing and potential uses and resources of the area.

(2) The management plan and the DEIS will be prepared as quickly as possible allowing for maximum public input. The time period between Active Candidate selection and recommendation of the site to the Secretary for designation is not to exceed three (3) years, unless it is determined that additional time is needed for public review.

(d) If regulations on fishery activities appear necessary to implement the sanctuary designation, the Secretary will consult with the appropriate Regional Fishery Management Council(s) in accordance with the following:

(1) Once the Secretary determines that regulations for fishing may be necessary within the proposed sanctuary, the Secretary shall provide the appropriate Council with the opportunity to recommend draft regulations to implement the proposed designation for specified fishery activities within the sanctuary and within the U.S. Fishery Conservation Zone. The Secretary should provide the Council with all necessary materials and information supporting the need for regulations:

(2) The Council shall have one hundred-twenty (120) days from the date of the Secretary's request to recommend draft fishery regulations and submit

these to the Secretary. In preparing these recommendations the Council shall use as guidance, the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that they are consistent and compatible with the goals and objectives of the proposed sanctuary designation.

(3) Draft regulations recommended by the Council, or its determination that regulations are not necessary, may be accepted by the Secretary. When making his/her determination whether to accept the Council's recommendation, the Secretary must consider whether the Council's action fulfills the purposes and policies of this Act and the goals and objectives of the proposed designation:

(4) The Secretary shall develop fishing regulations necessary to implement the Sanctuary designation, if the Council (a) declines to make a determination with respect to the need for regulations, (b) makes a determination which is rejected by the Secretary, or (c) fails to recommend the draft regulations within the period specified in subparagraph (2) above.

(5) Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations.

*(Comment: In signing the Amendments, President Reagan noted that he had been advised by the Justice Department that the promulgation of regulations by persons, such as Council members, who are not appointed by the President would violate Article 2, Section 2 (the Appointments Clause of the U.S. Constitution. In light of this, the President signed the Amendments with the understanding that the Councils will only make recommendations regarding proposed regulations. The Secretary of Commerce, not the Councils, must make the final decision on the development and promulgation of fishing regulations for sanctuary management (20 Weekly Comp. Pres. Doc. 1578 (October 19, 1984)).*

(e) Fishery activities not subject to any existing sanctuary regulation may be listed in the sanctuary designation document as potentially subject to regulation, without following the procedures specified in paragraph (d) of this section. If a decision is subsequently made that regulations on fishery activities are necessary, then the procedures specified in (d) must be followed.

(f) As part of the DEIS, the Secretary is to develop a resource assessment report documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial or recreational uses. In consultation with the Secretary of the Interior, the Secretary shall draft

a resource assessment section for the report concerning any commercial or recreational resource uses in the area that are subject to the primary jurisdiction of the Department of the Interior.

(g) After the DEIS is prepared, the Secretary shall publish the draft designation document and a summary of the management plan including the proposed regulations, where applicable, in the **Federal Register**. The **Federal Register** notice shall be published concurrently with the Environmental Protection Agency (EPA) Notice of Availability of the DEIS.

(h) Notice of the proposal will be published in newspapers of general circulation or electronic media in the communities that may be affected by the proposal.

(i) No sooner than 30 days after publication of the notice under paragraph (g) of this section, the Secretary shall hold at least one public hearing in the coastal area or areas most affected by the proposed designation for the purpose of receiving views of any interested parties.

#### § 922.32 Congressional findings.

(a) On the same day that the **Federal Register** notice in § 922.31(g) is issued, the Secretary shall submit to the House Committee on Merchant Marine and Fisheries and the Senate Commerce, Science, and Transportation Committee a prospectus on the proposal, consistent with section 304(a)(1)(C) of the Act, containing:

- (1) The terms of the proposed designation (See § 922.31(b));
- (2) The basis of the Secretarial designation findings discussed in § 922.33(a);
- (3) Assessment of the factors used for Active Candidate determination in § 922.30(b);
- (4) Proposed mechanisms to coordinate existing regulatory and management authorities within the area;
- (5) The draft environmental impact statement and the draft management plan, including the proposed regulations, detailing the proposed goals and objectives, management responsibilities, resource studies, interpretive and educational programs, and enforcement, including surveillance activities for the area;
- (6) An estimate of the annual cost of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education; and
- (7) An evaluation of the advantages of cooperative state and federal management if all or part of a proposed marine sanctuary is within the territorial

limits of any state or is superjacent to the subsoil and seabed within the seaward boundary of a state, as that boundary is established under the Submerged Lands Act (43 U.S.C. 1301 *et seq.*).

