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properties under the conditions necessitating the waiver.

(b) Information copies of the notice under § 78.4(a) shall be forwarded by the Federal Agency Head to the Advisory Council on Historic Preservation and the appropriate State Historic Preservation Officer.

## § 78.5 Review by the Secretary of the Interior.

(a) If the Secretary considers that all or part of the agency's decision as outlined under § 78.4(a) is inconsistent with the intent of the Act or these regulations for use of the waiver under extraordinary circumstances, the Secretary shall notify the Agency Head and the Director of the Office of Management and Budget within 5 days of receipt of the Federal Agency notice under § 78.4(a) of termination of the waiver, or make appropriate recommendations for modifications of the waiver's use. Termination of a waiver by the Secretary is final.

(b) If the waiver is still in effect at the time the Federal Agency Head receives recommendations from the Secretary, the Agency Head shall consider the recommendations and any comments received from the Advisory Council and the State Historic Preservation Officer before deciding whether to continue, withdraw, or modify the waiver. The Federal Agency Head shall respond to recommendations received from the Secretary either accepting or rejecting those recommendations, and, where recommendations are rejected, explaining the reasons for such a decision. Information copies of such response shall be forwarded by the Federal Agency Head to the Advisory Council on Historic Preservation and the appropriate State Historic Preservation Officer.

(c) If the waiver is no longer in effect at the time the Federal Agency Head receives recommendations from the Secretary or comments from the Advisory Council or the State Historic Preservation Officer, the Federal Agency Head should consider such recommendations and comments in similar future emergencies.

## 36 CFR Ch. I (7–1–23 Edition)

# PART 79—CURATION OF FEDERALLY OWNED OR ADMINISTERED ARCHEOLOGICAL COLLECTIONS

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AUTHORITY: 16 U.S.C. 470aa-mm, 54 U.S.C. 300101 *et seq.*

SOURCE: 55 FR 37630, Sept. 12, 1990, unless otherwise noted.

### Subpart A—Administrative Provisions

#### § 79.1 Purpose.

(a) The regulations in this part establish definitions, standards, procedures and guidelines to be followed by Federal agencies to preserve collections of prehistoric and historic material remains, and associated records, recovered under the authority of the Antiquities Act (54 U.S.C. 320301–320303), the Reservoir Salvage Act (54 U.S.C. 312501–312508), section 110 of the National Historic Preservation Act (54 U.S.C. 306101–306114) or the Archaeological Resources Protection Act (16 U.S.C. 470aa-mm). They establish:

(1) Procedures and guidelines to manage and preserve collections;

(2) Terms and conditions for Federal agencies to include in contracts, memoranda, agreements or other written instruments with repositories for curatorial services;

(3) Standards to determine when a repository has the capability to provide long-term curatorial services; and

(4) Guidelines to provide access to, loan and otherwise use collections.

(b) The regulations in this part contain three appendices that provide additional guidance for use by the Federal Agency Official.

(1) Appendix A to these regulations contains an example of an agreement between a Federal agency and a non-Federal owner of material remains who is donating the remains to the Federal agency.

(2) Appendix B to these regulations contains an example of a memorandum of understanding between a Federal agency and a repository for long-term curatorial services for a federally-owned collection.

(3) Appendix C to these regulations contains an example of an agreement between a repository and a third party for a short-term loan of a federally-owned collection (or a part thereof).

(4) The three appendices are meant to illustrate how such agreements might appear. They should be revised according to the:

(i) Needs of the Federal agency and any non-Federal owner;

(ii) Nature and content of the collection; and

(iii) Type of contract, memorandum, agreement or other written instrument being used.

(5) When a repository has preexisting standard forms (e.g., a short-term loan form) that are consistent with the regulations in this part, those forms may be used in lieu of developing new ones.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 12, 1990, as amended at 87 FR 22457, Apr. 15, 2022]

#### § 79.2 Authority.

(a) The regulations in this part are promulgated under 54 U.S.C. 302107 which requires that the Secretary of the Interior issue regulations ensuring that significant prehistoric and historic artifacts and associated records are deposited in an institution with adequate long-term curatorial capabilities. This requirement applies to artifacts and associated records subject to the National Historic Preservation Act (54 U.S.C. 300101 *et seq.*), the Reservoir Salvage Act (54 U.S.C. 312501–312508), and the Archaeological Resources Protection Act (16 U.S.C. 470aa-mm).

(b) In addition, the regulations in this part are promulgated pursuant to section 5 of the Archaeological Resources Protection Act (16 U.S.C. 470dd) which gives the Secretary of the Interior discretionary authority to promulgate regulations for the:

(1) Exchange, where appropriate, between suitable universities, museums or other scientific or educational institutions, of archeological resources recovered from public and Indian lands under that Act; and

(2) Ultimate disposition of archeological resources recovered under that Act (16 U.S.C. 470aa-mm), the Antiquities Act (54 U.S.C. 320301–320303) or the Reservoir Salvage Act (54 U.S.C. 312501–312508).

(3) It further states that any exchange or ultimate disposition of resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe that owns or has jurisdiction over such lands.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 12, 1990, as amended at 87 FR 22457, Apr. 15, 2022]

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#### § 79.3 Applicability.

(a) Except as otherwise stated in this section, the regulations in this part apply to collections, as defined in § 79.4 of this part, that are excavated or removed under the authority of the Antiquities Act (54 U.S.C. 320301–320303), the Reservoir Salvage Act (54 U.S.C. 312501–312508), section 110 of the National Historic Preservation Act (54 U.S.C. 306101–306114) or the Archaeological Resources Protection Act (16 U.S.C. 470aa–mm). Such collections generally include those that are the result of a prehistoric or historic resource survey, excavation or other study conducted in connection with a Federal action, assistance, license, or permit. Such collections include those that are owned by the United States and for which a Federal agency has practical management authority, either directly or indirectly, as a result of that ownership; and those collections that are not owned by the United States but that are managed or controlled by a Federal agency pursuant to the laws cited in this paragraph (a).

(b) The regulations in this part apply to preexisting and new collections that meet the requirements of paragraph (a) of this section. However, the regulations shall not be applied in a manner that would supersede or breach material terms and conditions in any contract, grant, license, permit, memorandum, or agreement entered into by or on behalf of a Federal agency prior to the effective date of this regulation.

(c) Collections that are excavated or removed pursuant to the Antiquities Act (16 U.S.C. 431–433) remain subject to that Act, the Act's implementing rule (43 CFR part 3), and the terms and conditions of the pertinent Antiquities Act permit or other approval.

(d) Collections that are excavated or removed pursuant to the Archaeological Resources Protection Act (16 U.S.C. 470aa–mm) remain subject to that Act, the Act's implementing rules (43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229), and the terms and conditions of the pertinent Archaeological Resources Protection Act permit or other approval.

(e) Any repository that is providing curatorial services for a collection subject to the regulations in this part

must possess the capability to provide adequate long-term curatorial services, as set forth in § 79.9 of this part, to safeguard and preserve the associated records and any material remains that are deposited in the repository.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 12, 1990, as amended at 87 FR 22457, Apr. 15, 2022]

#### § 79.4 Definitions.

As used for purposes of this part:

*Associated records* means original records (or copies thereof) that are prepared, assembled and document efforts to locate, evaluate, record, study, preserve or recover a prehistoric or historic resource. Some records such as field notes, artifact inventories and oral histories may be originals that are prepared as a result of the field work, analysis, and report preparation. Other records such as deeds, survey plats, historical maps and diaries may be copies of original public or archival documents that are assembled and studied as a result of historical research. Classes of associated records (and illustrative examples) that may be in a collection include, but are not limited to:

(1) Records relating to the identification, evaluation, documentation, study, preservation, or recovery of a resource (such as site forms, field notes, drawings, maps, photographs, slides, negatives, films, video and audio cassette tapes, oral histories, artifact inventories, laboratory reports, computer cards and tapes, computer disks and diskettes, printouts of computerized data, manuscripts, reports, and accession, catalog, and inventory records);

(2) Records relating to the identification of a resource using remote sensing methods and equipment (such as satellite and aerial photography and imagery, side scan sonar, magnetometers, subbottom profilers, radar, and fathometers);

(3) Public records essential to understanding the resource (such as deeds, survey plats, military and census records, birth, marriage and death certificates, immigration and naturalization papers, tax forms and reports);

(4) Archival records essential to understanding the resource (such as historical maps, drawings and photographs, manuscripts, architectural and landscape plans, correspondence, diaries, ledgers, catalogs, and receipts); and

(5) Administrative records relating to the survey, excavation, or other study of the resource (such as scopes of work, requests for proposals, research proposals, contracts, antiquities permits, reports, documents relating to compliance with section 106 of the National Historic Preservation Act (16 U.S.C. 470f), and National Register of Historic Places nomination and determination of eligibility forms).

