

TENNESSEE VALLEY AUTHORITY**18 CFR Part 1312****DEPARTMENT OF DEFENSE****32 CFR Part 229****DEPARTMENT OF AGRICULTURE****Forest Service****36 CFR Part 296****DEPARTMENT OF THE INTERIOR****Office of the Secretary****43 CFR Part 7****RIN 1024-AA51****Protection of Archaeological Resources; Uniform Regulations**

AGENCIES: Departments of the Interior, Agriculture, and Defense and Tennessee Valley Authority.

ACTION: Final rule.

SUMMARY: This final rule revises the uniform regulations that implement the Archaeological Resources Protection Act of 1979 (ARPA) to incorporate the recent amendments. Principally, these changes amend the description of prohibited acts in the final uniform regulations to include attempt to excavate, remove, damage, or otherwise alter or deface archaeological resources, address the lower threshold for felony violations of ARPA, public awareness programs, archaeological surveys and schedules, the Secretary of the Interior's report to Congress about federal archeology, and guidance to Federal land managers about the disposition of Native American human remains and other "cultural items" as defined by the Native American Graves Protection and Repatriation Act (NAGPRA).

EFFECTIVE DATE: The final rule becomes effective February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Francis P. McManamon, National Park Service, Department of the Interior, Washington, D.C., 202-343-4105; Lars Hanslin, Office of the Solicitor, Department of the Interior, Washington, D.C., 202-208-7957; Evan I. DeBloois, U.S. Forest Service, Department of Agriculture, Washington, D.C., 202-205-1754; Peter Walsh, Assistant Deputy Undersecretary of Defense for Environmental Quality, Department of Defense, Washington, D.C., 703-604-5753; or Bennett Graham, Tennessee Valley Authority, Norris, Tennessee, 615-632-1585.

SUPPLEMENTARY INFORMATION:**Background**

This final rule revises the uniform regulations that implement the Archaeological Resources Protection Act of 1979 (ARPA; Pub. L. 96-95, as amended by Pub. L. 100-555, Pub. L. 100-588; 93 Stat. 721; 102 Stat. 2983; 16 U.S.C. 470aa-mm). It was prepared by representatives of the Secretaries of the Interior, Agriculture, and Defense, and the Chairman of the Board of the Tennessee Valley Authority, as directed in section 10(a) of the Act.

The first purpose of ARPA is "to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands" [section 2(b)]. On November 3, 1988, amendments to ARPA were enacted which have the purpose "to improve the protection and management of archaeological resources" (Pub. L. 100-555) and "to strengthen the enforcement provisions of ARPA" (Pub. L. 100-588).

Section 10(a) of ARPA requires the Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian Tribes, representatives of concerned State agencies, and after public notice, to promulgate uniform regulations as may be appropriate to carry out the purposes of ARPA. The uniform regulations are to be promulgated after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). The uniform regulations for ARPA originally were published on January 6, 1984.

The six areas revised by this rulemaking include: (1) Expanding the description of prohibited acts to include attempts to excavate, remove, damage, or otherwise alter or deface archaeological resources, (2) adding the lower threshold provided for felony violations of ARPA, (3) adding public awareness programs, (4) adding archaeological surveys and schedules, (5) the Secretary of the Interior's report, and (6) providing guidance to Federal land managers about the disposition of Native American human remains and other "cultural items", as defined by NAGPRA [Pub. L. 101-601; 104 Stat. 3050; 25 U.S.C. 3001-13]. These topics are covered by adding paragraphs to §§ __.3, __.4, __.7, __.13, and __.19; revising §§ __.4 and __.19; and adding new §§ __.20 and __.21.

(1) Expanding prohibited acts. The prohibited acts section of the uniform regulations is revised to conform to the

recent amendments to ARPA. Federal land managers can pursue criminal and civil penalties against persons that *attempt* to excavate, remove, damage, alter, or otherwise deface archaeological resources.

(2) Lower felony threshold. Statutory amendments reduced the figure for distinguishing criminal penalties based upon calculations of damage to archaeological resources caused through violations of ARPA. The figure was reduced from \$5,000.00 to \$500.00. A new paragraph in § __.4 restates the criminal penalties section in ARPA as well as incorporates the lower felony threshold in the uniform rule. This paragraph was added to the uniform regulations to inform Federal land managers about the criminal provisions of the Act. Those preparing the regulations felt that Federal land managers use the regulations, thus, it was important to restate the penalties section.

