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

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

§ 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 (16 U.S.C. 431-433), the Reservoir Salvage Act (16 U.S.C. 469-469c), section 110 of the National Historic Preservation Act (16 U.S.C. 470h-2) 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 memoran-

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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.

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

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

§ 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 (16 U.S.C. 431-433), the Reservoir Salvage Act (16 U.S.C. 469-469c), section 110 of the National Historic Preservation Act (16 U.S.C. 470h-2) 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 memoran-

dum 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. 10, 1990]

§ 79.2 Authority.

(a) The regulations in this part are promulgated pursuant to section 101(a)(7)(A) of the National Historic Preservation Act (16 U.S.C. 470a) which requires that the Secretary of the Interior issue regulations ensuring that significant prehistoric and historic artifacts, and associated records, recovered under the authority of section 110 of that Act (16 U.S.C. 470h-2), the Reservoir Salvage Act (16 U.S.C. 469-469c) and the Archaeological Resources Protection Act (16 U.S.C. 470aa-mm) are deposited in an institution with adequate long-term curatorial capabilities.

(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 (16 U.S.C. 431-433) or the Reservoir Salvage Act (16 U.S.C. 469-469c).

(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. 10, 1990]

§ 79.3 Applicability.

(a) 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 (16 U.S.C. 431-433), the Reservoir Salvage Act (16 U.S.C. 469-469c), section 110 of the National Historic Preservation Act (16 U.S.C. 470h-2) 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.

(1) Material remains, as defined in § 79.4 of this part, that are excavated or removed from a prehistoric or historic resource generally are the property of the landowner.

(2) Data that are generated as a result of a prehistoric or historic resource survey, excavation or other study are recorded in associated records, as defined in § 79.4 of this part. Associated records that are prepared or assembled in connection with a Federal or federally authorized prehistoric or historic resource survey, excavation or other study are the property of the U.S. Government, regardless of the location of the resource.

(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. 10, 1990]

§ 79.4 Definitions.

As used for purposes of this part:

(a) *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.

(1) *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:

(i) Components of structures and features (such as houses, mills, piers, fortifications, raceways, earthworks and mounds);

(ii) Intact or fragmentary artifacts of human manufacture (such as tools, weapons, pottery, basketry and textiles);

(iii) Intact or fragmentary natural objects used by humans (such as rock crystals, feathers and pigments);

(iv) 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);

(v) Organic material (such as vegetable and animal remains, and coprolites);

(vi) Human remains (such as bone, teeth, mummified flesh, burials and cremations);

(vii) Components of petroglyphs, pictographs, intaglios or other works of artistic or symbolic representation;

(viii) Components of shipwrecks (such as pieces of the ship's hull, rigging, armaments, apparel, tackle, contents and cargo);

(ix) 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

(x) Paleontological specimens that are found in direct physical relationship with a prehistoric or historic resource.

(2) *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:

(i) 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 cas-

ette 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);

(ii) 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);

(iii) 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);

(iv) 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

(v) 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. 470), and National Register of Historic Places nomination and determination of eligibility forms).

(b) *Curatorial services*. Providing 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.

(c) *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.

(d) *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.

(e) *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.

(f) *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.

(g) *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.

(h) *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.

(i) *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 consultation with appropriate Indian tribes or other groups.

(j) *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.

(k) *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.

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

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 10, 1990]

§ 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 regula-

tions 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 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;

(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. 10, 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 general-

ly 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. 470aa-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 In-

terior and Insular Affairs of the U.S. House of Representatives.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 10, 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 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;

(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. 10, 1990]

§ 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 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 reli-

gious 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. 470h/h) 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:

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

(1) 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:

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

(1) 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 handling, packing, shipping and insuring material remains, for photocopying associated records, and for other related incidental costs.

§ 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 with 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;

(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 interagency 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. 10, 1990]

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. 10, 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 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 abso-

lutely 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

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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 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]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 7

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 296

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1312

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 229

Protection of Archaeological Resources; Uniform Regulations**AGENCY:** Departments of the Interior and Defense; Forest Service, USDA; and Tennessee Valley Authority.**ACTION:** Proposed rule.

SUMMARY: This proposed rule would amend the sections in the final uniform regulations to implement recent amendments to the Archaeological Resources Protection Act of 1979 ("Act"). Principally, these changes address the lower threshold for felony violations of the Act, public awareness programs, archaeological surveys and schedules, the Secretary of the Interior's report to Congress about Federal archaeology, and improved guidance to Federal land managers about treatments of human remains and directly associated objects from archaeological sites.

DATES: Written comments will be accepted until December 10, 1991.

ADDRESSES: Comments may be mailed to Douglas H. Scovill, Acting Departmental Consulting Archeologist, P.O. Box 37127, room 4318, 1100 L St. NW., Washington, DC 20013-7127.

FOR FURTHER INFORMATION CONTACT: Francis P. McManamon, National Park Service, Department of the Interior, Washington, DC, 202-343-4101; Lars Hanalin, Office of the Solicitor, Department of the Interior, Washington, DC 202-343-7967; Evan L. DeBloois, U.S. Forest Service, Department of Agriculture, Washington, DC, 202-382-9425; Christine Ramsey, Office of the Assistant Secretary for Acquisition and Logistics, Department of Defense, Washington, DC, 202-695-7820; or Maxwell D. Ramsey, Tennessee Valley Authority, Norris, Tennessee, 615-632-1586.

SUPPLEMENTARY INFORMATION**Background**

This proposed rule would amend the uniform regulations to implement changes mandated by 1988 amendments to the Archaeological Resources Protection Act of 1979 ("Act"; Pub. L. 96-95, as amended by Pub. L. 100-555 and Pub. L. 100-588; 93 Stat. 721, 102 Stat. 2778, 102 Stat. 2963; 16 U.S.C. 470a-mm). It was prepared by representatives of the Secretaries of the Interior, Agriculture, and Defense, and the Chairman of the Board of the Tennessee Valley Authority, as directed in section 10(a) of the Act.

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

Section 10(a) of the Act requires the Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, to promulgate uniform regulations as may be appropriate to carry out the purposes of the Act. The uniform regulations are to be promulgated after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1998). The uniform regulations originally were published in 48 FR 1016 on January 6, 1994. The Departments of the Interior, Agriculture, and Defense and the Tennessee Valley Authority now find it appropriate to amend the uniform regulations in five areas.

In addition to publication of regulations to implement the 1988 amendments to the Act, the proposed rule also is intended to provide improved guidance to Federal land managers about treatments for human remains and directly associated material remains from archaeological sites. It is timely to provide this guidance because of the concerns which have been expressed by Native Americans and others, and the need to clarify to Federal land managers the alternatives for resolving concerns which are already available to them. The Secretary of the Interior has stated that there is a need to be responsive to Native American concerns and also to take into account

the scientific, educational, and heritage values of such remains and objects.

The National Park Service has engaged in extensive discussions with a wide range of parties interested in treatments of human remains and directly associated material remains. This proposed rule facilitates the development of more widely accepted policy and guidance on this topic and does not foreclose options in the future development of more comprehensive policy and guidance documents currently underway. Additional guidance to Federal land managers in these amendments to the uniform regulations is one of the means to ensure more appropriate treatment of these remains and objects. One of the objectives of this section is to make it clear that the return to appropriate individuals and groups of human remains and associated objects encountered in an archaeological context is permissible under the existing statute.

The regulatory process for providing appropriate treatments of human remains and associated objects is a fundamental step, and one which can be taken immediately to address some of the concerns identified by Federal land managers, Indian tribes, anthropologists, archeologists, curators, and other interested groups. In addition, the Secretary of the Interior has directed the National Park Service to develop a new Department of the Interior policy statement and to revise an existing departmental guideline to ensure more sensitive treatment of human remains and funerary objects encountered in an archeological context on lands administered by Interior Department bureaus or contained in bureau collections. The revised documents also may serve as models for other public agencies and private organizations.

The five areas amended by this proposed rulemaking include: (1) The lower threshold provided for felony violations of the Act. (2) public awareness programs. (3) archaeological surveys and schedules. (4) the Secretary of the Interior's report, and (5) improved guidance to Federal land managers about treatments for human remains and directly associated material remains. These topics are covered by adding paragraphs to §§ 3, 4, 7, and 13; revising § 19; and adding new §§ 20 and 21.

(1) *Lower felony threshold.* Statutory amendments reduced the figure for distinguishing criminal penalties based upon calculations of damage to archaeological resources caused through violations of the Act. The figure was reduced from \$5,000 to \$500. A new

paragraph in § 4 is proposed to clarify to Federal land managers the criminal penalties provided in the Act as well as incorporate the lower felony threshold in the uniform rules.

(2) *Public awareness programs.* New § 20 discusses the requirements in the Act for Federal land managers to establish programs to increase public awareness about archaeological protection. Federal land managers should incorporate these programs into other current programs where appropriate. The discussion also provides for the Secretary of the Interior to report to Congress on these programs on behalf of Federal agencies.

(3) *Archaeological surveys and schedules.* New § 21 discusses the requirements in the Act for the Departments of the Interior, Agriculture, and Defense and the Tennessee Valley Authority to develop plans and schedules for surveying archaeological resources to determine their nature and extent. It also encourages other Federal land managing agencies to develop such plans and schedules. The surveys should contribute to agency planning and may be conducted to systematically cover areas where the most scientifically valuable archaeological resources are likely to exist.

(4) *The Secretary of the Interior's report.* Section 19 is proposed to be revised to enable the Secretary of the Interior to comprehensively report to Congress on behalf of Federal agencies conducting activities pursuant to the Act. This specifically addresses reporting on Federal agency public awareness programs and systems for documenting violations of the Act.

(5) *Treatments for human remains and directly associated material remains.* Improved guidance to Federal land managers on treatments for human remains and directly associated material remains is contained in paragraphs added to §§ 3, 7, and 13. The discussion provides additional procedures for notifications to Indian tribes and for developing agreements for treating human remains and directly associated material remains differently.

Finally, amendments are proposed to § 1(a) and § 3(i) to incorporate the revised legal references to the Act.

Statement of Effects

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These determinations are based on findings that rulemaking is directed toward Federal resource

management, with no economic impact on the public.

Paperwork Reduction Act

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

List of Subjects

43 CFR Part 7

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

36 CFR Part 206

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

18 CFR Part 1312

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

32 CFR Part 229

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

Amendment Proposal

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

Adoption of the Common Rule

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

DEPARTMENT OF THE INTERIOR

43 CFR Part 7

PART 7—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

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

Authority: Pub. L. 96-486, 90 Stat. 721, as amended; 102 Stat. 2778, 102 Stat. 2983 (16 U.S.C. 470aa-mm) (Sec. 10(a)). Related Authority: Pub. L. 96-208, 94 Stat. 229 (16 U.S.C. 432, 433); Pub. L. 96-423, 74 Stat. 228, 225 (16 U.S.C. 468), as amended, 99 Stat. 174 (1974); Pub. L. 96-366, 90 Stat. 918 (16 U.S.C. 470a-1), as amended, 94 Stat. 204 (1970), 97 Stat. 138 (1973), 90 Stat. 1320 (1976), 92 Stat.

the scientific, educational, and heritage values of such remains and objects.

The National Park Service has engaged in extensive discussions with a wide range of parties interested in treatments of human remains and directly associated material remains. This proposed rule facilitates the development of more widely accepted policy and guidance on this topic and does not foreclose options in the future development of more comprehensive policy and guidance documents currently underway. Additional guidance to Federal land managers in these amendments to the uniform regulations is one of the means to ensure more appropriate treatment of these remains and objects. One of the objectives of this section is to make it clear that the return to appropriate individuals and groups of human remains and associated objects encountered in an archaeological context is permissible under the existing statute.

The regulatory process for providing appropriate treatments of human remains and associated objects is a fundamental step, and one which can be taken immediately to address some of the concerns identified by Federal land managers, Indian tribes, anthropologists, archeologists, curators, and other interested groups. In addition, the Secretary of the Interior has directed the National Park Service to develop a new Department of the Interior policy statement and to revise an existing departmental guideline to ensure more sensitive treatment of human remains and funerary objects encountered in an archaeological context on lands administered by Interior Department bureaus or contained in bureau collections. The revised documents also may serve as models for other public agencies and private organizations.

The five areas amended by this proposed rulemaking include: (1) The lower threshold provided for felony violations of the Act, (2) public awareness programs, (3) archaeological surveys and schedules, (4) the Secretary of the Interior's report, and (5) improved guidance to Federal land managers about treatments for human remains and directly associated material remains. These topics are covered by adding paragraphs to §§ 3, 4, 7, and 13; revising § 19; and adding new §§ 20 and 21.

(1) *Lower felony threshold.* Statutory amendments reduced the figure for distinguishing criminal penalties based upon calculations of damage to archaeological resources caused through violations of the Act. The figure was reduced from \$5,000 to \$500. A new

paragraph in § 4 is proposed to clarify to Federal land managers the criminal penalties provided in the Act as well as incorporate the lower felony threshold in the uniform rules.

(2) *Public awareness programs.* New § 20 discusses the requirements in the Act for Federal land managers to establish programs to increase public awareness about archaeological protection. Federal land managers should incorporate these programs into other current programs where appropriate. The discussion also provides for the Secretary of the Interior to report to Congress on these programs on behalf of Federal agencies.

(3) *Archaeological surveys and schedules.* New § 21 discusses the requirements in the Act for the Departments of the Interior, Agriculture, and Defense and the Tennessee Valley Authority to develop plans and schedules for surveying archaeological resources to determine their nature and extent. It also encourages other Federal land managing agencies to develop such plans and schedules. The surveys should contribute to agency planning and may be conducted to systematically cover areas where the most scientifically valuable archaeological resources are likely to exist.

(4) *The Secretary of the Interior's report.* Section 19 is proposed to be revised to enable the Secretary of the Interior to comprehensively report to Congress on behalf of Federal agencies conducting activities pursuant to the Act. This specifically addresses reporting on Federal agency public awareness programs and systems for documenting violations of the Act.

(5) *Treatments for human remains and directly associated material remains.* Improved guidance to Federal land managers on treatments for human remains and directly associated material remains is contained in paragraphs added to §§ 3, 7, and 13. The discussion provides additional procedures for notifications to Indian tribes and for developing agreements for treating human remains and directly associated material remains differently.

Finally, amendments are proposed to § 1(a) and § 3(i) to incorporate the revised legal references to the Act.

Statement of Effects

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These determinations are based on findings that rulemaking is directed toward Federal resource

management, with no economic impact on the public.

Paperwork Reduction Act

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

List of Subjects

43 CFR Part 7

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

36 CFR Part 206

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

18 CFR Part 1312

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

33 CFR Part 229

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

Amendment Proposal

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

Adoption of the Common Rule

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

DEPARTMENT OF THE INTERIOR

43 CFR Part 7

PART 7—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

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

Authority: Pub. L. 86-66, 90 Stat. 721, as amended, 105 Stat. 2776, 102 Stat. 2883 (16 U.S.C. 470a-mm)(Sec. 10(a)); Related Authority: Pub. L. 86-308, 54 Stat. 226 (16 U.S.C. 432, 433); Pub. L. 86-422, 74 Stat. 228, 231 (16 U.S.C. 468), as amended, 89 Stat. 174 (1974); Pub. L. 89-364, 80 Stat. 915 (16 U.S.C. 470a-1), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 88 Stat. 1330 (1974), 92 Stat.

3467 (1976), 94 Stat. 2897 (1980); Pub. L. 95-341, 92 Stat. 499 (42 U.S.C. 1999).

§ 7.1 and 7.3 (Amended)

2. Sections 7.1(a), the first sentence, and 7.3(i) in 43 CFR part 7 are proposed to be revised to read as set forth at the end of this document.

§ 7.3, 7.4, 7.7, 7.13 (Amended)

3. Sections 7.3(a)(8), 7.4(c), 7.7(b)(4), and 7.13(e) in 43 CFR part 7 are proposed to be added to read as set forth at the end of this document.

4. Section 7.19 in 43 CFR part 7 is proposed to be revised to read as set forth at the end of this document.

5. Sections 7.20 and 7.21 are proposed to be added to 43 CFR part 7 to read as set forth at the end of this document.

Scott Sewell,

Acting Assistant Secretary for Fish and Wildlife and Parks.

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 226

**PART 226—PROTECTION OF
ARCHAEOLOGICAL RESOURCES:
UNIFORM REGULATIONS**

1. The authority citation for 36 CFR part 226 is revised to read as follows:

Authority: Pub. L. 95-66, 93 Stat. 721, as amended, 102 Stat. 2778, 102 Stat. 2983 (18 U.S.C. 470aa-mm)(Sec. 10(a)); Related Authority: Pub. L. 95-208, 34 Stat. 223 (18 U.S.C. 432, 433); Pub. L. 95-423, 74 Stat. 228, 221 (18 U.S.C. 408), as amended, 88 Stat. 174 (1974); Pub. L. 95-465, 89 Stat. 915 (16 U.S.C. 470a-1), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1330 (1976), 92 Stat. 3467 (1978), 94 Stat. 2867 (1980); Pub. L. 95-341, 92 Stat. 499 (42 U.S.C. 1999).

§§ 226.1 and 226.3 (Amended)

2. Sections 226.1(a), the first sentence, and 226.3(i) in 43 CFR part 226 are proposed to be revised to read as set forth at the end of this document.

§§ 226.3, 226.4, 226.7 and 226.13 (Amended)

3. Sections 226.3(a)(8), 226.4(c), 226.7(b)(4), and 226.13(e) in 36 CFR part 226 are proposed to be added to read as set forth at the end of this document.

4. Section 226.19 in 43 CFR part 226 is proposed to be revised to read as set forth at the end of this document.

5. Sections 226.20 and 226.21 are proposed to be added to 36 CFR part 226 to read as set forth at the end of this document.

Dated: June 4, 1981.
George M. Looney,
Associate Chief.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 229

**PART 229—PROTECTION OF
ARCHAEOLOGICAL RESOURCES:
UNIFORM REGULATIONS**

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

Authority: Pub. L. 95-66, 93 Stat. 721, as amended, 102 Stat. 2778, 102 Stat. 2983 (18 U.S.C. 470aa-mm)(Sec. 10(a)); Related Authority: Pub. L. 95-208, 34 Stat. 223 (18 U.S.C. 432, 433); Pub. L. 95-423, 74 Stat. 228, 221 (18 U.S.C. 408), as amended, 88 Stat. 174 (1974); Pub. L. 95-465, 89 Stat. 915 (16 U.S.C. 470a-1), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1330 (1976), 92 Stat. 3467 (1978), 94 Stat. 2867 (1980); Pub. L. 95-341, 92 Stat. 499 (42 U.S.C. 1999).

§§ 229.1 and 229.3 (Amended)

2. Sections 229.1(a), the first sentence and 229.3(i) in 32 CFR part 229 are proposed to be revised to read as set forth at the end of this document.

§§ 229.3, 229.4, 229.7, and 229.13 (Amended)

3. Sections 229.3(a)(8), 229.4(c), 229.7(b)(4), and 229.13(e) in 32 CFR part 229 are proposed to be amended by adding paragraphs to read as set forth at the end of this document.

4. Section 229.19 in 32 CFR part 229 is proposed to be revised to read as set forth at the end of this document.

5. Sections 229.20 and 229.21 are proposed to be added to 32 CFR part 229 to read as set forth at the end of this document.

Patricia Meenan,

*CSD Federal Register Liaison Officer,
Department of Defense.*

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1312

**PART 1312—PROTECTION OF
ARCHAEOLOGICAL RESOURCES:
UNIFORM REGULATIONS**

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

Authority: Pub. L. 95-66, 93 Stat. 721, as amended, 102 Stat. 2778, 102 Stat. 2983 (18 U.S.C. 470aa-mm)(Sec. 10(a)); Related Authority: Pub. L. 95-208, 34 Stat. 223 (18 U.S.C. 432, 433); Pub. L. 95-423, 74 Stat. 228, 221 (18 U.S.C. 408), as amended, 88 Stat. 174 (1974); Pub. L. 95-465, 89 Stat. 915 (16 U.S.C. 470a-1), as amended, 88 Stat. 204 (1970), 87

Stat. 139 (1973), 90 Stat. 1330 (1976), 92 Stat. 3467 (1978), 94 Stat. 2867 (1980); Pub. L. 95-341, 92 Stat. 499 (42 U.S.C. 1999).

§§ 1312.1 and 1312.3 (Amended)

2. Sections 1312.1(a), the first sentence, and 1312.3(i) in 18 CFR part 1312 are proposed to be revised to read as set forth at the end of this document.

§§ 1312.3, 1312.4, 1312.7, and 1312.13 (Amended)

3. Sections 1312.3(a)(8), § 1312.4(c), § 1312.7(b)(4), and § 1312.13(e) in 18 CFR part 1312 are proposed to be added to read as set forth at the end of this document.

4. Section 1312.19 in 18 CFR part 1312 is proposed to be revised to read as set forth at the end of this document.

5. Sections 1312.20 and 1312.21 are proposed to be added to 18 CFR part 1312 to read as set forth at the end of this document.

Marvin T. Runyan,

Chairman, Tennessee Valley Authority.

Text of the Common Rule

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

§ —1 Purpose.

(a) The regulations in this part implement provisions of the Archaeological Resources Protection Act of 1979, as amended (18 U.S.C. 470aa-mm) by establishing the uniform definitions, standards, and procedures to be followed by all Federal land managers in providing protection for archaeological resources located on public lands and Indian lands of the United States.

§ —3 Definitions.

(b) The Federal land manager may determine that particular human remains and directly associated material remains that have been excavated and/or removed from public lands are to be treated differently from other archaeological resources in accordance with § —13(e).

(i) Act means the Archaeological Resources Protection Act of 1979 (18 U.S.C. 470aa-mm).

§ —4 Prohibited acts.

(c) Section 6(d) of the Act establishes criminal penalties for violations of the Act and provides that any person who knowingly violates, or consents, procures, solicits, or employs any other

person to violate any prohibition contained in section 6(a), (b), or (c) of the Act shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both: *Provided, however,* That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$500, such person shall be fined not more than \$10,000 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than \$100,000, or imprisoned not more than five years, or both.

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

(b) . . .

(4) The Federal land manager should also seek to determine, in consultation with official representatives of Indian tribes or other Native American groups, what circumstances should be the subject of special notification to the tribe or group after a permit has been issued. Circumstances calling for notification, such as discovery of human remains, need not be limited to areas identified as sites of religious or cultural importance. When circumstances for special notification have been determined by the Federal land manager, the Federal land manager shall include a requirement in terms and conditions of permits, under § —.9(c), for permittees to notify the Federal land manager immediately upon the occurrence of such circumstances. Following the permittee's notification, the Federal land manager shall notify and consult with the tribe or group as appropriate.

§ —.13 Custody of archaeological resources.

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, the Federal land manager may determine that particular human remains and directly associated material remains that have been excavated and/or removed from public lands need not be preserved and maintained in a scientific or educational institution. The Federal land manager's determination shall be made pursuant to paragraphs (e)(1) through (e)(3) of this section.

(1) The Federal land manager shall consult with official representatives of Indian tribes or groups identified or consulted with pursuant to § —.7(b) of this part and may undertake similar

consultation with other appropriate interested parties, including archaeological authorities.

(2) In reaching such a determination, the Federal land manager shall consider the relationship of the Indian tribe, group, or individual with the remains; the religious or cultural importance of the remains to the Indian tribe, group, or individual; the importance of the remains as a source of information about the past; and when applicable the manner of disposition of the remains proposed by the Indian tribe, group, or individual.

(3) The Federal land manager shall document any such determination and its basis.

(4) If such a determination to give custody of remains to an Indian tribe, group, or individual is made, the manner of disposition shall be specified in a written agreement, defining appropriate terms and conditions, between the Federal land manager and the Indian tribe, group, or individual. Failure of the Indian tribe, group, or individual to comply with the terms of such agreement will result in its cancellation and return of the remains to the Federal land manager.

(5) The Federal land manager may not make such a determination regarding any remains during the time they are secured as evidence in a criminal proceeding.

§ —.19 Report.

(a) Each Federal land manager, when requested by the Secretary of the Interior, shall submit such information as is necessary to enable the Secretary to comply with section 13 of the Act and comprehensively report on activities carried out under provisions of the Act.

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

(c) The comprehensive report by the Secretary of the Interior also shall include information on the activities carried out under section 14 of the Act. Each Federal land manager, when requested by the Secretary, shall submit any available information on surveys and schedules and suspected violations

in order to enable the Secretary to summarize in the comprehensive report actions taken pursuant to section 14 of the Act.

§ —.20 Public Awareness Programs.

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

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

§ —.21 Surveys and schedules.

(a) The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall develop plans for surveying lands under each agency's control to determine the nature and extent of archaeological resources - pursuant to section 14(a) of the Act. Such activities should be consistent with Federal agency planning policies and other historic preservation program responsibilities required by 16 U.S.C. 470 *et seq.* Survey plans prepared under this section shall be designed to comply with the purposes of the Act regarding the protection of archaeological resources.

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

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

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

management of archaeological resources.

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

**[FR Doc. 91-21721 Filed 9-10-91; 9:46 am]
BILLING CODE 4310-79-01, 3010-11-01, 3010-07-01,
5120-01-01**

Sec.

- 3.14 Examinations by field officer.
- 3.15 Persons who may apprehend or cause to be arrested.
- 3.16 Seizure.
- 3.17 Preservation of collection.

AUTHORITY: Secs. 3, 4, 34 Stat. 225, as amended; 16 U.S.C. 432.

SOURCE: 19 FR 8838, Dec. 23, 1954, unless otherwise noted.

§ 3.1 Jurisdiction.

Jurisdiction over ruins, archeological sites, historic and prehistoric monuments and structures, objects of antiquity, historic landmarks, and other objects of historic and scientific interest, shall be exercised under the act by the respective Departments as follows:

(a) By the Secretary of Agriculture over lands within the exterior limits of forest reserves;

(b) By the Secretary of the Army over lands within the exterior limits of military reservations;

(c) By the Secretary of the Interior over all other lands owned or controlled by the Government of the United States, *Provided*, The Secretaries of the Army and Agriculture may by agreement cooperate with the Secretary of the Interior in the supervision of such monuments and objects covered by the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431-433), as may be located on lands near or adjacent to forest reserves and military reservations, respectively.

§ 3.2 Limitation on permits granted.

No permit for the removal of any ancient monument or structure which can be permanently preserved under the control of the United States in situ, and remain an object of interest, shall be granted.

§ 3.3 Permits; to whom granted.

Permits for the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity will be granted, by the respective Secretaries having jurisdiction, to reputable museums, universities, colleges, or other recognized scientific or educational institutions, or to their duly authorized agents.

PART 3—PRESERVATION OF AMERICAN ANTIQUITIES

Sec.

- 3.1 Jurisdiction.
- 3.2 Limitation on permits granted.
- 3.3 Permits; to whom granted.
- 3.4 No exclusive permits granted.
- 3.5 Application.
- 3.6 Time limit of permits granted.
- 3.7 Permit to become void.
- 3.8 Applications referred for recommendation.
- 3.9 Form and reference of permit.
- 3.10 Reports.
- 3.11 Restoration of lands.
- 3.12 Termination.
- 3.13 Report of field officer.

§ 3.4 No exclusive permits granted.

No exclusive permits shall be granted for a larger area than the applicant can reasonably be expected to explore fully and systematically within the time limit named in the permit.

§ 3.5 Application.

Each application for a permit should be filed with the Secretary having jurisdiction, and must be accompanied by a definite outline of the proposed work, indicating the name of the institution making the request, the date proposed for beginning the field work, the length of time proposed to be devoted to it, and the person who will have immediate charge of the work. The application must also contain an exact statement of the character of the work, whether examination, excavation, or gathering, and the public museum in which the collections made under the permit are to be permanently preserved. The application must be accompanied by a sketch plan or description of the particular site or area to be examined, excavated, or searched, so definite that it can be located on the map with reasonable accuracy.

§ 3.6 Time limit of permits granted.

No permit will be granted for a period of more than 3 years, but if the work has been diligently prosecuted under the permit, the time may be extended for proper cause upon application.

§ 3.7 Permit to become void.

Failure to begin work under a permit within 6 months after it is granted, or failure to diligently prosecute such work after it has been begun, shall make the permit void without any order or proceeding by the Secretary having jurisdiction.

§ 3.8 Applications referred for recommendation.

Applications for permits shall be referred to the Smithsonian Institution for recommendation.

§ 3.9 Form and reference of permit.

Every permit shall be in writing and copies shall be transmitted to the

Smithsonian Institution and the field officer in charge of the land involved. The permittee will be furnished with a copy of the regulations in this part.

§ 3.10 Reports.

At the close of each season's field work the permittee shall report in duplicate to the Smithsonian Institution, in such form as its secretary may prescribe, and shall prepare in duplicate a catalogue of the collections and of the photographs made during the season, indicating therein such material, if any, as may be available for exchange.

§ 3.11 Restoration of lands.

Institutions and persons receiving permits for excavation shall, after the completion of the work, restore the lands upon which they have worked to their customary condition, to the satisfaction of the field officer in charge.

§ 3.12 Termination.

All permits shall be terminable at the discretion of the Secretary having jurisdiction.

§ 3.13 Report of field officer.

The field officer in charge of land owned or controlled by the Government of the United States shall, from time to time, inquire and report as to the existence, on or near such lands, of ruins and archaeological sites, historic or prehistoric ruins or monuments, objects of antiquity, historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.

§ 3.14 Examinations by field officer.

The field officer in charge may at all times examine the permit of any person or institution claiming privileges granted in accordance with the act and this part, and may fully examine all work done under such permit.

§ 3.15 Persons who may apprehend or cause to be arrested.

All persons duly authorized by the Secretaries of Agriculture, Army and Interior may apprehend or cause to be arrested, as provided in the Act of February 6, 1905 (33 Stat. 700) any person or persons who appropriate, ex-

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cavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity on lands under the supervision of the Secretaries of Agriculture, Army, and Interior, respectively.

§ 2.16 Seizure.

Any object of antiquity taken, or collection made, on lands owned or controlled by the United States, without a permit, as prescribed by the act and this part, or there taken or made, contrary to the terms of the permit, or contrary to the act and this part, may be seized wherever found and at any time, by the proper field officer or by any person duly authorized by the Secretary having jurisdiction, and disposed of as the Secretary shall determine, by deposit in the proper national depository or otherwise.

§ 2.17 Preservation of collection.

Every collection made under the authority of the act and of this part shall be preserved in the public museum designated in the permit and shall be accessible to the public. No such collection shall be removed from such public museum without the written authority of the Secretary of the Smithsonian Institution, and then only to another public museum, where it shall be accessible to the public; and when any public museum, which is a depository of any collection made under the provisions of the act and this part, shall cease to exist, every such collection in such public museum shall thereupon revert to the national collections and be placed in the proper national depository.

**PART 2—RESOURCE PROTECTION,
PUBLIC USE AND RECREATION**

- Sec.
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AUTHORITY: 16 U.S.C. 1, 3, 9a, 462(k).

SOURCE: 48 FR 30282, June 30, 1983, unless otherwise noted.

§ 2.1 Preservation of natural, cultural and archeological resources.

(a) Except as otherwise provided in this chapter, the following is prohibited:

(1) Possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state:

(i) Living or dead wildlife or fish, or the parts or products thereof, such as antlers or nests.

(ii) Plants or the parts or products thereof.

(iii) Nonfossilized and fossilized paleontological specimens, cultural or ar-

cheological resources, or the parts thereof.

(iv) A mineral resource or cave formation or the parts thereof.

(2) Introducing wildlife, fish or plants, including their reproductive bodies, into a park area ecosystem.

(3) Tossing, throwing or rolling rocks or other items inside caves or caverns, into valleys, canyons, or caverns, down hillsides or mountainsides, or into thermal features.