*Collection* means material remains that are excavated or removed during a survey, excavation, or other study of a prehistoric or historic resource, and associated records that are prepared or assembled in connection with the survey, excavation, or other study.

*Curatorial services* means managing and preserving a collection according to professional museum and archival practices, including, but not limited to:

- (1) Inventorying, accessioning, labeling, and cataloging a collection;
- (2) Identifying, evaluating, and documenting a collection;
- (3) Storing and maintaining a collection using appropriate methods and containers, and under appropriate environmental conditions and physically secure controls;
- (4) Periodically inspecting a collection and taking such actions as may be necessary to preserve it;
- (5) Providing access and facilities to study a collection; and
- (6) Handling, cleaning, stabilizing, and conserving a collection in such a manner to preserve it.

*Departmental Consulting Archeologist* means the individual serving as the agent of the Secretary of the Interior in overseeing and coordinating the Department's archeological activities.

*Federal Agency Official* means any officer, employee or agent officially representing the secretary of the department or the head of any other agency or instrumentality of the United States having primary management authority over a collection that is subject to this part.

*Indian lands* has the same meaning as in §-.3(e) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

*Indian tribe* has the same meaning as in §-.3(f) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

*Material remains* means artifacts, objects, specimens, and other physical evidence that are excavated or removed in connection with efforts to locate, evaluate, document, study, preserve or recover a prehistoric or historic resource. Classes of material remains (and illustrative examples) that may be in a collection include, but are not limited to:

- (1) Components of structures and features (such as houses, mills, piers, fortifications, raceways, earthworks, and mounds);
- (2) Intact or fragmentary artifacts of human manufacture (such as tools, weapons, pottery, basketry, and textiles);
- (3) Intact or fragmentary natural objects used by humans (such as rock crystals, feathers, and pigments);
- (4) By-products, waste products or debris resulting from the manufacture or use of man-made or natural materials (such as slag, dumps, cores and debitage);
- (5) Organic material (such as vegetable and animal remains, and coprolites);
- (6) Human remains (such as bone, teeth, mummified flesh, burials, and cremations);
- (7) Components of petroglyphs, pictographs, intaglios, or other works of artistic or symbolic representation;
- (8) Components of shipwrecks (such as pieces of the ship's hull, rigging, armaments, apparel, tackle, contents, and cargo);
- (9) Environmental and chronometric specimens (such as pollen, seeds, wood, shell, bone, charcoal, tree core samples, soil, sediment cores, obsidian, volcanic ash, and baked clay); and
- (10) Paleontological specimens that are found in direct physical relationship with a prehistoric or historic resource.

*Personal property* has the same meaning as in 41 CFR 100–43.001–14. Collections, equipment (*e.g.*, a specimen cabinet or exhibit case), materials and supplies are classes of personal property.

*Provenience information* means recorded data about the physical location of an object as it was found during a survey, excavation, or other study of a prehistoric or historic resource.

*Public lands* has the same meaning as in §-.3(d) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

*Qualified museum professional* means a person who possesses knowledge, experience and demonstrable competence in museum methods and techniques appropriate to the nature and content of the collection under the person's management and care, and commensurate with the person's duties and responsibilities. Standards that may be used, as appropriate, for classifying positions and for evaluating a person's qualifications include, but are not limited to, the following:

(1) The Office of Personnel Management's "Position Classification Standards for Positions under the General Schedule Classification System" (U.S. Government Printing Office, stock No. 906–028–00000–0 (1981)) are used by Federal agencies to determine appropriate occupational series and grade levels for positions in the Federal service. Occupational series most commonly associated with museum work are the museum curator series (GS/GM–1015) and the museum technician and specialist series (GS/GM–1016). Other scientific and professional series that may have collateral museum duties include, but are not limited to, the archivist series (GS/GM–1420), the archeologist series (GS/GM–193), the anthropologist series (GS/GM–190), and the historian series (GS/GM–170). In general, grades GS–9 and below are assistants and trainees while grades GS–11 and above are professionals at the full performance level. Grades GS–11 and above are determined according to the level of independent professional responsibility, degree of specialization and scholarship, and the nature, variety, complexity, type, and scope of the work.

(2) The Office of Personnel Management's "Qualification Standards for

Positions under the General Schedule (Handbook X–118)" (U.S. Government Printing Office, stock No. 906–030–00000–4 (1986)) establish educational, experience and training requirements for employment with the Federal Government under the various occupational series. A graduate degree in museum science or applicable subject matter, or equivalent training and experience, and three years of professional experience are required for museum positions at grades GS–11 and above.

(3) The "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716, Sept. 29, 1983) provide technical advice about archeological and historic preservation activities and methods for use by Federal, State, and local Governments and others. One section presents qualification standards for a number of historic preservation professions. While no standards are presented for collections managers, museum curators or technicians, standards are presented for other professions (*i.e.*, historians, archeologists, architectural historians, architects, and historic architects) that may have collateral museum duties.

(4) Copies of the Office of Personnel Management's standards, including subscriptions for subsequent updates, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Copies may be inspected at the Office of Personnel Management's Library, 1900 E Street NW, Washington, DC, at any regional or area office of the Office of Personnel Management, at any Federal Job Information Center, and at any personnel office of any Federal agency. Copies of the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" are available at no charge from the Interagency Resources Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

*Religious remains* means material remains that the Federal Agency Official has determined are of traditional religious or sacred importance to an Indian tribe or other group because of customary use in religious rituals or spiritual activities. The Federal Agency Official makes this determination in

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consultation with appropriate Indian tribes or other groups.

*Repository* means a facility such as a museum, archeological center, laboratory, or storage facility managed by a university, college, museum, other educational or scientific institution, a Federal, State, or local Government agency or Indian tribe that can provide professional, systematic, and accountable curatorial services on a long-term basis.

*Repository Official* means any officer, employee or agent officially representing the repository that is providing curatorial services for a collection that is subject to this part.

*Tribal Official* means the chief executive officer or any officer, employee or agent officially representing the Indian tribe.

[87 FR 22457, Apr. 15, 2022]

### Subpart B—Archeological Collections Management

#### § 79.5 Management and preservation of collections.

The Federal Agency Official is responsible for the long-term management and preservation of preexisting and new collections subject to this part. Such collections shall be placed in a repository with adequate long-term curatorial capabilities, as set forth in § 79.9 of this part, appropriate to the nature and content of the collections.

(a) *Preexisting collections.* The Federal Agency Official is responsible for ensuring that preexisting collections, meaning those collections that are placed in repositories prior to the effective date of this rule, are being properly managed and preserved. The Federal Agency Official shall identify such repositories, and review and evaluate the curatorial services that are being provided to preexisting collections. When the Federal Agency Official determines that such a repository does not have the capability to provide adequate long-term curatorial services, as set forth in § 79.9 of this part, the Federal Agency Official may either:

(1) Enter into or amend an existing contract, memorandum, agreement or other appropriate written instrument

for curatorial services for the purpose of:

(i) Identifying specific actions that shall be taken by the repository, the Federal agency or other appropriate party to eliminate the inadequacies;

(ii) Specifying a reasonable period of time and a schedule within which the actions shall be completed; and

(iii) Specifying any necessary funds or services that shall be provided by the repository, the Federal agency or other appropriate party to complete the actions; or

(2) Remove the collections from the repository and deposit them in another repository that can provide such services in accordance with the regulations in this part. Prior to moving any collection that is from Indian lands, the Federal Agency Official must obtain the written consent of the Indian landowner and the Indian tribe having jurisdiction over the lands.

(b) *New collections.* The Federal Agency Official shall deposit a collection in a repository upon determining that:

(1) The repository has the capability to provide adequate long-term curatorial services, as set forth in § 79.9 of this part;

(2) The repository's facilities, written curatorial policies and operating procedures are consistent with the regulations in this part;

(3) The repository has certified, in writing, that the collection shall be cared for, maintained and made accessible in accordance with the regulations in this part and any terms and conditions that are specified by the Federal Agency Official;

(4) When the collection is from Indian lands, written consent to the disposition has been obtained from the Indian landowner and the Indian tribe having jurisdiction over the lands; and

(5) The initial processing of the material remains (including appropriate cleaning, sorting, labeling, cataloging, stabilizing and packaging) has been completed, and associated records have been prepared and organized in accordance with the repository's processing and documentation procedures.

(c) *Retention of records by Federal agencies.* The Federal Agency Official shall maintain administrative records

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on the disposition of each collection including, but not limited to:

(1) The name and location of the repository where the collection is deposited;

(2) A copy of the contract, memorandum, agreement or other appropriate written instrument, and any subsequent amendments, between the Federal agency, the repository and any other party for curatorial services;

(3) A catalog list of the contents of the collection that is deposited in the repository;

(4) A list of any other Federal personal property that is furnished to the repository as a part of the contract, memorandum, agreement or other appropriate written instrument for curatorial services;

(5) Copies of reports documenting inspections, inventories and investigations of loss, damage or destruction that are conducted pursuant to § 79.11 of this part; and

(6) Any subsequent permanent transfer of the collection (or a part thereof) to another repository.