(3) Public awareness programs. New § __.20 identifies the requirements in ARPA for Federal land managers to establish programs to increase public awareness about archaeological resource protection. Federal agencies are already developing public awareness programs. As examples, the Bureau of Land Management implemented the Heritage Education Program and the Forest Service developed Passports in Time. There were numerous other examples of public outreach efforts by field personnel from the land management agencies. The development of regulations defining the types of public awareness programs to be used by Federal land managers was not feasible. Rather, public awareness programs including volunteerism, formal education, interpretation, tourism, and others should be part of any archaeological resource activity and incorporated into other current programs where appropriate. The Secretary of the Interior will report to Congress about these programs on behalf of Federal agencies.

(4) Archaeological surveys and schedules. New § __.21 discusses the requirements in ARPA for the Departments of the Interior, Agriculture, and Defense and the Tennessee Valley Authority to develop plans and schedules for surveying archaeological resources to determine their nature and extent for purposes of agency resource planning. The surveys should be conducted systematically and cover areas where the most scientifically valuable archaeological resources are likely to exist. For example, the surveys may focus on lands where there is little knowledge of the resource base, on

lands that contain archaeological resources that are vulnerable to vandalism and looting, or on lands that contain archaeological resources significant in local, state or regional cultural history. Other Federal land managing agencies are encouraged to develop such plans and schedules.

(5) The Secretary of the Interior's report. Section _____.19 is revised to enable the Secretary of the Interior to report comprehensively to Congress regarding Federal agencies archaeological activities. This section specifically addresses reporting on Federal agency public awareness programs, surveys and schedules and systems for documenting violations of ARPA.

(6) Treatments for Native American human remains and other "cultural items". Sections _____.3, _____.7 and _____.13 include guidance to Federal land managers on treatments for Native American human remains and other "cultural items", as defined by NAGPRA.

Finally, the reference to the U.S. Code is revised in § _____.1(a) and § _____.3(i) to reflect changes by the amendments to ARPA.

Public comment was sought for a 30-day period following publication of § _____.4 of the proposed rules on January, 29, 1990 (55 FR 2848), and for a 90-day period following publication of the remaining sections of the proposed rules on September, 11, 1991 (56 FR 46259). Written comments were received from seven Federal agencies, one State agency, three Indian councils and associations, one educational institution, two utility companies and associations, and one private cultural resources management firm. The authority citation for 43 CFR Part 7 was addressed in 2 comments, § 7.3 was addressed in 9 comments, § 7.7 was addressed in 9 comments, § 7.13 was addressed in 24 comments, § 7.19 was addressed in 3 comments, § 7.20 was addressed in 1 comment, and § 7.21 was addressed in 5 comments. The proposed rules were published immediately prior to the enactment of NAGPRA, and thus, many of the public comments focused on relationships between ARPA and NAGPRA.

Many comments were directed at the apparent inconsistencies between NAGPRA and ARPA regarding notification and consultation with Indian Tribes as well as the extent of Federal land managers' authority in making determinations of custody. Other comments were directed at further defining terms regarding types of land and archaeological objects. The remaining comments dealt with

elaborating on the implementation and funding of reports, public awareness programs, and surveys and schedules.

All the comments were considered, and most contributed to some degree in the rulemaking process. All the comments and the changes made in response to public comments are discussed below.

Changes in Response to Public Comments

Two commentors noted that Pub. L. 101-601 (NAGPRA) should be included in the authority citation for 43 CFR Part 7. The authority for 43 CFR Part 7 is directed by Pub. L. 96-95; 93 Stat. 721, as amended; 102 Stat. 2983; 16 U.S.C. 470aa-mm (section 10(a)). Related authorities are those that ARPA influences, such as the Antiquity Act (16 U.S.C. 432,433), the Archeological and Historic Preservation Act (16 U.S.C. 469, as amended) and the National Historic Preservation Act (16 U.S.C. 470, as amended). The language in NAGPRA refers to the statute and its regulations but does not affect the implementation of ARPA and is not cited as a Related Authority. NAGPRA and its implementing regulations are referred to in the revisions of §§ _____.3, _____.7 and _____.13.