(b) After receiving the prospectus discussed in paragraph (a) of this section, the House Committee on Merchant Marine and Fisheries and the Senate Commerce, Science, and Transportation Committee may each hold hearings on the proposed designation and the prospectus. Consistent with section 304(a)(6) and section 304(b)(4) of the Act, the Committees have a forty-five (45) day period of continuous session of Congress, beginning on the date of submittal of the prospectus, to complete their review.

(c) If either Committee, within the forty-five day period, issues a report concerning the prospectus, this report must be considered before the Secretary may designate the sanctuary.

#### § 922.33 Designation and implementation.

(a) After the final EIS and final management plan, including final regulations, are prepared, the Secretary must evaluate the proposal in terms of the sanctuary designation standards in order to determine whether to designate an area of the marine environment as a National Marine Sanctuary. In a written decision document, the Secretary must:

- (1) Determine that the designation fulfills the purposes and policies of the Act; and
- (2) Find that:
  - (i) The area is of special national significance due to its resource or human-use values;
  - (ii) Existing state and federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;
  - (iii) Designation of the area as a national marine sanctuary will ensure comprehensive conservation and management, including resource protection, scientific research, and public education; and
  - (iv) The area is of a size and nature that will permit comprehensive and coordinated conservation and management.

(3) Consider, in making the findings in paragraph (a)(2) of this section,

- (i) The area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened

species or species assemblages, and the biogeographic representation of the site:

(ii) The area's historical, cultural, archaeological, or paleontological significance;

(iii) The present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

(iv) The present and potential activities that may adversely affect the factors identified in subparagraphs (i), (ii) and (iii);

(v) The existing state and federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of the Act;

(vi) The manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

(vii) The public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;

(viii) The negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development;

(ix) The socioeconomic effects of sanctuary designation; and

(x) The fiscal capability to designate and operate any given area.

(b) In designating an area as a National Marine Sanctuary, the Secretary shall publish notice of the designation and the implementing regulations in the **Federal Register**; this notice shall also advise the public of the availability of the financial management plan and the final EIS.

(c) The designation and regulations shall become final and take effect after the close of a review period of forty-five (45) days of continuous session of Congress, computed in accordance with section 304(b)(4) of the Act, beginning on the date of publication of the **Federal Register** notice in subsection (b) unless:

(1) The designation or any of its terms is disapproved by enactment of a joint resolution of disapproval consistent with section 304(b)(3) of the Act; or

(2) In the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any state, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the

designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the state.

(d) If the Secretary determines that the actions in subsection (c) affect the sanctuary designation in a manner that sanctuary goals and objectives cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation not disapproved under paragraph (c)(1) or not certified under paragraph (c)(2) of this section shall take effect.

(e) After sanctuary designation, the Secretary shall implement the management plan, and applicable regulations, including carrying out surveillance and enforcement activities, and conducting such research and education as are necessary and reasonable to carry out the purposes and policies of the Act.

(f) Consistent with the sanctuary management plan, after a sanctuary is designated, the Sanctuary Programs Division will develop and implement a site-specific contingency and emergency-response plan designed to protect the sanctuary resources. The plan will contain alert procedures and actions to be taken in the event of an emergency (such as a shipwreck or an oil spill).

(g) After the designation becomes effective, and where essential to prevent immediate, serious and irreversible damage to the resources of the sanctuary, activities including those not listed in the designation, may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which time an appropriate amendment of the terms of the designation will be sought by the Secretary.

(h) Every five years, or sooner if necessary, designated sanctuaries will be evaluated as to substantive progress toward implementing the management plan and the goals of the sanctuary, especially on the effectiveness of on-the-ground management techniques. The evaluation will be conducted by NOAA sanctuary staff and other professional managers of marine protected areas, such as those from the National Park Service.

#### Subpart D—Enforcement

##### § 922.40 Applicable procedures.

NOAA will apply to all enforcement matters under the Act the consolidated civil procedure regulations, set forth at 15 CFR Part 904, as amended on April 1, 1985 (50 FR 12781), and the seizure

and forfeiture, and disposal procedure regulations set forth at 50 CFR Part 219.