### § 79.6 Methods to secure curatorial services.

(a) Federal agencies may secure curatorial services using a variety of methods, subject to Federal procurement and property management statutes, regulations, and any agency-specific statutes and regulations on the management of museum collections. Methods that may be used by Federal agencies to secure curatorial services include, but are not limited to:

(1) Placing the collection in a repository that is owned, leased or otherwise operated by the Federal agency;

(2) Entering into a contract or purchase order with a repository for curatorial services;

(3) Entering into a cooperative agreement, a memorandum of understanding, a memorandum of agreement or other agreement, as appropriate, with a State, local or Indian tribal repository, a university, museum or other scientific or educational institution that operates or manages a repository, for curatorial services;

(4) Entering into an interagency agreement with another Federal agency for curatorial services;

(5) Transferring the collection to another Federal agency for preservation; and

(6) For archeological activities permitted on public or Indian lands under the Archaeological Resources Protection Act (16 U.S.C. 470 *aa-mm*), the Antiquities Act (16 U.S.C. 431–433) or other authority, requiring the archeological permittee to provide for curatorial services as a condition to the issuance of the archeological permit.

(b) *Guidelines for selecting a repository.*

(1) When possible, the collection should be deposited in a repository that:

(i) Is in the State of origin;

(ii) Stores and maintains other collections from the same site or project location; or

(iii) Houses collections from a similar geographic region or cultural area.

(2) The collection should not be subdivided and stored at more than a single repository unless such subdivision is necessary to meet special storage, conservation or research needs.

(3) Except when non-federally-owned material remains are retained and disposed of by the owner, material remains and associated records should be deposited in the same repository to maintain the integrity and research value of the collection.

(c) *Sources for technical assistance.* The Federal Agency Official should consult with persons having expertise in the management and preservation of collections prior to preparing a scope of work or a request for proposals for curatorial services. This will help ensure that the resulting contract, memorandum, agreement or other written instrument meets the needs of the collection, including any special needs in regard to any religious remains. It also will aid the Federal Agency Official in evaluating the qualifications and appropriateness of a repository, and in determining whether the repository has the capability to provide adequate long-term curatorial services for a collection. Persons, agencies, institutions and organizations that may be able to provide technical assistance include, but are not limited to the:

(1) Federal agency's Historic Preservation Officer;

(2) State Historic Preservation Officer;

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- (3) Tribal Historic Preservation Officer;
- (4) State Archeologist;
- (5) Curators, collections managers, conservators, archivists, archeologists, historians and anthropologists in Federal and State Government agencies and Indian tribal museum;
- (6) Indian tribal elders and religious leaders;
- (7) Smithsonian Institution;
- (8) American Association of Museums; and
- (9) National Park Service.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 12, 1990]

### § 79.7 Methods to fund curatorial services.

A variety of methods are used by Federal agencies to ensure that sufficient funds are available for adequate, long-term care and maintenance of collections. Those methods include, but are not limited to, the following:

(a) Federal agencies may fund a variety of curatorial activities using monies appropriated annually by the U.S. Congress, subject to any specific statutory authorities or limitations applicable to a particular agency. As appropriate, curatorial activities that may be funded by Federal agencies include, but are not limited to:

(1) Purchasing, constructing, leasing, renovating, upgrading, expanding, operating, and maintaining a repository that has the capability to provide adequate long-term curatorial services as set forth in § 79.9 of this part;

(2) Entering into and maintaining on a cost-reimbursable or cost-sharing basis a contract, memorandum, agreement, or other appropriate written instrument with a repository that has the capability to provide adequate long-term curatorial services as set forth in § 79.9 of this part;

(3) As authorized under section 110(g) of the National Historic Preservation Act (16 U.S.C. 470h-2), reimbursing a grantee for curatorial costs paid by the grantee as a part of the grant project;

(4) As authorized under section 110(g) of the National Historic Preservation Act (16 U.S.C. 470h-2), reimbursing a State agency for curatorial costs paid by the State agency to carry out the

historic preservation responsibilities of the Federal agency;

(5) Conducting inspections and inventories in accordance with § 79.11 of this part; and

(6) When a repository that is housing and maintaining a collection can no longer provide adequate long-term curatorial services, as set forth in § 79.9 of this part, either:

(i) Providing such funds or services as may be agreed upon pursuant to § 79.5(a)(1) of this part to assist the repository in eliminating the deficiencies; or

(ii) Removing the collection from the repository and depositing it in another repository that can provide curatorial services in accordance with the regulations in this part.

(b) As authorized under section 110(g) of the National Historic Preservation Act (16 U.S.C. 470h-2) and section 208(2) of the National Historic Preservation Act Amendments (16 U.S.C. 469c-2), for federally licensed or permitted projects or programs, Federal agencies may charge licensees and permittees reasonable costs for curatorial activities associated with identification, surveys, evaluation and data recovery as a condition to the issuance of a Federal license or permit.

(c) Federal agencies may deposit collections in a repository that agrees to provide curatorial services at no cost to the U.S. Government. This generally occurs when a collection is excavated or removed from public or Indian lands under a research permit issued pursuant to the Antiquities Act (16 U.S.C. 431-433) or the Archaeological Resources Protection Act (16 U.S.C. 470aaa-mm). A repository also may agree to provide curatorial services as a public service or as a means of ensuring direct access to a collection for long-term study and use. Federal agencies should ensure that a repository that agrees to provide curatorial services at no cost to the U.S. Government has sufficient financial resources to support its operations and any needed improvements.

(d) Funds provided to a repository for curatorial services should include costs for initially processing, cataloging and accessioning the collection as well as costs for storing, inspecting,



inventorying, maintaining, and conserving the collection on a long-term basis.

(1) Funds to initially process, catalog and accession a collection to be generated during identification and evaluation surveys should be included in project planning budgets.

(2) Funds to initially process, catalog and accession a collection to be generated during data recovery operations should be included in project mitigation budgets.

(3) Funds to store, inspect, inventory, maintain and conserve a collection on a long-term basis should be included in annual operating budgets.

(e) When the Federal Agency Official determines that data recovery costs may exceed the one percent limitation contained in the Archeological and Historic Preservation Act (16 U.S.C. 469c), as authorized under section 208(3) of the National Historic Preservation Act Amendments (16 U.S.C. 469c–2), the limitation may be waived, in appropriate cases, after the Federal Agency Official has:

(1) Obtained the concurrence of the Secretary of the U.S. Department of the Interior by sending a written request to the Departmental Consulting Archeologist, National Park Service, P.O. Box 37127, Washington, DC 20013–7127; and

(2) Notified the Committee on Energy and Natural Resources of the U.S. Senate and the Committee on Interior and Insular Affairs of the U.S. House of Representatives.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 12, 1990]

**§ 79.8 Terms and conditions to include in contracts, memoranda and agreements for curatorial services.**

The Federal Agency Official shall ensure that any contract, memorandum, agreement or other appropriate written instrument for curatorial services that is entered into by or on behalf of that Official, a Repository Official and any other appropriate party contains the following:

(a) A statement that identifies the collection or group of collections to be covered and any other U.S. Government-owned personal property to be furnished to the repository;

(b) A statement that identifies who owns and has jurisdiction over the collection;

(c) A statement of work to be performed by the repository;

(d) A statement of the responsibilities of the Federal agency and any other appropriate party;

(e) When the collection is from Indian lands:

(1) A statement that the Indian landowner and the Indian tribe having jurisdiction over the lands consent to the disposition; and

(2) Such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands;

(f) When the collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, such terms and conditions as may have been developed pursuant to §–.7 of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229;

(g) The term of the contract, memorandum or agreement; and procedures for modification, suspension, extension, and termination;

(h) A statement of costs associated with the contract, memorandum or agreement; the funds or services to be provided by the repository, the Federal agency and any other appropriate party; and the schedule for any payments;

(i) Any special procedures and restrictions for handling, storing, inspecting, inventorying, cleaning, conserving, and exhibiting the collection;

(j) Instructions and any terms and conditions for making the collection available for scientific, educational and religious uses, including procedures and criteria to be used by the Repository Official to review, approve or deny, and document actions taken in response to requests for study, laboratory analysis, loan, exhibition, use in religious rituals or spiritual activities, and other uses. When the Repository Official to approve consumptive uses, this should be specified; otherwise, the Federal Agency Official should review and approve consumptive uses. When

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the repository's existing operating procedures and criteria for evaluating requests to use collections are consistent with the regulations in this part, they may be used, after making any necessary modifications, in lieu of developing new ones;

(k) Instructions for restricting access to information relating to the nature, location and character of the prehistoric or historic resource from which the material remains are excavated or removed;

(l) A statement that copies of any publications resulting from study of the collection are to be provided to the Federal Agency Official and, when the collection is from Indian lands, to the Tribal Official and the Tribal Historic Preservation Officer, if any, of the Indian tribe that owns or has jurisdiction over such lands;

(m) A statement that specifies the frequency and methods for conducting and documenting the inspections and inventories stipulated in § 79.11 of this part;

(n) A statement that the Repository Official shall redirect any request for transfer or repatriation of a federally-owned collection (or any part thereof) to the Federal Agency Official, and redirect any request for transfer or repatriation of a federally administered collection (or any part thereof) to the Federal Agency Official and the owner;

(o) A statement that the Repository Official shall not transfer, repatriate or discard a federally-owned collection (or any part thereof) without the written permission of the Federal Agency Official, and not transfer, repatriate or discard a federally administered collection (or any part thereof) without the written permission of the Federal Agency Official and the owner;

(p) A statement that the Repository Official shall not sell the collection; and

(q) A statement that the repository shall provide curatorial services in accordance with the regulations in this part.