Section _____.3 Definitions

Two commentors noted that § _____.3(a)(6) of the uniform regulations, which states that Federal land managers may determine that particular human remains and directly associated material remains are to be treated differently from other archaeological resources, is in direct contradiction with NAGPRA which states that Native American human remains and graves must be treated differently from archaeological resources. One commentor noted that the definition of "Indian lands" in § _____.3(a)(5)(e) of the uniform regulations is different from the definition of "tribal lands" in NAGPRA, thus provisions in NAGPRA would cover graves on "tribal lands" as defined in NAGPRA but would not cover graves located on "Indian lands" as defined in the uniform regulations. This same commentor also noted that the uniform regulations, unlike NAGPRA, do not include: (1) Fee patented lands within the exterior boundaries of Indian reservations; (2) lands within dependent Indian communities that may not be in the boundaries of a reservation; and (3) certain lands administered for the benefit of Native Hawaiians. Three commentors noted that "associated funerary objects" as defined in NAGPRA should be used rather than the

terms "directly associated material remains", "associated objects", and "funerary objects" in the uniform regulations. One of these same commentors also noted that the terms "unassociated funerary objects", "sacred objects" and "objects of cultural patrimony" should be added to the uniform regulations. Another of these three commentors above noted that the definition for "human remains" should be better defined in the uniform regulations.

The commentors are correct in observing that the definitions of certain terms vary between the uniform regulations and NAGPRA. The terms used in the final rule follow the statutory definitions provided in ARPA and its amendments. The terms "associated funerary objects", "unassociated funerary objects", "sacred objects", and "objects of cultural patrimony" have particular statutory meaning in NAGPRA but not in ARPA. "Material remains" is defined in ARPA, but not "associated objects" or "funerary objects". In response to comments concerning the consistency of this section with NAGPRA, the term "cultural items", as defined in NAGPRA, is used in the final rule to distinguish material remains that are to be treated under NAGPRA and its implementing regulations.

Section _____.7 Notification to Indian Tribes of Possible Harm to, or Destruction of, Sites on Public Lands Having Religious or Cultural Importance

One commentor noted that § _____.7(b)(4) of the uniform regulations is inconsistent with NAGPRA § 3(c) which requires consultation and consent from Indian tribes prior to the issuance of an ARPA permit, not after one has already been issued. Two commentors stated that it is redundant to consult with tribes after an ARPA permit has already been issued, especially if it is to comply with NAGPRA. One of these commentors stated that amendments to an ARPA permit are acceptable only under certain provisions, while the other commentor stated it was inappropriate altogether to develop compliance procedures through another act when the implementing regulations for NAGPRA have not been developed. One commentor noted that the requirement for notice to Indian tribes being at the discretion of the Federal land manager is not sufficient to carry out NAGPRA. One commentor noted that the uniform regulations should require notification to Indian tribes when aboriginal land is involved regardless of a finding of potential harm or destruction of religious or cultural

sites. This same commentor also noted that the uniform regulations should reflect requirements in NAGPRA that consultation, and not just notification, is required before excavation of imbedded materials.

Two commentors directed their comments at setting conditions for consultation. One of these commentors stated that it should identify protocols to be followed when special notice is necessary including specification of time periods for completion of a tribe's response following a notification. The other commentor stated that minimum standards should be established setting the "extent of circumstances" that call for optional circumstances. One commentor inquired how the uniform regulations apply to non-Native American human remains and if there were any provisions for notification to non-Native American groups.

Section _____.7(a) provides procedures for notification to Indian tribes and consultation 30 days prior to the issuance of a permit. Section _____.7(b) provides for Federal land managers and Indian tribes to cooperate in advance to identify sites of religious or cultural importance to prevent harm to them. Existing rules allow for the suspension or revocation of permits for management purposes, such as to insure consistency with NAGPRA. Also, ARPA requires consent from tribes when the permit applies to Indian lands. ARPA stipulates that Federal land managers shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under their agency's jurisdiction. This section of the uniform regulations applies to sites on public lands having religious or cultural importance for Indian tribes. For cases involving non-Native Americans, the Federal land manager may consult with any concerned groups prior to permit issuance. In response to comments concerning the consistency of this section with NAGPRA, the final rule was modified to clarify the relationship of this section with NAGPRA.