(4) Using or possessing wood gathered from within the park area: *Provided, however,* That the superintendent may designate areas where dead wood on the ground may be collected for use as fuel for campfires within the park area.

(5) Walking on, climbing, entering, ascending, descending, or traversing an archeological or cultural resource, monument, or statue, except in designated areas and under conditions established by the superintendent.

(6) Possessing, destroying, injuring, defacing, removing, digging, or disturbing a structure or its furnishing or fixtures, or other cultural or archeological resources.

(7) Possessing or using a mineral or metal detector, magnetometer, side scan sonar, other metal detecting device, or subbottom profiler.

This paragraph does not apply to:

(i) A device broken down and stored or packed to prevent its use while in park areas.

(ii) Electronic equipment used primarily for the navigation and safe operation of boats and aircraft.

(iii) Mineral or metal detectors, magnetometers, or subbottom profilers used for authorized scientific, mining, or administrative activities.

(b) The superintendent may restrict hiking or pedestrian use to a designated trail or walkway system pursuant to §§ 1.5 and 1.7. Leaving a trail or walkway to shortcut between portions of the same trail or walkway, or to shortcut to an adjacent trail or walkway in violation of designated restrictions is prohibited.

(c)(1) The superintendent may designate certain fruits, berries, nuts, or unoccupied seashells which may be gathered by hand for personal use or con-

sumption upon a written determination that the gathering or consumption will not adversely affect park wildlife, the reproductive potential of a plant species, or otherwise adversely affect park resources.

(2) The superintendent may:

(i) Limit the size and quantity of the natural products that may be gathered or possessed for this purpose; or

(ii) Limit the location where natural products may be gathered; or

(iii) Restrict the possession and consumption of natural products to the park area.

(3) The following are prohibited:

(i) Gathering or possessing undesignated natural products.

(ii) Gathering or possessing natural products in violation of the size or quantity limits designated by the superintendent.

(iii) Unauthorized removal of natural products from the park area.

(iv) Gathering natural products outside of designated areas.

(v) Sale or commercial use of natural products.

(d) This section shall not be construed as authorizing the taking, use or possession of fish, wildlife or plants for ceremonial or religious purposes, except where specifically authorized by Federal statutory law, treaty rights, or in accordance with § 2.2 or § 2.3.

NOTE: Regulations concerning archeological resources are found in 43 CFR Part 3.

§ 2.2 Wildlife protection.

(a) The following are prohibited:

(1) The taking of wildlife, except by authorized hunting and trapping activities conducted in accordance with paragraph (b) of this section.

(2) The feeding, touching, teasing, frightening or intentional disturbing of wildlife nesting, breeding or other activities.

(3) Possessing unlawfully taken wildlife or portions thereof.

(b) *Hunting and trapping.*

(1) Hunting shall be allowed in park areas where such activity is specifically mandated by Federal statutory law.

(2) Hunting may be allowed in park areas where such activity is specifically authorized as a discretionary activity under Federal statutory law if the

superintendent determines that such activity is consistent with public safety and enjoyment, and sound resource management principles. Such hunting shall be allowed pursuant to special regulations.

(3) Trapping shall be allowed in park areas where such activity is specifically mandated by Federal statutory law.

(4) Where hunting or trapping or both are authorized, such activities shall be conducted in accordance with Federal law and the laws of the State within whose exterior boundaries a park area or a portion thereof is located. Nonconflicting State laws are adopted as a part of these regulations.

(c) Except in emergencies or in areas under the exclusive jurisdiction of the United States, the superintendent shall consult with appropriate State agencies before invoking the authority of § 1.5 for the purpose of restricting hunting and trapping or closing park areas to the taking of wildlife where such activities are mandated or authorized by Federal statutory law.

(d) The superintendent may establish conditions and procedures for transporting lawfully taken wildlife through the park area. Violation of these conditions and procedures is prohibited.

(e) The Superintendent may designate all or portions of a park area as closed to the viewing of wildlife with an artificial light. Use of an artificial light for purposes of viewing wildlife in closed areas is prohibited.

(f) Authorized persons may check hunting and trapping licenses and permits; inspect weapons, traps and hunting and trapping gear for compliance with equipment restrictions; and inspect wildlife that has been taken for compliance with species, size and other taking restrictions.

(g) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 49 FR 18450, Apr. 30, 1984; 51 FR 33264, Sept. 19, 1986; 52 FR 35240, Sept. 18, 1987]

§ 2.3 Fishing.

(a) Except in designated areas or as provided in this section, fishing shall be in accordance with the laws and regulations of the State within whose exterior boundaries a park area or portion thereof is located. Nonconflicting State laws are adopted as a part of these regulations.

(b) State fishing licenses are not required in Big Bend, Crater Lake, Denali, Glacier, Isle Royale (inland waters only), Mammoth Cave, Mount Rainier, Olympic and Yellowstone National Parks.

(c) Except in emergencies or in areas under the exclusive jurisdiction of the United States, the superintendent shall consult with appropriate State agencies before invoking the authority of § 1.5 for the purpose of restricting or closing park areas to the taking of fish.

(d) The following are prohibited:

(1) Fishing in fresh waters in any manner other than by hook and line, with the rod or line being closely attended.

(2) Possessing or using as bait for fishing in fresh waters, live or dead minnows or other bait fish, amphibians, nonpreserved fish eggs or fish roe, except in designated waters. Waters which may be so designated shall be limited to those where non-native species are already established, scientific data indicate that the introduction of additional numbers or types of non-native species would not impact populations of native species adversely, and park management plans do not call for elimination of non-native species.

(3) Chumming or placing preserved or fresh fish eggs, fish roe, food, fish parts, chemicals, or other foreign substances in fresh waters for the purpose of feeding or attracting fish in order that they may be taken.

(4) Commercial fishing, except where specifically authorized by Federal statutory law.

(5) Fishing by the use of drugs, poisons, explosives, or electricity.

(6) Digging for bait, except in privately owned lands.

(7) Failing to return carefully and immediately to the water from which it was taken a fish that does not meet

size or species restrictions or that the person chooses not to keep. Fish so released shall not be included in the catch or possession limit: *Provided*, That at the time of catching the person did not possess the legal limit of fish.

(8) Fishing from motor road bridges, from or within 200 feet of a public raft or float designated for water sports, or within the limits of locations designated as swimming beaches, surfing areas, or public boat docks, except in designated areas.

(e) Except as otherwise designated, fishing with a net, spear, or weapon in the salt waters of park areas shall be in accordance with State law.

(f) Authorized persons may check fishing licenses and permits; inspect creels, tackle and fishing gear for compliance with equipment restrictions; and inspect fish that have been taken for compliance with species, size and other taking restrictions.

(g) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 52 FR 35240, Sept. 18, 1987]

§ 2.4 Weapons, traps and nets.

(a) (1) Except as otherwise provided in this section and Parts 7 (special regulations) and 13 (Alaska regulations), the following are prohibited:

- (i) Possessing a weapon, trap or net
- (ii) Carrying a weapon, trap or net
- (iii) Using a weapon, trap or net

(2) Weapons, traps or nets may be carried, possessed or used:

(i) At designated times and locations in park areas where:

(A) The taking of wildlife is authorized by law in accordance with § 2.2 of this chapter;

(B) The taking of fish is authorized by law in accordance with § 2.3 of this part.

(ii) When used for target practice at designated times and at facilities or locations designed and constructed specifically for this purpose and designated pursuant to special regulations.

(iii) Within a residential dwelling. For purposes of this subparagraph

only, the term "residential dwelling" means a fixed housing structure which is either the principal residence of its occupants, or is occupied on a regular and recurring basis by its occupants as an alternate residence or vacation home.

(3) Traps, nets and unloaded weapons may be possessed within a temporary lodging or mechanical mode of conveyance when such implements are rendered temporarily inoperable or are packed, cased or stored in a manner that will prevent their ready use.

(b) Carrying or possessing a loaded weapon in a motor vehicle, vessel or other mode of transportation is prohibited, except that carrying or possessing a loaded weapon in a vessel is allowed when such vessel is not being propelled by machinery and is used as a shooting platform in accordance with Federal and State law.

(c) The use of a weapon, trap or net in a manner that endangers persons or property is prohibited.

(d) The superintendent may issue a permit to carry or possess a weapon, trap or net under the following circumstances:

(1) When necessary to support research activities conducted in accordance with § 2.5.

(2) To carry firearms for persons in charge of pack trains or saddle horses for emergency use.

(3) For employees, agents or cooperating officials in the performance of their official duties.

(4) To provide access to otherwise inaccessible lands or waters contiguous to a park area when other means of access are otherwise impracticable or impossible.

Violation of the terms and conditions of a permit issued pursuant to this paragraph is prohibited and may result in the suspension or revocation of the permit.

(e) Authorized Federal, State and local law enforcement officers may carry firearms in the performance of their official duties.

(f) The carrying or possessing of a weapon, trap or net in violation of applicable Federal and State laws is prohibited.

(g) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 49 FR 18450, Apr. 30, 1984; 52 FR 35240, Sept. 18, 1987]

§ 2.5 Research specimens.

(a) Taking plants, fish, wildlife, rocks or minerals except in accordance with other regulations of this chapter or pursuant to the terms and conditions of a specimen collection permit, is prohibited.

(b) A specimen collection permit may be issued only to an official representative of a reputable scientific or educational institution or a State or Federal agency for the purpose of research, baseline inventories, monitoring, impact analysis, group study, or museum display when the superintendent determines that the collection is necessary to the stated scientific or resource management goals of the institution or agency and that all applicable Federal and State permits have been acquired, and that the intended use of the specimens and their final disposal is in accordance with applicable law and Federal administrative policies. A permit shall not be issued if removal of the specimen would result in damage to other natural or cultural resources, affect adversely environmental or scenic values, or if the specimen is readily available outside of the park area.

(c) A permit to take an endangered or threatened species listed pursuant to the Endangered Species Act, or similarly identified by the States shall not be issued unless the species cannot be obtained outside of the park area and the primary purpose of the collection is to enhance the protection or management of the species.

(d) In park areas where the enabling legislation authorizes the killing of wildlife, a permit which authorizes the killing of plants, fish or wildlife may be issued only when the superintendent approves a written research proposal and determines that the collection will benefit science or has the po

tential for improving the management and protection of park resources.

(e) In park areas where enabling legislation does not expressly prohibit the killing of wildlife, a permit authorizing the killing of plants, fish or wildlife may be issued only when the superintendent approves a written research proposal and determines that the collection will not result in the derogation of the values or purposes for which the park area was established and has the potential for conserving and perpetuating the species subject to collection.

(f) In park areas where the enabling legislation prohibits the killing of wildlife, issuance of a collecting permit for wildlife or fish or plants, is prohibited.

(g) Specimen collection permits shall contain the following conditions:

(1) Specimens placed in displays or collections will bear official National Park Service museum labels and their catalog numbers will be registered in the National Park Service National Catalog.

(2) Specimens and data derived from consumed specimens will be made available to the public and reports and publications resulting from a research specimen collection permit shall be filed with the superintendent.

(h) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

NOTE: The Secretary's regulations on the preservation, use, and management of fish and wildlife are found in 43 CFR Part 24. Regulations concerning archeological resources are found in 43 CFR Part 3.

§ 2.10 Camping and food storage.

(a) The superintendent may require permits, designate sites or areas, and establish conditions for camping.

(b) The following are prohibited:

(1) Digging or leveling the ground at a campsite.

(2) Leaving camping equipment, site alterations, or refuse after departing from the campsite.

(3) Camping within 25 feet of a water hydrant or main road, or within 100 feet of a flowing stream, river or body of water, except as designated.

(4) Creating or sustaining unreasonable noise between the hours of 10:00 p.m. and 6:00 a.m., considering the nature and purpose of the actor's conduct, impact on park users, location, and other factors which would govern the conduct of a reasonably prudent person under the circumstances.

(5) The installation of permanent camping facilities.

(6) Displaying wildlife carcasses or other remains or parts thereof, except when taken pursuant to § 2.2.

(7) Connecting to a utility system, except as designated.

(8) Failing to obtain a permit, where required.

(9) Violating conditions which may be established by the superintendent.

(10) Camping outside of designated sites or areas.

(c) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

(d) Food storage. The superintendent may designate all or a portion of a park area where food, lawfully taken fish or wildlife, garbage, and equipment used to cook or store food must be kept sealed in a vehicle, or in a camping unit that is constructed of solid, non-pliable material, or suspended at least 10 feet above the ground and 4 feet horizontally from a post, tree trunk, or other object, or shall be stored as otherwise designated. Violation of this restriction is prohibited. This restriction does not apply to food that is being transported, consumed, or prepared for consumption.

§ 2.11 Picnicking.

Picnicking is allowed, except in designated areas closed in accordance with § 1.5. The superintendent may establish conditions for picnicking in areas where picnicking is allowed. Picnicking in violation of established conditions is prohibited.

§ 2.12 Audio disturbances.

(a) The following are prohibited:

(1) Operating motorized equipment or machinery such as an electric generating plant, motor vehicle, motorized toy, or an audio device, such as a

radio, television set, tape deck or musical instrument, in a manner: (i) That exceeds a noise level of 60 decibels measured on the A-weighted scale at 50 feet; or, if below that level, nevertheless; (ii) makes noise which is unreasonable, considering the nature and purpose of the actor's conduct, location, time of day or night, purpose for which the area was established, impact on park users, and other factors that would govern the conduct of a reasonably prudent person under the circumstances.

(2) In developed areas, operating a power saw, except pursuant to the terms and conditions of a permit.

(3) In nondeveloped areas, operating any type of portable motor or engine, or device powered by a portable motor or engine, except pursuant to the terms and conditions of a permit. This paragraph does not apply to vessels in areas where motor boating is allowed.

(4) Operating a public address system, except in connection with a public gathering or special event for which a permit has been issued pursuant to § 2.50 or § 2.51.

(b) Violation of the terms and conditions of a permit issued in accordance with section is prohibited and may result in the suspension or revocation of the permit.

§ 2.13 Fires.

(a) The following are prohibited:

(1) Lighting or maintaining a fire, except in designated areas or receptacles and under conditions that may be established by the superintendent.

(2) Using stoves or lanterns in violation of established restrictions.

(3) Lighting, tending, or using a fire, stove or lantern in a manner that threatens, causes damage to, or results in the burning of property, real property or park resources, or creates a public safety hazard.

(4) Leaving a fire unattended.

(5) Throwing or discarding lighted or smoldering material in a manner that threatens, causes damage to, or results in the burning of property or park resources, or creates a public safety hazard.

(b) Fires shall be extinguished upon termination of use and in accordance with such conditions as may be estab-

lished by the superintendent. Violation of these conditions is prohibited.

(c) During periods of high fire danger, the superintendent may close all or a portion of a park area to the lighting or maintaining of a fire.

(d) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 52 FR 35240, Sept. 18, 1987]

§ 2.14 Sanitation and refuse.

(a) The following are prohibited:

(1) Disposing of refuse in other than refuse receptacles.

(2) Using government refuse receptacles or other refuse facilities for dumping household, commercial, or industrial refuse, brought as such from private or municipal property, except in accordance with conditions established by the superintendent.

(3) Depositing refuse in the plumbing fixtures or vaults of a toilet facility.

(4) Draining refuse from a trailer or other vehicle, except in facilities provided for such purpose.

(5) Bathing, or washing food, clothing, dishes, or other property at public water outlets, fixtures or pools, except at those designated for such purpose.

(6) Polluting or contaminating park area waters or water courses.

(7) Disposing of fish remains on land, or in waters within 200 feet of boat docks or designated swimming beaches, or within developed areas, except as otherwise designated.

(8) In developed areas, the disposal of human body waste, except at designated locations or in fixtures provided for that purpose.

(9) In nondeveloped areas, the disposal of human body waste within 100 feet of a water source, high water mark of a body of water, or a campsite, or within sight of a trail, except as otherwise designated.

(b) The superintendent may establish conditions concerning the disposal, containerization, or carryout of human body waste. Violation of these conditions is prohibited.

§ 2.15 Pets.

(a) The following are prohibited:

(1) Possessing a pet in a public building, public transportation vehicle, or location designated as a swimming beach, or any structure or area closed to the possession of pets by the superintendent. This subparagraph shall not apply to guide dogs accompanying visually impaired persons or hearing ear dogs accompanying hearing-impaired persons.

(2) Failing to crate, cage, restrain on a leash which shall not exceed six feet in length, or otherwise physically confine a pet at all times.

(3) Leaving a pet unattended and tied to an object, except in designated areas or under conditions which may be established by the superintendent.

(4) Allowing a pet to make noise that is unreasonable considering location, time of day or night, impact on park users, and other relevant factors, or that frightens wildlife by barking, howling, or making other noise.

(5) Failing to comply with pet excrement disposal conditions which may be established by the superintendent.

(b) In park areas where hunting is allowed, dogs may be used in support of these activities in accordance with applicable Federal and State laws and in accordance with conditions which may be established by the superintendent.

(c) Pets or feral animals that are running-at-large and observed by an authorized person in the act of killing, injuring or molesting humans, livestock, or wildlife may be destroyed if necessary for public safety or protection of wildlife, livestock, or other park resources.

(d) Pets running-at-large may be impounded, and the owner may be charged reasonable fees for kennel or boarding costs, feed, veterinarian fees, transportation costs, and disposal. An impounded pet may be put up for adoption or otherwise disposed of after being held for 72 hours from the time the owner was notified of capture or 72 hours from the time of capture if the owner is unknown.

(e) Pets may be kept by residents of park areas consistent with the provisions of this section and in accordance with conditions which may be estab-

lished by the superintendent. Violation of these conditions is prohibited.

(f) This section does not apply to dogs used by authorized Federal, State and local law enforcement officers in the performance of their official duties.

§ 2.16 Horses and pack animals.

The following are prohibited:

(a) The use of animals other than those designated as "pack animals" for purposes of transporting equipment.

(b) The use of horses or pack animals outside of trails, routes or areas designated for their use.

(c) The use of horses or pack animals on a park road, except: (1) Where such travel is necessary to cross to or from designated trails, or areas, or privately owned property, and no alternative trails or routes have been designated; or (2) when the road has been closed to motor vehicles.

(d) Free-trailing or loose-herding of horses or pack animals on trails, except as designated.

(e) Allowing horses or pack animals to proceed in excess of a slow walk when passing in the immediate vicinity of persons on foot or bicycle.

(f) Obstructing a trail, or making an unreasonable noise or gesture, considering the nature and purpose of the actor's conduct, and other factors that would govern the conduct of a reasonably prudent person, while horses or pack animals are passing.

(g) Violation of conditions which may be established by the superintendent concerning the use of horses or pack animals.

§ 2.17 Aircraft and air delivery.

(a) The following are prohibited:

(1) Operating or using aircraft on lands or waters other than at locations designated pursuant to special regulations.

(2) Where a water surface is designated pursuant to paragraph (a)(1) of this section, operating or using aircraft under power on the water within 500 feet of locations designated as swimming beaches, boat docks, piers, or ramps, except as otherwise designated.

(3) Delivering or retrieving a person or object by parachute, helicopter, or other airborne means, except in emergencies involving public safety or serious property loss, or pursuant to the terms and conditions of a permit.

(b) The provisions of this section, other than paragraph (c) of this section, shall not be applicable to official business of the Federal government, or emergency rescues in accordance with the directions of the superintendent, or to landings due to circumstances beyond the control of the operator.

(c)(1) Except as provided in paragraph (c)(3) of this section, the owners of a downed aircraft shall remove the aircraft and all component parts thereof in accordance with procedures established by the superintendent. In establishing removal procedures, the superintendent is authorized to: (i) Establish a reasonable date by which aircraft removal operations must be complete; (ii) determine times and means of access to and from the downed aircraft; and (iii) specify the manner or method of removal.

(2) Failure to comply with procedures and conditions established under paragraph (c)(1) of this section is prohibited.

(3) The superintendent may waive the requirements of paragraph (c)(1) of this section or prohibit the removal of downed aircraft, upon a determination that: (i) The removal of downed aircraft would constitute an unacceptable risk to human life; (ii) the removal of a downed aircraft would result in extensive resource damage; or (iii) the removal of a downed aircraft is impracticable or impossible.

(d) The use of aircraft shall be in accordance with regulations of the Federal Aviation Administration. Such regulations are adopted as a part of these regulations.

(e) The operation or use of hovercraft is prohibited.

(f) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

§ 2.18 Snowmobiles.

(a) Notwithstanding the definition of vehicle set forth in § 1.4 of this chapter, the provisions of §§ 4.4, 4.12, 4.13, 4.14, 4.20, 4.21, 4.22 and 4.23 of this chapter apply to the operation of a snowmobile.

(b) Except as otherwise provided in this section, the laws of the State in which the exterior boundaries of a park area or a portion thereof is located shall govern equipment standards and the operation of snowmobiles. Nonconflicting State laws are adopted as a part of these regulations.

(c) The use of snowmobiles is prohibited, except on designated routes and water surfaces that are used by motor vehicles or motorboats during other seasons. Routes and water surfaces designated for snowmobile use shall be promulgated as special regulations. Snowmobiles are prohibited except where designated and only when their use is consistent with the park's natural, cultural, scenic and aesthetic values, safety considerations, park management objectives, and will not disturb wildlife or damage park resources.

(d) The following are prohibited:

(1) Operating a snowmobile that makes excessive noise. Excessive noise for snowmobiles manufactured after July 1, 1975 is a level of total snowmobile noise that exceeds 78 decibels measured on the A-weighted scale measured at 50 feet. Snowmobiles manufactured between July 1, 1973 and July 1, 1975 shall not register more than 82 decibels on the A-weighted scale at 50 feet. Snowmobiles manufactured prior to July 1, 1973 shall not register more than 86 decibels on the A-weighted scale at 50 feet. All decibel measurements shall be based on snowmobile operation at or near full throttle.

(2) Operating a snowmobile without a lighted white headlamp and red tail-light from one half-hour after sunset to one half-hour before sunrise, or when persons and vehicles are not clearly visible for a distance of 500 feet.

(3) Operating a snowmobile that does not have brakes in good working order.

(4) Racing, or operating a snowmobile in excess of 45 mph, unless restricted in accordance with § 4.22 of this chapter or otherwise designated.

(e) Except where State law prescribes a different minimum age or qualification for the person providing direct supervision and accompaniment, the following are prohibited:

(1) The operation of a snowmobile by a person under 16 years of age unless accompanied and supervised within line of sight by a responsible person 21 years of age or older;

(2) The operation of a snowmobile by a person under 12 years of age, unless accompanied on the same machine by a responsible person 21 years of age or older; or

(3) The supervision by one person of the operation of snowmobiles by more than one person under 16 years of age.

(48 FR 30282, June 30, 1983, as amended at 52 FR 10683, Apr. 2, 1987)

§ 2.19 Winter activities.

(a) Skiing, snowshoeing, ice skating, sledding, innertubing, tobogganing and similar winter sports are prohibited on park roads and in parking areas open to motor vehicle traffic, except as otherwise designated.

(b) The towing of persons on skis, sleds, or other sliding devices by motor vehicle or snowmobile is prohibited, except in designated areas or routes. This paragraph shall not apply to sleds designed to be towed behind snowmobiles and joined to the snowmobile with a rigid hitching mechanism.

(c) Failure to abide by area designations or activity restrictions established under this section is prohibited.

§ 2.20 Skating, skateboards, and similar devices.

Using roller skates, skateboards, roller skis, coasting vehicles, or similar devices is prohibited, except in designated areas.

§ 2.21 Smoking.

(a) The superintendent may designate a portion of a park area, or all or a portion of a building, structure or facility as closed to smoking when necessary to protect park resources, reduce the risk of fire, or prevent conflicts

among visitor use activities. Smoking in an area or location so designated is prohibited.

(b) Smoking is prohibited within all caves and caverns.

§ 2.22 Property.

(a) The following are prohibited:

(1) Abandoning property.

(2) Leaving property unattended for longer than 24 hours, except in locations where longer time periods have been designated or in accordance with conditions established by the superintendent.

(3) Failing to turn in found property to the superintendent as soon as practicable.

(b) Impoundment of property. (1) Property determined to be left unattended in excess of an allowed period of time may be impounded by the superintendent.

(2) Unattended property that interferes with visitor safety, orderly management of the park area, or presents a threat to park resources may be impounded by the superintendent at any time.

(3) Found or impounded property shall be inventoried to determine ownership and safeguard personal property.

(4) The owner of record is responsible and liable for charges to the person who has removed, stored, or otherwise disposed of property impounded pursuant to this section; or the superintendent may assess the owner reasonable fees for the impoundment and storage of property impounded pursuant to this section.

(c) Disposition of property. (1) Unattended property impounded pursuant to this section shall be deemed to be abandoned unless claimed by the owner or an authorized representative thereof within 60 days. The 60-day period shall begin when the rightful owner of the property has been notified, if the owner can be identified, or from the time the property was placed in the superintendent's custody, if the owner cannot be identified.

(2) Unclaimed, found property shall be stored for a minimum period of 60 days and, unless claimed by the owner or an authorized representative there-

of, may be claimed by the finder, provided that the finder is not an employee of the National Park Service. Found property not claimed by the owner or an authorized representative or the finder shall be deemed abandoned.

(3) Abandoned property shall be disposed of in accordance with Title 41 Code of Federal Regulations.

(4) Property, including real property, located within a park area and owned by a deceased person, shall be disposed of in accordance with the laws of the State within whose exterior boundaries the property is located.

(d) The regulations contained in paragraphs (a)(2), (b) and (c) of this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 52 FR 35240, Sept. 18, 1987]

§ 2.23 Recreation fees.

(a) Recreation fees shall be established as provided for in Part 71 of this chapter.

(b) Entering designated entrance fee areas or using specialized sites, facilities, equipment or services, or participating in group activities, recreation events, or other specialized recreation uses for which recreation fees have been established without paying the required fees and possessing the applicable permits is prohibited. Violation of the terms and conditions of a permit issued in accordance with Part 71 is prohibited and may result in the suspension or revocation of the permit.

(c) The superintendent may, when in the public interest, prescribe periods during which the collection of recreation fees shall be suspended.

§ 2.30 Misappropriation of property and services.

(a) The following are prohibited:

(1) Obtaining or exercising unlawful possession over the property of another with the purpose to deprive the owner of the property.

(2) Obtaining property or services offered for sale or compensation without making payment or offering to pay.

(3) Obtaining property or services offered for sale or compensation by

means of deception or a statement of past, present or future fact that is instrumental in causing the wrongful transfer of property or services, or using stolen, forged, expired revoked or fraudulently obtained credit cards or paying with negotiable paper on which payment is refused.

(4) Concealing unpurchased merchandise on or about the person without the knowledge or consent of the seller or paying less than purchase price by deception.

(5) Acquiring or possessing the property of another, with knowledge or reason to believe that the property is stolen.

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 52 FR 35240, Sept. 18, 1987]

§ 2.31 Trespassing, tampering and vandalism.

(a) The following are prohibited:

(1) *Trespassing.* Trespassing, entering or remaining in or upon property or real property not open to the public, except with the express invitation or consent of the person having lawful control of the property or real property.

(2) *Tampering.* Tampering or attempting to tamper with property or real property, or moving, manipulating or setting in motion any of the parts thereof, except when such property is under one's lawful control or possession.

(3) *Vandalism.* Destroying, injuring, defacing, or damaging property or real property.

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 52 FR 35240, Sept. 18, 1987]

§ 2.32 Interfering with agency functions.

(a) The following are prohibited:

(1) *Interference.* Threatening, resisting, intimidating, or intentionally interfering with a government employ-

ee or agent engaged in an official duty, or on account of the performance of an official duty.

(2) *Lawful order.* Violating the lawful order of a government employee or agent authorized to maintain order and control public access and movement during fire fighting operations, search and rescue operations, wildlife management operations involving animals that pose a threat to public safety, law enforcement actions, and emergency operations that involve a threat to public safety or park resources, or other activities where the control of public movement and activities is necessary to maintain order and public safety.

(3) *False information.* Knowingly giving a false or fictitious report or other false information: (i) To an authorized person investigating an accident or violation of law or regulation or; (ii) on an application for a permit.

(4) *False Report.* Knowingly giving a false report for the purpose of misleading a government employee or agent in the conduct of official duties, or making a false report that causes a response by the United States to a fictitious event.

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 52 FR 35240, Sept. 18, 1987]

§ 2.33 Report of injury or damage.

(a) A person involved in an incident resulting in personal injury or property damage exceeding \$300, other than an accident reportable under §§ 3.4 or 4.4 of this chapter, shall report the incident to the superintendent as soon as possible. This notification does not satisfy reporting requirements imposed by applicable State law.

(b) Failure to report an incident in accordance with paragraph (a) of this section is prohibited.

[48 FR 30282, June 30, 1983, as amended at 52 FR 10683, Apr. 2, 1987]

§ 2.34 Disorderly conduct.

(a) A person commits disorderly conduct when, with intent to cause public

alarm, nuisance, jeopardy or violence, or knowingly or recklessly creating a risk thereof, such person commits any of the following prohibited acts:

(1) Engages in fighting or threatening, or in violent behavior.

(2) Uses language, an utterance, or gesture, or engages in a display or act that is obscene, physically threatening or menacing, or done in a manner that is likely to inflict injury or incite an immediate breach of the peace.

(3) Makes noise that is unreasonable, considering the nature and purpose of the actor's conduct, location, time of day or night, and other factors that would govern the conduct of a reasonably prudent person under the circumstances.

(4) Creates or maintains a hazardous or physically offensive condition.

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 52 FR 35240, Sept. 18, 1987]

§ 2.35 Alcoholic beverages and controlled substances.

(a) *Alcoholic beverages.* (1) The use and possession of alcoholic beverages within park areas is allowed in accordance with the provisions of this section.

(2) The following are prohibited:

(i) The sale or gift of an alcoholic beverage to a person under 21 years of age, except where allowed by State law. In a State where a lower minimum age is established, that age limit will apply for purposes of this subparagraph.

(ii) The possession of an alcoholic beverage by a person under 21 years of age, except where allowed by State law. In a State where a lower minimum age is established, that age will apply for purposes of this subparagraph.

(3)(i) The superintendent may close all or a portion of a public use area or public facility within a park area to the consumption of alcoholic beverages and/or to the possession of a bottle, can or other receptacle containing an alcoholic beverage that is open,

or that has been opened, or whose seal is broken or the contents of which have been partially removed. *Provided however*, that such a closure may only be implemented following a determination made by the superintendent that:

(A) The consumption of an alcoholic beverage or the possession of an open container of an alcoholic beverage would be inappropriate considering other uses of the location and the purpose for which it is maintained or established; or

(B) Incidents of aberrant behavior related to the consumption of alcoholic beverages are of such magnitude that the diligent application of the authorities in this section and §§ 1.5 and 2.34 of this chapter, over a reasonable time period, does not alleviate the problem.

(i) A closure imposed by the superintendent does not apply to an open container of an alcoholic beverage that is stored in compliance with the provisions of § 4.14 of this chapter.

(ii) Violating a closure imposed pursuant to this section is prohibited.

(b) *Controlled substances*. The following are prohibited:

(1) The delivery of a controlled substance, except when distribution is made by a practitioner in accordance with applicable law. For the purposes of this paragraph, delivery means the actual, attempted or constructive transfer of a controlled substance whether or not there exists an agency relationship.

(2) The possession of a controlled substance, unless such substance was obtained by the possessor directly, or pursuant to a valid prescription or order, from a practitioner acting in the course of professional practice or otherwise allowed by Federal or State law.

(c) Presence in a park area when under the influence of alcohol or a controlled substance to a degree that may endanger oneself or another person, or damage property or park resources, is prohibited.

[48 FR 30282, June 30, 1983, as amended at 52 FR 10683, Apr. 2, 1987]

§ 2.36 Gambling.

(a) Gambling in any form, or the operation of gambling devices, is prohibited.