### **§ 79.9 Standards to determine when a repository possesses the capability to provide adequate long-term curatorial services.**

The Federal Agency Official shall determine that a repository has the capability to provide adequate long-term curatorial services when the repository is able to:

(a) Accession, label, catalog, store, maintain, inventory and conserve the particular collection on a long-term basis using professional museum and archival practices; and

(b) Comply with the following, as appropriate to the nature and consent of the collection;

(1) Maintain complete and accurate records of the collection, including:

(i) Records on acquisitions;

(ii) Catalog and artifact inventory lists;

(iii) Descriptive information, including field notes, site forms and reports;

(iv) Photographs, negatives and slides;

(v) Locational information, including maps;

(vi) Information on the condition of the collection, including any completed conservation treatments;

(vii) Approved loans and other uses;

(viii) Inventory and inspection records, including any environmental monitoring records;

(ix) Records on lost, deteriorated, damaged or destroyed Government property; and

(x) Records on any deaccessions and subsequent transfers, repatriations or discards, as approved by the Federal Agency Official;

(2) Dedicate the requisite facilities, equipment and space in the physical plant to properly store, study and conserve the collection. Space used for storage, study, conservation and, if exhibited, any exhibition must not be used for non-curatorial purposes that would endanger or damage the collection;

(3) Keep the collection under physically secure conditions within storage, laboratory, study and any exhibition areas by:

(i) Having the physical plant meet local electrical, fire, building, health and safety codes;

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(ii) Having an appropriate and operational fire detection and suppression system;

(iii) Having an appropriate and operational intrusion detection and deterrent system;

(iv) Having an adequate emergency management plan that establishes procedures for responding to fires, floods, natural disasters, civil unrest, acts of violence, structural failures and failures of mechanical systems within the physical plant;

(v) Providing fragile or valuable items in a collection with additional security such as locking the items in a safe, vault or museum specimen cabinet, as appropriate;

(vi) Limiting and controlling access to keys, the collection and the physical plant; and

(vii) Inspecting the physical plant in accordance with § 79.11 of this part for possible security weaknesses and environmental control problems, and taking necessary actions to maintain the integrity of the collection;

(4) Require staff and any consultants who are responsible for managing and preserving the collection to be qualified museum professionals;

(5) Handle, store, clean, conserve and, if exhibited, exhibit the collection in a manner that:

(i) Is appropriate to the nature of the material remains and associated records;

(ii) Protects them from breakage and possible deterioration from adverse temperature and relative humidity, visible light, ultraviolet radiation, dust, soot, gases, mold, fungus, insects, rodents and general neglect; and

(iii) Preserves data that may be studied in future laboratory analyses. When material remains in a collection are to be treated with chemical solutions or preservatives that will permanently alter the remains, when possible, retain untreated representative samples of each affected artifact type, environmental specimen or other category of material remains to be treated. Untreated samples should not be stabilized or conserved beyond dry brushing;

(6) Store site forms, field notes, artifacts inventory lists, computer disks and tapes, catalog forms and a copy of

the final report in a manner that will protect them from theft and fire such as:

(i) Storing the records in an appropriate insulated, fire resistant, locking cabinet, safe, vault or other container, or in a location with a fire suppression system;

(ii) Storing a duplicate set of records in a separate location; or

(iii) Ensuring that records are maintained and accessible through another party. For example, copies of final reports and site forms frequently are maintained by the State Historic Preservation Officer, the State Archeologist or the State museum or university. The Tribal Historic Preservation Officer and Indian tribal museum ordinarily maintain records on collections recovered from sites located on Indian lands. The National Technical Information Service and the Defense Technical Information Service maintain copies of final reports that have been deposited by Federal agencies. The National Archeological Database maintains summary information on archeological reports and projects, including information on the location of those reports.

(7) Inspect the collection in accordance with § 79.11 of this part for possible deterioration and damage, and perform only those actions as are absolutely necessary to stabilize the collection and rid it of any agents of deterioration;

(8) Conduct inventories in accordance with § 79.11 of this part to verify the location of the material remains, associated records and any other Federal personal property that is furnished to the repository; and

(9) Provide access to the collection in accordance with § 79.10 of this part.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 12, 1990]

### Subpart C—Public Access to and Use of Collections

#### § 79.10 Use of collections.

(a) The Federal Agency Official shall ensure that the Repository Official makes the collection available for scientific, educational and religious uses, subject to such terms and conditions as are necessary to protect and preserve

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the condition, research potential, religious or sacred importance, and uniqueness of the collection.

(b) *Scientific and educational uses.* A collection shall be made available to qualified professionals for study, loan and use for such purposes as in-house and traveling exhibits, teaching, public interpretation, scientific analysis and scholarly research. Qualified professionals would include, but not be limited to, curators, conservators, collection managers, exhibitors, researchers, scholars, archeological contractors and educators. Students may use a collection when under the direction of a qualified professional. Any resulting exhibits and publications shall acknowledge the repository as the curatorial facility and the Federal agency as the owner or administrator, as appropriate. When the collection is from Indian lands and the Indian landowner and the Indian tribe having jurisdiction over the lands wish to be identified, those individuals and the Indian tribe shall also be acknowledged. Copies of any resulting publications shall be provided to the Repository Official and the Federal Agency Official. When Indian lands are involved, copies of such publications shall also be provided to the Tribal Official and the Tribal Historic Preservation Officer, if any, of the Indian tribe that owns or has jurisdiction over such lands.

(c) *Religious uses.* Religious remains in a collection shall be made available to persons for use in religious rituals or spiritual activities. Religious remains generally are of interest to medicine men and women, and other religious practitioners and persons from Indian tribes, Alaskan Native corporations, Native Hawaiians, and other indigenous and immigrant ethnic, social and religious groups that have aboriginal or historic ties to the lands from which the remains are recovered, and have traditionally used the remains or class of remains in religious rituals or spiritual activities.

(d) *Terms and conditions.* (1) In accordance with section 9 of the Archaeological Resources Protection Act (16 U.S.C. 470hh) and section 304 of the National Historic Preservation Act (16 U.S.C. 470 w-3), the Federal Agency Official shall restrict access to associated

records that contain information relating to the nature, location or character of a prehistoric or historic resource unless the Federal Agency Official determines that such disclosure would not create a risk of harm, theft or destruction to the resource or to the area or place where the resource is located.

(2) Section -.18(a)(2) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229 sets forth procedures whereby information relating to the nature, location or character of a prehistoric or historic resource may be made available to the Governor of any State. The Federal Agency Official may make information available to other persons who, following the procedures in §-.18(a)(2) of the referenced uniform regulations, demonstrate that the disclosure will not create a risk of harm, theft or destruction to the resource or to the area or place where the resource is located. Other persons generally would include, but not be limited to, archeological contractors, researchers, scholars, tribal representatives, Federal, State and local agency personnel, and other persons who are studying the resource or class or resources.

(3) When a collection is from Indian lands, the Federal Agency Official shall place such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands on:

(i) Scientific, educational or religious uses of material remains; and

(ii) Access to associated records that contain information relating to the nature, location or character of the resource.

(4) When a collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, the Federal Agency Official shall place such terms and conditions as may have been developed pursuant to §-.7 of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229 on:

(i) Scientific, educational or religious uses of material remains; and

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(ii) Access to associated records that contain information relating to the nature, location or character of the resource.

(5) The Federal Agency Official shall not allow uses that would alter, damage or destroy an object in a collection unless the Federal Agency Official determines that such use is necessary for scientific studies or public interpretation, and the potential gain in scientific or interpretive information outweighs the potential loss of the object. When possible, such use should be limited to unprovenienced, nonunique, nonfragile objects, or to a sample of objects drawn from a larger collection of similar objects.