Section _____.13 Custody of Archaeological Resources

Two commentors stated that § _____.13(a) should be amended to read that archaeological resources that are excavated or removed from public lands will remain the property of the United States "except when lineal descendants have rights of ownership" or "except in those instances where NAGPRA recognizes ownership or control in a lineal descendant or Indian tribe" in order to conform with NAGPRA. One of these same commentors noted that the Federal land manager is given too much

power to decide the custody of items when no descendants can be identified and that NAGPRA has a resolution process, whereas, ARPA does not. This commentor also said that Federal land managers should be charged with identifying all aboriginal lands within their jurisdiction that meet the standards in NAGPRA and be instructed to defer decisions regarding custody to the appropriate tribe. Two commentors noted that § _____.13(e) should read that the Federal land manager *shall* determine, not *may* determine, that human remains and directly associated material remains need not be preserved and maintained in a scientific or educational institution. Seven commentors noted that the procedures for reaching a determination in § _____.13(e)(2) should be consistent with NAGPRA. One of these commentors noted that allowing Federal land managers alone to consider religious and cultural importance is inconsistent with NAGPRA, which reserves this right to Native American individuals and groups. Another of these commentors stated that while the uniform regulations allow Federal land managers the right to consider remains as a "source of information about the past", NAGPRA does not give this consideration. Another of these commentors stated that § _____.13(e)(2), in general, sets the context for allowing the study and curation of remains to be more important than repatriation. Three of these commentors stated that it needs to define conditions for applicability with regard to the disposition of human remains. Regarding § _____.13(e)(4), one commentor noted that NAGPRA provides the basis for reaching a determination of custody. Three commentors noted that the cancellation of the agreement by the Federal land manager over the tribe's failure to comply is contradictory to NAGPRA. Two commentors stated that there is a written agreement provision implied on activity pursuant to Section 106 of the National Historic Preservation Act, and that they were opposed to any process involving the Advisory Council or the SHPO. Another comment, regarding the same topic, suggested that written agreements should not rule out face-to-face communications. Two commentors stated that § _____.13(e)(4) appears to allow Federal land managers to impose "appropriate terms and conditions" to dictate the manner of repatriation, when tribal religious practices should govern, instead, and that this would be contrary to Section 3 of NAGPRA. Regarding § _____.13(e)(5), one commentor stated that it needs to explain how, when, and

who determines the custody of "remains" during a criminal investigation. One commentor stated that § _____.13 needs to include procedures for custody of resources on Indian lands, not just public lands.

Federal land managers are ultimately responsible for archaeological resources under their agencies' jurisdictions. When Native American human remains and other "cultural items", as defined by NAGPRA, are returned to lineal descendants or culturally affiliated Indian tribes, then these items are no longer the responsibility of the United States. The claimants have complete authority over their future treatment. Archaeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources, and who, as stated in ARPA, determine the appropriate treatment. Under ARPA the Federal land manager will identify tribes with historic or aboriginal ties to the lands under the Federal land manager's jurisdiction and through consultation will determine if there are religious or cultural sites which could be harmed.

The commentors are correct in noting that the term "when applicable" is too general to provide useful guidance for the Federal land manager to consider the manner of disposition of the remains as proposed by the Indian tribe, group or individual. ARPA also is intended to enhance the protection of archaeological resources that are a source of information about the past. With regard to the custody of material remains during a criminal investigation, the status of archaeological resources is determined through law enforcement. Only when archaeological resources that are secured as evidence in a civil or criminal proceeding have been released officially by law enforcement, may they then be considered for treatment under this section. As for criminal proceedings involving Native American human remains and other "cultural items", as defined by NAGPRA, the Federal land manager is referred to the requirements in NAGPRA and its implementing regulations.

In response to the comments, the final rule includes guidance to Federal land managers about treatments of Native American human remains and other "cultural items", as defined by NAGPRA. Section _____.13(e)(1)-(4) was deleted from the final rule. The Federal land manager is referred to the requirements in NAGPRA and its implementing regulations.

Section ____19 Report

One commentator noted that a statistics-keeping requirement is the "last thing Federal land managers need or want." Another commentator noted that "available information", in § ____19(c), should be clarified with regard to information from active criminal cases. This same commentator also noted that regulations should be written by resource specialists, law enforcement personnel, and interpreters regarding the development of systems to report on violations and public awareness, and that any system so developed should be centralized and computerized.

The statutory requirements of ARPA require a report to Congress on the progress and effectiveness of public awareness programs and the surveys and schedules. Available information includes that which is available for public disclosure. If this information is part of active criminal investigations, then this information should be withheld until it can be released. The submitted information will be presented as part of the Secretary's Report to Congress. No modifications were made to the final rule based on these comments.