(b) This regulation applies, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 52 FR 35240, Sept. 18, 1987]

§ 2.37 Noncommercial soliciting.

Soliciting or demanding gifts, money, goods or services is prohibited, except pursuant to the terms and conditions of a permit that has been issued under § 2.50, § 2.51 or § 2.52.

§ 2.38 Explosives.

(a) Using, possessing, storing, or transporting explosives, blasting agents or explosive materials is prohibited, except pursuant to the terms and conditions of a permit. When permitted, the use, possession, storage and transportation shall be in accordance with applicable Federal and State laws.

(b) Using or possessing fireworks and firecrackers is prohibited, except pursuant to the terms and conditions of a permit or in designated areas under such conditions as the superintendent may establish, and in accordance with applicable State law.

(c) Violation of the conditions established by the superintendent or of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

§ 2.50 Special events.

(a) Sports events, pageants, regattas, public spectator attractions, entertainments, ceremonies, and similar events are allowed: *Provided, however*, There is a meaningful association between the park area and the events, and the observance contributes to visitor understanding of the significance of the park area, and a permit therefor has been issued by the superintendent. A permit shall be denied if such activities would:

(1) Cause injury or damage to park resources; or

(2) Be contrary to the purposes for which the natural, historic, development and special use zones were established; or unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic, or commemorative zones.

(3) Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of National Park Service concessioners or contractors; or

(5) Present a clear and present danger to the public health and safety; or

(6) Result in significant conflict with other existing uses.

(b) An application for such a permit shall set forth the name of the applicant, the date, time, duration, nature and place of the proposed event, an estimate of the number of persons expected to attend, a statement of equipment and facilities to be used, and any other information required by the superintendent. The application shall be submitted so as to reach the superintendent at least 72 hours in advance of the proposed event.

(c) As a condition of permit issuance, the superintendent may require:

(1) The filing of a bond payable to the Director, in an amount adequate to cover costs such as restoration, rehabilitation, and cleanup of the area used, and other costs resulting from the special event. In lieu of a bond, a permittee may elect to deposit cash equal to the amount of the required bond.

(2) In addition to the requirements of paragraph (c)(1) of this section, the acquisition of liability insurance in which the United States is named as co-insured in an amount sufficient to protect the United States.

(d) The permit may contain such conditions as are reasonably consistent with protection and use of the park area for the purposes for which it is established. It may also contain reasonable limitations on the equipment

used and the time and area within which the event is allowed.

(e) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

[48 FR 30282, June 30, 1983; 48 FR 31847, July 11, 1983]

§ 2.51 Public assemblies, meetings.

(a) Public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views are allowed within park areas, provided a permit therefor has been issued by the superintendent.

(b) An application for such a permit shall set forth the name of the applicant; the date, time, duration, nature and place of the proposed event; an estimate of the number of persons expected to attend; a statement of equipment and facilities to be used and any other information required by the permit application form.

(c) The superintendent shall, without unreasonable delay, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and place has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of that particular area; or

(2) It reasonably appears that the event will present a clear and present danger to the public health or safety; or

(3) The event is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for, considering such things as damage to park resources or facilities, impairment of a protected area's atmosphere of peace and tranquility, interference with program activities, or impairment of public use facilities.

(d) If a permit is denied, the applicant shall be so informed in writing, with the reason(s) for the denial set forth.

(e) The superintendent shall designate on a map, that shall be available in the office of the superintendent, the locations available for public as-

semblies. Locations may be designated as not available only if such activities would:

(1) Cause injury or damage to park resources; or

(2) Unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic or commemorative zones; or

(3) Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of National Park Service concessioners or contractors; or

(5) Present a clear and present danger to the public health and safety.

(f) The permit may contain such conditions as are reasonably consistent with protection and use of the park area for the purposes for which it is established. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

(g) No permit shall be issued for a period in excess of 7 days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(h) It is prohibited for persons engaged in activities covered under this section to obstruct or impede pedestrians or vehicles, or harass park visitors with physical contact.

(i) A permit may be revoked under any of those conditions, as listed in paragraph (c) of this section, that constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made to be followed by written confirmation within 72 hours.

(j) Violation of the terms and conditions of a permit issued in accordance with this section may result in the suspension or revocation of the permit.

§ 2.52 Sale or distribution of printed matter.

(a) The sale or distribution of printed matter is allowed within park areas, provided that a permit to do so has been issued by the superintendent, and provided further that the printed matter is not solely commercial advertising.

(b) An application for such a permit shall set forth the name of the applicant, the name of the organization (if any), the date, time, duration, and location of the proposed sale or distribution, the number of participants, and any other information required by the permit application form.

(c) The superintendent shall, without unreasonable delay, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and location has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of the particular area; or

(2) It reasonably appears that the sale or distribution will present a clear and present danger to the public health and safety; or

(3) The number of persons engaged in the sale or distribution exceeds the number that can reasonably be accommodated in the particular location applied for, considering such things as damage to park resources or facilities, impairment of a protected area's atmosphere of peace and tranquility, interference with program activities, or impairment of public use facilities; or

(4) The location applied for has not been designated as available for the sale or distribution of printed matter; or

(5) The activity would constitute a violation of an applicable law or regulation.

(d) If a permit is denied, the applicant shall be so informed in writing, with the reason(s) for the denial set forth.

(e) The superintendent shall designate on a map, which shall be available for inspection in the office of the superintendent, the locations within the park area that are available for the sale or distribution of printed

matter. Locations may be designated as not available only if the sale or distribution of printed matter would:

(1) Cause injury or damage to park resources; or

(2) Unreasonably impair the atmosphere of the peace and tranquility maintained in wilderness, natural, historic, or commemorative zones; or

(3) Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of National Park Service concessioners or contractors.

(5) Present a clear and present damage to the public health and safety.

(f) The permit may contain such conditions as are reasonably consistent with protection and use of the park area for the purposes for which it is established.

(g) No permit shall be issued for a period in excess of 14 consecutive days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(h) It is prohibited for persons engaged in the sale or distribution of printed matter under this section to obstruct or impede pedestrians or vehicles, harass park visitors with physical contact or persistent demands, misrepresent the purposes or affiliations of those engaged in the sale or distribution, or misrepresent whether the printed matter is available without cost or donation.

(i) A permit may be revoked under any of those conditions, as listed in paragraph (c) of this section, that constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made, to be followed by written confirmation within 72 hours.

(j) Violation of the terms and conditions of a permit issued in accordance with this section may result in the suspension or revocation of the permit.

§ 2.60 Livestock use and agriculture.

(a) The running-at-large, herding, driving across, allowing on, pasturing or grazing of livestock of any kind in a park area or the use of a park area for agricultural purposes is prohibited, except:

(1) As specifically authorized by Federal statutory law; or

(2) As required under a reservation of use rights arising from acquisition of a tract of land; or

(3) As designated, when conducted as a necessary and integral part of a recreational activity or required in order to maintain a historic scene.

(b) Activities authorized pursuant to any of the exceptions provided for in paragraph (a) of this section shall be allowed only pursuant to the terms and conditions of a license, permit or lease. Violation of the terms and conditions of a license, permit or lease issued in accordance with this paragraph is prohibited and may result in the suspension or revocation of the license, permit, or lease.

(c) Impounding of livestock. (1) Livestock trespassing in a park area may be impounded by the superintendent and, if not claimed by the owner within the periods specified in this paragraph, shall be disposed of in accordance with applicable Federal and State law.

(2) In the absence of applicable Federal or State law, the livestock shall be disposed of in the following manner:

(i) If the owner is known, prompt written notice of impoundment will be served, and in the event of the owner's failure to remove the impounded livestock within five (5) days from delivery of such notice, it will be disposed of in accordance with this paragraph.

(ii) If the owner is unknown, disposal of the livestock shall not be made until at least fifteen (15) days have elapsed from the date that a notice of impoundment is originally published in a newspaper of general circulation in the county in which the trespass occurs or, if no such newspaper exists,

notification is provided by other appropriate means.

(iii) The owner may redeem the livestock by submitting proof of ownership and paying all expenses of the United States for capturing, advertising, pasturing, feeding, impounding, and the amount of damage to public property injured or destroyed as a result of the trespass.

(iv) In determining the claim of the government in a livestock trespass, the value of forage consumed shall be computed at the commercial rates prevailing in the locality for the class of livestock found in trespass. The claim shall include the pro rata salary of employees for the time spent and the expenses incurred as a result of the investigation, reporting, and settlement or prosecution of the claim.

(v) If livestock impounded under this paragraph is offered at public sale and no bid is received, or if the highest bid received is less than the amount of the claim of the United States or of the officer's appraised value of the livestock, whichever is the lesser amount, such livestock, may be sold at private sale for the highest amount obtainable, condemned and destroyed, or converted to the use of the United States.

§ 2.61 Residing on Federal lands.

(a) Residing in park areas, other than on privately owned lands, except pursuant to the terms and conditions of a permit, lease or contract, is prohibited.

(b) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

§ 2.62 Memorialization.

(a) The installation of a monument, memorial, tablet, structure, or other commemorative installation in a park area without the authorization of the Director is prohibited.

(b) The scattering of human ashes from cremation is prohibited, except pursuant to the terms and conditions of a permit, or in designated areas according to conditions which may be established by the superintendent.

(c) Failure to abide by area designations and established conditions is prohibited.

(d) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

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- 327.9 Sanitation.
- 327.10 Fires.
- 327.11 Control of animals.
- 327.12 Restrictions.
- 327.13 Explosives, firearms, other weapons and fireworks.
- 327.14 Public property.
- 327.15 Abandonment and impoundment of personal property.
- 327.16 Lost and found articles.
- 327.17 Advertisement.
- 327.18 Commercial activities.
- 327.19 Permits.
- 327.20 Unauthorized structures.
- 327.21 Special events.
- 327.22 Unauthorized occupation.
- 327.23 Recreation use fees.
- 327.24 Interference with Government employees.
- 327.25 Violations of rules and regulations.
- 327.26 State and local laws.
- 327.27-327.29 [Reserved]
- 327.30 Shoreline Management on Civil Works Projects.
- 327.31 Shoreline Management fee schedule.

AUTHORITY: The Rivers and Harbors Act of 1894, as amended and supplemented (33 U.S.C. 1).

SOURCE: 50 FR 35556, Sept. 3, 1985, unless otherwise noted.

§ 327.0 Applicability.

The regulations covered in this part 327 shall be applicable to water resource development projects, completed or under construction, administered by the Chief of Engineers, and to those portions of jointly administered water resource development projects which are under the administrative jurisdiction of the Chief of Engineers. All other Federal, State and local laws and regulations remain in full force and effect where applicable to those water resource development projects.

§ 327.1 Policy.

(a) It is the policy of the Secretary of the Army, acting through the Chief of Engineers, to manage the natural, cultural and developed resources of each project in the public interest, providing the public with safe and healthful recreational opportunities while protecting and enhancing these resources.

(b) Unless otherwise indicated herein, the term *District Engineer*

PART 327—RULES AND REGULATIONS GOVERNING PUBLIC USE OF WATER RESOURCE DEVELOPMENT PROJECTS ADMINISTERED BY THE CHIEF OF ENGINEERS

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shall include the authorized representatives of the District Engineer.

(c) The term *project* or *water resource development project* refers to the water areas of any water resource development project administered by the Chief of Engineers, without regard to ownership of underlying land, to all lands owned in fee by the Federal Government and to all facilities therein or thereon of any such water resource development project.

(d) All water resource development projects open for public use shall be available to the public without regard to sex, race, color, creed, age, nationality or place of origin. No lessee, licensee, or concessionaire providing a service to the public shall discriminate against any person because of sex, race, creed, color, age, nationality or place of origin in the conduct of the operations under the lease, license or concession contract.

(e) In addition to the regulations in this part 327, all applicable Federal, state and local laws and regulations remain in full force and effect on project lands or waters which are out-granted by the District Engineer by lease, license or other written agreement.

(f) The regulations in this part 327 shall be deemed to apply to those lands and waters which are subject to treaties and Federal laws and regulations concerning the rights of Indian Nations and which lands and waters are incorporated, in whole or in part, within water resource development projects administered by the Chief of Engineers, to the extent that the regulations in this part 327 are not inconsistent with such treaties and Federal laws and regulations.

(g) Any violation of any section of this part 327 shall constitute a separate violation for each calendar day in which it occurs.

(h) For the purposes of this part 327, the owner of any unattended vehicle, vessel or aircraft as described herein shall be presumed to be responsible for its use on project property. Unless proven otherwise, such presumption will be sufficient to issue a citation for the violation of regulations applicable to the use of such vehicle, vessel or

aircraft as provided for in § 327.25, Violation of Rules and Regulations.

§ 327.2 Vehicles.

(a) This section pertains to all vehicles, including, but not limited to, automobiles, trucks, motorcycles, mini-bikes, snowmobiles, dune buggies, all-terrain vehicles and trailers, campers, bicycles or any other such equipment.

(b) Vehicles shall not be parked in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, project property or environmental feature. Vehicles so parked are subject to removal and impoundment at the owner's expense.

(c) The operation and/or parking of a vehicle off authorized roadways is prohibited except at locations and times designated by the District Engineer. Taking any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier is prohibited.

(d) Vehicles shall be operated only in accordance with posted regulations and applicable Federal, state and local laws, which shall be enforced by authorized enforcement officials.

(e) No person shall operate any vehicle in a careless, negligent or reckless manner so as to endanger any person, project property or environmental feature.

(f) At developed recreation areas, vehicles shall be used only to enter or leave the area or individual sites or facilities unless otherwise posted.

(g) Except as authorized by the District Engineer, no person shall operate any motorized vehicle without a proper and effective exhaust muffler as defined by state and local laws, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.

§ 327.3 Vessels.

(a) This section pertains to all vessels or watercraft, including, but not limited to, powerboats, cruisers, houseboats, sailboats, rowboats, canoes,

kayaks, jetskis and any other such equipment capable of navigation on water, whether in motion or at rest.

(b) The placement and/or operation of any vessel or watercraft for a fee or profit upon project waters or lands is prohibited except as authorized by permit, lease, license, or concession contract with the Department of the Army. This paragraph (§ 327.3(b)) shall not apply to the operation of commercial tows or passenger carrying vessels not based at a Corps project which utilize project waters as a link in continuous transit over navigable waters of the United States.

(c) Vessels or other watercraft may be operated on the project waters, except in prohibited or restricted areas, in accordance with posted regulations, including buoys, and applicable Federal, state and local laws, as regulated by authorized enforcement officials. All vessels or watercraft so required by applicable Federal, state and local laws shall display an appropriate registration on board whenever the vessel is operated on project waters.

(d) The operation of vessels or other watercraft in a careless, negligent or reckless manner so as to endanger any property or person (including the operator and/or user(s) of the vessel or watercraft) is prohibited.

(e) All vessels, when in use, shall have safety equipment, including personal flotation devices, on board in compliance with U.S. Coast Guard boating safety requirements (Coast Guard Pamphlet CG-290; 46 CFR parts 25, 30; 33 CFR part 175) and in compliance with boating safety laws issued and enforced by the state in which the vessel is being operated.

(f) Unless otherwise permitted by Federal, state or local law, vessels or other watercraft, while moored in commercial facilities, community or corporate docks, or at any fixed or permanent mooring point, may only be used for overnight occupancy when such use is incidental to recreational boating. Vessels or other watercraft are not to be used as a place of habitation or residence.

(g) Water skis, parasails, ski-kites and similar devices are permitted in nonrestricted areas except that they

may not be used in a careless, negligent, or reckless manner so as to endanger any property or person (including the user and/or operator of the towing vessel).

(h) All vessels when not in actual use shall be removed from project lands and water unless securely moored or stored at designated areas approved by the District Engineer. The placing of floating or stationary mooring facilities on, adjacent to, or interfering with a buoy, channel marker or other navigational aid is prohibited.

(i) The use at a project of any vessel not constructed or maintained in compliance with the standards and requirements established by the Federal Safe Boating Act of 1971 (Pub. L. 92-75, 85 Stat. 213), or promulgated pursuant to such act, is prohibited.

(j) Except as authorized by the District Engineer, no person shall operate any vessel or watercraft without a proper and effective exhaust muffler as defined by State and local laws, or with an exhaust muffler cutout open or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.

§ 327.4 Aircraft.

(a) This section pertains to all aircraft including, but not limited to, airplanes, seaplanes, helicopters, ultralight aircraft, motorized hang gliders, hot air balloons, any non-powered flight devices or any other such equipment.

(b) The operation of aircraft on project lands at locations other than those designated by the District Engineer is prohibited. This provision shall not be applicable to aircraft engaged on official business of Federal, state or local governments or law enforcement agencies, aircraft used in emergency rescue in accordance with the directions of the District Engineer or aircraft forced to land due to circumstances beyond the control of the operator.

(c) No person shall operate any aircraft while on or above project waters or project lands in a careless, negligent or reckless manner so as to endanger any person or property.

(d) Nothing in this section (§ 327.4) bestows authority to deviate from rules and regulations or prescribed standards of the appropriate State Aeronautical Agency, or the Federal Aviation Administration, including, but not limited to, regulations and standards concerning pilot certifications or ratings, and airspace requirements.

(e) Except in extreme emergencies threatening human life or serious property loss, the air delivery of any person, material or equipment by parachute, helicopter or other means onto project lands or waters without written permission of the District Engineer is prohibited.

(f) In addition to the above provisions, seaplanes, as defined below, are subject to the following restrictions:

(1) Such use is limited to aircraft utilized for water landings and takeoff, herein called seaplanes, at the risk of the owner, operator and passenger(s).

(2) Seaplane operations contrary to the prohibitions or restrictions established by the District Engineer (pursuant to part 328 of title 36) are prohibited. The responsibility to ascertain whether seaplane operations are prohibited or restricted is incumbent upon the person(s) contemplating the use of, or using, such waters.

(3) All operations of seaplanes while upon project waters shall be in accordance with marine rules of the road for power boats or vessels and § 327.3 Vessels.

(4) Seaplanes on project waters and lands in excess of 24 hours shall be securely moored at mooring facilities and at locations permitted by the District Engineer. Seaplanes may be temporarily moored on project waters and lands, except in areas prohibited by the District Engineer, for periods less than 24 hours providing that (i) the mooring is safe, secure, and accomplished so as not to damage the rights of the Government or members of the public and (ii) the operator remains in the vicinity of the seaplane and reasonably available to relocate the seaplane if necessary.

(5) Commercial operation of seaplanes from project waters is prohibited without written approval of the District Engineer following consulta-

tion with and necessary clearance from the Federal Aviation Administration (FAA) and other appropriate public authorities and affected interests.

(6) Seaplanes may not be operated at Corps projects between sunset and sunrise unless adequate lighting and supervision approved by the District Engineer are available.

§ 327.5 Swimming.

(a) Swimming, diving, snorkeling or scuba diving at one's own risk is permitted, except at launching sites, designated mooring points and other areas so designated by the District Engineer. Diving or jumping from bridges or other structures which cross project waters is prohibited.

(b) An international diving flag must be displayed during underwater activities.

§ 327.6 Picnicking.

Picnicking and related day-use activities are permitted, except in those areas where prohibited by the District Engineer.

§ 327.7 Camping.

(a) Camping is permitted only at sites and/or areas designated by the District Engineer.

(b) Camping at one or more campsites at any one water resource project for a period longer than 14 days during any 30-consecutive-day period is prohibited without the written permission of the District Engineer.

(c) The unauthorized placement of camping equipment or other items on a campsite and/or personal appearance without overnight occupancy at a campsite for the purpose of reserving a designated campsite for future occupancy is prohibited.

(d) The digging or leveling of any ground or the construction of any structure without written permission of the District Engineer is prohibited.

§ 327.8 Hunting, fishing, and trapping.

Hunting, fishing, and trapping are permitted except in areas where prohibited by the District Engineer. All Federal, state and local laws governing these activities apply on project lands

and waters, as regulated by authorized enforcement officials.

§ 327.9 Sanitation.

(a) Garbage, trash, rubbish, litter, or any other waste material or waste liquid generated on the project and incidental to authorized recreational activities shall be either removed from the project or deposited in receptacles provided for that purpose. The improper disposal of such wastes, human and animal waste included, on the project is prohibited.

(b) It is a violation to bring onto a project any household or commercial garbage, trash, rubbish, debris, dead animals or litter of any kind for disposal or dumping without the written permission of the District Engineer.

(c) The spilling, pumping or other discharge of contaminants, pollutants or other wastes, including, but not limited to, human or animal waste, petroleum, industrial and commercial products and by-products, on project lands or into project waters is prohibited.

(d) Campers, picnickers, and all other persons using a water resource development project shall keep their sites free of trash and litter during the period of occupancy and shall remove all personal equipment and clean their sites upon departure.

(e) The discharge or placing of sewage, galley waste, garbage, refuse, or pollutants into the project waters from any vessel or watercraft is prohibited.

§ 327.10 Fires.

(a) Gasoline and other fuels, except that which is contained in storage tanks of vehicles, vessels, camping equipment, or hand portable containers designed for such purpose, shall not be carried onto or stored on the project without written permission of the District Engineer.

(b) Fires shall be confined to those areas designated by the District Engineer, and shall be contained in fireplaces, grills, or other facilities designated for this purpose. Fires shall not be left unattended and must be completely extinguished prior to departure. The burning of materials that produce toxic fumes, including, but

not limited to, tires, plastic or treated wood products is prohibited.

(c) Improper disposal of lighted smoking materials, matches or other burning material is prohibited.

§ 327.11 Control of animals.

(a) No person shall bring or allow dogs, cats, or other pets into developed recreation areas unless penned, caged on a leash under 6 feet in length, or otherwise physically restrained. No person shall allow animals to impede or restrict otherwise full and free use of project lands and waters by the public. All animals and pets are prohibited in swimming beaches. Animal and pets, except properly trained animals assisting the handicapped (such as seeing-eye dogs), are prohibited in sanitary facilities or other areas designated by the District Engineer. Unclaimed or unattended animals are subject to immediate impoundment and removal in accordance with state and local laws.

(b) Persons bringing or allowing pets in designated public use areas shall be responsible for proper removal and disposal, in sanitary facilities, of any waste produced by these animals.

(c) No person shall bring or allow horses, cattle, or other livestock in camping, picnicking, swimming or other recreation areas except in areas designated by the District Engineer.

(d) Ranging, grazing, watering or allowing livestock on project lands and waters is prohibited except when authorized by lease, license or other written agreement with the District Engineer.

(e) Unauthorized livestock are subject to impoundment and removal in accordance with Federal, state and local laws.

(f) Any animal impounded under the provisions of this section may be confined at a location designated by the District Engineer, who may assess a reasonable impoundment fee. This fee shall be paid before the impounded animal is returned to its owner(s).

§ 327.12 Restrictions.

(a) The District Engineer may establish and post a schedule of visiting hours and/or restrictions on the

public use of a project or portion of a project. The District Engineer may close or restrict the use of a project or portion of a project when necessitated by reason of public health, public safety, maintenance, or other reasons in the public interest. Entering or using a project in a manner which is contrary to the schedule of visiting hours, closures or restrictions is prohibited.

(b) Quiet shall be maintained in all public use areas between the hours of 10 p.m. and 6 a.m., or those hours designated by the District Engineer. Excessive noise during such times which unreasonably disturbs persons is prohibited.

(c) Any act or conduct by any person which interferes with, impedes or disrupts the use of the project or impairs the safety of another person is prohibited. Individuals who are boisterous, rowdy, disorderly or otherwise disturb the peace on project lands or waters may be requested to leave the project.

(d) The operation or use of any audio or other noise producing device including, but not limited to, radios, televisions, or musical instruments and motorized equipment, including vessels or vehicles, in such a manner as to unreasonably annoy or endanger persons at any time or exceed state or local laws governing noise levels from motorized equipment is prohibited.

§ 327.13 Explosives, firearms, other weapons and fireworks.

The possession of loaded firearms, ammunition, loaded projectile firing devices, bows and arrows, crossbows, explosives or explosive devices of any kind, including fireworks, is prohibited unless:

(a) In the possession of a Federal, state or local law enforcement officer;

(b) Being used for hunting or fishing as permitted under § 327.8, with devices being unloaded when transported to, from or between hunting and fishing sites;

(c) Being used at authorized shooting ranges; or

(d) Written permission has been received from the District Engineer.

§ 327.14 Public property.

(a) Destruction, injury, defacement, removal or any alteration of public property including, but not limited to, developed facilities, natural formations, mineral deposits, historical and archaeological features, and vegetative growth, is prohibited except when in accordance with written permission of the District Engineer.

(b) Cutting or gathering of trees or parts of trees and/or the removal of wood from project lands is prohibited without written permission of the District Engineer.

(c) Gathering of dead wood on the ground for use in designated recreation areas as firewood is permitted.

§ 327.15 Abandonment and impoundment of personal property.

(a) Personal property of any kind shall not be abandoned, stored or left unattended upon project lands or waters. After a period of 24 hours, or at any time after a posted closure hour in a public use area, unattended personal property shall be presumed to be abandoned and may be impounded and stored at a storage point designated by the District Engineer, who may assess a reasonable impoundment fee. Such fee shall be paid before the impounded property is returned to its owner.

(b) The District Engineer shall, by public or private sale or otherwise, dispose of all lost, abandoned or unclaimed personal property that comes into Government custody or control. However, property may not be disposed of until diligent effort has been made to find the owner, heirs, next of kin or legal representative(s). If the owner, heirs, next of kin or legal representative(s) are determined but not found, the property may not be disposed of until the expiration of 120 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at the last known address. When diligent efforts to determine the owner, heirs, next of kin or legal representative(s) are unsuccessful, the property may be disposed of without delay except that if it has a fair

market value of \$25 or more the property may not be disposed of until 90 days after the date it is received at the storage point designated by the District Engineer. The net proceeds from the sale of property shall be covered into the Treasury of the United States as miscellaneous receipts.

(c) Personal property placed on Federal lands or waters adjacent to a private residence and/or developments of any private nature for more than 24 hours without permission of the District Engineer shall be presumed to have been abandoned and, unless proven otherwise, such presumption will be sufficient to issue a citation as provided for in § 327.25.

§ 327.16 Lost and found articles.

All articles found shall be deposited by the finder at the Resource Manager's office or with a ranger. All such articles shall be disposed of in accordance with the procedures set forth in § 327.15.

§ 327.17 Advertisement.

Advertising by the use of billboards, signs, markers, audio devices, handbills, circulars, posters, or any other means whatsoever, is prohibited without written permission of the District Engineer. Vessels and vehicles with semipermanent or permanent painted or installed signs are exempt as long as they are used for authorized recreational activities and comply with all other rules and regulations pertaining to vessels and vehicles.

§ 327.18 Commercial activities.

The engaging in or solicitation of business without the express written permission of the District Engineer is prohibited.

§ 327.19 Permits.

(a) It shall be a violation of these regulations to refuse to or fail to comply with the fee requirements or other terms or conditions of any permit issued under the provisions of this part 327.

(b) Permits for floating structures (issued under the authority of § 327.30) of any kind on/in waters of water resources development projects, whether or not such waters are

deemed navigable waters of the United States but where such waters are under the management of the Corps of Engineers, shall be issued at the discretion of the District Engineer under the authority of this regulation. District Engineers will delineate the portions of the navigable waters of the United States where this provision is applicable and post notices of this designation in the vicinity of the appropriate Resource Manager's office.

(c) Permits for nonfloating structures (issued under the authority of § 327.30) of any kind constructed or placed in or affecting waters of water resource development projects where such waters are deemed navigable waters of the U.S. shall be issued under the provisions of section 10 of the Act approved March 3, 1899 (33 U.S.C. 403). If a discharge of dredge or fill material in these waters is involved, a permit is required under section 404 of the Clean Water Act (33 U.S.C. 1344). (See 33 CFR parts 320 and 330).

(d) Permits for nonfloating structures (issued under the authority of § 327.30) of any kind in waters of water resource development projects where such waters are under the management of the Corps of Engineers and where such waters are not deemed navigable waters of the United States shall be issued as set forth in paragraph (b) of this section. If a discharge of dredged or fill material into any water of the United States is involved, a permit is required under Section 404 of the Clean Water Act (33 U.S.C. 1344) (See 33 CFR parts 320 and 330). Certification may be required pursuant to section 401 of the Clean Water Act (33 U.S.C. 1341).

§ 327.20 Unauthorized structures.

The construction, placement, or existence of any structure (including but not limited to, roads, trails, signs or landscape features) of any kind under, upon, in or over the project lands or waters is prohibited unless a permit, lease, license or other appropriate written agreement has been issued by the District Engineer. The design, construction, placement, existence or use of structures in violation

of the terms of the permit, lease, license or other written agreement is prohibited. The government shall not be liable for the loss of, or damage to, any private structures, whether authorized or not, placed on project lands or waters. Unauthorized structures are subject to summary removal or impoundment by the District Engineer.

§ 327.21 Special events.

(a) Special events including, but not limited to, water carnivals, boat regattas, music festivals, dramatic presentations or other special recreation programs are prohibited unless written permission has been granted by the District Engineer. An appropriate fee may be charged under the authority of § 327.23.

(b) The public shall not be charged any fee by the sponsor of such event unless the District Engineer has approved in writing (and the sponsor has properly posted) the proposed schedule of fees. The District Engineer shall have authority to revoke permission and require removal of any equipment upon failure of the sponsor to comply with terms and conditions of the permit/permission or the regulations in this part 327.

§ 327.22 Unauthorized occupation.

(a) Occupying any lands, buildings, vessels or other facilities within water resource development projects for the purpose of maintaining same as a full- or part-time residence without the written permission of the District Engineer is prohibited. The provisions of this section shall not apply to the occupation of lands for the purpose of camping, in accordance with the provisions of § 327.7.

(b) Use of project lands or waters for agricultural purposes is prohibited except when in compliance with terms and conditions authorized by lease, license or other written agreement issued by the District Engineer.

§ 327.23 Recreation use fees.

(a) In accordance with 16 USC 4601, the Corps of Engineers is required to collect special recreation use fees and/or special permit fees for the use of specialized sites, facilities, equipment

or services related to outdoor recreation furnished at Federal expense.

(b) All use fees shall be fair and equitable and will be based on the following criteria (as contained in the Land and Water Conservation Fund Act of 1965, Pub. L. 88-578, as amended):

(1) The direct and indirect amount of Federal expenditure.

(2) The benefit to the recipient.

(3) The public policy or interest served.

(4) The comparable recreation fees charged by other Federal and non-Federal public agencies and the private sector within the service area of the management unit at which the fee is charged.

(5) The economic and administrative feasibility of fee collection.

(6) The extent of regular maintenance required.

(7) Other pertinent factors.

Based upon the above criteria, it shall be the policy of the Chief of Engineers to publish in the FEDERAL REGISTER, as a general notice document, the established range of fees for specialized sites, facilities, equipment or services whenever such fees are adjusted.

(c) Where such fees are charged, the District Engineer shall insure that clear notice of fee requirements is prominently posted at each area, and at appropriate locations therein and that the notice be included in publications distributed at such areas. Failure to pay authorized recreation use fees as established pursuant to Pub. L. 88-578, 78 Stat. 897, as amended (16 U.S.C. 4601-6a), is prohibited and is punishable by a fine of not more than \$100.

(d) Any Golden Age or Golden Access Passport permittee shall be entitled, upon presentation of such a permit, to utilize special recreation facilities at a rate of 50 percent off the established use fee at federally operated areas.

(e) At each Corps lake or reservoir where camping is permitted, the District Engineer will provide at least one primitive campground, containing designated campsites, sanitary facilities and vehicular access, where no fees will be charged.

§ 327.24 Interference with Government employees.

(a) It is a Federal crime pursuant to the provisions of sections 1114 and 111 of title 18 U.S.C., to forcibly assault, resist, oppose, impede, intimidate, or interfere with any civilian official or employee of the U.S. Army Corps of Engineers engaged in the performance of his or her official duties, or on account of the performance of his or her official duties. Such actions or interference directed against a Federal employee while carrying out these regulations are also a violation of these regulations and may be a state crime pursuant to the laws of the state where they occur.