#### Appendix 1—National Marine Sanctuary Program Site Identification and Selection Criteria for Sites With Historical Qualities of Special National Significance

##### Background

The Site Evaluation List (SEL) was established in 1983 (See 48 FR 35568). As established, the SEL consists of twenty nine (29) highly-qualified natural resource sites identified and recommended to NOAA by regional resource evaluation teams in accordance with the Program's mission and goals and then existent site identification and selection criteria.

The SEL serves as NOAA's working list for future marine sanctuary sites; only sites on the SEL may be considered for subsequent review as active candidates for designation. Thus, the SEL provides a pool from which potential sanctuaries are considered. After the SEL only if it is an important new discovery or if there is substantial information indicating that a known site merits such consideration as provided in § 922.24 of the regulations.

The SEL established in 1983 was based on the then existing Act which provided that national marine sanctuaries could be designated for their conservation, recreational, ecological, or esthetic values. The 1984 Amendments add additional qualities—historical, research, or education—which must also be considered when selecting sanctuary sites (sec. 301(a)(2)). Areas of nationally significant research and educational qualities were considered as part of the original site evaluation process. Such areas are represented on the present SEL. Areas of significant research and educational values will not be reconsidered at this time, except as provided in § 922.24 of the regulations. Sites possessing nationally significant historical or cultural resources were not specifically considered in the initial SEL; there are no historical sites on the SEL. Because the 1984 Amendments require the consideration of marine areas possessing historical values of special national significance, the existing SEL will be amended, as discussed in § 922.21 of the regulations, using revised identification and selection criteria, provided below, to evaluate areas of the marine environment possessing historical qualities of special national significance.

##### Site Selection for Sites of Historical Qualities of Special National Significance

To determine if an area possesses historical qualities of special national significance and otherwise meets the Sanctuary Designation standards specified in section 303, certain definitions and criteria are included in this appendix for use in evaluating potential sites for listing on the amended SEL.

##### Definitions

The term "historical qualities" means those areas of the marine environment possessing historical, cultural, archeological or paleontological significance. The term



"historical" is used in the broad sense to refer to both pre-historic and historic periods, to the anthropological concept of culture, and to the processes, events, places, and objects related to the human past. The phrase "special national significance" denotes those historic resources that possess unique national significance and are illustrative of the nation's maritime heritage.

#### *Criteria for Identification and Selection*

To qualify for listing on the SEL for historical qualities, a site must be determined to have special national significance and meet other programmatic requirements. The determination of special national significance shall include an evaluation of an area's unique national significance and an evaluation of its contribution to the historical resources already represented in the National Marine Sanctuary Program.

#### *A. Determination of Significance*

The National Historic Landmark (NHL) Program (36 CFR Part 65), administered by the Department of the Interior, focuses attention on properties of exceptional significance to the nation as a whole. It is the primary Federal means of evaluating the special national significance of historical and cultural resources. Properties designated as NHLs that are not already listed on the National Register of Historic Places are automatically listed. Additionally, the NHL Program is one of the major tools for identifying areas of potential international significance for nomination to the World Heritage List.

Consistent with the Amendment's Purposes and Policies that the management of special marine areas complement existing regulatory authorities, the criteria for nomination as a NHL will be used by NOAA as the first step in evaluating the historical, cultural, archeological or paleontological significance of a marine resource (See Table 1). Sites of unique national significance demonstrated by their designation as NHLs, or considered by the Sanctuary Programs Division, in consultation with the Department of the Interior or other authorities, to meet NHL criteria, will be further evaluated for placement on the SEL, as discussed in B and C, below. Sites within the jurisdiction of the United States which have international significance as determined by the criteria for nomination to the World Heritage List also will be evaluated consistent with § 922.1(d) and § 922.10 (See Table 2).

New discoveries which are nominated as NHLs, or to the World Heritage List, may be evaluated for placement on the SEL, consistent with the procedures set forth in § 922.24.

As general policy, the site selection and evaluation process for marine resources will be consistent with the establishment generic framework for the identification, evaluation, registration, and treatment of historical properties as described in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 716). It is specifically intended that the same regulatory protection and preservation planning philosophy extended to historical and cultural resources on land shall be

extended to historical and cultural resources in the marine environment.

#### *B. Determination of Representative Distribution*

In addition to unique national significance as evaluated in A, above, a site must complement or contribute to the desired range of historical resources of the National Marine Sanctuary Program. Consistent with the Program's mission and goals specified in § 922.1, sanctuaries designated for historical qualities should be illustrative of the nation's maritime heritage and representative of the nation's most significant historical and cultural marine resources.