(e) No collection (or a part thereof) shall be loaned to any person without a written agreement between the Repository Official and the borrower that specifies the terms and conditions of the loan. Appendix C to the regulations in this part contains an example of a short-term loan agreement for a federally-owned collection. At a minimum, a loan agreement shall specify:

(1) The collection or object being loaned;

(2) The purpose of the loan;

(3) The length of the loan;

(4) Any restrictions on scientific, educational or religious uses, including whether any object may be altered, damaged or destroyed;

(5) Except as provided in paragraph (e)(4) of this section, that the borrower shall handle the collection or object being borrowed during the term of the loan in accordance with this part so as not to damage or reduce its scientific, educational, religious or cultural value; and

(6) Any requirements for insuring the collection or object being borrowed for any loss, damage or destruction during transit and while in the borrower's possession.

(f) The Federal Agency Official shall ensure that the Repository Official maintains administrative records that document approved scientific, educational and religious uses of the collection.

(g) The Repository Official may charge persons who study, borrow or use a collection (or a part thereof) reasonable fees to cover costs for han-

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dling, packing, shipping and insuring material remains, for photocopying associated records, and for other related incidental costs.

### Subpart D—Inspections and Inventories of Collections

#### § 79.11 Conduct of inspections and inventories.

(a) The inspections and inventories specified in this section shall be conducted periodically in accordance with the Federal Property and Administrative Services Act (40 U.S.C. 484), its implementing regulation (41 CFR part 101), any agency-specific regulations on the management of Federal property, and any agency-specific statutes and regulations on the management of museum collections.

(b) Consistent with paragraph (a) of this section, the Federal Agency Official shall ensure that the Repository Official:

(1) Provides the Federal Agency Official and, when the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands with a copy of the catalog list of the contents of the collection received and accessioned by the repository;

(2) Provides the Federal Agency Official will a list of any other U.S. Government-owned personal property received by the repository;

(3) Periodically inspects the physical plant for the purpose of monitoring the physical security and environmental control measures;

(4) Periodically inspects the collection for the purposes of assessing the condition of the material remains and associated records, and of monitoring those remains and records for possible deterioration and damage;

(5) Periodically inventories the collection by accession, lot or catalog record for the purpose of verifying the location of the material remains and associated records;

(6) Periodically inventories any other U.S. Government-owned personal property in the possession of the repository;

(7) Has qualified museum professionals conduct the inspections and inventories;

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(8) Following each inspection and inventory, prepares and provides the Federal Agency Official with a written report of the results of the inspection and inventory, including the status of the collection, treatments completed and recommendations for additional treatments. When the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands shall also be provided with a copy of the report;

(9) Within five (5) days of the discovery of any loss or theft of, deterioration and damage to, or destruction of the collection (or a part thereof) or any other U.S. Government-owned personal property, prepares and provides the Federal Agency Official with a written notification of the circumstances surrounding the loss, theft, deterioration, damage or destruction. When the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands shall also be provided with a copy of the notification; and

(10) Makes the repository, the collection and any other U.S. Government-owned personal property available for periodic inspection by the:

(i) Federal Agency Official;

(ii) When the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands; and

(iii) When the collection contains religious remains, the Indian tribal elders, religious leaders, and other officials representing the Indian tribe or other group for which the remains have religious or sacred importance.

(c) Consistent with paragraph (a) of this section, the Federal Agency Official shall have qualified Federal agency professionals:

(1) Investigate reports of a lost, stolen, deteriorated, damaged or destroyed collection (or a part thereof) or any other U.S. Government-owned personal property; and

(2) Periodically inspect the repository, the collection and any other U.S. Government-owned personal property for the purposes of:

(i) Determining whether the repository is in compliance with the minimum

standards set forth in § 79.9 of this part; and

(ii) Evaluating the performance of the repository in providing curatorial services under any contract, memorandum, agreement or other appropriate written instrument.

(d) The frequency and methods for conducting and documenting inspections and inventories stipulated in this section shall be mutually agreed upon, in writing, by the Federal Agency Official and the Repository Official, and be appropriate to the nature and content of the collection:

(1) Collections from Indian lands shall be inspected and inventoried in accordance with such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands.

(2) Religious remains in collections from public lands shall be inspected and inventoried in accordance with such terms and conditions as may have been developed pursuant to §-.7 of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

(3) Material remains and records of a fragile or perishable nature should be inspected for deterioration and damage on a more frequent basis than lithic or more stable remains or records.

(4) Because frequent handling will accelerate the breakdown of fragile materials, material remains and records should be viewed but handled as little as possible during inspections and inventories.

(5) Material remains and records of a valuable nature should be inventoried on a more frequent basis than other less valuable remains or records.

(6) Persons such as those listed in § 79.6(c) of this part who have expertise in the management and preservation of similar collections should be able to provide advice to the Federal Agency Official concerning the appropriate frequency and methods for conducting inspections and inventories of a particular collection.

(e) Consistent with the Single Audit Act (31 U.S.C. 75), when two or more Federal agencies deposit collections in the same repository, the Federal Agency Officials should enter into an inter-agency agreement for the purposes of:

(1) Requesting the Repository Official to coordinate the inspections and inventories, stipulated in paragraph (b) of this section, for each of the collections;

(2) Designating one or more qualified Federal agency professionals to:

(i) Conduct inspections, stipulated in paragraph (c)(2) of this section, on behalf of the other agencies; and

(ii) Following each inspection, prepare and distribute to each Federal Agency Official a written report of findings, including an evaluation of performance and recommendations to correct any deficiencies and resolve any problems that were identified. When the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands shall also be provided with a copy of the report; and

(3) Ensuring consistency in the conduct of inspections and inventories conducted pursuant to this section.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 12, 1990]

### Subpart E—Disposition of Particular Material Remains

SOURCE: 87 FR 22459, Apr. 15, 2022, unless otherwise noted.

#### § 79.12 Determining which particular material remains are eligible for disposal.

(a) *Which material remains are eligible for disposal under this subpart?* In order to be eligible for disposal under this subpart, material remains from collections must be:

(1) Archaeological resources, as defined in the Archaeological Resources Protection Act (16 U.S.C. 470bb(1)), or other resources excavated and removed under the Reservoir Salvage Act (54 U.S.C. 312501–312508) or the Antiquities Act (54 U.S.C. 320301–320303); and

(2) Considered to be of insufficient archaeological interest under the criteria in paragraph (e) of this section, based on the definition of “of archaeological interest” in 43 CFR 7.3(a)(1).

(b) *Which material remains are not eligible for disposal under this subpart?* The following material remains from col-

lections are not eligible for disposal under this subpart:

(1) Native American “cultural items” as defined in the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001(3)), because disposition is governed by that Act and its implementing regulations (43 CFR part 10);

(2) Other human remains not subject to the Native American Graves Protection and Repatriation Act of 1990;

(3) Material remains excavated and removed from Indian lands on or before the enactment of the Archaeological Resources Protection Act (16 U.S.C. 470aa–mm) on October 31, 1979; and

(4) Material remains excavated and removed from Indian lands under the Antiquities Act (54 U.S.C. 320301–320303).

(c) *Who may propose the disposal of particular material remains?* The following individuals who meet the applicable Professional Qualification Standards set by the Secretary of the Interior may propose the disposal of particular material remains from a collection:

(1) Federal agency staff members with verifiable knowledge of the particular material remains, including archaeologists, curators, and conservators; and

(2) Qualified museum professionals located in a repository that provides curatorial services for a collection held in that repository.

(d) *Who is responsible for the disposal of particular material remains?* The Federal Agency Official is responsible for ensuring that particular material remains are disposed of according to the requirements of this subpart.

(e) *When are particular material remains considered to be of insufficient archaeological interest?* Particular material remains are considered to be of insufficient archaeological interest when, on a case-by-case basis, at least one qualified archaeological or museum professional who meets the Professional Qualification Standards set by the Secretary of the Interior and possesses verifiable knowledge of and experience in the type of material remains being evaluated makes a determination. The determination must follow the process

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established in § 79.15 and document that:

(1) Disposition of the material remains will not negatively impact the overall integrity of the original collection recovered during the survey, excavation, or other study of a prehistoric or historic resource; and

(2) At least one of the following three requirements—lack of provenience information; lack of physical integrity; or overly redundant and not useful for research—are met:

(i) *Lack of provenience information.* Lack of provenience information may be established after a concerted effort to recover the information in the related associated records is performed and documented and by one or more of the following circumstances:

(A) The labels on the material remains or the labels on the containers that hold the material remains do not provide adequate information to reliably establish meaningful archeological context for the material remains;

(B) The labels on the material remains or the labels on the containers that hold the material remains have been lost or destroyed over time and cannot be reconstructed through the associated records; or

(C) The associated records of the material remains never existed, have been lost, or have been destroyed.