(b) Failure to comply with a lawful order issued by a Federal employee acting pursuant to these regulations shall be considered as interference with that employee while engaged in the performance of their official duties. Such interference with a Federal employee includes failure to provide a correct name, address or other identification upon request of the Federal employee, when that employee is authorized by the District Engineer to issue citations in the performance of the employees official duties.

§ 327.25 Violation of rules and regulations.

(a) Any person who violates the provisions of these regulations, other than for a failure to pay authorized recreation use fees as separately provided for in § 327.23, may be punished by a fine of not more than \$500 or imprisonment for not more than six months or both and may be tried and sentenced in accordance with the provisions of section 3401 of title 18 U.S.C. Persons designated by the District Engineer shall have the authority to issue a citation for violation of these regulations, requiring the appearance of any person charged with the violation to appear before the United States Magistrate within whose jurisdiction the affected water resources development project is located. (16 U.S.C. 460d).

(b) Any person who commits an act against any official or employee of the U.S. Army Corps of Engineers that is a crime under the provisions of section

1114 or section 111 of title 18 U.S.C. under provisions of pertinent state law may be tried and sentenced as further provided in Federal or state law, as the case may be.

§ 327.26 State and local laws.

Except as otherwise provided here or by Federal law or regulation, state and local laws and ordinances shall apply on project lands and water. This includes, but is not limited to state and local laws and ordinances governing:

- (a) Operation and use of motor vehicles, vessels, and aircraft;
- (b) Hunting, fishing and trapping;
- (c) Use of firearms or other weapons;
- (d) Civil disobedience and criminal acts; and,
- (e) Littering, sanitation and pollution.

These state and local laws and ordinances are enforced by those state and local enforcement agencies established and authorized for that purpose.

§§ 327.27—327.29 [Reserved]

§ 327.30 Shoreline Management on Civil Works Projects.

(a) *Purpose.* The purpose of this regulation is to provide policy and guidance on management of shorelines of Civil Works projects where 36 CFR part 327 is applicable.

(b) *Applicability.* This regulation is applicable to all field operating agencies with Civil Works responsibilities except when such application would result in an impingement upon existing Indian rights.

(c) *References.* (1) Section 4, 194 Flood Control Act, as amended (16 U.S.C. 460d).

(2) The Rivers and Harbors Act of 1894, as amended and supplemented (33 U.S.C. 1)

(3) Section 10, River and Harbor Act of 1899 (33 U.S.C. 403).

(4) National Historic Preservation Act of 1966 (Pub. L. 89-665; 80 Stat. 915) as amended (16 U.S.C. 470 *et seq.*)

(5) The National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*)

(6) The Clean Water Act (33 U.S.C. 1344, *et seq.*)

(7) The Water Resources Development Act of 1986 (Pub. L. 99-662).

(8) Title 36, chapter III, part 327, Code of Federal Regulations, "Rules and Regulations Governing Public Use of Water Resource Development Projects Administered by the Chief of Engineers."

(9) Executive Order 12088 (13 Oct. 78).

(10) 33 CFR parts 320-330, "Regulatory Programs of the Corps of Engineers."

(11) ER 1130-2-400, "Management of Natural Resources and Outdoor Recreation at Civil Works Water Resource Projects."

(12) EM 385-1-1, "Safety and Health Requirements Manual."

(d) *Policy.* (1) It is the policy of the Chief of Engineers to protect and manage shorelines of all Civil Works water resource development projects under Corps jurisdiction in a manner which will promote the safe and healthful use of these shorelines by the public while maintaining environmental safeguards to ensure a quality resource for use by the public. The objectives of all management actions will be to achieve a balance between permitted private uses and resource protection for general public use. Public pedestrian access to and exit from these shorelines shall be preserved. For projects or portions of projects where Federal real estate interest is limited to easement title only, management actions will be appropriate within the limits of the estate acquired.

(2) Private shoreline uses may be authorized in designated areas consistent with approved use allocations specified in Shoreline Management Plans. Except to honor written commitments made prior to publication of this regulation, private shoreline uses are not allowed on water resource projects where construction was initiated after December 13, 1974, or on water resource projects where no private shoreline uses existed as of that date. Any existing permitted facilities on these projects will be grandfathered until the facilities fail to meet the criteria set forth in § 327.30(h).

(3) A Shoreline Management Plan, as described in § 327.30(e), will be pre-

pared for each Corps project where private shoreline use is allowed. This plan will honor past written commitments. The plan will be reviewed at least once every five years and revised as necessary. Shoreline uses that do not interfere with authorized project purposes, public safety concerns, violate local norms or result in significant environmental effects should be allowed unless the public participation process identifies problems in these areas. If sufficient demand exists, consideration should be given to revising the shoreline allocations (e.g. increases/decreases). Maximum public participation will be encouraged as set forth in § 327.30(e)(6). Except to honor written commitments made prior to the publication of this regulation, shoreline management plans are not required for those projects where construction was initiated after December 13, 1974, or on projects not having private shoreline use as of that date. In that case, a statement of policy will be developed by the district commander to present the shoreline management policy. This policy statement will be subject to the approval of the division commander. For projects where two or more agencies have jurisdiction, the plan will be cooperatively prepared with the Corps as coordinator.

(4) Where commercial or other public launching and/or moorage facilities are not available within a reasonable distance, group owned mooring facilities may be allowed in Limited Development Areas to limit the proliferation of individual facilities. Generally only one permit will be necessary for a group owned mooring facility with that entity, if incorporated, or with one person from the organization designated as the permittee and responsible for all moorage spaces within the facility. No charge may be made for use of any permitted facility by others nor shall any commercial activity be engaged in thereon.

(5) The issuance of a private shoreline use permit does not convey any real estate or personal property rights or exclusive use rights to the permit holder. The public's right of access and use of the permit area must be maintained and preserved. Owners of

permitted facilities may take necessary precautions to protect their property from theft, vandalism or trespass, but may in no way preclude the public right of pedestrian or vessel access to the water surface or public land adjacent to the facility.

(6) Shoreline Use Permits will only be issued to individuals or groups with legal right of access to public lands.

(e) *Shoreline Management Plan*—

(1) *General.* The policies outlined in § 327.30(d) will be implemented through preparation of Shoreline Management Plans, where private shoreline use is allowed.

(2) *Preparation.* A Shoreline Management Plan is prepared as part of the Operational Management Plan. A moratorium on accepting applications for new permits may be placed in effect from the time an announcement of creation of a plan or formal revision of a plan is made until the action is completed.

(3) *Approval.* Approval of Shoreline Management Plans rests with division commanders. After approval, one copy of each project Shoreline Management Plan will be forwarded to HQU-SACE (CECW-ON) WASH DC 20314-1000. Copies of the approved plan will also be made available to the public.

(4) *Scope and Format.* The Shoreline Management Plan will consist of a map showing the shoreline allocated to the uses listed in § 327.30(e)(6), related rules and regulations, a discussion of what areas are open or closed to specific activities and facilities, how to apply for permits and other information pertinent to the Corps management of the shoreline. The plan will be prepared in sufficient detail to ensure that it is clear to the public what uses are and are not allowed on the shoreline of the project and why. A process will be developed and presented in the Shoreline Management Plan that prescribes a procedure for review of activities requested but not specifically addressed by the Shoreline Management Plan.

(5) *Shoreline Allocation.* The entire shoreline will be allocated within the classifications below and delineated on a map. Any action, within the context of this rule, which gives a special privilege to an individual or group of indi-

viduals on land or water at a Corps project, that precludes use of the lands and waters by the general public, is considered to be private shoreline use. Shoreline allocations cover that land and/or water extending from the edge of the water and seaward with the exception of allocations for the purpose of vegetation modification which extends landward to the project boundary. These allocations should complement, but certainly not contradict, the land classifications in the project master plan. A map of sufficient size and scale clearly display the shoreline allocations will be conspicuously displayed or readily available for viewing in the project administration office and will serve as the authoritative reference. Reduced or smaller scale maps may be developed for public dissemination but the information contained on them must be identical to that contained on the display map in the project administration office. No changes will be made to these maps except through the formal update process. Division commanders may add specific constraints and identify areas having unique characteristics during the plan preparation, review, or updating process in addition to the allocation classifications described below.

(i) *Limited Development Areas.* Limited Development Areas are those areas in which private facilities and activities may be allowed consistent with § 327.30(h) and appendix B. Modification of vegetation by individuals may be allowed only following the issuance of a permit in accordance with appendix A. Potential low and high water conditions and underwater topography should be carefully evaluated before shoreline is allocated in a Limited Development Area.

(ii) *Public Recreation Areas.* Public Recreation Areas are those areas designated for commercial concessional facilities, Federal, state or other similar public use. No private shoreline facilities and/or activities will be permitted within or near designated undeveloped public recreation areas. The term "near" depends on the terrain, road system, and other local conditions, so actual distances must be established on a case by case basis.

each project Shoreline Management Plan. No modification of land forms or vegetation by private individuals or groups of individuals is permitted in public recreation areas.

(iii) *Protected Shoreline Areas.* Protected Shoreline Areas are those areas designated to maintain or restore aesthetic, fish and wildlife, cultural, or other environmental values. Shoreline may also be so designated to prevent development in areas that are subject to excessive siltation, erosion, rapid dewatering, or exposure to high wind, wave, or current action and/or in areas in which development would interfere with navigation. No Shoreline Use Permits for floating or fixed recreation facilities will be allowed in protected areas. Some modification of vegetation by private individuals, such as clearing a narrow meandering path to the water, or limited mowing, may be allowed only following the issuance of a permit if the resource manager determines that the activity will not adversely impact the environment or physical characteristics for which the area was designated as protected. In making this determination the effect on water quality will also be considered.

(iv) *Prohibited Access Areas.* Prohibited Access Areas are those in which public access is not allowed or is restricted for health, safety or security reasons. These could include hazardous areas near dams, spillways, hydroelectric power stations, work areas, water intake structures, etc. No shoreline use permits will be issued in Prohibited Access Areas.

(6) *Public Participation.* District commanders will ensure public participation to the maximum practicable extent in Shoreline Management Plan formulation, preparation and subsequent revisions. This may be accomplished by public meetings, group workshops, open houses or other public involvement techniques. When master plan updates and preparation of the Shoreline Management Plans are concurrent, public participation may be combined and should consider all aspects of both plans, including shoreline allocation classifications. Public participation will begin during the initial formulation stage and must

be broad-based to cover all aspects of public interest. The key to successful implementation is an early and continual public relations program. Projects with significant numbers of permits should consider developing computerized programs to facilitate exchange of information with permittees and to improve program efficiency. Special care will be taken to advise citizen and conservation organizations; Federal, state and local natural resource management agencies; Indian Tribes; the media; commercial concessionaires; congressional liaisons; adjacent landowners and other concerned entities during the formulation of Shoreline Management Plans and subsequent revisions. Notices shall be published prior to public meetings to assure maximum public awareness. Public notices shall be issued by the district commander allowing for a minimum of 30 days for receipt of written public comment in regard to the proposed Shoreline Management Plan or any major revision thereto.

(7) *Periodic Review.* Shoreline Management Plans will be reviewed periodically, but no less often than every five years, by the district commander to determine the need for update. If sufficient controversy or demand exists, consideration should be given, consistent with other factors, to a process of reevaluation of the shoreline allocations and the plan. When changes to the Shoreline Management Plan are needed, the plan will be formally updated through the public participation process. Cumulative environmental impacts of permit actions and the possibility of preparing or revising project NEPA documentation will be considered. District commanders may make minor revisions to the Shoreline Management Plan when the revisions are consistent with policy and funds for a complete plan update are not available. The amount and type of public involvement needed for such revision is at the discretion of the district commander.

(f) *Instruments for Shoreline Use.* Instruments used to authorize private shoreline use facilities, activities or development are as follows:

(1) *Shoreline Use Permits.* (i) Shoreline Use Permits are issued and en-

forced in accordance with provisions of 36 CFR 327.19.

(ii) Shoreline Use Permits are required for private structures/activities of any kind (except boats) in waters of Civil Works projects whether or not such waters are deemed navigable and where such waters are under the primary jurisdiction of the Secretary of the Army and under the management of the Corps of Engineers.

(iii) Shoreline Use Permits are required for non-floating structures on waters deemed commercially non-navigable, when such waters are under management of the Corps of Engineers.

(iv) Shoreline Use Permits are also required for land vegetation modification activities which do not involve disruption to land form.

(v) Permits should be issued for a term of five years. To reduce administration costs, one year permits should be issued only when the location or nature of the activity requires annual reissuance.

(vi) Shoreline Use Permits for erosion control may be issued for the life or period of continual ownership of the structure by the permittee and his/her legal spouse.

(2) *Department of the Army Permits.* Dredging, construction of fixed structures, including fills and combination fixed-floating structures and the discharge of dredged or fill material in waters of the United States will be evaluated under authority of section 10, River and Harbor Act of 1899 (33 U.S.C. 403) and section 404 of the Clean Water Act (33 U.S.C. 1344). Permits will be issued where appropriate.

(3) *Real Estate Instruments.* Commercial development activities and activities which involve grading, cuts, fills, or other changes in land form, or establishment of appropriate land-based support facilities required for private floating facilities, will continue to be covered by a lease, license or other legal grant issued through the appropriate real estate element. Shoreline Management Plans should identify the types of activities that require real estate instruments and indicate the general process for obtaining same. Shoreline Use Permits are not

required for facilities or activities covered by a real estate instrument.

(g) *Transfer of Permits.* Shoreline Use Permits are non-transferable. They become null and void upon sale or transfer of the permitted facility or the death of the permittee and his/her legal spouse.

(h) *Existing Facilities Now Under Permit.* Implementation of a Shoreline Management Plan shall consider existing permitted facilities and prior written Corps commitments implicit in their issuance. Facilities or activities permitted under special provisions should be identified in a way that will set them apart from other facilities or activities.

(1) Section 6 of Pub. L. 97-140 provides that no lawfully installed dock or appurtenant structures shall be required to be removed prior to December 31, 1989, from any Federal water resources reservoir or lake project administered by the Secretary of the Army, acting through the Chief of Engineers, on which it was located on December 29, 1981, if such property is maintained in usable condition, and does not occasion a threat to life or property.

(2) In accordance with section 1134(d) of Pub. L. 99-662, any house boat, boathouse, floating cabin or lawfully installed dock or appurtenant structures in place under a valid shoreline use permit as of November 17, 1986, cannot be forced to be removed from any Federal water resources project or lake administered by the Secretary of the Army on or after December 31, 1989, if it meets the three conditions below except where necessary for immediate use for public purposes or higher public use or for a navigation or flood control project.

(i) Such property is maintained in a usable and safe condition,

(ii) Such property does not occasion a threat to life or property, and

(iii) The holder of the permit is in substantial compliance with the existing permit.

(3) All such floating facilities and appurtenances will be formally recognized in an appropriate Shoreline Management Plan. New permits for these permitted facilities will be issued to new owners. If the holder of the

permit fails to comply with the terms of the permit, it may be revoked and the holder required to remove the structure, in accordance with the terms of the permit as to notice, time, and appeal.

(i) *Facility Maintenance.* Permitted facilities must be operated, used and maintained by the permittee in a safe, healthful condition at all times. If determined to be unsafe, the resource manager will establish together with the permittee a schedule, based on the seriousness of the safety deficiency, for correcting the deficiency or having it removed, at the permittee's expense. The applicable safety and health prescriptions in EM 385-1-1 should be used as a guide.

(j) *Density of Development.* The density of private floating and fixed recreation facilities will be established in the Shoreline Management Plan for all portions of Limited Development areas consistent with ecological and aesthetic characteristics and prior written commitments. The facility density in Limited Development Areas should, if feasible, be determined prior to the development of adjacent private property. The density of facilities will not be more than 50 per cent of the Limited Development Area in which they are located. Density will be measured by determining the linear feet of shoreline as compared to the width of the facilities in the water plus associated moorage arrangements which restrict the full unobstructed use of that portion of the shoreline. When a Limited Development Area or a portion of a Limited Development area reaches maximum density, notice should be given to the public and facility owners in that area that no additional facilities will be allowed. In all cases, sufficient open area will be maintained for safe maneuvering of watercraft. Docks should not extend out from the shore more than one-third of the width of a cove at normal recreation or multipurpose pool. In those cases where current density of development exceeds the density level established in the Shoreline Management Plan, the density will be reduced to the prescribed level through attrition.

(k) *Permit Fees.* Fees associated with the Shoreline Use Permits shall be

paid prior to issuing the permit in accordance with the provisions of § 327.30(c)(1). The Fee Schedule is published in § 327.31.

APPENDIX A TO § 327.30—GUIDELINES FOR GRANTING SHORELINE USE PERMITS

1. General

a. Decisions regarding permits for private floating recreation facilities will consider the operating objectives and physical characteristics of each project. In developing Shoreline Management Plans, district commanders will give consideration to the effects of added private boat storage facilities on commercial concessions for that purpose. Consistent with established policies, new commercial concessions may be alternatives to additional limited development shoreline.

b. Permits for individually or group owned shoreline use facilities may be granted only in Limited Development Areas when the sites are not near commercial marine services and such use will not despoil the shoreline nor inhibit public use or enjoyment thereof. The installation and use of such facilities will not be in conflict with the preservation of the natural characteristics of the shoreline nor will they result in significant environmental damage. Charges will be made for Shoreline Use Permits in accordance with the separately published fee schedule.

c. Permits may be granted within Limited Development Areas for ski jumps, floats, boat moorage facilities, duck blinds, and other private floating recreation facilities when they will not create a safety hazard and inhibit public use or enjoyment of project waters or shoreline. A Corps permit is not required for temporary ice fishing shelters or duck blinds when they are regulated by a state program. When the facility or activity is authorized by a shoreline use permit, a separate real estate instrument is generally not required.

d. Group owned boat mooring facilities may be permitted in Limited Development Areas where practicable (e.g. where physically feasible in terms of access, water depths, wind protection, etc.).

2. Applications for Shoreline Use Permits

a. Applications for private Shoreline Use Permits will be reviewed with full consideration of the policies set forth in this and referenced regulations, and the Shoreline Management Plan. Fees associated with the Shoreline Use Permit shall be paid prior to issuing the permit. Plans and specifications of the proposed facility shall be submitted and approved prior to the start of construction. Submissions should include engineering details, structural design, anchorage

method, and construction materials; the type, size, location and ownership of the facility; expected duration of use; and an indication of willingness to abide by the applicable regulations and terms and conditions of the permit. Permit applications shall also identify and locate any land-based support facilities and any specific safety considerations.

b. Permits will be issued by the district commander or his/her authorized representative on ENG Form 4264-R (Application for Shoreline Use Permit) (appendix B). Computer generated forms may be substituted for ENG Form 4264-R provided all information is included. The computer generated form will be designated, "ENG Form 4264-R-E, Oct 87 (Electronic generation approved by USACE, Oct 87)".

c. The following are guides to issuance of Shoreline Use Permits:

(1) Use of boat mooring facilities, including piers and boat (shelters) houses, will be limited to vessel or watercraft mooring and storage of gear essential to vessel or watercraft operation.

(2) Private floating recreation facilities, including boat mooring facilities shall not be constructed or used for human habitation or in a manner which gives the appearance of converting Federal public property on which the facility is located to private, exclusive use. New docks with enclosed sides (i.e. boathouses) are prohibited.

(3) No private floating facility will exceed the minimum size required to moor the owner's boat or boats plus the minimum size required for an enclosed storage locker of oars, life preservers and other items essential to watercraft operation. Specific size limitations may be established in the project Shoreline Management Plan.

(4) All private floating recreation facilities including boat mooring facilities will be constructed in accordance with plans and specifications, approved by the resource manager, or a written certification from a licensed engineer, stating the facility is structurally safe will accompany the initial submission of the plans and specifications.

(5) Procedures regarding permits for individual facilities shall also apply to permits for non-commercial group mooring facilities.

(6) Facilities attached to the shore shall be securely anchored by means of moorings which do not obstruct the free use of the shoreline, nor damage vegetation or other natural features. Anchoring to vegetation is prohibited.

(7) Electrical service and equipment leading to or on private mooring facilities must not pose a safety hazard nor conflict with other recreational use. Electrical installations must be weatherproof and meet all current applicable electrical codes and regulations. The facility must be equipped with

quick disconnect fittings mounted above flood pool elevation. All electrical installations must conform to the National Electrical Code and all state, and local codes and regulations. In those states where electricians are licensed, registered, or otherwise certified, a copy of the electrical certificate must be provided to the resource manager before a Shoreline Use Permit can be issued or renewed. The resource manager will require immediate removal or disconnection of any electrical service or equipment that is not certified (if appropriate), does not meet code, or is not safely maintained. All electrical lines will be installed underground. This will require a separate estate instrument for the service right-of-way. Existing overhead lines will be allowed as long as they meet all applicable electrical codes, regulations and above guidelines include compatibility and safety related to fluctuating water levels.

(8) Private floating recreation facilities will not be placed so as to interfere with authorized project purposes, including navigation, or create a safety or health hazard.

(9) The district commander or his/her authorized representative may place special conditions on the permit when deemed necessary.

(10) Vegetation modification, including but not limited to, cutting, pruning, chemical manipulation, removal or seeding by private individuals is allowed only in the areas designated as Limited Development Areas or Protected Shoreline Areas. An existing (as of July 1, 1987) vegetation modification permit, within a shoreline allocation which normally would not allow vegetation modification, should be grandfathered. Permittees will not create the appearance of private ownership of public lands.

(11) The term of a permit for vegetation modification will be for five years. Where possible, such permits will be consolidated with other shoreline management permits into a single permit. The district commander is authorized to issue vegetation modification permits of less than five years for one-time requests or to aid in the consolidation of shoreline management permits.

(12) When issued a permit for vegetation modification, the permittee will delineate the government property line, as surveyed and marked by the government, in a clear but unobtrusive manner approved by the district commander and in accordance with the project Shoreline Management Plan and the conditions of the permit. Other adjoining owners may also delineate the common boundary subject to these same conditions. This delineation may include, but is not limited to, boundary planting and fencing. The delineation will be accomplished at no cost to the government.

(13) No permit will be issued for vegetation modification in Protected Shoreline Areas until the environmental impacts of the proposed modification are assessed by the resource manager and it has been determined that no significant adverse impacts will result. The effects of the proposed modification on water quality will also be considered in making this determination.

(14) The original of the completed permit application is to be retained by the permittee. A duplicate will be retained in the resource manager's office.

3. Permit Revocation

Permits may be revoked by the district commander when it is determined that the public interest requires such revocation or when the permittee fails to comply with terms and conditions of the permit, the Shoreline Management Plan, or of this regulation. Permits for duck blinds and ice fishing shelters will be issued to cover a period not to exceed 30 days prior to and 30 days after the season.

4. Removal of Facilities

Facilities not removed when specified in the permit or when requested after termination or revocation of the permit will be treated as unauthorized structures pursuant to 36 CFR 327.30.

5. Posting of Permit Number

Each district will procure 5" x 8" or larger printed permit tags of light metal or plastic for posting. The permit display tag shall be posted on the facility and/or on the land area covered by the permit, so that it can be visually checked, with ease in accordance with instructions provided by the resource manager. Facilities or activities permitted under special provisions should be identified in a way that will set apart from other facilities or activities.

APPENDIX B TO § 327.30—APPLICATION FOR SHORELINE USE PERMIT (RESERVED)

APPENDIX C TO § 327.30—SHORELINE USE PERMIT CONDITIONS

1. This permit is granted solely to the applicant for the purpose described on the attached permit.

2. The permittee agrees to and does hereby release and agree to save and hold the Government harmless from any and all causes of action, suits at law or equity, or claims or demands or from any liability of any nature whatsoever for or on account of any damages to persons or property, including a permitted facility, growing out of the ownership, construction, operation or maintenance by the permittee of the permitted facilities and/or activities.

3. Ownership, construction, operation, use and maintenance of a permitted facility are subject to the Government's navigation servitude.

4. No attempt shall be made by the permittee to forbid the full and free use by the public of all public waters and/or lands at or adjacent to the permitted facility or to unreasonably interfere with any authorized project purposes, including navigation in connection with the ownership, construction, operation or maintenance of a permitted facility and/or activity.

5. The permittee agrees that if subsequent operations by the Government require an alteration in the location of a permitted facility and/or activity or if in the opinion of the district commander a permitted facility and/or activity shall cause unreasonable obstruction to navigation or that the public interest so requires, the permittee shall be required, upon written notice from the district commander to remove, alter, or relocate the permitted facility, without expense to the Government.

6. The Government shall in no case be liable for any damage or injury to a permitted facility which may be caused by or result from subsequent operations undertaken by the Government for the improvement of navigation or for other lawful purposes, and no claims or right to compensation shall accrue from any such damage. This includes any damage that may occur to private property if a facility is removed for noncompliance with the conditions of the permit.

7. Ownership, construction, operation, use and maintenance of a permitted facility and/or activity are subject to all applicable Federal, state and local laws and regulations. Failure to abide by these applicable laws and regulations may be cause for revocation of the permit.

8. This permit does not convey any property rights either in real estate or material; and does not authorize any injury to private property or invasion of private rights or any infringement of Federal, state or local laws or regulations, nor does it obviate the necessity of obtaining state or local assent required by law for the construction, operation, use or maintenance of a permitted facility and/or activity.

9. The permittee agrees to construct the facility within the time limit agreed to on the permit issuance date. The permit shall become null and void if construction is not completed within that period. Further, the permittee agrees to operate and maintain any permitted facility and/or activity in a manner so as to provide safety, minimize any adverse impact on fish and wildlife habitat, natural, environmental, or cultural resources values and in a manner so as to minimize the degradation of water quality.

10. The permittee shall remove a permitted facility within 30 days, at his/her expense, and restore the waterway and lands to a condition accepted by the resource manager upon termination or revocation of this permit or if the permittee ceases to use, operate or maintain a permitted facility and/or activity. If the permittee fails to comply to the satisfaction of the resource manager, the district commander may remove the facility by contract or otherwise and the permittee agrees to pay all costs incurred thereof.

11. The use of a permitted boat dock facility shall be limited to the mooring of the permittee's vessel or watercraft and the storage, in enclosed locker facilities, of his/her gear essential to the operation of such vessel or watercraft.

12. Neither a permitted facility nor any houseboat, cabin cruiser, or other vessel moored thereto shall be used as a place of habitation or as a full or part-time residence or in any manner which gives the appearance of converting the public property, on which the facility is located, to private use.

13. Facilities granted under this permit will not be leased, rented, sub-let or provided to others by any means of engaging in commercial activity(s) by the permittee or his/her agent for monetary gain. This does not preclude the permittee from selling total ownership to the facility.

14. On all new docks and boat mooring buoys, flotation shall be of materials which will not become waterlogged, is not subject to damage by animals, is not subject to deterioration upon contact with petroleum products (gasoline, diesel fuel, oil, or other caustic substances) and will not sink or contaminate the water if punctured. No metal-covered or injected drum flotation will be allowed. Foam bead flotation may be authorized by the district commander if it is encased in a protective coating to prevent deterioration with resultant loss of beads. Existing flotation will be authorized until it has severely deteriorated and is no longer serviceable or capable of supporting the structure, at which time it should be replaced with approved flotation.

15. Permitted facilities and activities are subject to periodic inspection by authorized Corps representatives. The resource manager will notify the permittee of any deficiencies and together establish a schedule for their correction. No deviation or changes from approved plans will be allowed without prior written approval of the resource manager.

16. Floating facilities shall be securely attached to the shore in accordance with the approved plans by means of moorings which do not obstruct general public use of the shoreline or adversely affect the natural terrain or vegetation. Anchoring to vegetation is prohibited.

17. The permit display tag shall be posted on the permitted facility and/or on the areas covered by the permit so that it can be visually checked with ease in accordance with instructions provided by the resource manager.

18. No vegetation other than that prescribed in the permit will be damaged, destroyed or removed. No vegetation of any kind will be planted, other than that specifically prescribed in the permit.

19. No change in land form such as grading, excavation or filling is authorized under this permit.

20. This permit is non-transferable. Upon the sale or other transfer of the permitted facility or the death of the permittee or his/her legal spouse, this permit is null and void.

21. By 30 days written notice, mailed to the permittee by certified letter, the district commander may revoke this permit whenever the public interest necessitates such revocation or when the permittee fails to comply with any permit condition or term. The revocation notice shall specify the reasons for such action. If the permittee requests a hearing in writing to the district commander through the resource manager within the 30-day period, the district commander shall grant such hearing at the earliest opportunity. In no event shall the hearing date be more than 60 days from the date of the hearing request. Following the hearing, a written decision will be rendered and a copy mailed to the permittee by certified letter.

22. Notwithstanding the conditions cited in condition 21 above, if in the opinion of the district commander, emergency circumstances dictate otherwise, the district commander may summarily revoke the permit.

23. When vegetation modification of these lands is accomplished by chemical means, the program will be in accordance with appropriate Federal, state and local laws, rules and regulations.

24. The resource manager or his/her authorized representative shall be allowed to cross the permittee's property, as necessary to inspect facilities and/or activities under permit.

25. When vegetation modification is allowed, the permittee will delineate the government property line in a clear, but unobtrusive manner approved by the resource manager and in accordance with the project Shoreline Management Plan.

26. If the ownership of a permitted facility is sold or transferred, the permittee or new owner will notify the Resource Manager of the action prior to finalization. The new owner must apply for a Shoreline Use Permit within 14 days or remove the facility and restore the use area within 30 days from the date of ownership transfer.

37. If permitted facilities are removed for storage or extensive maintenance, the resource manager may require all portions of the facility be removed from public property.

APPENDIX D TO § 327.30—PERMIT—
(RESERVED)

[56 FR 30697, July 27, 1990, as amended at 56 FR 29587, June 28, 1991]

EFFECTIVE DATE NOTE: At 56 FR 29587, June 28, 1991, § 327.30 was amended by revising the last sentence of paragraph (k), effective October 1, 1991. For the convenience of the user, the superseded text appears as follows:

§ 327.30 Shoreline Management on Civil Works Projects.

(k) . . . The fee schedule will be published separately.

§ 327.31 Shoreline Management fee schedule.

(a) *Applicability.* This fee schedule is applicable to all permits issued in accordance with § 327.30, Shoreline Management at Civil Works Projects.

(b) *General.* (1) Permits will be issued for a five year period to reduce costs to the permittee. To reduce administrative workload, projects may elect to issue a permit for a term less than five years. The new fees will not be assessed until the expiration of a valid permit.

(2) When an applicant receives a permit that covers more than one activity and/or facility, only a single permit covering the activities/facilities will be issued. A one time fee will be charged for all permit activities/facilities which are simultaneously authorized as if the permit was for a single activity/facility. If both a moorage facility and vegetation modification are authorized concurrently under one permit, only the fee for a moorage facility will be charged. This will apply to permit renewals as well as new activities/facilities.

(3) Similarly, if multiple activities/facilities are authorized under a single permit renewal, only one periodic fee will be charged for each year of the

permit as if the permit was for a single activity/facility.

(4) If one or more activity/facility modifications are authorized, on a permit which contains multiple activities/facilities, a one time activity/facility modification will apply. No periodic inspection fees will be charged for activity/facility modifications.

(5) No periodic inspection fee will be charged for facility modifications.

(6) This fee schedule does not affect the fees charged for real estate instruments. Those fees are established by a separate regulation.

(7) This fee schedule reflects a portion of the administrative costs to manage the program, and includes base labor, fringe benefits, overhead, equipment, materials and supplies. This fee schedule enables the government to recover a greater portion of the cost of administering the shoreline management program.

(8) This fee schedule insures that those individuals or groups deriving the most benefit from shoreline management are paying a larger portion of the administrative cost of the program.