Section ____20 Public Awareness Programs

One commentator noted that financial expenditures in this area will be wasted if NAGPRA is not taken into consideration since subsequent regulations could make this provision obsolete.

ARPA requires Federal land managers to establish public awareness programs. These programs can be very beneficial to furthering the protection of Native American graves. No modifications were made to the final rule based on these comments.

Section ____21 Surveys and Schedules

One commentator noted that this survey provision runs the risk of legitimizing unreliable "probability models" and that the discipline of archaeology is not in a position to identify and "systematically cover areas where most scientific resources are likely to exist." This same commentator stated that the "scientifically valuable" criterion, in § ____21(b), neglects other equally important cultural values and that the definition of "scientifically valuable" is subject to many changes over time. Two commentators noted that timetables or requirements should be set forth for developing and implementing survey plans since any agency can develop a

schedule, but the need is to demonstrate agency commitments in time, funding and personnel. Another commentator, along the same lines, suggested that Congress should either set aside funds to pay for surveys or some other means for funding planned surveys should be developed.

This section promotes a comprehensive management program for the protection of archaeological resources. The intent is to direct agencies to learn more about the archaeological resource base using systematic approaches that can lead to better protection strategies. Scientifically valuable areas do not exclude sacred areas but focus on resources that will produce valuable information about regional cultural histories. Each agency is given the flexibility to determine plans for work based on funding and personnel levels that vary annually. The results and progress of such work are provided in the Secretary's Report to Congress along with appropriate recommendations.

Statement of Effects

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These determinations are based on findings that the rulemaking is directed toward Federal resource management, with no economic impact on the public.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects**18 CFR Part 1312**

Administrative practice and procedure, Historic preservation, Indians—lands, Penalties, Public lands.

32 CFR Part 229

Administrative practice and procedure, Historic preservation, Indians—lands, Penalties, Public lands.

36 CFR Part 296

Administrative practice and procedure, Historic preservation, Indians—lands, Penalties, Public lands.

43 CFR Part 7

Administrative practice and procedure, Historic preservation, Indians—lands, Penalties, Public lands.

Amendment

The Departments of the Interior, Agriculture, and Defense and the Tennessee Valley Authority are codifying identical amendments to the uniform regulations for protection of archaeological resources in their respective titles of the Code of Federal Regulations. Since the regulations are identical, the text of the amendments is set out only once at the end of this document.

Adoption of the Common Rule

The agency specific preambles adopting the text of the common rule appear below.

Tennessee Valley Authority**18 CFR Part 1312**

As set forth in the common preamble, 18 CFR Part 1312 is amended as follows:

PART 1312—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

1. The authority citation for 18 CFR Part 1312 is revised to read as follows:

Authority: Pub. L. 96–95, 93 Stat. 721, as amended, 102 Stat. 2983 (16 U.S.C. 470a–mm) (Sec. 10(a). Related Authority: Pub. L. 59–209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86–523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470a–t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95–341, 92 Stat. 469 (42 U.S.C. 1996).

2. In § 1312.1, the first sentence in paragraph (a) is revised to read as set forth at the end of this document.

3. In § 1312.3, paragraph (a)(6) is added and paragraph (i) is revised to read as set forth at the end of this document.

4. In § 1312.4, the section heading and paragraph (a) are revised and paragraph (c) is added to read as set forth at the end of this document.

5. In § 1312.7, paragraph (b)(4) is added to read as set forth at the end of this document.

6. In § 1312.13, paragraph (e) is added to read as set forth at the end of this document.

7. Section 1312.19 is revised to read as set forth at the end of this document.

8. New §§ 1312.20 and 1312.21 are added to read as set forth at the end of this document.

Craven Crowell,

Chairman, Tennessee Valley Authority.

Department of Defense**32 CFR Part 229**

As set forth in the common preamble, 32 CFR Part 229 is amended as follows:

PART 229—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

1. The authority citation for 32 CFR Part 229 is revised to read as follows:

Authority: Pub. L. 96–95, 93 Stat. 721, as amended, 102 Stat. 2983 (16 U.S.C. 470aa–mm) (Sec. 10(a). Related Authority: Pub. L. 59–209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86–523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470a–t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95–341, 92 Stat. 469 (42 U.S.C. 1996).