(ii) *Lack of physical integrity.* Material remains lack physical integrity when, subsequent to recovery during the survey, excavation, or other study of a prehistoric or historic resource, the material remains were irreparably damaged through decay, decomposition, or inadvertent loss. Examples may include human-caused incidents, exposure to elements, or natural disaster.

(iii) *Overly redundant and not useful for research.* Material remains are overly redundant and not useful for research in light of the collection's archeological context, research questions, and research potential. These considerations may vary based on geography, time and culture period, scientific or cultural significance, prior analysis, and other factors. Because it is difficult to predict if future analytical methods will yield useful informa-

tion about the material remains proposed for disposal, a sample of the material remains deemed to be overly redundant and not useful for research must be retained for curation, as required by § 79.15(f).

### § 79.13 Acceptable methods for disposition of particular material remains.

(a) *Indian lands.* This paragraph applies to material remains that are determined to be of insufficient archeological interest under § 79.12(e) and that were excavated or removed from Indian lands after October 31, 1979. Under the Archaeological Resources Protection Act (16 U.S.C. 470aa-mm), these material remains are the property of the Indian individual or Indian tribe having rights of ownership over the resources. Under the authority of 16 U.S.C. 470dd, disposition of these material remains is subject to the consent of the Indian individual or Indian tribe. The Federal Agency Official must use the following methods of disposal for these material remains in the following order:

(1) Return them to the Indian individual or Indian tribe having rights of ownership under the Archaeological Resources Protection Act's custody regulations, 43 CFR 7.13(b), 36 CFR 296.13(b), 32 CFR 229.13(b), and 18 CFR 1312.13(b).

(2) If the Indian individual or Indian tribe having rights of ownership does not wish to accept and take physical custody of the material remains, the Federal Agency Official may otherwise dispose of the material remains using the disposition methods in paragraph (b) of this section after receiving written consent and relinquishment of ownership from the Indian individual or Indian tribe having rights of ownership.

(b) *Public lands.* This paragraph applies to material remains that are determined to be of insufficient archeological interest under § 79.12(e) and that were excavated or removed from public lands that are not Indian lands. As a condition of disposal, the Federal Agency Official will reasonably ensure that material remains from such lands may not be traded, sold, bought, or bartered after disposal. The Federal Agency Official must consider the following methods for disposal of the material remains:



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(1) Transfer to another Federal agency.

(2) Convey to a suitable public or tribal scientific or professional repository as defined in § 79.4(k) of this part.

(3) Convey to a federally recognized Indian tribe if the material remains were excavated or removed from lands of religious or cultural importance to that tribe and were identified and documented by a Federal land manager under 43 CFR 7.7(b)(1), 36 CFR 296.7(b)(1), 32 CFR 229.7(b)(1), or 18 CFR 1312.7(b)(1).

(4) Convey to a federally recognized Indian tribe from whose aboriginal lands the material remains were removed. Aboriginal occupation may be documented by evidence including, but not limited to, a final judgment of the Indian Claims Commission or the United States Court of Claims, or a treaty, Act of Congress, or Executive Order.

(5) Convey to a federally recognized Indian tribe for the purpose of traditional cultural, educational, or religious practices.

(6) Transfer within the Federal agency for the purpose of education or interpretation, or convey to a suitable institution to be used for public benefit and education including, but not limited to, local historical societies, museums, university or college departments, and schools.

(7) If the Federal Agency Official considers each of these prior methods carefully and is still unable to find an acceptable method of disposition, then the material remains may be destroyed. The Federal Agency Official or their designee must witness and document the destruction, including through photography or video as practicable.

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## § 79.15 Final determination of disposition of particular material remains.

The Federal Agency Official is responsible for ensuring that the agency disposes of material remains according to the requirements of this subpart. A determination made under this subpart in no way affects a Federal land manager's obligations under other applicable laws or regulations. The Federal

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Agency Official must take all the following actions before making a final determination that it is appropriate to dispose of material remains.

(a) The Federal Agency Official must determine that the material remains are eligible for disposal under the criteria in § 79.12(a).

(b) The Federal Agency Official must verify in writing that none of the material remains proposed for disposal meet the criteria in § 79.12(b).

(c) The Federal Agency Official must verify that the material remains proposed for disposal are appropriately documented through a professional procedure approved by the Federal agency that is consistent with curatorial services, including accessioning and cataloging, as defined in § 79.4(b).

(d) The Federal Agency Official must consult with qualified museum professionals located in the repository that provides curatorial services for the material remains proposed for disposal if those museum professionals did not propose the disposal under § 79.12(c)(2). This consultation with the qualified museum professionals must address the appropriateness of the proposed disposal.

(e) The Federal Agency Official must establish a collections advisory committee of at least five members to review proposed dispositions of material remains. The committee must make a consensus recommendation to the Federal Agency Official about each proposed disposition based on the adequacy of the documentation addressing the requirements in paragraphs (a) and (b) of this section and the appropriateness of the proposed disposition based on the criteria in § 79.12(e).

(1) The collections advisory committee must consist of qualified employees from Federal agencies who meet appropriate Professional Qualification Standards set by the Secretary of the Interior, and must include the curator and the principal archeologist of the Federal agency that owns or administers the material remains if either or both of these two positions exist. The Departmental Consulting Archeologist may not participate on the collections advisory committee. If the Departmental Consulting Archeologist is the principal archeologist, then

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the Federal Agency Official must designate another qualified archeologist at the agency instead.

(2) Collections advisory committee members must include Federal employees with subject matter or technical expertise in the object types, cultural period, and culture area of the proposed disposition. These employees may include archeologists, anthropologists, curators, and conservators with expertise in historic, prehistoric, or underwater material remains.

(3) If the material remains being proposed for disposal are Native American, then collections advisory committee members must also include at least one or more individuals who are Tribal Officials acting in their official capacities representing their respective federally recognized Indian tribes that are regularly consulted by the Federal agency regarding the collection containing the material remains being proposed for disposal.

(4) The collections advisory committee must have written procedures and governing rules, including terms of member appointments and the duration of the committee, approved by the Federal Agency Official, to ensure all recommendations about the appropriateness of disposal are fair, open, timely, and in the best interests of the public.

(5) The collections advisory committee must submit a written report to the Federal Agency Official for each proposed disposition that, at a minimum, documents the information required for the FEDERAL REGISTER notice identified in paragraphs (i)(1)(i) through (iii) of this section; membership of the committee and each member's role and expertise pertinent to the proposed disposition; a summary of any comments received on the proposed disposition under paragraph (h) of this section; the recommendations for disposition, including any conditions of transfer or conveyance; and the reasons why other methods of disposal would be of lesser public benefit.

(6) Federal employees or qualified members of federally recognized Indian tribes may be temporarily added to the committee if its existing members determine that specific expertise, including archeological knowledge of the cul-

tural period and cultural area, is needed on a case-by-case basis.

(7) Collections advisory committee members, whether permanent or temporary, and their family members may not benefit financially or in any other way from a disposition of material remains, except to the extent that members of a federally recognized Indian Tribe, when that Indian Tribe is being considered as a potential recipient of material remains, may participate in the collections advisory committee as described in § 79.15(e)(3).

(f) The Federal Agency Official must retain in the curated collection a sample of those material remains determined to be overly redundant and not useful for research that is representative of the population as a whole from which the sample was taken.

(1) The size of the representative sample must be large enough to permit future analysis for research purposes.

(2) The method for establishing a representative sample, including sample size and typology, must be determined by a qualified museum or archeological professional with expertise in the type of prehistoric or historic material remains being sampled.

(3) The sampling method must be documented and consistent with professional prehistoric or historic archeological practice.

(g) The Federal Agency Official must retain all associated records in the archeological collection as defined in § 79.4(a)(2). A copy of the original associated records must be given to the recipient of any transferred or conveyed items subject to the restrictions stipulated in the Archaeological Resources Protection Act (16 U.S.C. 470hh(a)). For material remains excavated and removed from Indian land, a copy of the original associated records must be given to the Tribal Historic Preservation Officer (or other designated tribal representative) from the tribal land where the material remains were recovered.

(h) The Federal Agency Official must notify the entities listed in this paragraph of the proposed disposition and solicit comments on the proposal. Notifications must be made in writing, and must include a deadline for submitting comments that is at least 60 days after

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notice is issued, in accordance with procedures established by the Federal agency. All written comments must be reviewed by the Federal Agency Official and the collections advisory committee. The Federal Agency Official will respond to all relevant, substantive comments received. Notice must be given to the following:

(1) The State Historic Preservation Officer and, where established, the State Archeologist, from the state(s) where the material remains to be disposed of were recovered.