(9) The one time fee is necessary to recover a portion of the cost associated with the initial administration of new permits, permit modifications and new owner permit reassignments.

(10) Payment of the Facility Modification Fee will not change the expiration date of the Shoreline Management Permit.

(11) A Facility Modification Permit will only be issued to a current holder of a Shoreline Management Permit. Current permit holders have already paid a periodic fee, therefore no additional periodic fees will be paid for the duration of the permit.

(12) There is no separate fee for community docks. In the case of multi-owner facilities any reassignment of an individual owner will be done free of charge.

(13) Fees will not be assessed for erosion control permits because the government, the public, and the permittee all benefit directly or indirectly from the construction of erosion control structures.

(14) No refunds will be made for any unused portions of permits terminated

by the permittee before the permit expiration date. A refund may be issued if the permit is terminated by the government.

(15) The 50% fee reduction to senior citizens available through the Golden Age and Golden Access programs does not apply to shoreline management fees.

(16) The "one time fees" will be required each time an application is made for a specific activity/facility.

(17) Co-permit holders, other than husband and wife, are not allowed.

(18) Definitions:

New facility—A facility for which a permit has expired or where no facility has previously existed.

New owner—The reassignment of an existing permit (other than single permit holder in a multi-slip community dock) to a different person.

Vegetation modification new permit—A vegetation modification for which a permit has expired or where no vegetation modification has previously existed.

Vegetation modification—New owner—An existing permit for a new adjacent land owner or reassignment of an existing permit to a different adjacent landowner.

Vegetation modification—Change—Any substantial change as defined by the project Shoreline Management Plan, to an existing vegetation modification permit.

Facility modification—Any substantial change, as defined by the project Shoreline Management Plan, to an existing permit or, replacement of an existing facility.

Permit renewal—The term of an existing permit has expired and the activity/facility is being reauthorized, without change, under a new permit.

(c) *Fee schedule.* The fee schedule is as follows:

Type of permit	One time fee	Periodic fee*	Total 5 year fee
Permit renewal.....	0	15/year.....	75
Change.....	100	0.....	100
Erosion control.....	0	0.....	0

*Periodic fees (inspection fees) are set at \$15 per year and are payable in advance for 5 year increments.

[56 FR 29587, June 28, 1991]

EFFECTIVE DATE NOTE: At 56 FR 29587, June 28, 1991, § 327.31 was added, effective October 1, 1991.

Type of permit	One time fee	Periodic fee*	Total 5 year fee
Facilities			
New facility.....	\$400	\$15/year.....	\$475
New owner.....	200	15/year.....	275
Facility mod.....	100	0.....	100
Permit renewal.....	0	15/year.....	75
Vegetation modification:			
New permit.....	200	15/year.....	275
New owner.....	100	15/year.....	175

PART 261—PROHIBITIONS

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AUTHORITY: 16 U.S.C. 551; 16 U.S.C. 472; 7 U.S.C. 1011(f); 16 U.S.C. 1246(i); 16 U.S.C. 1133(c)-(d)(1).

SOURCE: 42 FR 2957, Jan. 14, 1977, unless otherwise noted.

Subpart A—General Prohibitions

§ 261.1 Scope.

(a) The prohibitions in this part apply, except as otherwise provided, when:

(1) An act or omission occurs in the National Forest System or on a Forest development road or trail.

(2) An act or omission affects, threatens, or endangers property of

the United States administered by the Forest Service.

(3) An act or omission affects, threatens, or endangers a person using, or engaged in the protection, improvement or administration of the National Forest System or a Forest development road or trail.

(4) An act or omission occurs within the designated boundaries of a component of the National Wild and Scenic Rivers System.

(b) Nothing in this part shall preclude activities as authorized by the Wilderness Act of 1964 or the U.S. Mining Laws Act of 1872 as amended.

[42 FR 35958, July 13, 1977, as amended at 43 FR 32136, July 25, 1978; 46 FR 33519, June 30, 1981]

§ 261.1a Special use authorizations, contracts and operating plans.

The Chief, each Regional Forester, each Forest Supervisor, and each District Ranger or equivalent officer may issue special-use authorizations, award contracts, or approve operating plans authorizing the occupancy or use of a road, trail, area, river, lake, or other part of the National Forest System in accordance with authority which is delegated elsewhere in this chapter or in the Forest Service Manual. These Forest Officers may permit in the authorizing document or approved plan an act or omission that would otherwise be a violation of a subpart A or subpart C regulation or a subpart B order. In authorizing such uses, the Forest Officer may place such conditions on the authorization as that officer considers necessary for the protection or administration of the National Forest System, or for the promotion of public health, safety, or welfare.

[49 FR 25450, June 21, 1984]

§ 261.1b Penalty.

Any violation of the prohibitions of this part (261) shall be punished by a fine of not more than \$500 or imprisonment for not more than six months or both pursuant to title 16 U.S.C., section 551, unless otherwise provided.

[46 FR 33519, June 30, 1981]

§ 261.2 Definitions.

The following definitions apply to this part:

~~Archaeological resource~~ means any material remains of prehistoric or historic human life or activities which are of archaeological interest and are at least 50 years of age, and the physical site, location, or context in which they are found.

Campfire means a fire, not within any building, mobile home or living accommodation mounted on a motor vehicle, which is used for cooking, personal warmth, lighting, ceremonial, or esthetic purposes. *Fire* includes campfire.

Camping means the temporary use of National Forest System lands for the purpose of overnight occupancy without a permanently-fixed structure.

Camping equipment means the personal property used in or suitable for camping, and includes any vehicle used for transportation and all equipment in possession of a person camping. Food and beverage are not considered camping equipment.

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

Developed recreation site means an area which has been improved or developed for recreation.

Forest development road means a road wholly or partly within or adjacent to and serving a part of the National Forest System and which has been included in the Forest Development Road System Plan.

Forest development trail means a trail wholly or partly within or adjacent to and serving a part of the National Forest System and which has been included in the Forest Development Trail System Plan.

Forest officer means an employee of the Forest Service.

Historical resource means any structural, architectural, archaeological, artifactual or other material remains of past human life or activities which are of historical interest and are at least 50 years of age, and the physical site, location, or context in which they are found.

Motorized equipment means any machine activated by a nonliving power source except small battery-powered handcarried devices such as flashlights, shavers, Geiger counters, and cameras.

Motor vehicle means any vehicle which is self-propelled or any vehicle which is propelled by electric power obtained from batteries, but not operated on rails.

National Forest System includes all national forest lands and waters reserved or withdrawn from the public domain of the United States, national forest lands and waters acquired through purchase, exchange, donation, or other means, national grasslands and land utilization projects and waters administered under title III of the Bankhead-Jones Farm Tenant Act (50 Stat. 525, 7 U.S.C. 1010-1012), and other lands, waters, or interests therein acquired under the Wild and Scenic River Act (16 U.S.C. 1271-1287) or National Trails System Act (16 U.S.C. 1241-1249).

National Forest wilderness means those parts of the National Forest System which were designated units of the National Wilderness Preservation System by the Wilderness Act of September 3, 1964, and such other areas of the National Forest System as are added to the wilderness system by act of Congress.

Operating plan means a plan of operations as provided for in 36 CFR part 228, subpart A, and a surface use plan of operations as provided for in 36 CFR part 228, subpart E.

Paleontological resource means any evidence of fossilized remains of multicellular invertebrate and vertebrate animals and multicellular plants, including imprints thereof. Organic remains primarily collected for use as fuel such as coal and oil are Paleontological Resources, but are excluded from the prohibitions under the rule.

Person means natural person, corporation, company, partnership, trust, firm, or association of persons.

Permission means oral authorization by a forest officer.

Permit means authorization in writing by a forest officer.

Prehistoric resource means any structural, architectural, archaeologi-

cal, artifactual or other material remains of past human life or activity generally prior to the advent of written records and of anthropological interest, and the physical site, location, or context in which they are found.

Primitive areas are those areas within the National Forest System classified as *Primitive* on the effective date of the Wilderness Act, September 3, 1964.

Publicly nude means nude in any place where a person may be observed by another person. Any person is nude if the person has failed to cover the rectal area, pubic area or genitals. A female person is also nude if she has failed to cover both breasts below a point immediately above the top of the areola. Each such covering must be fully opaque. No person under the age of 10 years shall be considered publicly nude.

Special-use authorization means a permit, term permit, lease or easement which allows occupancy, or use rights or privileges of National Forest System land.

State means any State, the Commonwealth of Puerto Rico, and the District of Columbia.

State law means the law of any State in whose exterior boundaries an act or omission occurs regardless of whether State law is otherwise applicable.

Stove fire means a campfire built inside an enclosed stove or grill, a portable brazier, or a pressurized liquid or gas stove, including a space-heating device.

Unauthorized livestock means any cattle, sheep, goat, hog, or equine not defined as a wild free-roaming horse or burro by § 222.20(b)(13), which is not authorized by permit to be upon the land on which the livestock is located and which is not related to use authorized by a grazing permit; provided, that noncommercial pack and saddle stock used by recreationists, travelers, other Forest visitors for occasional trips, as well as livestock to be trailed over an established driveway when there is no overnight stop on Forest Service administered land do not fall under this definition.

Vehicle means any device in, upon, or by which any person or property is

or may be transported, including any frame, chassis, or body of any motor vehicle, except devices used exclusively upon stationary rails or tracks.

Volunteer or hosted enrollee means any person, not a Forest Service employee, officially participating in a Forest Service human resource program as authorized by an act of Congress and identified to accomplish one or more of the following objectives: provide skills training; education; useful work; develop understanding of ecological systems and conservation of natural resources; build cultural and communication bridges between various socioeconomic groups; and further the administration, development, and management of National Forest resources, forest research, and State and Private Forest activities.

Wild free-roaming horses and burros mean all unbranded and unclaimed horses and burros and their progeny that have used lands of the National Forest System on or after December 15, 1971, or do hereafter use these lands as all or part of their habitat, but does not include any horse or burro introduced onto National Forest System lands on or after December 15, 1971, by accident, negligence, or willful disregard of private ownership. Unbranded, claimed horses and burros, where the claim is found to be erroneous, are also considered as wild and free-roaming if they meet the criteria above.

[42 FR 2957, Jan. 14, 1977, as amended at 42 FR 35959, July 13, 1977; 46 FR 33519, June 30, 1981; 47 FR 29230, July 6, 1982; 49 FR 25450, June 24, 1984; 51 FR 1250, Jan. 10, 1986; 55 FR 10452, Mar. 21, 1990]

§ 261.3 Interfering with a Forest officer, volunteer, or human resource program enrollee or giving false report to a Forest officer.

The following are prohibited:

(a) Threatening, resisting, intimidating, or interfering with any forest officer engaged in or on account of the performance of his official duties in the protection, improvement, or administration of the National Forest System is prohibited.

(b) Giving any false, fictitious or fraudulent report or other informa-

tion to any Forest Officer engaged in or on account of the performance of his official duties knowing that such report or other information contains false, fictitious or fraudulent statement or entry.

(c) Threatening, intimidating, or intentionally interfering with any Forest officer, volunteer, or human resource program enrollee while engaged in, or on account of, the performance of duties for the protection, improvement, or administration of the National Forest System or other duties assigned by the Forest Service.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981; 49 FR 26450, June 21, 1984]

§ 261.4 Disorderly conduct.

The following are prohibited:

- (a) Engaging in fighting.
- (b) Addressing any offensive, derisive, or annoying communication to any other person who is lawfully present when such communication has a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed.
- (c) Make statements or other actions directed toward inciting or producing imminent lawless action and likely to incite or produce such action.
- (d) Causing public inconvenience, annoyance, or alarm by making unreasonably loud noise.

[46 FR 33520, June 30, 1981]

§ 261.5 Fire.

The following are prohibited:

- (a) Carelessly or negligently throwing or placing any ignited substance or other substance that may cause a fire.
- (b) Firing any tracer bullet or incendiary ammunition.
- (c) Causing timber, trees, slash, brush or grass to burn except as authorized by permit.
- (d) Leaving a fire without completely extinguishing it.
- (e) Allowing a fire to escape from control.
- (f) Building, attending, maintaining, or using a campfire without removing all flammable material from around the campfire adequate to prevent its escape.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981]

§ 261.6 Timber and other forest products.

The following are prohibited:

- (a) Cutting or otherwise damaging any timber, tree, or other forest product, except as authorized by a special-use authorization, timber sale contract, or Federal law or regulation.
- (b) Cutting any standing tree, under permit or timber sale contract, before a Forest Officer has marked it or has otherwise designated it for cutting.
- (c) Removing any timber or other forest product cut under permit or timber sale contract, except to a place designated for scaling, or removing it from that place before it is scaled, measured, counted, or otherwise accounted for by a forest officer.
- (d) Stamping, marking with paint, or otherwise identifying any tree or other forest product in a manner similar to that employed by forest officers to mark or designate a tree or any other forest product for cutting or removal.
- (e) Loading, removing or hauling timber or other forest product acquired under any permit or timber sale contract unless such product is identified as required in such permit or contract.
- (f) Selling or exchanging any timber or other forest product obtained under free use pursuant to §§ 223.5 through 223.11.
- (g) Violating any timber export or substitution restriction in §§ 223.160 through 223.164.
- (h) Removing any timber, tree or other forest product, except as authorized by a special-use authorization, timber sale contract, or Federal law or regulation.

[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977, as amended at 49 FR 25450, June 21, 1984; 51 FR 1250, Jan. 10, 1986]

[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977, as amended at 49 FR 25450, June 21, 1984; 51 FR 1250, Jan. 10, 1986]

[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977, as amended at 49 FR 25450, June 21, 1984; 51 FR 1250, Jan. 10, 1986]

[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977, as amended at 49 FR 25450, June 21, 1984; 51 FR 1250, Jan. 10, 1986]

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[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977, as amended at 49 FR 25450, June 21, 1984; 51 FR 1250, Jan. 10, 1986]

§ 261.7 Livestock.

The following are prohibited:

- (a) Placing or allowing unauthorized livestock to enter or be in the National Forest System or other lands under Forest Service control.
- (b) Not removing unauthorized livestock from the National Forest System

or other lands under Forest Service control when requested by a forest officer.

(c) Failing to reclose any gate or other entry.

(d) Molesting, injuring, removing, or releasing any livestock impounded under § 262.10 while in the custody of the Forest Service or its authorized agents.

[42 FR 35959, July 13, 1977, as amended at 51 FR 1251, Jan. 10, 1986]

§ 261.8 Fish and wildlife.

The following are prohibited to the extent Federal or State law is violated:

(a) Hunting, trapping, fishing, catching, molesting, killing or having in possession any kind of wild animal, bird, or fish, or taking the eggs of any such bird.

(b) Possessing a firearm or other implement designed to discharge a missile capable of destroying animal life.

(c) Possessing equipment which could be used for hunting, fishing, or trapping.

(d) Possessing a dog not on a leash or otherwise confined.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981]

§ 261.9 Property.

The following are prohibited:

(a) Damaging any natural feature or other property of the United States.

(b) Removing any natural feature or other property of the United States.

(c) Damaging any plant that is classified as a threatened, endangered, sensitive, rare, or unique species.

(d) Removing any plant that is classified as a threatened, endangered, sensitive, rare, or unique species.

(e) Entering any building, structure, or enclosed area owned or controlled by the United States when such building, structure, or enclosed area is not open to the public.

(f) Using any pesticide except for personal use as an insect repellent or as provided by special-use authorization for other minor uses.

(g) Digging in, excavating, disturbing, injuring, destroying, or in any way damaging any prehistoric, historic, or archaeological resource, structure, site, artifact, or property.

(h) Removing any prehistoric, historic, or archaeological resource, structure, site, artifact, property.

(i) Excavating, damaging, or removing any vertebrate fossil or removing any paleontological resource for commercial purposes without a special use authorization.

[46 FR 33520, June 30, 1981, as amended at 49 FR 25450, June 21, 1984; 51 FR 30356, Aug. 26, 1986]

§ 261.10 Occupancy and use.

The following are prohibited:

(a) Constructing, placing, or maintaining any kind of road, trail, structure, fence, enclosure, communication equipment, or other improvement on National Forest system land or facilities without a special-use authorization, contract, or approved operating plan.

(b) Taking possession of, occupying, or otherwise using National Forest System lands for residential purposes without a special-use authorization, or as otherwise authorized by Federal law or regulation.

(c) Selling or offering for sale any merchandise or conducting any kind of work activity or service unless authorized by Federal law, regulation, or special-use authorization.

(d) Discharging a firearm or any other implement capable of taking human life, causing injury, or damaging property:

(1) In or within 150 yards of a residence, building, campsite, developed recreation site or occupied area, or

(2) Across or on a Forest Development road or a body of water adjacent thereto, or in any manner or place whereby any person or property is exposed to injury or damage as a result in such discharge.

(e) Abandoning any personal property.

(f) Placing a vehicle or other object in such a manner that it is an impediment or hazard to the safety or convenience of any person.

(g) Disseminating, posting, placing, or erecting any paper, notice, advertising material, sign, handbill, petition, or similar written and/or graphic matter without a special use authorization.

(h) Operating or using in or near a campsite, developed recreation site, or over an adjacent body of water without a permit, any device which produces noise, such as a radio, television, musical instrument, motor or engine in such a manner and at such a time so as to unreasonably disturb any person.

(i) Operating or using a public address system, whether fixed, portable or vehicle mounted, in or near a campsite or developed recreation site or over an adjacent body of water without a special-use authorization.

(j) Use or occupancy of National Forest System land or facilities without special-use authorization when such authorization is required.

(k) Violating any term or condition of a special-use authorization, contract or approved operating plan.

(l) Failing to stop a vehicle when directed to do so by a Forest Officer.

(m) Failing to pay any special use fee or other charges as required.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981; 49 FR 25450, June 21, 1984; 53 FR 16550, May 10, 1988]

§ 261.11 Sanitation.

The following are prohibited:

(a) Depositing in any toilet, toilet vault, or plumbing fixture any substance which could damage or interfere with the operation or maintenance of the fixture.

(b) Possessing or leaving refuse, debris, or litter in an exposed or unsanitary condition.

(c) Placing in or near a stream, lake, or other water any substance which does or may pollute a stream, lake, or other water.

(d) Failing to dispose of all garbage, including any paper, can, bottle, sewage, waste water or material, or rubbish either by removal from the site or area, or by depositing it into receptacles or at places provided for such purposes.

(e) Dumping of any refuse, debris, trash or litter brought as such from private property or from land occupied under permit, except, where a container, dump or similar facility has been provided and is identified as such, to receive trash generated from private lands or lands occupied under permit.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981]

§ 261.12 Forest development roads and trails.

The following are prohibited:

(a) Violating the load, weight, height, length, or width limitations prescribed by State law except by special-use authorization or written agreement or by order issued under § 261.54 of this Chapter.

(b) Failing to have a vehicle weighed at a Forest Service weighing station, if required by a sign.

(c) Damaging and leaving in a damaged condition any such road, trail, or segment thereof.

(d) Blocking, restricting, or otherwise interfering with the use of a road, trail, or gate.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981; 49 FR 25450, June 21, 1984; 55 FR 25832, June 25, 1990]

§ 261.13 Use of vehicles off roads.

It is prohibited to operate any vehicle off Forest Development, State or County roads:

(a) Without a valid license as required by State law.

(b) Without an operable braking system.

(c) From one-half hour after sunset to one-half hour before sunrise unless equipped with working head and tail lights.

(d) In violation of any applicable noise emission standard established by any Federal or State agency.

(e) While under the influence of alcohol or other drug;

(f) Creating excessive or unusual smoke;

(g) Carelessly, recklessly, or without regard for the safety of any person, or in a manner that endangers, or is likely to endanger, any person or property.

(h) In a manner which damages or unreasonably disturbs the land, wildlife, or vegetative resources.

(i) In violation of State law established for vehicles used off roads.

[42 FR 2957, Jan. 14, 1977, as amended at 42 FR 35959, July 13, 1977]

§ 261.14 Developed recreation sites.

The following are prohibited:

- (a) Occupying any portion of the site for other than recreation purposes.
- (b) Building, attending, maintaining, or using a fire outside of a fire ring provided by the Forest Service for such purpose or outside of a stove, grill or fireplace.
- (c) Cleaning or washing any personal property, fish, animal, or food, or bathing or washing at a hydrant or water faucet not provided for that purpose.
- (d) Discharging or igniting a firecracker, rocket or other firework, or explosive.
- (e) Occupying between 10 p.m. and 6 a.m. a place designated for day use only.
- (f) Failing to remove all camping equipment or personal property when vacating the area or site.
- (g) Placing, maintaining, or using camping equipment except in a place specifically designated or provided for such equipment.
- (h) Without permission, failing to have at least one person occupy a camping area during the first night after camping equipment has been set up.
- (i) Leaving camping equipment unattended for more than 24 hours without permission.
- (j) Bringing in or possessing an animal, other than a seeing eye dog, unless it is crated, caged, or upon a leash not longer than six feet, or otherwise under physical restrictive control.
- (k) Bringing in or possessing in a swimming area an animal, other than a seeing eye dog.
- (l) Bringing in or possessing a saddle, pack, or draft animal except as authorized by posted instructions.
- (m) Operating or parking a motor vehicle or trailer except in places developed or designated for this purpose.
- (n) Operating a bicycle, motorbike, or motorcycle on a trail unless designated for this use.
- (o) Operating a motorbike, motorcycle, or other motor vehicle for any purpose other than entering or leaving the site.

(p) Distributing any handbill, circular, paper or notice without a special-use authorization.

(q) Depositing any body waste except into receptacles provided for that purpose.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981; 49 FR 25450, June 21, 1984]

§ 261.15 Admission, recreation use and special recreation permit fees.

Failing to pay any fee established for admission or entrance to or use of a site, facility, equipment or service furnished by the United States is prohibited. The maximum fine shall not exceed \$100.

(Sec. 2, 78 Stat. 897, as amended; 16 U.S.C. 4601-6(e))
[46 FR 33520, June 30, 1981]

§ 261.16 National Forest Wilderness.

The following are prohibited in a National Forest Wilderness:

- (a) Possessing or using a motor vehicle, motorboat or motorized equipment except as authorized by Federal Law or regulation.
- (b) Possessing or using a hang glider or bicycle.
- (c) Landing of aircraft, or dropping or picking up of any material, supplies, or person by means of aircraft, including a helicopter.

[42 FR 2957, Jan. 14, 1977, as amended at 42 FR 35959, July 13, 1977; 50 FR 16231, Apr. 25, 1985]

§ 261.17 Boundary Waters Canoe Area Wilderness.

The following are prohibited in the Boundary Waters Canoe Area Wilderness:

- (a) Possessing or transporting any motor or other mechanical device capable of propelling a watercraft through water by any means, except by permit or as specifically authorized by Federal law or regulation.
- (b) Transporting, using, or mooring amphibious craft of any type or any watercraft designed for or used as floating living quarters.
- (c) Using wheels, rollers, or other mechanical devices for the overland transportation of any watercraft.

except by special-use authorization, or as authorized by Federal law or regulation.

[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977, as amended at 49 FR 25450, June 21, 1984; 50 FR 16231, Apr. 25, 1985]

§ 261.18 Pacific Crest National Scenic Trail.

It is prohibited to use a motorized vehicle on the Pacific Crest National Scenic Trail without a special-use authorization.

[49 FR 25450, June 21, 1984]

§ 261.19 National Forest primitive areas.

The following are prohibited in any area classified as a National Forest Primitive Area on September 3, 1964:

(a) Landing of aircraft or using a motor boat, unless such use had become well established before September 3, 1964.

(b) Possessing or using a motor or motorized equipment, except small battery powered, hand-held devices, such as cameras, shavers, flashlights, and Geiger-counters.

[42 FR 35959, July 13, 1977]

§ 261.20 Unauthorized use of "Smokey Bear" and "Woody Owl" symbol.

(a) Manufacture, importation, reproduction, or use of "Smokey Bear" except as provided under §§ 271.2, 271.3, or 271.4 is prohibited.

(b) Manufacture, importation, reproduction, or use of "Woody Owl" except as provided under §§ 272.2, 272.3, or 272.4 is prohibited.

[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977]

§ 261.21 Wild free-roaming horses and burros.

The following are prohibited:

(a) Removing or attempting to remove a wild free-roaming horse or burro from the National Forest System unless authorized by law or regulation.

(b) Causing or allowing the inhumane treatment or harassment of a wild free-roaming horse or burro.

(c) Removing or attempting to remove, alter or destroy any official mark used to identify a wild horse or

burro or its remains unless authorized or permitted by law or regulation.

(d) Violating any terms or conditions specified in a care and maintenance agreement or permit.

[46 FR 33520, June 30, 1981]

Subpart B—Prohibitions in Areas Designated by Order

§ 261.50 Orders.

(a) The Chief, each Regional Forester, each Experiment Station Director, the Administrator of the Lake Tahoe Basin Management Unit and each Forest Supervisor may issue orders which close or restrict the use of described areas within the area over which he has jurisdiction. An order may close an area to entry or may restrict the use of an area by applying any or all of the prohibitions authorized in this subpart or any portion thereof.

(b) The Chief, each Regional Forester, each Experiment Station Director, the Administrator of the Lake Tahoe Basin Management Unit and each Forest Supervisor may issue orders which close or restrict the use of any forest development road or trail within the area over which he has jurisdiction.

(c) Each order shall:

(1) For orders issued under paragraph (a) of this section, describe the area to which the order applies;

(2) For orders issued under paragraph (b) of this section, describe the road or trail to which the order applies;

(3) Specify the times during which the prohibitions apply if applied only during limited times;

(4) State each prohibition which is applied; and

(5) Be posted in accordance with § 261.51.

(d) The prohibitions which are applied by an order are supplemental to the general prohibitions in Subpart A.

(e) An order may exempt any of the following persons from any of the prohibitions contained in the order:

(1) Persons with a permit specifically authorizing the otherwise prohibited act or omission.

(2) Owners or lessees of land in the area;

(3) Residents in the area;

(4) Any Federal, State, or local officer, or member of an organized rescue or fire fighting force in the performance of an official duty; and

(5) Persons engaged in a business, trade, or occupation in the area.

(6) Any other person meeting exemption requirements specified in the order.

(f) Any person wishing to use a Forest development road or trail or a portion of the National Forest System, should contact the Forest Supervisor, Director, Administrator, or District Ranger to ascertain the special restrictions which may be applicable thereto.

[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977, as amended at 42 FR 35959, July 13, 1977; 46 FR 33521, June 30, 1981]

§ 261.51 Posting.

Posting is accomplished by:

(a) Placing a copy of the order imposing each prohibition in the offices of the Forest Supervisor and District Ranger, or equivalent officer who have jurisdiction over the lands affected by the order, and

(b) Displaying each prohibition imposed by an order in such locations and manner as to reasonably bring the prohibition to the attention of the public.

§ 261.52 Fire.

When provided by an order, the following are prohibited:

(a) Building, maintaining, attending or using a fire, campfire, or stove fire.

(b) Using an explosive.

(c) Smoking.

(d) Smoking, except within an enclosed vehicle or building, a developed recreation site, or while stopped in an area at least three feet in diameter that is barren or cleared of all flammable material.

(e) Going into or being upon an area.

(f) Possessing, discharging or using any kind of firework or other pyrotechnic device.

(g) Entering an area without any firefighting tool prescribed by the order.

(h) Operating an internal combustion engine.

(i) Welding, or operating an acetylene or other torch with open flame.

(j) Operating or using any internal or external combustion engine without a spark arresting device properly installed, maintained and in effective working order meeting either:

(1) Department of Agriculture, Forest Service Standard 5100-1a; or

(2) Appropriate Society of Automotive Engineers (SAE) recommended practice J335(b) and J350(a).

(k) Violating any state law specified in the order concerning burning, fires or which is for the purpose of preventing, or restricting the spread of fires.

[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977; as amended at 42 FR 35959, July 13, 1977; 46 FR 33521, June 30, 1981]

§ 261.53 Special closures.

When provided in an order, it is prohibited to go into or be upon any area which is closed for the protection of:

(a) Threatened, endangered, rare, unique, or vanishing species of plants, animals, birds or fish.

(b) Special biological communities.

(c) Objects or areas of historical, archaeological, geological, or paleontological interest.

(d) Scientific experiments or investigations.

(e) Public health or safety.

(f) Property.

§ 261.54 Forest development roads.

When provided by an order, the following are prohibited:

(a) Using any type of vehicle prohibited by the order.

(b) Use by any type of traffic prohibited by the order.

(c) Using a road for commercial hauling without a permit or written authorization.

(d) Operating a vehicle in violation of the speed, load, weight, height, length, width, or other limitations specified by the order.

(e) Being on the road.

(f) Operating a vehicle carelessly, recklessly, or without regard for the rights or safety of other persons or in a manner or at a speed that would endanger or be likely to endanger any person or property.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33521, June 30, 1981]

§ 261.55 Forest development trails.

When provided by an order issued in accordance with § 261.50 of this subpart, the following are prohibited on a forest development trail:

- (a) Being on a trail.
- (b) Using any type of vehicle prohibited by the order.
- (c) Use by any type of traffic or mode of transport prohibited by the order.
- (d) Operating a vehicle in violation of the width, weight, height, length, or other limitations specified by the order.
- (e) Shortcutting a switchback in a trail.

[55 FR 25832, June 25, 1990]

§ 261.56 Use of vehicles off forest development roads.

When provided by an order, it is prohibited to possess or use a vehicle off forest development roads.

§ 261.57 National Forest wilderness.

When provided by an order, the following are prohibited:

- (a) Entering or being in the area.
- (b) Possessing camping or pack-out-fitting equipment, as specified in the order.
- (c) Possessing a firearm or firework.
- (d) Possessing any non-burnable food or beverage containers, including deposit bottles, except for non-burnable containers designed and intended for repeated use.
- (e) Grazing.
- (f) Storing equipment, personal property or supplies.
- (g) Disposing of debris, garbage, or other waste.
- (h) Possessing or using a wagon, cart or other vehicle.

[42 FR 2957, Jan. 14, 1977, as amended at 49 FR 25450, June 21, 1984]

§ 261.58 Occupancy and use.

When provided by an order, the following are prohibited:

- (a) Camping for a period longer than allowed by the order.
- (b) Entering or using a developed recreation site or portion thereof.

(c) Entering or remaining in a campground during night periods prescribed in the order except for persons who are occupying such campgrounds.

(d) Occupying a developed recreation site with prohibited camping equipment prescribed by the order.

(e) Camping.

(f) Using a campsite or other area described in the order by more than the number of users allowed by the order.

(g) Parking or leaving a vehicle in violation of posted instructions.

(h) Parking or leaving a vehicle outside a parking space assigned to one's own camp unit.

(i) Possessing, parking or leaving more than two vehicles, except motorcycles or bicycles per camp unit.

(j) Being publicly nude.

(k) Entering or being in a body of water.

(l) Being in the area after sundown or before sunrise.

(m) Discharging a firearm, air rifle, or gas gun.

(n) Possessing or operating a motorboat.

(o) Water skiing.

(p) Storing or leaving a boat or raft.

(q) Operating any watercraft in excess of a posted speed limit.

(r) Launching a boat except at a designated launching ramp.

(s) Possessing, storing, or transporting any bird, fish, or other animal or parts thereof, as specified in the order.

(t) Possessing, storing, or transporting any part of a tree or other plant, as specified in the order.

(u) Being in the area between 10 p.m. and 6 a.m. except a person who is camping or who is visiting a person camping in that area.

(v) Hunting or fishing.

(w) Possessing or transporting any motor or mechanical device capable of propelling a watercraft through water by any means.

(x) Using any wheel, roller, or other mechanical device for the overland transportation of any watercraft.

(y) Landing of aircraft, or dropping or picking up any material, supplies, or person by means of an aircraft, including a helicopter.

(z) Entering or being on lands or waters within the boundaries of a com-

ponent of the National Wild and Scenic Rivers System.