2. In § 229.1, the first sentence in paragraph (a) is revised to read as set forth at the end of this document.

3. In § 229.3, paragraph (a)(6) is added and paragraph (i) is revised to read as set forth at the end of this document.

4. In § 229.4, the section heading and paragraph (a) are revised and paragraph (c) is added to read as set forth at the end of this document.

5. In § 229.7, paragraph (b)(4) is added to read as set forth at the end of this document.

6. In § 229.13, paragraph (e) is added to read as set forth at the end of this document.

7. Section 229.19 is revised to read as set forth at the end of this document.

8. New §§ 229.20 and 229.21 are added to read as set forth at the end of this document.

Dated: August 22, 1994.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Department of Agriculture

Forest Service

36 CFR Part 296

As set forth in the common preamble, 36 CFR Part 296 is amended as follows:

PART 296—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

1. The authority citation for 36 CFR Part 296 is revised to read as follows:

Authority: Pub. L. 96–95, 93 Stat. 721, as amended, 102 Stat. 2983 (16 U.S.C. 470aa–mm)(Sec. 10(a). Related Authority: Pub. L. 59–209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86–523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470a–t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95–341, 92 Stat. 469 (42 U.S.C. 1996).

2. In § 296.1, the first sentence in paragraph (a) is revised to read as set forth at the end of this document.

3. In § 296.3 paragraph (a)(6) is added and paragraph (i) is revised to read as set forth at the end of this document.

4. In § 296.4, the section heading and paragraph (a) are revised and paragraph (c) is added to read as set forth at the end of this document.

5. In § 296.7, paragraph (b)(4) is added to read as set forth at the end of this document.

6. In § 296.13, paragraph (e) is added to read as set forth at the end of this document.

7. Section 296.19 is revised to read as set forth at the end of this document.

8. New §§ 296.20 and 296.21 are added to read as set forth at the end of this document.

Adela Backiel,

Deputy Assistant Secretary for Natural Resources and Environment.

Department of the Interior

43 CFR Part 7

As set forth in the common preamble, 43 CFR Part 7 is amended as follows:

PART 7—PROTECTION OF ARCHAEOLOGICAL RESOURCES

1. The authority citation for 43 CFR Part 7 is revised to read as follows:

Authority: Pub. L. 96–95, 93 Stat. 721, as amended; 102 Stat. 2983 (16 U.S.C. 470aa–mm) (Sec. 10(a). Related authority: Pub. L. 59–209, 34 Stat. 225 (16 U.S.C. 432,433); Pub. L. 86–523; 74 Stat. 220, 221 (16 U.S.C. 469), as amended; 88 Stat. 174 (1974); Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470a–t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95–341, 92 Stat. 469 (42 U.S.C. 1996).

2. In § 7.1, the first sentence in paragraph (a) is revised to read as set forth at the end of this document.

3. In § 7.3, paragraph (a)(6) is added and paragraph (i) is revised to read as set forth at the end of this document.

4. In § 7.4, the section heading and paragraph (a) are revised and paragraph (c) is added to read as set forth at the end of this document.

5. In § 7.7, paragraph (b)(4) is added to read as set forth at the end of this document.

6. In § 7.13, paragraph (e) is added to read as set forth at the end of this document.

7. Section 7.19 is revised to read as set forth at the end of this document.

8. Reserved §§ 7.20 through 7.30 in subpart B are removed and new §§ 7.20

and 7.21 are added to subpart A to read as set forth at the end of this document.

George T. Frampton Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

Text of the Common Rule

The text of the common rule, as adopted by the agencies in this document, appears below.

§ ____1 Purpose.

(a) The regulations in this part implement provisions of the Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa–mm) by establishing the uniform definitions, standards, and procedures to be followed by all Federal land managers in providing protection for archaeological resources, located on public lands and Indian lands of the United States. * * *

* * * * *

§ ____3 Definitions.

* * * * *

(a) * * *

(6) For the disposition following lawful removal or excavations of Native American human remains and “cultural items”, as defined by the Native American Graves Protection and Repatriation Act (NAGPRA; Pub. L. 101–601; 104 Stat. 3050; 25 U.S.C. 3001–13), the Federal land manager is referred to NAGPRA and its implementing regulations.

* * * * *

(i) *Act* means the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa–mm).

§ ____4 Prohibited acts and criminal penalties.

(a) Under section 6(a) of the Act, no person may excavate, remove, damage, or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under § ____8 or exempted by § ____5(b) of this part.