(2) The Tribal Historic Preservation Officer (or other designated tribal representative) from the Indian land(s) where the material remains to be disposed of were recovered.

(3) Federal, state, tribal, or local agencies that were involved in the recovery of the material remains to be disposed of.

(4) Private landowners from whose lands the material remains to be disposed of were removed, but only in such cases where the Federal agency obtained practical management authority over the material remains as the result of activities conducted in connection with a Federal action, assistance, license, or permit, on those private lands.

(5) Universities, museums, scientific institutions, and educational institutions with which the agency has an existing relationship pursuant to a written instrument (*e.g.*, permit, agreement) for research, excavation, curation, education, or other partnership in the state and region from which the material remains to be disposed of were recovered.

(6) Indian tribes that consider the land to have religious or cultural importance, if the material remains are from a site on public lands that has religious or cultural importance to Indian tribes under 43 CFR 7.7(b)(1).

(7) Indian tribes from whose aboriginal lands the material remains were removed, if aboriginal occupation has been documented by a final judgment of the Indian Claims Commission or the United States Court of Claims, treaty, Act of Congress, or Executive Order.

(i) The Federal Agency Official must, after the comment period described in

paragraph (h) of this section has expired and the Federal Agency Official has responded to all relevant, substantive comments received, publish a notice of determination of disposition in the FEDERAL REGISTER.

(1) The notice published in the FEDERAL REGISTER must include the following:

(i) A general description of the material remains to be disposed.

(ii) The criteria used to determine that the material remains are of insufficient archeological interest under § 79.12(e).

(iii) The method of disposal.

(iv) The name of the Federal Agency Official or their designee as a point of contact.

(v) An explanation of a person's right to object to the determination of disposition under § 79.16 and the name, email, and physical address of the Departmental Consulting Archeologist.

(2) The Federal Agency Official must also prepare a determination of disposition that includes the following:

(i) A detailed list of the material remains to be disposed, including a description of each object, or lot of objects if there are multiples of a particular type, and photograph(s) of the objects when appropriate.

(ii) The report of the collections advisory committee as stipulated in paragraph (e)(5) of this section.

(iii) Documentation that all of the procedures in § 79.15 have been met.

(iv) The name of the recipient entity or method of disposal, as appropriate.

(v) Justification of the method to be used to dispose of the material remains under § 79.13.

(vi) The name of the Federal Agency Official or their designee as a point of contact.

(vii) Other conditions of transfer or conveyance, as appropriate.

(viii) A statement that the determination is a final agency action under the Administrative Procedure Act (5 U.S.C. 704) unless an objection is filed in accordance with § 79.16.

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### **§ 79.16 Objecting to a determination of disposition of particular material remains.**

Anyone may object to and request in writing that the Departmental Consulting Archeologist review a Federal Agency Official's determination to dispose of material remains within 60 days of publication of the notice of determination of disposition in the FEDERAL REGISTER. The objection must document why the objector disagrees with the Federal Agency Official's decision regarding the disposal. The procedure for objecting to a determination of disposition is as follows:

(a) The objection must be sent to the Departmental Consulting Archeologist. The Departmental Consulting Archeologist must forward a copy of the objection within 5 days of receipt to the Federal Agency Official who made the determination under objection. The Federal Agency Official must halt the planned disposition until the Departmental Consulting Archeologist completes the requested review.

(b) The Departmental Consulting Archeologist must review the objection, and the Federal Agency Official's determination of disposition in § 79.15(i)(2).

(c) The Departmental Consulting Archeologist must consult with the objecting party or parties and the Federal Agency Official with the aim of resolving the objection.

(d) Within 60 days of receipt of the objection, whether or not a formal resolution has been agreed upon, the Departmental Consulting Archeologist must transmit to the Federal Agency Official a non-binding recommendation, including a thorough explanation, for further consideration.

(e) The Federal Agency Official must consider the recommendation of the Departmental Consulting Archeologist prior to making a decision on the objection. Within 30 days of receipt of the recommendation, the Federal Agency Official must respond to the Departmental Consulting Archeologist and the objector with a decision on the objection and a justification for that decision. The decision document must include any information about administrative appeal rights required by internal agency appeal procedures or a

statement that the decision document is a final agency action under the Administrative Procedure Act, as appropriate.

(f) The Federal Agency Official must publish notice of the decision on the objection and any amendments made to the determination of disposition in the FEDERAL REGISTER. This may only be done after the objector exhausts any internal appeal procedures identified in the decision document sent to the objector under § 79.16(e). Publication of the notice of the decision on the objection constitutes a final agency action under the Administrative Procedure Act (5 U.S.C. 704).

### **§ 79.17 Timing of disposition.**

Disposition will occur no sooner than 60 days after the notice of determination of disposition is published in the FEDERAL REGISTER under § 79.15(i). If the Federal agency receives an objection under § 79.16, then disposition will occur no sooner than 30 days after the notice of decision on the objection and any amendments are published in the FEDERAL REGISTER under § 79.16(f).

### **§ 79.18 Administrative record of disposition.**

(a) After the Federal Agency Official has made a determination of disposition, he or she must document the determination and retain the administrative record as part of the associated records as defined in § 79.4(a)(2), which must include:

(1) The professional evaluation of the material remains conducted under §§ 79.12(e) and 79.15(b).

(2) The report of the collections advisory committee provided under § 79.15(e)(5).

(3) Notifications of the proposed disposition under § 79.15(h); consent of Indian individuals or tribes, if applicable, under § 79.13(a)(2); and comments received from the parties notified under § 79.15(h).

(4) Objections received by the Departmental Consulting Archeologist, the non-binding recommendation of the Departmental Consulting Archeologist, and the decision on the objection and any amendments made to the determination of disposition, if applicable, under § 79.16.

(5) The disposition action with specific information, including a description and evaluation of objects; the method of disposition and the reason for the method chosen; names and titles of persons initiating and approving the disposition; date of disposition; relevant accession and catalog numbers; evidence of the receipt for the return, transfer, or conveyance of the material remains by the recipient tribe, agency, repository, or institution, including the title to the received material remains, as appropriate; photographic documentation, as appropriate; and the name and location of the recipient institution or entity, as appropriate.

(6) A detailed inventory of the representative sample of material remains retained, when the larger proportion is disposed of because it is overly redundant and not useful for research.

(7) Other activities and decisions pertaining to the disposition of the material remains, such as conditions of use after the disposition is completed, as appropriate.

(b) The administrative record must be made available to the public upon request, unless the information or a portion of it must be withheld under the terms of the Freedom of Information Act (5 U.S.C. 552) or the Archaeological Resources Protection Act (16 U.S.C. 470hh). The latter restricts the government's ability to make sensitive information, such as archeological site location data, available to the public.

(c) After disposition, the accession and catalog records must be reviewed and amended through a procedure established by the Federal agency. The amendments must identify the material remains that were deaccessioned and disposed of, the date of disposition, and the manner in which they were disposed. The documentation prepared under § 79.15, § 79.16, and paragraph (a) of this section must be retained in accordance with Federal agency policy.

#### APPENDIX A TO PART 79—EXAMPLE OF A DEED OF GIFT

##### DEED OF GIFT TO THE

(Name of the Federal agency)

*Whereas*, the (name of the Federal agency), hereinafter called the Recipient, is dedicated to the preservation and protection of

artifacts, specimens and associated records that are generated in connection with its projects and programs;

*Whereas*, certain artifacts and specimens, listed in Attachment A to this Deed of Gift, were recovered from the (name of the prehistoric or historic resource) site in connection with the Recipient's (name of the Recipient's project) project;

*Whereas*, the (name of the prehistoric or historic resource) site is located on lands to which title is held by (name of the donor), hereinafter called the Donor, and that the Donor holds free and clear title to the artifacts and specimens; and

*Whereas*, the Donor is desirous of donating the artifacts and specimens to the Recipient to ensure their continued preservation and protection;

*Now therefore*, the Donor does hereby unconditionally donate to the Recipient, for unrestricted use, the artifacts and specimens listed in Attachment A to this Deed of Gift; and

The Recipient hereby gratefully acknowledges the receipt of the artifacts and specimens.

Signed: (signature of the Donor)

Date: (date)

Signed: (signature of the Federal Agency Official)

Date: (date)

Attachment A: Inventory of Artifacts and Specimens.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 12, 1990]

#### APPENDIX B TO PART 79—EXAMPLE OF A MEMORANDUM OF UNDERSTANDING FOR CURATORIAL SERVICES FOR A FEDERALLY-OWNED COLLECTION

##### MEMORANDUM OF UNDERSTANDING FOR CURATORIAL SERVICES BETWEEN THE

(Name of the Federal agency)

AND THE

(Name of the Repository)

This Memorandum of Understanding is entered into this (day) day of (month and year), between the United States of America, acting by and through the (name of the Federal agency), hereinafter called the Depositor, and the (name of the Repository), hereinafter called the Repository, in the State of (name of the State).