(aa) Riding, hitching, tethering or hobbling a horse or other saddle or pack animal in violation of posted instructions.

(bb) Possessing a beverage which is defined as an alcoholic beverage by State law.

(cc) Possessing or storing any food or refuse, as specified in the order.

[42 FR 2597, Jan. 14, 1977, as amended at 42 FR 35959, July 13, 1977; 43 FR 32136, July 25, 1978; 46 FR 33521, June 30, 1981; 52 FR 19347, May 22, 1987]

Subpart C—Prohibitions in Regions

§ 261.70 Issuance of regulations.

(a) Pursuant to 7 CFR 2.60, the Chief, and each Regional Forester, to whom the Chief has delegated authority, may issue regulations prohibiting acts or omissions within all or any part of the area over which he has jurisdiction, for one or more of the following purposes:

- (1) Fire prevention or control.
- (2) Disease prevention or control.
- (3) Protection of property, roads, or trails.
- (4) Protection of threatened, endangered, rare, unique, or vanishing species of plants, animals, birds or fish, or special biological communities.
- (5) Protection of objects or places of historical, archaeological, geological or paleontological interest.
- (6) Protection of scientific experiments or investigations.
- (7) Public safety.
- (8) Protection of health.
- (9) Establishing reasonable rules of public conduct.

(b) Regulations issued under this subpart shall not be contrary to or duplicate any prohibition which is established under existing regulations.

(c) In issuing any regulations under paragraph (a) of this section, the issuing officer shall follow 5 U.S.C. 553.

(d) In a situation when the issuing officer determines that a notice of proposed rule making and public participation thereon is impracticable, unnecessary, or contrary to the public interest, he shall issue, with the concurrence of the Chief, an interim regulation containing an expiration date.

(e) No interim regulation issued under paragraph (d) of this section will be effective for more than 90 days unless readopted as a permanent rule after a notice of proposed rule making under 5 U.S.C. 553 (b) and (c).

§ 261.71 Regulations applicable to Region 1, Northern Region, as defined in § 200.2. [Reserved]

§ 261.72 Regulations applicable to Region 2, Rocky Mountain Region, as defined in § 200.2. [Reserved]

§ 261.73 Regulations applicable to Region 3, Southwestern Region, as defined in § 200.2. [Reserved]

§ 261.74 Regulations applicable to Region 4, Intermountain Region, as defined in § 200.2. [Reserved]

§ 261.75 Regulations applicable to Region 5, California Region, as defined in § 200.2.

(a) *Definitions.* In this section: (1) *Middle Fork of the Feather River* means the river and land area in or adjacent to Plumas National Forest described as the *River Area* in the notice at 35 FR 4219 or any amendment to that notice.

(2) *Motorized equipment* means any equipment having or using an engine or motor, except small battery-powered handheld devices such as cameras, shavers, flashlights, and Geiger counters.

(3) *Wild river zone* means the area described as the Bald Rock Canyon Wild River Zone or as the Upper Canyon Wild River Zone in the notice at 35 FR 4219 or any amendment to that notice.

(b) *Prohibitions.* (1) Possessing or using motorized equipment in the wild river zone of the Middle Fork of the Feather River, except on the Stag Point Trail or the Cleghorn Bar Trail, is prohibited.

(2) Paragraph (b)(1) of this section does not apply to any equipment authorized by a permit from the Forest Supervisor, Plumas National Forest, containing such terms and conditions as he considers necessary for the protection or preservation of the wild river zone or the health, safety or wel-

fare of its users. Violation of any term or condition of such a permit is prohibited.

[42 FR 31789, June 23, 1977]

§ 261.76 Regulations applicable to Region 6, Pacific Northwest Region, as defined in § 200.2. [Reserved]

§ 261.77 Prohibitions in Region 8, Southern Region.

(a) Using or occupying any area of the Sumter National Forest or the Chattahoochee National Forest abutting the Chattooga River for the purpose of entering or going upon the River in, on, or upon any floatable object or craft of every kind or description, unless authorized by permit obtained through registration at Forest Service Registration Stations abutting the Chattooga River located at Highway 28, Low-Water Bridge, Earl's Ford, Sandy Ford, Highway 76, Woodall Shoals, or Overflow Bridge or unless authorized under special use permit.

(b) Using or occupying within the scope of any commercial operation or business any area of the Sumter National Forest or the Chattahoochee National Forest abutting the Chattooga River for the purpose of entering or going upon the River in, on, or upon any floatable object or craft of every kind or description, unless authorized by special use permit.

(c) Violating or failing to comply with any of the terms or conditions of any permit authorizing the occupancy and use specified in paragraph (a) or (b) of this section is prohibited.

(d) Entering, going, riding, or floating upon any portion or segment of the Chattooga River within the boundaries of the Chattahoochee National Forest in, on, or upon any floatable object or craft of every kind or description, unless authorized by a permit obtained through registration at Forest Service Registration Stations abutting the Chattooga River located at Highway 28, Low-Water Bridge, Earl's Ford, Sandy Ford, Highway 76, Woodall Shoals, or Overflow Bridge or unless authorized under special use permit.

(e) Entering, going, riding, or floating within the scope of any commer-

cial operation or business upon any portion or segment of the Chattooga River within the boundaries of the Chattahoochee National Forest in, on, or upon any floatable object or craft of every kind or description, unless authorized by special use permit.

(f) Violating or failing to comply with any of the terms or conditions of any permit authorizing the occupancy and use specified in paragraph (d) or (e) of this section is prohibited.

[43 FR 3706, Jan. 27, 1978]

§ 261.78 Prohibitions applicable to Region 9, Eastern Region, as defined in § 200.2.

(a) Using or occupying any area of the Manistee National Forest abutting the Pine River between a point commencing 1 mile downstream from Lincoln Bridge to a point one-half mile upstream from Stronach Dam, for the purpose of entering, leaving, or going upon the river, in, on, or upon any floatable object of any kind or description during specific dates set forth annually and posted in such locations and manner as to reasonably bring the closure and dates to the attention of the public, is prohibited unless otherwise authorized by permit.

(b) [Reserved]

[43 FR 42749, Sept. 21, 1978]

§ 261.79 Regulations applicable to Region 10, Alaska Region, as defined in § 200.2. [Reserved]

§ 8360.0-5 Definitions.

As used in this part, the term:

(a) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(b) *Campfire* means a controlled fire occurring out of doors, used for cooking, branding, personal warmth, lighting, ceremonial or aesthetic purposes.

(c) *Developed sites and areas* means sites and areas that contain structures or capital improvements primarily used by the public for recreation purposes. Such sites or areas may include such features as: delineated spaces for parking, camping or boat launching; sanitary facilities; potable water; grills; or fire rings; tables; or controlled access.

(d) *Public lands* means any lands and interests in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management without regard to how the United States acquired ownership.

§ 8360.0-7 Penalties.

Violations of any regulations in this part by a member of the public, except for the provisions of § 8365.1-7, are punishable by a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months. Violations of supplementary rules authorized by § 8365.1-6 are punishable in the same manner.

Subpart 8360—General

§ 8360.0-3 Authority.

The regulations of this part are issued under the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Sikes Act (16 U.S.C. 670g), the Taylor Grazing Act (43 U.S.C. 315a), the Wild and Scenic Rivers Act (16 U.S.C. 1281c), the Act of September 18, 1960, as amended, (16 U.S.C. 877 *et seq.*), the Land and Water Conservation Fund Act (16 U.S.C. 4601-6a) and the National Trails System Act (16 U.S.C. 1241 *et seq.*).

PART 27—PROHIBITED ACTS

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AUTHORITY: Sec. 2, 33 Stat. 614, as amended (16 U.S.C. 685); Sec. 5, 43 Stat. 651 (16 U.S.C. 725); Sec. 5, Stat. 449 (16 U.S.C. 690d); Sec. 10, 45 Stat. 1224 (16 U.S.C. 715i); Sec. 4, 48 Stat. 402, as amended (16 U.S.C. 664); Sec. 2, 48 Stat. 1270 (43 U.S.C. 315a); 49 Stat. 383 as amended; Sec. 4, 76 Stat. (16 U.S.C. 460k); Sec. 4, 80 Stat. 927 (16 U.S.C. 668dd) (5 U.S.C. 685, 752, 690d); 16 U.S.C. 715a).

SOURCE: 41 FR 9168, Mar. 3, 1976, unless otherwise noted.

Subpart A—Introduction

- § 27.11 Purpose of regulations.

The regulations in this part 27 govern those acts by the public which are prohibited at all times except as permitted in this part, part 26, and part 25, subpart D—Permits.

[42 FR 56954, Oct. 31, 1977]

Subpart B—Taking Violations

- § 27.21 General provisions.

No person shall take any animal or plant on any national wildlife refuge, except as authorized under 50 CFR 27.51 and parts 31, 32, and 33 of this subchapter C.

**Subpart C—Disturbing Violations:
With Vehicles**

§ 27.31 General provisions regarding vehicles.

Travel in or use of any motorized or other vehicles, including those used on air, water, ice, snow, is prohibited on national wildlife refuges except on designated routes of travel, as indicated by the appropriate traffic control signs or signals and in designated areas posted or delineated on maps by the refuge manager and subject to the following requirements and limitations:

(a) Unless specifically covered by the general and special regulations set forth in this chapter, the laws and regulations of the State within whose exterior boundaries a national wildlife refuge or portion thereof is located shall govern traffic and the operation and use of vehicles. Such State laws and regulations which are now or may hereafter be in effect are hereby adopted and made a part of the regulations in this part.

(b) No operator of a vehicle shall be under the influence of intoxicating beverages or controlled substances.

(c) Driving or operating any vehicle carelessly or heedlessly, or in willful or wanton disregard for the rights or safety of other persons, or without due care or at a speed greater than is reasonable and prudent under prevailing conditions, having regard to traffic, weather, wildlife, road, and light conditions, and surface, width, and character of the travel way is prohibited. Every operator shall maintain such control of the vehicle as may be necessary to avoid danger to persons or property or wildlife.

(d) The vehicle speed limit shall not exceed 25 m.p.h. except as otherwise legally posted.

(e)(1) Every motor vehicle shall at all time be equipped with a muffler in good working order, and which cannot be removed or otherwise altered while the vehicle is being operated on a national wildlife refuge. To prevent excessive or unusual noise no person shall use a muffler cut-out, bypass, or similar device upon a motor vehicle. A vehicle that produces unusual or ex-

cessive noise or visible pollutants is prohibited.

(2) A refuge manager, by posting of appropriate signs or by marking on a map which shall be available at the refuge headquarters, may require that any motor vehicle operating in the designated area shall be equipped with a spark arrester that meets Standard 5100-1a of the U.S. Forest Service, Department of Agriculture which standard includes the requirements that such spark arrester shall have an efficiency to retain or destroy at least 80 percent of carbon particles, for all flow rates, and that such spark arrester has been warranted by its manufacturer as meeting the above mentioned efficiency requirement for at least 1,000 hours, subject to normal use, with maintenance and mounting in accordance with the manufacturers recommendations.

(f) The operation of a vehicle which does not bear valid license plates and is not properly certified, registered, or inspected in accordance with applicable State laws is prohibited.

(g) Driving or permitting another person to drive a vehicle without valid license is prohibited. A valid driver's or operator's license must be displayed upon the request of any authorized official.

(h) Stopping, parking or leaving any vehicle, whether attended or unattended, upon any road, trail, or fire lane so as to obstruct the free movement of other vehicles is prohibited, except in the event of accident or other conditions beyond the immediate control of the operator, or as otherwise directed by an authorized official.

(i) All persons shall obey the lawful order or signal of any authorized official directing, controlling, or regulating the movement of traffic.

(j) Load, weight and width limitations, as may be necessary, shall be prescribed and the public advised under provisions of § 25.31. Such limitations must be complied with by the operators of all vehicles.

(k) A motor vehicle involved in an accident is not to be moved until an authorized official arrives at the scene of the accident, unless such vehicle constitutes a traffic or safety hazard.

(1) A motor vehicle shall not be operated at anytime without proper brakes and brake lights, or from sunset to sunrise without working headlights and taillights which comply with the regulations for operation on the roads of the State within whose boundaries the refuge is located.

(m) Such other requirements which are established under the provisions of this subchapter C.

§ 27.32 Boats.

(a) The use of boats in national wildlife refuges is prohibited except as may be authorized under and subject to the requirements set forth below.

(b) When the use of boats is permitted on any national wildlife refuge, the public will be notified under the provisions of this Subchapter C and the following operational requirements and limitations will apply:

(1)(i) In addition to the regulations contained in this part, the U.S. Coast Guard Regulations, titles 33 and 46 CFR, are applicable on navigable waters of the United States.

(ii) Unless specifically covered by the general and special regulations set forth in this chapter, the laws and regulations of the State within whose exterior boundaries a national wildlife refuge or portion thereof is located shall govern boating and the operation and use of boats. Such laws and regulations which are now or may hereafter be in effect are hereby adopted and made a part of the regulations in this part.

(2) No operator or person in charge of any boat shall operate or knowingly permit any other person to operate a boat in a reckless or negligent manner, or in a manner so as to endanger or be likely to endanger any person, property or wildlife.

(3) No person shall operate or be in actual physical control of a boat while under the influence of intoxicating beverages or controlled substances.

(4) No person shall operate a boat in a manner which will unreasonably interfere with other boats or with free and proper navigation of the waterways of the areas. Anchoring in heavily traveled channels or main thoroughfares shall constitute such inter-

ference if unreasonable in the prevailing circumstances.

(5) No person shall operate a boat on refuge waters that has a marine head (toilet) unless it conforms to Environmental Protection Agency regulations regarding sewage discharge.

(6) Every sailboat when underway from sunset to sunrise shall carry and exhibit a bright white light visible all around the horizon for a distance of two miles.

(7) Leaving any boat unattended, outside of designated mooring or beaching areas, for a period in excess of 72 hours without written permission of the refuge manager is prohibited and any boat so left may be impounded by the refuge manager.

(8) Government-owned docks, piers, and floats are not to be used for loading and unloading of boats, except in emergencies or unless specifically authorized by the refuge manager.

§ 27.33 Water skiing.

When water skiing is permitted upon national wildlife refuge waters, the public will be notified under the provisions of this Subchapter C and the following requirements and limitations will apply:

(a) Water skiing is permitted only during daylight hours and during periods posted or otherwise designated under the provisions of this Subchapter C.

(b) When a skier is in "tow" there must be two persons in the boat at all times, with one person not operating the boat, acting as an observer of the skier in tow.

(c) The direction of a tow boat when circling will be counter clockwise.

(d) Skiers must wear U.S. Coast Guard approved ski belts, life jackets or buoyant vests.

(e) Water skiing is prohibited within 300 feet of harbors, swimming beaches, and mooring areas, and within 100 feet of any designated swimming area.

§ 27.34 Aircraft.

The unauthorized operation of aircraft, including sail planes, and hang gliders, at altitudes resulting in harassment of wildlife, or the unauthorized landing or take-off on a national

wildlife refuge, except in an emergency, is prohibited. National wildlife refuge boundaries are designated on up-date FAA aeronautical charts.

**Subpart D—Disturbing Violations:
With Weapons**

§ 27.41 General provisions.

Carrying, possessing, or discharging firearms, fireworks, or explosives on national wildlife refuges is prohibited unless specifically authorized under the provisions of this subchapter C.

§ 27.42 Firearms.

Only the following persons may possess, use, or transport firearms on national wildlife refuges in accordance with this section and applicable Federal and State law:

(a) Persons using firearms for public hunting under the provisions of 50 CFR part 32.

(b) Persons carrying unloaded firearms, that are dismantled or cased, in vehicles and boats over routes of travel designated under the provision of subchapter C.

(c) Persons authorized to use firearms for the taking of specimens of wildlife for scientific purposes.

(d) Persons authorized by special regulations or permits to possess or use firearms for the protection of property, for field trials, and other special purposes.

[46 FR 47230, Sept. 25, 1981]

§ 27.43 Weapons other than firearms.

The use or possession of cross bows, bows and arrows, air guns, spears, gigs, or other weapons on national wildlife refuges is prohibited except as may be authorized under the provision of this subchapter C.

[46 FR 47230, Sept. 25, 1981]

**Subpart E—Disturbing Violations:
Against Plants and Animals**

§ 27.51 Disturbing, injuring, and damaging plants and animals.

(a) Disturbing, injuring, spearing, poisoning, destroying, collecting or attempting to disturb, injure, spear, poison, destroy or collect any plant or

animal on any national wildlife refuge is prohibited except by special permit unless otherwise permitted under this subchapter C.

(b) [Reserved]

§ 27.52 Introduction of plants and animals.

Plants and animals or their parts taken elsewhere shall not be introduced, liberated, or placed on any national wildlife refuge except as authorized.

**Subpart F—Disturbing Violations:
Against Nonwildlife Property**

§ 27.61 Destruction or removal of property.

The destruction, injury, defacement, disturbance, or the unauthorized removal of any public property including natural objects or private property on or from any national wildlife refuge is prohibited.

§ 27.62 Search for and removal of objects of antiquity.

No person shall search for or remove from national wildlife refuges objects of antiquity except as may be authorized by 43 CFR part 3.

§ 27.63 Search for and removal of other valued objects.

(a) No person shall search for buried treasure, treasure trove, valuable semiprecious rocks, stones, or mineral specimens on national wildlife refuges unless authorized by permit or by provision of this subchapter C.

(b) Permits are required for archeological studies on national wildlife refuges in accordance with the provisions of this subchapter C.

§ 27.64 Prospecting and mining.

Prospecting, locating, or filing mining claims on national wildlife refuges is prohibited unless otherwise provided by law. See § 29.31 for provisions concerning mineral leasing.

[41 FR 9168, Mar. 3, 1976, as amended at 44 FR 42976, July 23, 1979]

§ 27.65 Tampering with vehicles and equipment.

Tampering with, entering, or starting any motor vehicle, boat, equipment or machinery or attempting to tamper with, enter, or start any motor vehicle, boat, equipment or machinery on any national wildlife refuge without proper authorization is prohibited.

**Subpart G—Disturbing Violations:
Light and Sound Equipment**

§ 27.71 Motion or sound pictures.

The taking or filming of any motion or sound pictures on a national wildlife refuge for subsequent commercial use is prohibited except as may be authorized under the provisions of 43 CFR part 5.

§ 27.72 Audio equipment.

The operation or use of audio devices including radios, recording and playback devices, loudspeakers, television sets, public address systems and musical instruments so as to cause unreasonable disturbance to others in the vicinity is prohibited.

§ 27.73 Artificial lights.

No unauthorized person shall use or direct the rays of a spotlight or other artificial light, or automotive headlights for the purpose of spotting, locating, or taking any animal within the boundaries of any national wildlife refuge or along rights-of-way for public or private roads within a national wildlife refuge.

**Subpart H—Disturbing Violations:
Personal Conduct**

§ 27.81 Alcoholic beverages.

Entering or remaining in any national wildlife refuge when under the influence of alcohol, to a degree that may endanger oneself or other persons or property or unreasonably annoy persons in the vicinity, is prohibited.

§ 27.82 Possession and delivery of controlled substances.

(a) Definitions for the purpose of this section:

(1) The term "controlled substance" means a drug or other substance, or

immediate precursor, included in Schedules I, II, III, IV, or V of Part B of the Controlled Substance Act (21 U.S.C. 812) or any drug or substance added to these schedules pursuant to the terms of the Controlled Substance Act.

(2) The term "practitioner" means a physician, dentist, veterinarian, scientific investigator, pharmacist, or other person licensed, registered, or otherwise permitted by the United States or the jurisdiction in which he practices to distribute or possess a controlled substance in the course of professional practice.

(3) The term "delivery" means the actual, attempted or constructive transfer and/or distribution of a controlled substance, whether or not there exists an agency relationship.

(b) Offenses. (1) The delivery of any controlled substance on a national wildlife refuge is prohibited, except that distributed by a practitioner in accordance with applicable law.

(2) The possession of a controlled substance on a national wildlife refuge is prohibited unless such substance was obtained by the possessor directly, or pursuant to a valid prescription or order, from a practitioner acting in the course of his professional practice, or except as otherwise authorized by applicable law.

(3) Presence in a national wildlife refuge when under the influence of a controlled substance to a degree that may endanger oneself, or another person, or property, or may cause unreasonable interference with another person's enjoyment of a national wildlife refuge is prohibited.

§ 27.83 Indecency and disorderly conduct.

Any act of indecency or disorderly conduct as defined by State or local laws is prohibited on any national wildlife refuge.

§ 27.84 Interference with persons engaged in authorized activities.

Disturbing, molesting, or interfering with any employee of the United States or of any local or State government engaged in official business, or with any private person engaged in the pursuit of an authorized activity

on any national wildlife refuge is prohibited.

§ 27.85 Gambling.

Gambling in any form, or the operation of gambling devices, for money or otherwise, on any national wildlife refuge is prohibited.

§ 27.86 Begging.

Begging on any national wildlife refuge is prohibited. Soliciting of funds for the support or assistance of any cause or organization is also prohibited unless properly authorized.

Subpart I—Other Disturbing Violations

§ 27.91 Field trials.

The conducting or operation of field trials for dogs on national wildlife refuges is prohibited except as may be authorized by special permit.

§ 27.92 Private structures.

No person shall without proper authority construct, install, occupy, or maintain any building, log boom, pier, dock, fence, wall, pile, anchorage, or other structure or obstruction in any national wildlife refuge.

§ 27.93 Abandonment of property.

Abandoning, discarding, or otherwise leaving any personal property in any national wildlife refuge is prohibited.

§ 27.94 Disposal of waste.

(a) The littering, disposing, or dumping in any manner of garbage, refuse sewage, sludge, earth, rocks, or other debris on any national wildlife refuge except at points or locations designated by the refuge manager, or the draining or dumping of oil, acids, pesticide wastes, poisons, or any other types of chemical wastes in, or otherwise polluting any waters, water holes, streams or other areas within any national wildlife refuge is prohibited.

(b) Persons using a national wildlife refuge shall comply with the sanitary requirements established under the provisions of this subchapter C for each individual refuge: the sanitation provisions which may be included in

leases, agreements, or use permits, and all applicable Federal and State laws.

§ 27.95 Fires.

On all national wildlife refuges persons are prohibited from the following:

(a) Setting on fire or causing to be set on fire any timber, brush, grass, or other inflammable material including camp or cooking fires, except as authorized by the refuge manager or at locations designated for that purpose or as provided for under § 26.33(c) of this subchapter C.

(b) Leaving a fire unattended or not completely extinguished;

(c) Throwing a burning cigarette, match, or other lighted substance from any moving conveyance or throwing of same in any place where it may start a fire; and

(d) Smoking on any lands, including roads, or in any buildings which have been designated and/or posted with no smoking signs.

§ 27.96 Advertising.

Except as may be authorized, posting, distributing, or otherwise displaying private or public notices, advertisements, announcements, or displays of any kind in any national wildlife refuge, other than business designations on private vehicles or boats is prohibited.

§ 27.97 Private operations.

Soliciting business or conducting a commercial enterprise on any national wildlife refuge is prohibited except as may be authorized by special permit.

SUBCHAPTER L—HERITAGE PRESERVATION

PART 261—PRESERVATION OF ANTIQUITIES

- Sec.
 261.1 Penalty.
 261.2 Permits.
 261.3 Supervision.
 261.4 [Reserved]
 261.5 Restoration of land after work completed.
 261.6 Superintendents authorized to confiscate antiquities illegally obtained or possessed.
 261.7 Notice to public.
 261.8 Report of violations.
 261.9 Report on objects of antiquity.

AUTHORITY: Secs. 3, 4, 34 Stat. 225, as amended; 16 U.S.C. 432.

SOURCE: 22 FR 10570, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

CROSS REFERENCE: For uniform regulations issued by the Secretaries of the Interior, Agriculture, and Army pertaining to the preservation of antiquities, see Public Lands; Interior, 43 CFR part 3.

§ 261.1 Penalty.

The appropriation, excavation, injury, or destruction of any historic or prehistoric ruin or monument, or any object of antiquity situated on lands owned or controlled by the Government of the United States, by any person or persons, without the permission of the Secretary of the department having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, subject such person or persons to be fined not to exceed \$500 or imprisoned for not to exceed 90 days, or both.

§ 261.2 Permits.

The Departmental Consulting Archeologist may grant permits for the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity on Indian tribal lands or on individually owned trust or restricted Indian lands. Permit application forms may be obtained from the Departmental Consulting Archeologist, National Park Service, Interior Building, Washington, D.C. 20240. Completed applications should be directed to the Depart-

mental Consulting Archeologist who will grant permits to reputable museums, universities, colleges or other recognized scientific or educational institutions, or to their duly authorized agents, subject to the regulations in this part and 43 CFR part 3. Copies of these regulations will be attached to the permit. Permits may be granted only after obtaining the consent of the Indian landowners, who may impose special conditions for inclusion in the permit, and the concurrence of the Bureau of Indian Affairs official having immediate jurisdiction over the property. Said Bureau official should not permit any excavation or explorations except as granted to the holders of permits.

[38 FR 18547, July 12, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 261.3 Supervision.

Superintendents may at all times examine the permit of any person or institution claiming the privileges referred to, and may fully examine all work done under such permit.

§ 261.4 [Reserved]

§ 261.5 Restoration of land after work completed.

After the work is completed, institutions and persons receiving permits for excavation shall restore the lands upon which they have worked to their customary condition, to the satisfaction of the Indian owners and the Bureau of Indian Affairs official having immediate jurisdiction over said lands.

[38 FR 18548, July 12, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 261.6 Superintendents authorized to confiscate antiquities illegally obtained or possessed.

Superintendents or others in administrative charge of reservations are hereby directed and authorized to confiscate any antiquities that may have been illegally obtained or that may now be illegally in the possession of licensed Indian traders or others and to

submit a report and description of the articles confiscated and request instructions as to their disposition.

NOTE: This section prescribed to carry out provisions of 43 CFR 3.16.

§ 261.7 Notice to public.

Copies of the act of June 8, 1906 (34 Stat. 225), and the interdepartmental regulations of December 28, 1906 (43 CFR part 3), shall be posted conspicuously at all agency offices where the need is justified, and warning notices posted on the reservations and at or near the ruins or other articles to be protected. All licensed traders shall be notified immediately that failure to cease traffic in antiquities will result in a revocation of their license.

NOTE: This section prescribed to carry out provisions of 43 CFR 3.16.

§ 261.8 Report of violations.

Any and all violations of the regulations in this part should be reported to the Bureau of Indian Affairs immediately.

NOTE: This section prescribed to carry out provisions of 43 CFR 3.16.

§ 261.9 Report on objects of antiquity.

Superintendents shall from time to time inquire and report as to the existence, on or near their reservations, of ruins, and archaeological sites, historic or prehistoric ruins, or monument, historic landmarks and prehistoric structures, and other objects of antiquity.

PRESERVATION OF AMERICAN ANTIQUITIES.

MARCH 12, 1906. — Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. LACEY, from the Committee on the Public Lands, submitted the following

REPORT.

[To accompany H. R. 11016.]

Your committee to whom was referred the bill (H. R. 11016) for the preservation of American antiquities, report the same back with the following amendments:

In line 8, page 1, after the word "shall," insert the words "willfully or wantonly."

In line 9, page 1, after the word "shall," insert "be guilty of a misdemeanor and."

On page 2, at the end of line 14, insert the following proviso: "*Provided further*, That no expense shall be incurred for special custodians under this act."

The various archaeological societies of the United States in the Fifty-eighth Congress presented the subject of the enactment of a bill along the lines proposed in the present bill. A full hearing was had on the matter by the Committee on the Public Lands, and a bill was reported to carry out the purpose proposed, but the bill did not receive action in the House in the last Congress.

The bill as above amended will, in the opinion of your committee, accomplish the purpose desired. There are scattered throughout the Southwest quite a large number of very interesting ruins. Many of these ruins are upon the public lands, and the most of them are upon lands of but little present value. The bill proposes to create small reservations reserving only so much land as may be absolutely necessary for the preservation of these interesting relics of prehistoric times.

Practically every civilized government in the world has enacted laws for the preservation of the remains of the historic past, and has provided that excavations and explorations shall be conducted in some systematic and practical way so as not to needlessly destroy buildings and other objects of interest.

The United States should adopt some method of protecting these

remains that are still upon the public domain or in Indian reservations. The following-named persons, during the Fifty-eighth Congress, communicated with or appeared before your committee in behalf of this legislation: Prof. Thomas D. Seymour, of Yale University; Charles P. Bowditch, esq., of Boston, Mass.; Prof. Francis W. Kelsey, of the University of Michigan; Prof. Mitchell Carroll, of George Washington University; Dr. A. L. Kroeber, of the University of California; Dr. G. B. Gordon, of the University of Pennsylvania; Prof. M. H. Saville, of Columbia University; Hon. John W. Foster, of Washington, D. C.; Prof. William Henry Holmes, of the Smithsonian Institution; Dr. Henry Mason Baum, president Institute of Historical Research, of Washington, D. C.; Prof. F. W. Putnam, of Harvard University; Prof. Edgar L. Hewett, formerly president of the Normal University of New Mexico; Mgr. Dennis J. O'Connell, rector of the Catholic University of America, and others.

Professor Seymour, of Yale University, president of the Archaeological Institute of America; Mr. Charles P. Bowditch, of the Boston society; Prof. Franz Boas, of the New York society; Miss Alice Fletcher, of the Baltimore society; Mrs. Sara Y. Stevenson, of the Pennsylvania society; Dr. George A. Dorsey, of the Chicago society; Mr. George William Bates, of the Detroit society; Prof. M. S. Slaughter, of the Wisconsin society; Prof. H. N. Fowler, of the Cleveland society; Dr. George Grant MacCurdy, of the Connecticut society; Dr. W. J. McGee, of the Missouri society; Prof. M. Carroll, of the Washington society; Dr. Duren J. H. Ward, of the Iowa society; Hon. H. K. Porter, M. C., of the Pittsburg society; Mr. Charles F. Lummis, of the Southwest society; Dr. A. L. Kroeber, of the San Francisco society; Mrs. W. S. Peabody, of the Colorado society; Prof. F. W. Putnam, of the Peabody Museum; Mr. W. H. Holmes and Dr. J. W. Fewkes, of the Smithsonian Institution; Hon. J. W. Foster and Dr. Henry Mason Baum, of Washington, D. C., and Hon. L. Bradford Prince, of Santa Fe, N. Mex.

These gentlemen are men of high character who have given the subject much consideration and their opinions are entitled to most serious consideration.

Prof. Edgar L. Hewett prepared and presented your committee with a very interesting memorandum on the ruins in Arizona, New Mexico, Colorado, and Utah, which is here incorporated as a part of this report:

Memorandum concerning the historic and prehistoric ruins of Arizona, New Mexico, Colorado, and Utah, and their preservation.

The importance of the large number of historic and prehistoric ruins scattered over the semiarid region of the southwestern part of the United States has gradually come to be recognized. Every cliff dwelling, every prehistoric tower, communal house, shrine, and burial mound is an object which can contribute something to the advancement of knowledge, and hence is worthy of preservation. Knowledge of the extent, location, and nature of these ruins has been accumulating for many years. We now know them to be very numerous and of great value.

The question of the preservation of this vast treasury of information relative to our prehistoric tribes has come to be a matter of much concern to the American people. Fortunately there seems to be no barrier to the speedy accomplishment of this. By the prompt exercise of the authority lodged in various branches of the Interior Department the preservation of the ruins is assured. I shall endeavor to show that there is urgent need for the immediate exercise of this authority. This done, the work of legislation to the end that these regions may be made a perpetual source of education

and enjoyment for the American people, as well as for travelers from foreign lands, may proceed with the careful deliberation which the subject demands.