#### *C. Additional Programmatic Requirements*

In addition to special national significance as established under criteria A and B, above, to qualify for listing on the SEL the following programmatic requirements must be satisfied:

1. That the resource is of such special national significance that coordinated and comprehensive conservation and management of the area including: (a) Resource protection; (b) scientific research and monitoring; and (c) public education are required to derive maximum present and future public benefit from the resource.
2. That designation as a National Marine Sanctuary will complement existing regulatory authorities and will improve resource protection and preservation.

#### **Table 1**

##### *National Historic Landmarks Program Selection Criteria* (36 CFR 65.4)

Specific Criteria of National Significance: The quality of national significance is ascribed to districts, sites, buildings, structures and objects that possess exceptional value or quality in illustrating or interpreting the heritage of the United States in history, architecture, archeology, engineering and culture and that possess a high degree of integrity of location, design, setting, materials, workmanship, feeling and association, and:

- (1) That are associated with events that have made a significant contribution to, and are identified with, or that outstandingly represent, the broad national patterns of United States history and from which an understanding and appreciation of those patterns may be gained; or
- (2) That are associated importantly with the lives of persons nationally significant in the history of the United States; or
- (3) That represent some great idea or ideal of the American people; or
- (4) That embody the distinguishing characteristics of an architectural type specimen exceptionally valuable for a study of a period, style or method of construction or that represent a significant, distinctive and exceptional entity whose components may lack individual distinction; or
- (5) That are composed of integral parts of the environment not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but collectively compose an entity of exceptional historical or artistic significance, or

outstandingly commemorate or illustrate a way of life or culture; or

(6) That have yielded or may be likely to yield information of major scientific importance by revealing new cultures, or by shedding light upon periods of occupation over large areas of the United States. Such sites are those which have yielded, or which may reasonably be expected to yield, data affecting theories, concepts and ideas to a major degree.

Ordinarily, cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings and properties that have achieved significance within the past 50 years are not eligible for designation. Such properties, however, will qualify if they fall within the following categories:

- (1) A religious property deriving its primary national significance from architectural or artistic distinction or historical importance; or
- (2) A building or structure removed from its original location but which is nationally significant primarily its architectural merit, or for association with person or events of transcendent importance in the nation's history and the association consequential; or
- (3) A site of a building or structure no longer standing but the person or event associated with it is of transcendent importance in the nation's history and the association consequential; or
- (4) A birthplace, grave or burial if it is of a historical figure of transcendent national significance and no other appropriate site, building or structure directly associated with the productive life of that person exists; or
- (5) A cemetery that derives its primary national significance from graves of persons of transcendent importance, or from an exceptionally distinctive design or from an exceptionally significant event; or
- (6) A reconstructed building or ensemble of buildings of extraordinary national significance when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other buildings or structures with the same association have survived; or
- (7) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own national historical significance; or
- (8) A property achieving national significance within the past 50 years if it is of extraordinary national importance.

#### **Table 2**

##### *Criteria for Inclusion of Cultural Properties on the World Heritage List*

- (1) A monument, group of buildings or site, which nominated for inclusion on the World Heritage List will be considered to be of outstanding universal value for the purposes of the World Heritage Convention when the World Heritage Committee finds that it meets one or more of the following criteria and the test of authenticity. Each property nominated should therefore:

(i) Represent a unique artistic achievement, a masterpiece of the creative genius; or

(ii) Have exerted great influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental arts or townplanning and landscaping; or

(iii) Bear a unique or at least exceptional testimony to a civilization which has disappeared; or

(iv) Be an outstanding example of a type of structure which illustrates a significant stage in history; or

(v) Be an outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change; or

(vi) Be directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance. (The Committee considered that this criterion should justify inclusion in the List only in exceptional circumstances or in conjunction with other criteria); and

In addition, the property must meet the test of authenticity in design, materials, workmanship, or setting.

(2) The following additional factors will be kept in mind by the Committee in deciding on the eligibility of a cultural property for inclusion on the List:

(i) The state of preservation of the property should be evaluated relatively, that is, it should be compared with that of other property of the same type dating from the same period, both inside and outside the country's borders; and

(ii) Nominations of immovable property which is likely to become movable will not be considered.