The Parties do witnesseth that,

*Whereas*, the Depositor has the responsibility under Federal law to preserve for future use certain collections of archeological artifacts, specimens and associated records, herein called the Collection, listed in Attachment A which is attached hereto and

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made a part hereof, and is desirous of obtaining curatorial services; and

*Whereas*, the Repository is desirous of obtaining, housing and maintaining the Collection, and recognizes the benefits which will accrue to it, the public and scientific interests by housing and maintaining the Collection for study and other educational purposes; and

*Whereas*, the Parties hereto recognize the Federal Government's continued ownership and control over the Collection and any other U.S. Government-owned personal property, listed in Attachment B which is attached hereto and made a part hereof, provided to the Repository, and the Federal Government's responsibility to ensure that the Collection is suitably managed and preserved for the public good; and

*Whereas*, the Parties hereto recognize the mutual benefits to be derived by having the Collection suitably housed and maintained by the Repository;

*Now therefore*, the Parties do mutually agree as follows:

1. The Repository shall:

a. Provide for the professional care and management of the Collection from the (names of the prehistoric and historic resources) sites, assigned (list site numbers) site numbers. The collections were recovered in connection with the (name of the Federal or federally-authorized project) project, located in (name of the nearest city or town), (name of the county) county, in the State of (name of the State).

b. Perform all work necessary to protect the Collection in accordance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections and the terms and conditions stipulated in Attachment C to this Memorandum.

c. Assign as the Curator, the Collections Manager and the Conservator having responsibility for the work under this Memorandum, persons who are qualified museum professionals and whose expertise is appropriate to the nature and content of the Collection.

d. Begin all work on or about (month, date and year) and continue for a period of (number of years) years or until sooner terminated or revoked in accordance with the terms set forth herein.

e. Provide and maintain a repository facility having requisite equipment, space and adequate safeguards for the physical security and controlled environment for the Collection and any other U.S. Government-owned personal property in the possession of the Repository.

f. Not in any way adversely alter or deface any of the Collection except as may be absolutely necessary in the course of stabilization, conservation, scientific study, analysis and research. Any activity that will involve

the intentional destruction of any of the Collection must be approved in advance and in writing by the Depositor.

g. Annually inspect the facilities, the Collection and any other U.S. Government-owned personal property. Every (number of years) years inventory the Collection and any other U.S. Government-owned personal property. Perform only those conservation treatments as are absolutely necessary to ensure the physical stability and integrity of the Collection, and report the results of inventories, inspections and treatments to the Depositor.

h. Within five (5) days of discovery, report all instances of and circumstances surrounding loss of, deterioration and damage to, or destruction of the Collection and any other U.S. Government-owned personal property to the Depositor, and those actions taken to stabilize the Collection and to correct any deficiencies in the physical plant or operating procedures that may have contributed to the loss, deterioration, damage or destruction. Any actions that will involve the repair and restoration of any of the Collection and any other U.S. Government-owned personal property must be approved in advance and in writing by the Depositor.

i. Review and approve or deny requests for access to or short-term loan of the Collection (or a part thereof) for scientific, educational or religious uses in accordance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections and the terms and conditions stipulated in Attachment C of this Memorandum. In addition, refer requests for consumptive uses of the Collection (or a part thereof) to the Depositor for approval or denial.

j. Not mortgage, pledge, assign, repatriate, transfer, exchange, give, sublet, discard or part with possession of any of the Collection or any other U.S. Government-owned personal property in any manner to any third party either directly or indirectly without the prior written permission of the Depositor, and redirect any such request to the Depositor for response. In addition, not take any action whereby any of the Collection or any other U.S. Government-owned personal property shall or may be encumbered, seized, taken in execution, sold, attached, lost, stolen, destroyed or damaged.

2. The Depositor shall:

a. On or about (month, date and year), deliver or cause to be delivered to the Repository the Collection, as described in Attachment A, and any other U.S. Government-owned personal property, as described in Attachment B.

b. Assign as the Depositor's Representative having full authority with regard to this Memorandum, a person who meets pertinent professional qualifications.

c. Every (number of years) years, jointly with the Repository's designated representative, have the Depositor's Representative inspect and inventory the Collection and any other U.S. Government-owned personal property, and inspect the repository facility.

d. Review and approve or deny requests for consumptively using the Collection (or a part thereof).

3. Removal of all or any portion of the Collection from the premises of the Repository for scientific, educational or religious purposes may be allowed only in accordance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections; the terms and conditions stipulated in Attachment C to this Memorandum; any conditions for handling, packaging and transporting the Collection; and other conditions that may be specified by the Repository to prevent breakage, deterioration and contamination.

4. The Collection or portions thereof may be exhibited, photographed or otherwise reproduced and studied in accordance with the terms and conditions stipulated in Attachment C to this Memorandum. All exhibits, reproductions and studies shall credit the Depositor, and read as follows: "Courtesy of the (name of the Federal agency)." The Repository agrees to provide the Depositor with copies of any resulting publications.

5. The Repository shall maintain complete and accurate records of the Collection and any other U.S. Government-owned personal property, including information on the study, use, loan and location of said Collection which has been removed from the premises of the Repository.

6. Upon execution by both parties, this Memorandum of Understanding shall be effective on this (day) day of (month and year), and shall remain in effect for (number of years) years, at which time it will be reviewed, revised, as necessary, and reaffirmed or terminated. This Memorandum may be revised or extended by mutual consent of both parties, or by issuance of a written amendment signed and dated by both parties. Either party may terminate this Memorandum by providing 90 days written notice. Upon termination, the Repository shall return such Collection and any other U.S. Government-owned personal property to the destination directed by the Depositor and in such manner to preclude breakage, loss, deterioration and contamination during handling, packaging and shipping, and in accordance with other conditions specified in writing by the Depositor. If the Repository terminates, or is in default of, this Memorandum, the Repository shall fund the packaging and transportation costs. If the Depositor terminates this Memorandum, the Depositor shall fund the packaging and transportation costs.

7. Title to the Collection being cared for and maintained under this Memorandum lies with the Federal Government.

*In witness whereof*, the Parties hereto have executed this Memorandum.

Signed: (signature of the Federal Agency Official)

Date: (date)

Signed: (signature of the Repository Official)

Date: (date)

Attachment A: Inventory of the Collection  
Attachment B: Inventory of any other U.S. Government-owned Personal Property

Attachment C: Terms and Conditions Required by the Depositor

#### APPENDIX C TO PART 79—EXAMPLE OF A SHORT-TERM LOAN AGREEMENT FOR A FEDERALLY-OWNED COLLECTION

##### SHORT-TERM LOAN AGREEMENT BETWEEN THE

(Name of the Repository)

AND THE

(Name of the Borrower)

The (name of the Repository), hereinafter called the Repository, agrees to loan to (name of the Borrower), hereinafter called the Borrower, certain artifacts, specimens and associated records, listed in Attachment A, which were collected from the (name of the prehistoric or historic resource) site which is assigned (list site number) site number. The collection was recovered in connection with the (name of the Federal or federally authorized project) project, located in (name of the nearest city or town), (name of the county) county in the State of (name of the State). The Collection is the property of the U.S. Government.

The artifacts, specimens and associated records are being loaned for the purpose of (cite the purpose of the loan), beginning on (month, day and year) and ending on (month, day and year).

During the term of the loan, the Borrower agrees to handle, package and ship or transport the Collection in a manner that protects it from breakage, loss, deterioration and contamination, in conformance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections and the terms and conditions stipulated in Attachment B to this loan agreement.

The Borrower agrees to assume full responsibility for insuring the Collection or for providing funds for the repair or replacement of objects that are damaged or lost during transit and while in the Borrower's possession. Within five (5) days of discovery, the Borrower will notify the Repository of instances and circumstances surrounding any loss of, deterioration and damage to, or destruction

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of the Collection and will, at the direction of the Repository, take steps to conserve damaged materials.

The Borrower agrees to acknowledge and credit the U.S. Government and the Repository in any exhibits or publications resulting from the loan. The credit line shall read as follows: "Courtesy of the (names of the Federal agency and the Repository)." The Borrower agrees to provide the Repository and the (name of the Federal agency) with copies of any resulting publications.

Upon termination of this agreement, the Borrower agrees to properly package and ship or transport the Collection to the Repository.

Either party may terminate this agreement, effective not less than (number of days) days after receipt by the other party of written notice, without further liability to either party.

Signed: (signature of the Repository Official)

Date: (date)

Signed: (signature of the Borrower)

Date: (date)

Attachment A: Inventory of the Objects being Loaned.

Attachment B: Terms and Conditions of the Loan.

## PARTS 80-199 [RESERVED]