Unquestionably some of these regions are sufficiently rich in historic and scientific interest and scenic beauty to warrant their organization into permanent national parks. Many others should be temporarily withdrawn and allowed to revert to the public domain after the ruins thereon have been examined by competent authority, the collections therefrom properly cared for, and all data that can be secured made a matter of permanent record.

General legislation providing for the creation and administration of such parks and providing for the excavation of ruins in the interest of science only is urgently needed. It is well known that during recent years an extensive traffic has arisen in relics from these ruins. In securing these, buildings, mounds, etc., have been destroyed. These relics are priceless when secured by proper scientific methods, and of comparatively little value when scattered about either in museums or private collections without accompanying records. No scientific man is true to the highest ideals of science who does not protest against this outrageous traffic, and it will be a lasting reproach upon our Government if it does not use its power to restrain it.

With a view to furnishing concise information upon which preservative measures may be based, I have compiled the accompanying map, showing by geographical districts the location of the most important ruins in the pueblo region. My sources of information have been both official and unofficial, and the work is based upon the highest authority obtainable. However, the map is not intended to be mathematically correct. It will show approximately the location of important ruins. Some may have entirely disappeared since the maps were made from which this compilation is made, and more recent surveys might require important modifications. It may serve as a beginning for something more exact and more complete. I have prepared to accompany this a memorandum concerning the ruins located on each district, and have taken the liberty to point out how adequate protection may be afforded such as are on the public domain.

Reference to the accompanying map will show at a glance that the distribution of the prehistoric tribes of the Southwest was determined by the drainage system. The great basins of the Rio Grande, the San Juan, the Little Colorado, and the Gila constitute the four great seats of prehistoric culture of the so-called pueblo region. The remains of this ancient culture are scattered extensively over these four areas, and it is not to be hoped nor would it be a service to science to attempt to preserve all these remains. They are of the three great types, pueblo ruins, cliff houses, and cave dwellings, with their accompanying burial mounds, kivas, shrines, etc., and are practically innumerable. All measures for their preservation should look toward the encouragement of research and the advancement of knowledge and not toward its restriction. I am of the opinion that if the principal groups or districts of ruins of each great culture area can be protected by the Department of the Interior, and no excavation permitted thereon except by responsible parties bearing proper permission from the Department, the highest interests of the people will be held.

I have shown on the accompanying map that the majority of the ruins of the four great basins are embraced in twenty districts. The circles on the map are not intended to fix absolutely the boundaries of these districts. They are merely intended to show approximately how the ruins may be grouped for convenience and reference.

The districts are grouped as follows:

- I. The Rio Grande basin.
 1. The Pajarito Park district.
 2. The Pecos Pueblo district.
 3. The Gran Quivira district.
 4. The Jemez district.
 5. The Acoma district.
- II. The San Juan basin.
 1. The Astec district.
 2. The Mesa Verde district.
 3. The Chaco Canyon district.
 4. The Canyon de Chelly district.
 5. The Bluff district.
- III. The Little Colorado basin.
 1. The Tusayan district.
 2. The Flagstaff district.
 3. The Holbrook district.
 4. The Zuni district.

IV. The Gila basin.

1. The Rio Verde district.
2. The San Carlos district.
3. The Lower Gila district.
4. The Middle Gila district.
5. The Upper Gila district.
6. The San Francisco River district.

Following is a brief memorandum showing the nature, extent, and condition of the ruins on each district:

I. THE RIO GRANDE BASIN.

This culture area, lying wholly in New Mexico, embraces the Rio Grande Valley, with its tributaries, from Ojo Caliente on the north to Socorro on the south and from Acoma on the west to the plains east of the Manzano Mountains.

1. *The Pajarito Park district.*—This district lies between the Rio Grande on the east and the Jemez Mountains on the west and extends from Ojo Caliente on the north to Cochiti on the south. In the northern part are the ruins of Homayo, Houiri (Ho we re) and Pose, on Ojo Caliente Creek. Ten miles west, below El Rito, is the large ruin of Sepawi (Se paw we). Near the village of Abiquiu, on the Rio Chama, is the important ruin of Taiwari (Twi wa re). These are all pueblo ruins and not well preserved.

The central portion of the district is the Pajarito Park proper, the region that has for some years been under withdrawal by the General Land Office and favorably reported on for a national park, for which it has many advantages, being of great scenic beauty, accessible, and one of the richest in the Southwest in well-preserved prehistoric remains. It contains innumerable cavate houses, a vast number of small pueblo ruins, and the ruins of the great communal dwellings of Puye, Otowi, Tsankivi (Tsan ke we), Navakwi (Nav a kwe), and Pajarito or Tchrega. Vandalism has greatly diminished among these ruins since the park has been under withdrawal.

In the southern part of this district, between the Rito de los Frijoles and Cochiti, are the ruins of six pueblos, and a considerable number of cavate houses, the interesting Cueva Pintada (painted cave), and the famous shrines known as the Stone Lions of Potrero de las Varas and Potrero de los Idolos.

2. *The Pecos district.*—The principal ruins of this district are those of the old pueblo of Pecos on the abandoned Pecos pueblo grant. These are very important ruins, consisting of the two large communal houses and the remains of the old mission church, the first mission founded on the soil of the United States. These are the only ones of the numerous ruins in the upper Pecos Valley that can be preserved. All others are well-nigh obliterated.

3. *The Gran Quivira district.*—These interesting ruins lie on the plains east of the Manzano Mountains. The principal ones are those of Tabira (Gran Quivira), Abo, and Cuaray. All are pueblo ruins of the historic epoch, and at each place are the ruins of interesting mission churches. The ruins of this district should be officially investigated.

4. *The Jemez district.*—The ruins of 17 ancient pueblos are recorded as being located in the Jemez Valley north of Jemez pueblo. Most of them have not been accurately located. Such of them are still preserved and on public lands are within the limits of the proposed Jemez Forest Reserve, now temporarily withdrawn. The most important ruins in the district are those of the old pueblo of Ginsewa. They lie 12 miles north of Jemez pueblo and include the ruins of the stately old mission church of San Diego de Jemez, built early in the seventeenth century, the second oldest mission church on the soil of the United States. An investigation of this district is needed.

5. *The Acoma district.*—A large number of valuable pueblo ruins are scattered over this district to the south and southwest of the pueblo of Acoma and southeast to the neighborhood of Magdalena. Many other of lesser importance are to the north and west. It is a region of great interest, the pueblo of Acoma itself being one of the most interesting objects in the Southwest. Near by it is the famous Mesa Encantada. Unfortunately there has been but little investigation of this district, so that we have no important accounts of its ruins. It is a district that is greatly in need of official examination.

The ruins of the San Juan basin consists of both large and small communal houses and true cliff dwellings in great numbers. They are scattered in numerous irregular groups over the contiguous portions of New Mexico, Colorado, Utah, and Arizona. All the ruins of the San Juan and its tributaries have suffered much from destructive collectors.

1. *The Aztec district.*—The most important ruins on this district are the group of

large communal dwellings near Astec, N. Mex. They are on private lands and well cared for, their owner apparently appreciating their value. Numerous other pueblo ruins exist in the district, but it is doubtful if any are so situated as to permit of their protection by the Government.

2. *The Mesa Verde district.*—In this district are the finest specimens of true cliff dwellings. They are very numerous in the canyons of Mesa Verde and along the Mancos River. ONE Palace is justly one of the most famous works of prehistoric man in existence. Numerous pueblo and cliff ruins are distributed along the McElmo, the Yellowjacket, and the Hovenweep. On the whole, this is one of the most interesting of all prehistoric districts. A portion of it is under withdrawal by the General Land Office pending the creation of the Colorado Cliff Dwellings National Park. The intelligent interest of the people of Colorado has done much toward the preservation of these ruins. However, the entire district has suffered much from vandalism, a majority of the burial mounds having been destroyed. A national park in this region would be of great educational value.

3. *The Chaco Canyon district.*—This district embraces the great ruins of Pueblo Bonito, Pueblo Alto, Chetro Kettle, Hungo Pavia, Kin Kase, Una Vida, Wejegi, Kinbineola, Tuba Kin, Pensaco Blanco, Kin Klshin, Tala Kin, Kin Ya Ah, and Kin Ah Zia.

Nowhere else is there such a splendid group of prehistoric buildings in a fair state of preservation. They have been made the subject of special investigation by the Hyde exploring expedition of New York, under Dr. George H. Pepper. A splendid collection from this district is installed in the American Museum of Natural History in New York City. In due time we shall doubtless have a full report of this excellent piece of work. This district has also been made the subject of a special investigation by Mr. B. J. Holsinger, whose comprehensive manuscript report, with accompanying photographs, in the office of the Commissioner of the General Land Office, affords much valuable information.

4. *Canyon de Chelly district.*—The ruins of this district are mostly in Canyon de Chelly and its tributary, Canyon del Muerto, although many others are scattered along the lower Chinlee Valley. They are, for the most part, pueblo and cave ruins. They have been specially studied and reported on by Mr. Cosmos Mindeleff. A large collection of pottery from here has recently been acquired by the Brooklyn Institute of Science and Art. The preservation of these ruins has been made a matter of special care by the Secretary of the Interior.

5. *The Bluff district.*—Comparatively little is known of the numerous ruins in southeastern Utah. They have been explored and the district mapped by Dr. T. Mitchell Prudden, of New York City, but as yet no close investigations have been undertaken. Ruins are very numerous along Montezuma Creek, Recapture Creek, Cottonwood Creek, Butler Wash, Comb Wash, and Grand Gulch. The caves of the Cottonwood and its tributaries have been investigated by the Hyde exploring expedition, and the collections therefrom placed in the American Museum of Natural History. These are important relics of ancient "basket makers."

III. THE LITTLE COLORADO BASIN.

This extensive region, embraced in the valley of the Little Colorado and its tributaries, is preeminently a region of pueblo ruins, though some cave dwellings are found. It is especially rich in prehistoric pottery. Because of its wealth of relics this region has suffered more than any other from the traffic in prehistoric wares. However, we are fortunate in that Dr. J. Walter Fewkes, of the Bureau of American Ethnology, has made the districts of the Little Colorado a subject of research for many years. His voluminous reports on this region have put us in possession of a vast amount of information on the archaeology and ethnology of the Southwest. His collections from Sikyatki for the National Museum, made in 1895 with the assistance of Mr. F. W. Hodge, of the Smithsonian Institution, together with the collections made from the Holbrook district by Doctors Fewkes and Hough, form probably the most valuable collection of prehistoric pottery in existence.

Another extensive collection of pottery from this region may be seen in the Field Columbian Museum, in Chicago.

1. *The Tusayan district.*—The Hopi Plateau is a region of pueblo ruins. The buildings are not well preserved, and there are probably no ruins in the district that demand permanent preservation. It is, however, exceedingly important that they should be protected from further unauthorized excavation. There are many ruins on the northern part of this reservation that have not been explored.

2. *The Flagstaff district.*—The important group of ruins in Walnut Canyon are good types of cliff dwellings. These have received special attention from the Secre-

tary of the Interior. The group of pueblo ruins which lie from 5 to 15 miles northwest of Black Falls have been examined and reported on by Doctor Fewkes. He pronounces them among the most important in the Southwest. They are entirely without protection.

2. *The Holbrook district.*—This is a region of numerous pueblo ruins, some of which have been examined and reported on by Doctors Fewkes and Hough. The Museum-Gates expedition of 1901, Doctor Hough's report of which we now have, has advanced our knowledge of portions of this region very much. Doctor Hough has published particularly interesting information concerning the ruins in the Petrified Forest. The traffic in prehistoric wares from the Holbrook district has been deplorably active. Many thousands of pieces of excavated pottery have been shipped from Holbrook alone, and collections embracing several thousands of pieces are now in the hands of dealers at various towns in the district and are offered for sale. These collections have been made, for the most part, by Indians and native Mexicans in the employ of traders, and are devoid of authentic records. The district is not rich in ruins that demand permanent protection, but it is in great need of temporary protection pending further serious investigation by competent parties.

3. *The Zuni district.*—This region is rich in both historic and prehistoric ruins. On Zuni Reservation are the ruins of the historic Seven Cities of Cibola. El Moro, or Inscription Rock, is an interesting historic monument east of Zuni, which is under temporary withdrawal by the General Land Office. The region south of Zuni to Quemado is known to be full of ruins, and traders are securing large collections of pottery therefrom at the present time. The ruins of Zuni have been thoroughly made known to us through the work of the Hemenway expedition, under the direction of the late Frank Hamilton Cushing, assisted by Mr. F. W. Hodges. The collections of this expedition are now in the Peabody Museum at Harvard University. Other important researches have been made in the Zuni district by Doctor Fewkes.

IV. THE GILA BASIN.

This is another region that embraces practically every species of prehistoric ruins. It is of vast extent and comprises, besides the valley of the Gila proper, the large valleys of the Salt and Verde rivers. As a seat of prehistoric culture it was one of the most extensive and populous. Many ruins of these three great valleys are on irrigable lands, and accordingly have disappeared with the advancement of agriculture.

1. *The Rio Verde district.*—On the northern tributaries of the Rio Verde are many cliff ruins. Of these Honanki and Palatki are the most important. They are within the limits of the San Francisco Mountains Forest Reserve. There are numerous cliff ruins along Oak Creek and Beaver Creek and their tributaries. Near Camp Verde is the ruin known as Montezuma Castle, and a little farther up Beaver Creek, on the Black Mesa Forest Reserve, is the interesting Montezuma Well. Mr. Mindeleff and Doctor Fewkes have made important studies and reports on the ruins of this district.

2. *The San Carlos district.*—Of the ruins on this district we have very little information beyond that obtained by Mr. A. F. Bandelier, to whose indefatigable exploration we owe so much of our knowledge of the Southwest. Both pueblo and cliff ruins are known to exist in various parts of the district, almost all of which are situated within the limits of the San Carlos Apache Reservation. Ruins are reported from near San Carlos, from various points along the Upper Salt River, on White Mountain Creek, the Carrizozo, the Cibola, and the Pinal.

3. *The Lower Gila district.*—Many ruins of this district have disappeared during recent years because situated upon agricultural land. Our archaeological knowledge of the district is due, for the most part, to the Hemenway expedition under the late Mr. Cushing, to Mr. Mindeleff, and Doctor Fewkes. The famous Casa Grande ruin has for several years been under the care of the Government. The best collection from the district is that obtained by the Hemenway expedition. It is in the Peabody Museum at Harvard University.

4. *The middle Gila district.*—The ruins of this part of the Gila Valley are mostly on agricultural lands, though many cliff ruins are known to exist in outlying districts. Pueblo ruins are very plentiful about Solomonville, but are not well preserved. The largest is that of Pueblo Viejo. Ruins are also numerous about Clifton and along the Blue River. We have some reports on ruins of this district by Mr. Bandelier and Doctor Fewkes. There is need for further investigation and report as to the present condition of these ruins.

5. *The Upper Gila district.*—It is known that there are many ruins on the Upper Gila and its tributaries near Fort Bayard, the Mimbres, and near Silver City. They are almost entirely within the Gila Forest Reserve. These ruins should be officially investigated and reported on, as we have very meager information concerning them.

6. *The San Francisco River district.*—The upper San Francisco Valley and its tributaries, especially the Tularosa, is full of cliff and pueblo ruins. It is almost entirely within the Gila Forest Reserve. Much of it is almost unknown country. It is in great need of further exploration. While we know of its almost innumerable ruins, we have no reports on them. The first archaeological work to be done here was that of Doctor Hough, of the National Museum, who made an expedition into this district during the past summer. Doctor Hough's report will doubtless give us much interesting information concerning the archeology of this little-known district.

With the generous assistance of Dr. Walter Hough I have prepared a brief bibliography relative to the ruins in these various districts. No attempt has been made to make this complete. Many valuable works are omitted. The purpose of it is to direct anyone seeking information on this subject to some literature thereon. Reference to this bibliography, hereto attached, will enable anyone to secure considerable information concerning ruins or groups of ruins that have been examined and reported on.

In conclusion, I would respectfully submit the following recommendations:

1. That the authority of the Department of the Interior should be immediately exercised to protect all ruins on the public domain.

2. That the Interior Department should prohibit the collecting of prehistoric objects from public lands and Indian reservations by any person not duly furnished with a permit from the Secretary of the Interior.

3. That custodians or inspectors under the direction of the General Land Office are needed to protect the ruins in the following districts:

- (a) The Pajarito Park district, New Mexico.
- (b) The Chaco Canyon district, New Mexico.
- (c) The Mesa Verde district, Colorado.
- (d) The Bluff district, Utah.
- (e) The Holbrook district, Arizona.
- (f) The Zuni district, New Mexico.
- (g) The Rio Verde district, Arizona.
- (h) The Casa Grande district, Arizona.
- (i) The Acoma district, New Mexico.
- (j) The Middle Gila district, Arizona.
- (k) The Gran Quivira district, New Mexico.
- (l) The Jemez district, New Mexico.

With the first seven districts there is urgent need for immediate action. The eighth is already provided for. The next four are important in the order named. It would appear from general report and from the literature thereon that they are all of sufficient importance to warrant protection by the Government. At any rate they should be examined as early as possible by competent authority and reported upon with reference to the present condition, character, and extent of the ruins.

4. That the forestry department, if furnished with adequate forces, could protect the ruins in the following districts which lie within forest reserves, and that provision should be made for the same as early as possible.

(a) The Flagstaff district, Arizona, including the important Black Falls group of ruins lying just above the northern boundary of the San Francisco Mountains Forest Reserve; also the ruins on the northern tributaries of the Rio Verde, lying within the same reserve, and also those of the Black Mesa Forest Reserve.

- (b) The San Francisco River district, New Mexico.
- (c) The Upper Gila district, New Mexico.

5. That the cooperation of the Department of Indian Affairs is needed for the protection of all ruins in the following districts:

- (a) The Pecos Pueblo district, New Mexico.
- (b) The Canyon de Chelly district, Arizona.
- (c) The Tusayan district, Arizona.
- (d) The San Carlos district, Arizona.

(e) That part of the Zuni district, New Mexico, which lies within the Zuni Indian Reservation.

6. That there is neither economy nor efficiency in the policy of employing a custodian for a single ruin. All the ruins of any district described herein can be efficiently protected by one or two custodians or inspectors of the grade of forest rangers, who should make it known by posted notices that the excavation of ruins without the permission of the Secretary of the Interior is forbidden, and who might also examine and report from time to time upon ruins within their districts which are in need of special attention.

7. That the permanent withdrawal of tracts of land from the public domain for the purpose of protecting ruins thereon would seem to be unnecessary except where the

ruins are of such character and extent as to warrant the creation of permanent national parks.

8. That there is need for general legislation authorizing the creation of such national parks and providing for the excavation of prehistoric ruins in the interests of science only.

I respectfully submit the above as a comprehensive plan for the preservation of all historic and prehistoric ruins upon the public domain and upon Indian reservations, and invite your consideration of the same. As a working plan I have no doubt it is open to much criticism, but I believe it might be made the basis for an economical and efficient method of performing this public service.

PRESERVATION OF AMERICAN ANTIQUITIES.

MAY 24, 1906.—Ordered to be printed.

Mr. PATTERSON, from the Committee on Public Lands, submitted the following

REPORT.

[To accompany S. 4698.]

The Committee on Public Lands, to whom was referred the bill (S. 4698) for the preservation of American antiquities, having had the same under consideration, beg leave to report it back with the recommendation that the bill do pass.

This measure has the hearty support of the Archæological Institute of America, the American Anthropological Association, the Smithsonian Institution, and numerous museums throughout the country, and in view of the fact that the historic and prehistoric ruins and monuments on the public lands of the United States are rapidly being destroyed by parties who are gathering them as relics and for the use of museums and colleges, etc., your committee are of the opinion that their preservation is of great importance.

The bill is carefully drawn, and the committee are unanimously in favor of its passage.

PRESERVATION OF AMERICAN ANTIQUITIES.

SENATE.

THURSDAY, May 24, 1906.

Mr. PATTERSON. I am directed by the Committee on Public Lands, to whom was referred the bill (S. 4693) for preservation of American antiquities, to report it favorably without amendment, and I submit a report thereon. I ask unanimous consent for the present consideration of the bill.

The Secretary read the bill, and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration. It provides that any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than \$500 or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

Section 2 authorizes the President of the United States, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected, but when such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States.

Permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and War to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: *Provided*, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects and that the gatherings shall be made for permanent preservation in public museums.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

PRESERVATION OF AMERICAN ANTIQUITIES.

Mr. LACEY. Mr. Speaker, I ask unanimous consent for the present consideration of the bill S. 4698.

The Clerk read as follows:

A bill (S. 4698) for the preservation of American antiquities.

Be it enacted, etc., That any person who shall appropriate, excavate, injure or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than \$500 or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

Sec. 2. That the President of the United States is hereby authorized in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected: *Provided*, That when such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States.

Sec. 3. That permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and War to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: *Provided*, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gathering shall be made for permanent preservation in public museums.

Sec. 4. That the Secretaries of the Departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this act.

The SPEAKER. Is there objection?

Mr. STEPHENS of Texas. Mr. Speaker, I desire to ask the gentleman whether this applies to all the public lands or only certain reservations made in the bill?

Mr. LACEY. There is no reservation made in the bill of any specific spot.

Mr. STEPHENS of Texas. I think the bill would be preferable if it covered a particular spot and did cover the entire public domain.

Mr. LACEY. There has been an effort made to have national parks in some of these regions, but this will merely make small reservations where the objects are of sufficient interest to preserve them.

Mr. STEPHENS of Texas. Will that take this land off the market, or can they still be settled on as part of the public domain?

Mr. LACEY. It will take that portion of the reservation out of the market. It is meant to cover the cave dwellers and cliff dwellers.

Mr. STEPHENS of Texas. How much land will be taken off the market in the Western States by the passage of the bill?

Mr. LACEY. Not very much. The bill provides that it shall be the smallest area necessary for the care and maintenance of the objects to be preserved.

Mr. STEPHENS of Texas. Would it be anything like the forest-reserve bill, by which seventy or eighty million acres of land in the United States have been tied up?

Mr. LACEY. Certainly not. The object is entirely different. It is to preserve these old objects of special interest and the Indian remains in the pueblos in the Southwest, whilst the other reserves the forests and the water courses.

Mr. STEPHENS of Texas. I will say that that bill was abused. I know of one place where in 5 miles square you could not get a cord of wood, and they call it a forest, and by such means they have locked up a very large area in this country.

Mr. LACEY. The next bill I desire to call up is a bill on which there is a conference report now on the Speaker's table, which permits the opening up of specified tracts of agricultural lands where they can be used, by which the very evil that my friend is protesting against can be remedied. It is House bill 17576, which has passed both bodies, and there is a conference report for concurrence as to one of the details upon the Speaker's table.

Mr. STEPHENS of Texas. I hope the gentleman will succeed in passing that bill, and this bill will not result in locking up other lands. I have no objection to its consideration.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none.

The bill was ordered to a third reading, read the third time, and passed.

On motion of Mr. LACEY, a motion to reconsider the vote by which the bill was passed was laid on the table.

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**ARCHAEOLOGICAL RESOURCES PROTECTION
ACT OF 1979**

P.L. 96-95, see page 93 Stat. 721

**House Report (Interior and Insular Affairs Committee)
No. 96-311, June 29, 1979 [To accompany H.R. 1825]**

**Senate Report (Energy and Natural Resources Committee)
No. 96-179, May 15, 1979 [To accompany S. 490]**

Cong. Record Vol. 125 (1979)

DATES OF CONSIDERATION AND PASSAGE

House July 9, October 12, 1979

Senate July 30, October 17, 1979

The House bill was passed in lieu of the Senate bill.

The House Report is set out.

HOUSE REPORT NO. 96-311

[page 1]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 1825) to protect archaeological resources owned

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by the United States, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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PURPOSE

The purpose of H.R. 1825¹ as reported by the Committee on Interior and Insular Affairs is to provide protection for archaeological resources found on public lands and Indian lands of the United States. The legislation provides civil and criminal penalties for those who remove or damage archaeological resources in violation of the prohibitions contained in the bill. The bill prohibits the removal of archaeological resources on public lands or Indian lands without first obtaining a permit from the affected Federal land manager or Indian Tribe.

BACKGROUND

The basic statute protecting archaeological resources on public lands is the Antiquities Act of 1906 (16 USC 431-433). That Act provides that "any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument or any object of antiquity situated on lands owned or controlled by the Government of the United States without the permission of the Secretary . . . shall upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment. . . ."

In a 1974 decision, the United States Court of Appeals for the Ninth Circuit held that the 1906 Act was unconstitutional. The court found that the definitional portion of the Act was unconstitutionally vague; therefore, the Act is legally unenforceable in the Ninth Circuit. The Ninth Circuit includes the states of Arizona, California, Nevada, Oregon, Washington, Montana, Idaho, Alaska, Hawaii and Guam.

That court decision, coupled with the dramatic rise in recent years of illegal excavations on public lands and Indian lands for private gain, prompted Members of the House and Senate to introduce legislation intended to provide adequate protection to archaeological resources located on public lands and Indian lands.

Much has changed since the 1906 Act was passed. The commercial value of illegally obtained artifacts has substantially increased and the existing penalties under the 1906 Act have proven to be an inadequate deterrent to theft of archaeological resources from public lands.

¹ H.R. 1825 was introduced on February 1, 1979, by Representative Morris K. Udall, and was also sponsored by Representative Rhodes, Seiberling, Clausen, Lujan, Runnels, Rodd, Marriott, Ullman, and Hammerhead.

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SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

Section 2. Sets forth the findings and purposes of the legislation.

Section 3. Includes the definitions of terms used in the Act.

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Paragraph 1 includes a definition of the term "archaeological resource". This definition has been included, in part, to address the problem of unconstitutional vagueness, created by the lack of definition, found by the United States Court of Appeals for the Ninth Circuit *U.S. v. Dias*, 449 F. 2d 118 (9th Cir. 1974). Provision has also been made to allow the Secretary of the Interior to promulgate a definition of this term under uniform regulations. Concern was expressed during full Committee deliberation that the definition of "archaeological resource" could be construed to include virtually any object found on the public lands. Amendments were adopted to ensure that only artifacts of true archaeological interest, at least 100 years of age, will be considered to be "archaeological resources" for the purposes of this legislation. Such items as coins, and bottles are clearly not intended to come under the purview of this Act unless found within an archeological site. The Committee has included language in its amendment of the bill to ensure that arrowheads and bullets found on the surface of the ground will not be considered as archaeological resources. The Committee is also concerned that the penalties contained in this bill will only be used in situations that clearly warrant an enforcement action. It is the recognition of the importance of the integrity of the archaeological site and the context in which archaeological resources are found that the Committee feels should guide land managers in their protection and enforcement efforts.

Paragraph 2 includes a definition of the term "Federal land manager".

Paragraph 3 includes a definition of the term "public land" to include all lands actually owned by the United States other than lands on the Outer Continental Shelf. No privately owned lands within the exterior boundaries of a Federal land holding would be included. The Committee recognizes that it is often difficult to delineate public land from private or state land on the ground, particularly in the West. The Committee also realizes that many of the specific archaeological sites on public lands are currently unknown; therefore, specific signs around sites will not be required. The Committee does, however, urge Federal land managers to carry out an active public information program and to publish the appropriate prohibitions and warnings in their respective brochures, maps, visitor guides, and to post signs at entrances to public lands.

Paragraph 4 includes a definition of "Indian lands" to mean lands of tribes or individual Indians either held in trust by the United States or subject to a restriction on alienation.

Paragraph 5 includes a definition of the term "Indian tribe".

Paragraph 6 includes a definition of the term "person".

Paragraph 7 includes a definition of the term "State".

Section 4. This section describes the method by which archaeological resources may be legally excavated and removed from public lands and Indian lands.

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Paragraph (a) provides that any person may apply to the appropriate Federal land manager for a permit to excavate or remove archaeological resources from public lands or Indian lands. Any application shall include, among other items that may be deemed necessary by the land manager, information concerning the time, scope, and location and specific purposes of the proposed work.

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Paragraph (b) describes the terms and conditions under which permits may be given by the Secretary to any applicant.

Subparagraph (b) (1) requires that the applicant be qualified to carry out the proposed activity. The Committee intends that only individuals with adequate professional expertise (education, experience, or both) in archaeology be considered as eligible to receive permits.

Subparagraph (b) (2) requires that the activity to be undertaken will be for the purpose of furthering archaeological knowledge in the public interest.

Subparagraph (b) (3) requires that all archaeological resources removed from public lands and copies of the associated records and data will remain the property of the United States and be preserved in a suitable location, such as a museum or university. The Committee intends that archaeological specimens removed be adequately evaluated and the knowledge obtained used for scientific and educational purposes. The subsequent storage or display of these artifacts should not, however, be narrowly construed and may include private as well as public museums or institutions which have adequate resources to protect the artifacts and to provide a public, educational, or interpretive service.

Subparagraph (b) (4) requires that any activity carried out under this Act be consistent with applicable land management plans for the specified area and consequently would not be in conflict with any laws governing the area in question or the agency managing it. This section is included with recognition that the science of archaeology, in the modern sense, is as much concerned with the conservation and protection of archaeological resources "in situ" as it is with the excavation and removal of specified archaeological resources. The protection of the integrity of an archaeological site is extremely important in that the scientific value to society—the unraveling of the secrets of the past—may be enhanced by not altering archaeological sites. A determination by the land manager as to the wisdom of allowing an applicant to excavate archaeological resources should take these factors into consideration.

Paragraph (c) provides that if a permit application is for the excavation of a site determined by the Secretary of the Interior to be an Indian religious or cultural site, the Secretary is required to notify any Indian Tribe which may consider the site as having religious or cultural importance, prior to issuing a permit.

Paragraph (d) provides that the land manager may impose such terms and conditions in any permit as the land manager deems necessary to carry out the provisions of this Act.

Paragraph (e) requires that one individual be named in each case as the person responsible for carrying out the terms and conditions of the permit. This section was included with the recognition that, in

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many instances, "teams" of archaeologists from universities or museums are involved in one excavation, and in order to ensure that such excavations are conducted properly, one individual out of the group will be identified as responsible for the group compliance with the permit and applicable law.

Paragraph (f) provides the Federal land manager with the authority to suspend any permit if he believes that the permittee has violated

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any of the prohibitions of section 6. The land manager is also given the authority to permanently revoke any permit if a permittee has been assessed a civil penalty under section 8 or has been convicted under section 7.

Subparagraph (g) (1) provides that no tribe or member thereof is required to get a permit from the Secretary to excavate on their tribal lands. However, in the absence of tribal law regulating excavation or removal of archaeological resources on their lands, an individual tribal member must obtain a permit under this Act.

Subparagraph (g) (2) requires the consent of a tribe or individual Indian, as the case may be, for all permits for excavation on Indian lands.

Paragraph (h) meshes existing laws with the provisions of this Act.

Subparagraph (h) (1) ensures that an individual who receives a permit to excavate or remove archaeological resources under this Act shall not be required to obtain an additional permit under the 1906 Antiquities Act.

Subparagraph (h) (2) ensures that an individual who has an existing permit under the 1906 Antiquities Act before the date of enactment of this Act shall not be required to obtain an additional permit under this Act.

Paragraph (i) waives the applicability of section 106 of the National Historic Preservation Act of 1966 (80 Stat. 917, 16 USC 470f) to activities undertaken pursuant to this Act.

Paragraph (j) provides that any Governor may request a Federal land manager to issue a permit for archaeological research, excavation, removal and curation from federal lands to such Governor or any person the Governor deems to be qualified. Upon such request, the Federal land manager shall issue a permit.

Section 5. This section provides the Secretary of the Interior with the authority to establish regulations pertaining to the management and disposition of archaeological resources removed pursuant to this Act, the 1906 Antiquities Act, or the Archaeological Recovery Act of 1960, as amended.

Paragraph (1) permits the Secretary to promulgate regulations providing for the exchange of archaeological resources between suitable and appropriate bodies.