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## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 230 and 239

[Release No. 33-6650; File No. S7-13-86]

#### Form D and Regulation D; Registration Requirements; Limited Offers and Sales

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Publish for comment the proposed revisions to Form D and the corresponding revisions to Regulation D.

**SUMMARY:** The Commission with the cooperation of the North American Securities Administrators Association is publishing for comment proposed revisions to Form D designed to make the Form a uniform notification form that can be filed with the Commission and with the states. Other revisions being proposed would revise or eliminate certain item requirements of the Form and would delete the provision requiring the Form to be updated every

six months until the offering is completed. Corresponding revisions to Regulation D are also being proposed. Further, the Commission is seeking comments from the public about the appropriateness of eliminating the requirement for a final filing of the Form D upon completion of the offering.

**DATE:** Comments must be received on or before July 18, 1986.

**ADDRESSES:** All communications on this matter should be submitted in triplicate to Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments should refer to File No. S7-13-86 and will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Richard K. Wulff or Karen O'Brien, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission with the cooperation of the North American Securities Administrators Association, Inc. ("NASAA")<sup>1</sup> is proposing for comment revisions to Form D and the description of Form D (17 CFR 239.500), the notification Form required to be filed by issuers relying on the exemptions from the registration provisions of the Securities Act of 1933 (the "Securities Act")<sup>2</sup> provided by Regulation D (17 CFR 230.501-506) thereunder and Section 4(6) of the Securities Act.

The effect of the proposed revision will be (1) to structure the Form so that it will be a uniform notification form which can be filed with the Commission and, to the extent provided by individual state laws, with the states when certain exempt offerings are being made; (2) to eliminate the requirement to furnish certain information about the issuer and to revise other items of the Form; and (3) to remove the requirement to file periodic updates of the Form every six months so that the Form need be filed only fifteen days after the first sale and thirty days after the last sale of securities offered in reliance upon the specified exemptions. The Commission also is proposing conforming revisions to Rule 503(a) of Regulation D to delete the requirement for a six-month update.

<sup>1</sup> NASAA is an association of securities commissioners from each of the 50 States, the District of Columbia, Puerto Rico and several of the Canadian provinces.

<sup>2</sup> 15 U.S.C. 77a et seq.

Finally, the Commission is considering and therefore specifically requests comments from the public about the elimination of the filing of the final notice, currently required thirty days after the last sale.

#### I. Proposed Revisions to Form D

Regulation D, which was adopted by the Commission in 1982,<sup>3</sup> resulted from a cooperative effort by NASAA and the Commission to adopt a regulation which would provide the framework for a limited offering exemption that would apply uniformly at the federal and state level. Form D was adopted as part of Regulation D. NASAA formally adopted ULOE as an official policy guideline<sup>4</sup> in September 1983. Since that time, more than half of the states have adopted ULOE or an exemption substantially similar to ULOE. The Commission and NASAA are continuing to work together to encourage the remaining states to adopt ULOE.

The proposal to structure Form D as a uniform federal/state notification form is intended to further encourage states to adopt ULOE. The proposed Form, which was developed by the Commission with the cooperation of the Small Business Finance Committee of NASAA, provides special instructions for the federal filing and the state filing, includes an appendix so that information can be furnished for the specific items on a state-by-state basis, and provides a federal and state signature page. Thus, if the proposed Form is adopted by the Commission and by the states, an issuer could fill out and sign one Form and then make the appropriate number of copies for filing with both the Commission and the states.

At the time Form D was proposed, the Commission stated that one of the purposes of the notice was to collect empirical data as a basis for further action by the Commission either in terms of amending existing rules and regulations or proposing new ones. Another purpose of the Form was to elicit information necessary in assessing the effectiveness of Regulation D as a capital raising device for small businesses.<sup>5</sup> Relying on the data

<sup>3</sup> See Release No. 33-0389 (March 8, 1982) (47 FR 11251) in which the Commission adopted Form D to replace old Forms 416, 146, 240 and 242 as part of its effort to simplify and clarify the then existing exemptions from the registration provisions of the Securities Act, to expand their availability, and to achieve uniformity between Federal and state exemptions in order to facilitate capital formation consistent with the protection of investors.

<sup>4</sup> 1 CCB Blue Sky Rep. Section 5294, at 1273 through 1274-5.

<sup>5</sup> See Release No. 33-0379 (August 18, 1981) (46 FR 31781).