* * * * *

(c) Under section (d) of the Act, any person who knowingly violates or counsels, procures, solicits, or employs any other person to violate any prohibition contained in section 6 (a), (b), or (c) of the Act will, upon conviction, be fined not more than \$10,000.00 or imprisoned not more than one year, or both: provided, however, that if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the

sum of \$500.00, such person will be fined not more than \$20,000.00 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person will be fined not more than \$100,000.00, or imprisoned not more than five years, or both.

§ ____ .7 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.

* * * * *

(b) * * *

(4) The Federal land manager should also seek to determine, in consultation with official representatives of Indian tribes or other Native American groups, what circumstances should be the subject of special notification to the tribe or group after a permit has been issued. Circumstances calling for notification might include the discovery of human remains. When circumstances for special notification have been determined by the Federal land manager, the Federal land manager will include a requirement in the terms and conditions of permits, under § ____ .9(c), for permittees to notify the Federal land manager immediately upon the occurrence of such circumstances. Following the permittee's notification, the Federal land manager will notify and consult with the tribe or group as appropriate. In cases involving Native American human remains and other "cultural items", as defined by NAGPRA, the Federal land manager is referred to NAGPRA and its implementing regulations.

§ ____ .13 Custody of archaeological resources.

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(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, the Federal land manager will follow the procedures required by NAGPRA and its implementing regulations for determining the disposition of Native American human remains and other "cultural items", as defined by NAGPRA, that have been excavated, removed, or discovered on public lands.

§ ____ .19 Report.

(a) Each Federal land manager, when requested by the Secretary of the Interior, will submit such information as is necessary to enable the Secretary to

comply with section 13 of the Act and comprehensively report on activities carried out under provisions of the Act.

(b) The Secretary of the Interior will include in the annual comprehensive report, submitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate under section 13 of the Act, information on public awareness programs submitted by each Federal land manager under § ____ .20(b). Such submittal will fulfill the Federal land manager's responsibility under section 10(c) of the Act to report on public awareness programs.

(c) The comprehensive report by the Secretary of the Interior also will include information on the activities carried out under section 14 of the Act. Each Federal land manager, when requested by the Secretary, will submit any available information on surveys and schedules and suspected violations in order to enable the Secretary to summarize in the comprehensive report actions taken pursuant to section 14 of the Act.

§ ____ .20 Public Awareness Programs.

(a) Each Federal land manager will establish a program to increase public awareness of the need to protect important archaeological resources located on public and Indian lands. Educational activities required by section 10(c) of the Act should be incorporated into other current agency public education and interpretation programs where appropriate.

(b) Each Federal land manager annually will submit to the Secretary of the Interior the relevant information on public awareness activities required by section 10(c) of the Act for inclusion in the comprehensive report on activities required by section 13 of the Act.

§ ____ .21 Surveys and Schedules.

(a) The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority will develop plans for surveying lands under each agency's control to determine the nature and extent of archaeological resources pursuant to section 14(a) of the Act. Such activities should be consistent with Federal agency planning policies and other historic preservation program responsibilities required by 16 U.S.C.

470 *et seq.* Survey plans prepared under this section will be designed to comply with the purpose of the Act regarding the protection of archaeological resources.

(b) The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Tennessee Valley Authority will prepare schedules for surveying lands under each agency's control that are likely to contain the most scientifically valuable archaeological resources pursuant to section 14(b) of the Act. Such schedules will be developed based on objectives and information identified in survey plans described in paragraph (a) of this section and implemented systematically to cover areas where the most scientifically valuable archaeological resources are likely to exist.

(c) Guidance for the activities undertaken as part of paragraphs (a) through (b) of this section is provided by the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.

(d) Other Federal land managing agencies are encouraged to develop plans for surveying lands under their jurisdictions and prepare schedules for surveying to improve protection and management of archaeological resources.

(e) The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Tennessee Valley Authority will develop a system for documenting and reporting suspected violations of the various provisions of the Act. This system will reference a set of procedures for use by officers, employees, or agents of Federal agencies to assist them in recognizing violations, documenting relevant evidence, and reporting assembled information to the appropriate authorities. Methods employed to document and report such violations should be compatible with existing agency reporting systems for documenting violations of other appropriate Federal statutes and regulations. Summary information to be included in the Secretary's comprehensive report will be based upon the system developed by each Federal land manager for documenting suspected violations.

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