Paragraph (2) permits the Secretary to promulgate regulations providing for the permanent curation or disposal of archaeological resources removed from public lands or Indian lands.

This section further provides that any regulations governing the exchange or ultimate disposition of archaeological resources excavated or removed from Indian lands shall be subject to the consent of the tribe or individual Indian involved.

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Section 6. This section describes those activities which would be prohibited by this Act. It prohibits on public or Indian lands the excavation, removal, alteration or defacement of archaeological resources except in accordance with permits or exemptions; prohibits dealing in those resources which are excavated or removed illegally, and precludes the sale and transportation in interstate or foreign commerce when the resources are involved in violations of State or local law.

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This section also provides criminal penalties for those who knowingly commit one of the prohibited acts. This is a general intent crime, and therefore a person could be convicted if he acted of his own volition and was aware of the acts he was committing. The Committee is aware that these penalties overlap with more general statutes and regulations, and there is no intent to preclude action under those general provisions relating to the protection of Federal property under appropriate circumstances.

The Committee recognizes that many individuals and institutions may possess artifacts or collections of archaeological resources which have been obtained legally. Section 6(f) provides an exemption from the prohibitions on sale, purchase, exchange, etc. in such instances. The Committee notes, however, that archaeological resources which are in a person's possession illegally, are not covered by this exemption.

Field casting of paleontological specimens on the public domain has not been and is not intended to be prohibited by any section of this legislation. Such activities are presently carried out under separate authority of the local land managing bureau which has immediate jurisdiction over the land in question.

Section 7. This section provides civil penalties for those who violate regulations or permits issued under this Act, and it sets up administrative procedures for imposing those penalties. Civil penalties may be as high as twice the value of the archaeological resource involved, and double the cost of restoration and repair of the site involved, plus \$1,000 in case of a first violation and \$2,000 in case of any subsequent violation. Hearings must comply with title 5 USC section 554, and on judicial review the Federal land manager's action must be sustained if supported by substantial evidence.

This section is intended to give Federal land managers a strong enforcement authority, short of criminal sanctions, by which illegal activities on the public lands may be deterred. However, the Committee does not intend the civil penalties authorized to be used to harass citizens in their normal use of the public lands or to impose heavy penalties on persons who inadvertently violate regulations in a minor way. The regulations promulgated should take these factors into account.

Section 8. This section provides rewards to persons furnishing information leading to the finding of a civil violation. The reward may be equal to half of the penalty assessed under section 7. Section 7 also provides for forfeiture of archaeological resources, vehicles, and equipment involved in violations of section 6, but it is expected that the courts and the administrative law judges would exercise their discretion to avoid unduly burdensome forfeitures of property belonging to persons who neither know nor could have known of the illegal activities.

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Section 9. This section stipulates the conditions under which the confidentiality of the location of archaeological resources on public lands and Indian lands can be maintained without violating the provisions of the Freedom of Information Act.

Paragraph (a) provides that information concerning the nature and location of archaeological resources may be withheld from the public unless (1) such disclosure would further the purpose of this Act, or the Archaeological Salvage Act of 1960, as amended; or (2) such dis-

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closure would not create a risk of harm to the archaeological resources involved.

Paragraph (b) provides for the Governor of any State to receive information concerning the nature and location of archaeological resources within said State from the appropriate land manager if the written request from the governor contains (1) the specific site or area for which information is sought; (2) the purpose of the request, and (3) a commitment by the Governor that the confidentiality of the information will be adequately preserved in order to protect the resource from commercial exploitation.

Section 10. Subsection (a) requires intergovernmental coordination and adequate public participation, including participation by official Indian tribes, prior to issuance of uniform regulations under this Act by the Secretaries of Interior, Agriculture, and Defense.

Subsection (b) requires each Federal land manager to promulgate rules and regulations, consistent with the uniform rules and regulations promulgated under subsection (a) as may be necessary to carry out his responsibilities under this Act.

Because in many parts of the country public land management is "checkerboarded", i.e. divided among a variety of different agencies, the Committee feels it is vital that a set of uniform regulations, easily comprehensible to the public, be promulgated for all public lands. The Committee also realizes that conditions may vary from situation to situation, so provision has been made for each Federal land manager to promulgate additional rules and regulations so long as they are consistent with the overall uniform rules and regulations.

Section 11. This section encourages the Secretary of the Interior to foster increased coordination and cooperation between professional archaeologists, Federal personnel responsible for managing archaeological resources, and private individuals with private collections, and other individuals interested in the science of archaeology. The Committee is concerned that greater efforts must be undertaken by the Secretary and professional archaeologists to involve to the fullest extent possible non-professional individuals with existing collections or with an interest in archaeology. The potential benefit of this increased cooperation is enormous; there is a wealth of archaeological information in the hands of private individuals that could greatly expand the archaeological data base of this country. The Committee is convinced that the key to success of a program of this nature is true cooperation between all parties concerned.

Section 12. This section assures that the Act will not be construed to impose significant additional restrictions on the activities permitted under existing multiple use laws and authorities relating to the public lands. Activities such as mining, mineral leasing, grazing, timber har-

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vesting, flood control, recreation, reclamation and other construction projects on public or Indian lands, or which are Federally assisted, are required under provisions of existing laws and regulations to take steps to identify and protect or salvage archaeological resources. The Committee does not intend by this Act to alter the provisions of existing law nor does it intend to create any additional significant barriers which would inhibit authorized uses of public lands.

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Paragraph (b) ensures that the private collection of rocks, coins, or minerals which are not considered archaeological resources will not require a permit under this Act for such activity.

Paragraph (c) ensures that this Act shall not be construed to affect any land other than public land or Indian land to affect the lawful recovery, collection or sale of archaeological resources from lands other than Indian lands or public lands.

Section 13. This section requires the Secretary to submit, as a distinct, separate component of the report required under section 5(c) of the Archaeological Recovery Act, a section detailing the activities carried out pursuant to the provisions of this Act, including efforts made to foster increased cooperation with private individuals pursuant to section 12 of this Act. The report shall also include such recommendations, including legislative recommendations, as the Secretary deems appropriate to improve the administration of this Act.

COST AND BUDGET ACT COMPLIANCE

The lands involved in the legislation are entirely Federally owned or Indian lands; therefore any costs incurred would be administrative in nature and are not expected to increase significantly once the current or future expenditures for protection of these resources is assured. The following analysis was received from the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., June 18, 1979.

HON. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 1825, the Archaeological Resources Protection Act of 1979, as ordered reported by the House Committee on Interior and Insular Affairs, June 18, 1979.

The bill provides for the protection of archaeological resources on public and Indian lands by prohibiting unauthorized removal or sale of antiquities and outlines a means of assessing penalties to be imposed on violators. Costs incurred by the Federal Government as a result of enactment of this bill will stem from enforcement and administration of the civil penalty process, promulgation of regulations, and the review of applications. Based on information available from the Department of the Interior, it is estimated that these costs will total approximately \$4 million for fiscal years 1980 through 1984.

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Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, Director.

INFLATIONARY IMPACT STATEMENT

Pursuant to rule X clause 2(1)(4) of the Rules of the House of Representatives, the Committee believes that enactment of H.R. 1825,

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as amended, would have virtually no inflationary impact on the the national economy.

OVERSIGHT STATEMENT

In accordance with the Committee's jurisdiction over archaeological resources located on public lands and Indian lands, the Committee on Interior and Insular Affairs would have oversight responsibilities over any action of the Secretary taken to comply with the mandate of the legislation. No recommendations were submitted to the Committee pursuant to rule X, clause 2(b) (2).

COMMITTEE RECOMMENDATION

On June 13, 1979, after adopting amendments to the Subcommittee recommendation, the Committee on Interior and Insular Affairs, meeting in open session, reported H.R. 1825 by voice vote and recommends that the bill, as amended, be approved.

DEPARTMENTAL REPORT

The favorable report by the Department of the Interior, dated April 18, 1979, and the comments of the Department of Justice, dated May 22, 1979, follow:

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., April 13, 1979.

HON. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to the request of your Committee for the views of this Department on H.R. 1825, a bill "To protect archaeological resources owned by the United States, and for other purposes."

We recommend that H.R. 1825 be enacted if it is amended as described herein.

H.R. 1825 would supplement our authorization to control archaeological excavations on Federally owned or controlled lands, and to remove objects of antiquity from such lands for scholarly purposes. In general, the bill will solve a number of problems in present authorizations and will provide much greater protection of the archaeological resources of the United States.

Specifically, H.R. 1825 would: (1) be of broader application than the Antiquities Act by allowing the archaeological permits to be issued to any qualified individual or private entity as well as any officer, employee, agent, department or instrumentality of the United States or a

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State or political subdivision thereof; (2) define "archaeological resource" as any material remains of past human life or activities which are at least 50 years of age and of archaeological interest; (3) set forth certain qualifications to be met by permit applications and the conditions under which the appropriate Secretary could either refuse to issue a permit or suspend or revoke issued permits; (4) prohibit commercial trade in archaeological resources obtained in violation of Federal, State or local laws; (5) authorize the appropriate Secretary to

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assess civil penalties, subject to judicial review, for violations of the prohibitions contained in the bill or regulations or permits; (6) provide greatly increased criminal penalties for violations of the prohibitions contained in the bill (up to \$20,000 fine or two years imprisonment, or both, for a first offense and up to \$100,000 fine or five years imprisonment, or both, for second and subsequent offenses versus a maximum \$500 fine or 90 days imprisonment, or both, for violations of the 1906 Act); (7) authorize the appropriate Secretary to recommend the payment of up to 1/2 of any fine or civil penalty, but not more than \$2500, to any person furnishing information leading to the finding of a civil violation or criminal conviction; (8) direct the Secretary of the Interior to report to the Congress by June 1, 1980, on the regulation of the excavation and removal of archaeological resources from Indian lands; (9) provide a specific exemption from the Freedom of Information Act for site location information concerning archaeological resources covered by the bill, unless the appropriate Secretary found the disclosure of this information would further the purposes of the bill and not create risk of harm to the resources or the site location; (10) authorize the Secretary of the Interior, after consultation with other land management departments, to promulgate the rules and regulations to be followed by all such departments in carrying out the purposes of the bill; and (11) require the Secretary of the Interior to report annually to the Congress on the activities carried out by him under the bill.

This Administration wholeheartedly endorses the purposes of H.R. 1825. In recent years, the Antiquities Act of 1906, 16 U.S.C. 431-433, has had the application of its criminal sanctions severely circumscribed. The result has been a corresponding decrease in the effectiveness of its protection of archaeological resources on Federal lands. The most severe problem is the holding in *United States v. Dias*, 499 F.2d 118 (9th Cir. 1974), that the criminal penalty provisions of the Antiquities Act are unconstitutionally vague. Another problem is that in light of the increased commercial trade in archaeological treasures, the penalties provided in the Act are insufficient to provide the deterrent effect necessary to protect these resources. Finally, we have found it increasingly a problem that information on permit applications and other cultural resource information, particularly relating to site location, must be released under the Freedom of Information Act, leading to an increased threat of vandalism of archaeological sites.

This bill reflects the need demonstrated by these problems for a new comprehensive statute to deal with each of these issues. It provides a much clearer direction as to what resources Congress intends to be protected, and specifically grants to the Secretary of the Interior regulatory authority to further define those resources. This would over-

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come the vagueness problem of *Dias*. It also provides for a full range of enforcement tools running from civil penalties to felony provisions for particularly serious offenses. An additional facet is that it makes criminal the commercial trade in archaeological resources which were obtained in violation of either Federal, State, or local law. While recognizing that the problem of proof of how the object was initially obtained is a difficult one, we support this additional layer of protection for the valuable resources which would be protected by this bill. These

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two aspects of the bill would significantly improve the effectiveness of the cultural resources protection program of this Department.

Finally, the bill would provide a specific exemption from the Freedom of Information Act for site location information regarding archaeological resources covered by the bill, unless the Secretary finds that the release of such information would further the purposes of the bill and would not create a risk of harm to such resources or the site in which they are located. While this provision would be a positive step, we would suggest that it is unnecessary and, probably unintentionally, limited. Because the only archaeological resources covered are those on Federal land, where, in the course of cultural resource surveys or other activities required by other laws, information is collected regarding sites not on Federal land, it would not be exempted from release. We believe that this provision should be redrafted to protect information relating to any archaeological site.

We strongly support the overall purposes of H.R. 1825. We would like to recommend, however, a number of amendments to the bill which will eliminate certain problems of language, interpretation and administration. If so amended, we recommend the enactment of H.R. 1825. Our proposed amendments are attached to this report.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

ROBERT HERBST,
Assistant Secretary.

Enclosure.

SUGGESTED AMENDMENTS TO H.R. 1825

1. Section 2(a)(2), page 2:

On line 6, after "resources" insert "which are the property of the United States".

Reason: We believe the bill should make it clear that these archaeological resources are in public ownership.

2. Section 3(1), page 2:

Delete paragraph (1) and insert the following new paragraph:

(1) The term "archaeological resource" means any material remains of past human life or activities which are at least fifty years of age and which are of archaeological interest, as determined under regulations promulgated by the Secretary of the Interior. The Secretary of the Interior shall promulgate regulations under this paragraph after consultation with other Federal land managers, the professional archaeological community, representatives of concerned States and all other interested parties.

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Reason: This change will eliminate a partial listing of archaeological resources, which may be confusing. Instead, this can be handled through regulations.

3. Section 3(2), page 3:

Delete lines 13-21 and insert:

(2) The term "Secretary" means, except where otherwise specifically provided, the Secretary of the Department

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or the head of any agency of the United States (as defined by section 551 of Title 5, U.S.C.) having primary management authority over the land concerned.

Reason: We believe this clarifies the intent of the definition and will also clarify the provisions of the bill where the term is used.

4. Section 3(3), page 3:

Delete all of section 3(3), and insert the following:

The term "Indian lands" means lands of Indian tribes or Indian individuals which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States.

Reason: The term "Indian lands" is defined to include all lands within the exterior boundaries of any Federal Indian reservation. This may be somewhat broader than is intended for there are situations in which either private or State owned lands may be included within these boundaries. Also, lands are often held in trust for individuals. The intent of this bill seemingly would be achieved by defining "Indian lands" as suggested.

5. Section 3(4), page 4, line 2:

Between "trust," and "association", insert *institution*,

Reason: Technical amendment.

6. Section 3(5), page 4:

Add new subparagraph (5) as follows:

An archaeological survey means a physical inspection, inventory, and/or assessment which has the potential for physically impacting archaeological resources located within a prescribed geographical area.

Reason: Required to further explain terminology in reference to Sections 4 and 8.

7. Section 3(6), page 4:

Insert a new subparagraph (6) as follows:

(6) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Reason: The term "State", which appears several places in the bill, needs to be defined to clarify the application of this bill to land areas which are not strictly States.

8. Section 4, page 4:

Section 4 of H.R. 1825 should be revised as indicated below. We have completely rewritten this section:

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EXCAVATION AND REMOVAL FROM FEDERAL LAND

(a) Any person may apply to the Secretary for a permit for archaeological survey, excavation, or removal of any archaeological resources located on land owned or controlled by the United States or to carry out any or all such activities.

(b) A permit may only be issued pursuant to an application under subsection (a) permitting archaeological surveys, excavation, or removal of any archaeological resource, or per-

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mitting any or all such activities, if the Secretary to whom such application is made determines, under regulations promulgated by the Secretary of the Interior, that

(1) the research is important to the acquisition of data related to significant archaeological concerns, and

(2) capability exists to recover, analyse, synthesise or disseminate the results of the work; to meet curatorial responsibilities for the archaeological materials and resources removed; and to provide for appropriate preservation measures onsite, and

(3) a work plan is submitted meeting current professional standards (including necessary logistical, financial and project management data) which demonstrates the applicant and principal investigator have sufficient experience and capability to complete the work in accordance with purposes of this Act.

Such permit shall contain such terms and conditions as the Secretary concerned deems necessary (pursuant to regulations promulgated by the Secretary of the Interior) to carry out the purposes of this Act, to insure compliance with other applicable provisions of law, and to protect other resources involved. The Secretary of the Interior shall promulgate interim regulations within 90 days of the passage of this Act and shall promulgate final regulations within one year of the passage of this Act. Promulgation of final regulations under this subsection will occur only after consultation with—

(1) other departments, bureaus, and agencies of the United States having primary responsibility for management of land owned or controlled by the United States, and

(2) representatives of concerned State agencies.

(c) Systematic collections of archaeological resources and related physical and scientific evidences, archaeological resources with inherent data potential, and associated documentation shall be retained in a manner to assure their scientific integrity. The United States shall retain a proprietary interest in such collection and their conservation for public benefit.

(d) The Secretary to whom an application is made under subsection (a) may refuse to issue a permit under this section to any applicant—

(1) against whom a civil penalty has been assessed under section 6(a) or

(2) who has been convicted of a violation under sections 6(b) or 6(c) or under the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431-433).

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Any permit issued under this section may be suspended by the Secretary to whom an application is made for not more than two years for each instance that he determines that the permittee has violated the terms of the permit or the prohibition contained in section 5. Any such permit may be revoked by such Secretary upon assessment of a civil penalty under section 6(a) against the permittee or upon the permittee's conviction of a violation under sections 6(b) or 6(c).

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(e) *No permit or other permission shall be required under the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431-433) for any activity for which a permit is issued under this section. Nothing in this Act shall modify or affect any existing permit validly issued under the Act of June 8, 1906.*

(f) *Nothing contained in this section shall require any officer, employee, agent, department or instrumentality of the United States with land management responsibilities to acquire a permit to survey, excavate or remove archaeological resources, provided such activities are a part of the authorized duties of such officer, employee, agent, department or instrumentality of the United States, are undertaken with the consent of the land management agency, and are carried out in accordance with the purposes and intent of this Act, and in accordance with other applicable laws.*

(g) *Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 917, 16 U.S.C. 470f).*

(h) *The responsibilities and duties under this Act of any Secretary may, with the consent of the Secretary of the Interior, be delegated to the Secretary of the Interior.*

Reason: These recommendations are designed to clarify the policy of the Act by recognizing that archaeological resources are a diminishing resource in this nation today. Archaeological excavation is itself a process of study that destroys the resource. Because of this, and because of Archaeological resources are finite and non-refinable, the objective should be to manage these resources for their long-term conservation while at the same time allowing the necessary consumption of them in the interests of advancing knowledge about the past or to illustrate or interpret to the public and the human history of this nation. The purpose of the recommended changes in this section is to strike a balance between this generation's consumption and of the archaeological resources on Federal lands and the conservation of these resources for future generations when new research problems and advanced research methods of a less destructive nature will be available.

Four additional provisions are recommended for inclusion: (1) to continue in force existing Antiquities Act permits issued under section 3 of the Antiquities Act of 1960; (2) language to clarify that any employee or agent of the Federal government does not need a permit under this act, provided the employee or agent is carrying out authorized, agency-related duties, in accordance with other applicable laws, such as the Archaeological and Historical Preservation Act of 1974 and the Historic Preservation Act of 1966; (3) the compliance with the permitting provision of this act would excuse compliance with

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section 106 of the National Historic Preservation Act of 1966; and (4) authorization for any Secretary to delegate to the Secretary of the Interior, where he consents, the authority to issue permits under this act.

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9. Section 5(a), page 6:
Delete line 10, and insert in lieu thereof:

Sec. 5. (a) Except as provided in section 4(f), no person may excavate, remove, injure, or destroy any ar-

Reason: Technical amendment to make the language of this section consistent with 16 U.S.C. 433, and to clarify the relationship of this prohibition to the disclaimer in section 4(f).

10. Section 5(b), page 6, line 18, and sec. 5(c) page 7, line 2: Delete "possess."

Reason: There are Constitutional problems inherent in making the possession of an object a criminal offense in light of the effective date provisions in (d) (2). The deprivation of poverty and due process clauses require that in such a situation the criminal offense be tied to an intervening act. The way the bill is presently drafted, a person possessing an object legally the day before the bill was passed could be put into criminal violation the day the bill became effective. The simplest remedy is to delete possession as a crime. Insofar as overall enforcement is concerned, this deletion does not seem to weaken the bill significantly.

11. Section 5(b) (2), page 6:

Reword paragraph (2) on lines 22-24 to read as follows: "any other Federal law, rule, regulation, or permit."

Reason: Technical amendment.

12. Section 5 (c) and (d) (2), page 7:

Following the word "any" on line 5, reword as follows: *State or local law, ordinance, rule, regulation, or permit.*

On line 15, following the word "any", reword to read *State or local, law, ordinance, rule, regulation, or permit or of any other Federal law before, on or after the date of the enactment of the Act.*

Reason: Technical amendment.

13. Section 6(a) (2), page 8, lines 3-14:

We believe that the Congress should set an upper limit on the penalty which may be provided by the Secretary of the Interior. This is the clearest way for the Secretary to establish a system of penalties which most closely reflects the will of the Congress and which, therefore, would withstand judicial review as reasonable. Failure to establish such a ceiling may well result in any system of penalties succumbing to judicial challenge. We feel that under the bill as drafted the Secretary could not impose a civil penalty higher than \$20,000, since the maximum fine provided in section 6(b) is \$20,000. Because of the extreme value of the properties involved, we believe that both of these figures should be raised to more adequately provide the deterrent we need.

14. Section 6(a) (2), page 8, lines 4 and 10:

Delete the word "guidelines" and insert the word *regulations* in lieu thereof.

Reason: Technical amendment.

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15. Section 6(a)(2), page 8, line 12:

Change the word "shall" to *may*

Reason: To provide additional flexibility in the penalty assessment process.

16. Section 6(a)(3):

In lines 17-18, delete "Court of Appeals for the District of Columbia Circuit or for any other circuit in". Insert in lieu thereof: *District Court for the District of Columbia or for any other district in*

Reason: Review of the assessments of civil penalties is well within the province of the District Courts. To allocate the function to the already crowded Circuit Court calendars will only further delay resolution of the civil penalty assessment. Additionally, to require a person against whom a civil penalty has been assessed to seek his relief in the Circuit Court may well discourage meritorious appeals because of the distance to the courts and the expenses involved.

17. Section 6(a)(4)(A) and (B), page 9:

Section 6(a)(4)(A) and (B) should refer to paragraph (3) instead of paragraph (2).

Reason: Technical amendment.

18. Section 6(c), page 9:

Delete all of lines 17-20 and insert in lieu thereof:

(c) Any person who commits a second or subsequent violation of any prohibition contained in section 5

Reason: Technical amendment.

19. Section 7(a), page 9:

In line 24, delete the word "recommendation", and insert in lieu thereof the word *certification*

Reason: Technical amendment. The Department of Treasury indicates that it needs a certification and not just a recommendation.

20. Section 7(a), page 10:

After line 10, insert this sentence:

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this subsection.

Reason: Without this amendment, funds from a fined person would go to the general fund of Treasury. This amendment would put the money raised from fines into an account for that purpose, so that rewards could be paid out of that account.

21. Section 7(a), page 10, line 6:

Change the word "shall" to *may* and delete the word "equally".

Reason: To allow the Secretary to provide for a division among persons which reflects the value of their contribution to the enforcement effort.

22. Section 7(b)(1), page 10, line 17:

Insert "or (c)" between "6(b)" and ",".

Reason: Technical amendment.

23. Section 8, page 10:

Throughout section 8 of the bill, insert after "Secretary" the words *of the Interior*

Reason: Technical amendment.

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24. Section 8(a), page 11, line 5:

Delete the words "proposed legislation designed to allow" and insert the words *consideration of the feasibility of authorising*

Reason: This amendment gives the Secretary discretion in the study process and does not prejudice the outcome of the study.

25. Section 8(b), page 11, line 10:

Delete the words "drafts of proposed legislation and".

Reason: Same reason as in amendment number 24 above.

26. Section 8(b), page 11, line 12:

Delete "1980" and insert *1982*

Reason: We believe the Indian lands study required by this section will require an additional two years more than allowed the bill.

27. Section 8(c), page 11, line 18:

Delete "After the date of the enactment of this Act", and after "all", insert *archaeological surveys*

Reason: All such archaeological resources are presently protected by the Antiquities Act. This subsection's design is to reinforce in clear language that during the interim time prior to the Secretary's report to Congress, such lands shall continue to receive equal protection under this statute when enacted.

28. Section 8(d), page 11, lines 16-19:

Delete all of section 8(d) and insert in lieu thereof the following:

The Secretary shall not issue a permit under this Act with respect to Indian lands if the Indian tribe objects to such issuance and such objections are consistent with section 202 of the Civil Rights Act of 1968 (82 Stat. 77). With respect to permits issued under this Act with respect to Indian lands, the Secretary shall include and enforce terms and conditions in addition to those required by this Act as may be requested by the Indian tribe, consistent with section 202 of the Civil Rights Act of 1968 and other statutory responsibilities.

Reason: This amendment requires the tribes' objections to be consistent with section 202 of the Civil Rights Act of 1968. In addition, the terms and conditions requested by a tribe should not be inconsistent with other statutory requirements imposed on the Secretary.

29. Section 9, page 12:

Delete all of lines 5-8, and insert the following:

Sec. 9. Information obtained by the Federal government under this Act or under any other provision of Federal law concerning the location of any archaeological resource may not be made.

Reason: We believe that in order to protect archaeological resources site location information regarding any archaeological resources obtained by the government under any law should not be disclosed unless the proper finding is made.

30. Section 9(1), page 12:

In line 13, delete "this" and insert in its place *the relevant*

Reason: Technical amendment.

31. Section 11(a), page 13, line 5:

Delete existing line 5, and substitute *repeal or modify*

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Reason: We would suggest that section 11(a), as introduced, might preclude any cultural resource protection under this bill in the context of mining or mineral leasing. To remove such protection completely seems unnecessary. The provisions of the mining and mineral leasing laws can be preserved from modification or repeal, while at the same time giving a reasonable level of protection to cultural resources which might otherwise be endangered.

82. Add new section 11(c) as follows:

(c) A permit under this Act shall not be required when an archaeological survey in compliance with section 106 of the National Historic Preservation Act of 1966 has been made and it has been determined that the subject project will not adversely affect archaeological resources. However, this shall not be deemed to exempt an agency from compliance with this act or the Archaeological and Historic Preservation Act of 1974 when new or additional archaeological resources are discovered.

Reason: To protect private contractors from criminal liability in the event of an inadvertent discovery and/or destruction of an archaeological resource, after there has been agency compliance with section 106.

83. Section 12, page 13, lines 13 and 14:

Delete the words "annually, submit" and insert in lieu thereof the words *as a part of the annual report submitted to the Congress pursuant to section 5(c) of the Archaeology and Historic Preservation Act of 1974 (74 Stat. 220) as amended,*

Reason: We believe a separate report to the Congress should not be required under this bill since an archaeology report is already being submitted annually to the Congress under the 1974 Act, and the reports can easily be consolidated.

DEPARTMENT OF JUSTICE,
Washington, D.C., May 22, 1979.

HON. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to proffer the comments of the Department of Justice on H.R. 1825, "To Protect Archeological Resources Owned by the United States, and for Other Purposes."

H.R. 1825 would replace provisions of the Antiquities Act of 1906, 16 U.S.C. 431-433, which require a permit "to excavate or remove any archeological resource located on land owned or controlled by the United States or to carry out both such activities." Proposed Sections 4(a) and 4(d). In addition, the proposed bill would clarify the definition of what activities are to be covered, provide a stricter permitting system for excavation and removal of archeological resources, and provide stronger remedies and penalties for violation of the Act and Department of the Interior regulations.

As is well know, the current Antiquities Act has lost much of its effectiveness. The criminal penalties provision was held unconstitutionally vague in *United States v. Dias*, 499 F. 2d 118 (9th Cir., 1974).

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This holding has severely hampered enforcement of current Antiquities Act requirements. Although a recent case in the Tenth Circuit has upheld the constitutionality of the Antiquities Act, the fact remains that most of the sites and objects which require protection are found in the Ninth Circuit where the Act is still considered invalid.

Furthermore, the current penalties provision of the Antiquities Act, 16 U.S.C. § 433, is insufficient to deter unlawful excavation and removal of archeological resources. The value of objects removed from federal lands exceeds many times over the current misdemeanor penalty of \$500 or imprisonment for not more than 90 days or both. For many, the risk is well worth running of getting caught in view of such a meager potential penalty.

Because of these severe inroads into the effectiveness of current legislation and the severity of the existing problem, no one can contest that corrective legislation is necessary and should be enacted quickly. We do, however, have a number of reservations to H.R. 1825 as currently drafted. We feel the following issues must be addressed before we can recommend enactment of the bill.

(1) The purpose of the legislation is to allow the Secretary of the Interior to restrict access to "archeological resources" found on all lands "owned or controlled" by the United States. As the bill recognizes, much of the land "owned or controlled" by the United States is held as trustee for Indian tribes or individuals, who have a vested, judicially recognized property interest in such lands. It is our view that the proposed legislation, while acknowledging the political interest of Indian tribes, inadequately addresses the problems raised by the fact that archeological sites found on Indian trust or restricted land may be owned by the tribe or individual Indians possessing the beneficial interest in the land.

We assume that much of the "archeological resource" designed to be protected by the legislation is related to Indian culture and is found on Indian reservation lands. Often the Indians not only own such archeological material but, in fact, often are the descendants of those who manufactured it. We suggest therefore that some modifications be considered for Indian tribes.

We concur with the Department of the Interior's proposed changes in the definition of "Indian lands." While the term "Indian country" is statutorily defined so as to include all lands—even those in non-Indian ownership—within the boundaries of a reservation, we question whether non-Indian lands within a reservation should be made subject to this legislation which is directed to federal and Indian lands only. With regard to the other amendments proposed by the Department of the Interior, we believe that these matters are in the purview of their administrative responsibilities and thus defer to them.

We note that in Section (3) (1), the bill requires that the Secretary consult with the states before promulgating regulations. We believe that some consideration should be given to an amendment affording similar consultation rights to affected Indian tribes.

(2) We share the concern of the Department of the Interior reflected in their report on H.R. 1825 concerning the bill's definition of "Archeological Resource". As currently drafted, resources now covered by the Antiquities Act may not be covered under the bill.

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We endorse Interior's proposed definition. In order to insure coverage at least as broad as presently exists under the Antiquities Act, such a definition is necessary.

(3) Section 5(a) of H.R. 1825, governing prohibited acts, should use the same wording as § 483 of the current Antiquities Act. Instead of "No person may excavate or remove any archeological . . ." (H.R. 1825), the section should begin "No person may excavate, remove, injure, or destroy any archeological . . ." In the absence of this change, a loophole may be provided allowing damage or injury to archeological resources to occur with impunity.

(4) Enforcement provisions of the statute would be much strengthened by adding authority to seek an injunction. Although such authority can sometimes be implied from general enforcement responsibility and authority, it would be much better to have injunctive relief specifically provided in the statute. We suggest the following wording:

"At the request of the Secretary, or in consultation with the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from violating the requirements of this Act, the regulations issued pursuant to it, or any requirement of a permit issued under this Act."

(5) Throughout Section 6, dealing with penalties, the word "prohibition" should be changed to "requirement." The Act, its regulations, and, in particular, permits issued under the Act, may not contain prohibitions so much as conditions and requirements. To avoid possible future technical disputes over wording of the provision and what is subject to penalties, the wording should be changed.

(6) The legislative history of H.R. 1825 and any future act should specifically state that any criminal penalties provided by Section 6 should be in addition to any criminal sanctions which may be imposed under existing criminal provisions, such as 18 U.S.C. § 641 (theft of government property) or 18 U.S.C. § 1361 (degradation of government property). Although as a matter of departmental policy, we would prosecute all violations of the Act under enforcement provisions of the Act, we should have the Title 18 alternative available, in case any "loopholes" are discovered in the Act.

(7) The Department would oppose any efforts to make violations of Section 5 a specific intent crime by adding the phrase "willfully." As currently drafted, Section 6(b) makes violation of Section 5 a general intent crime by using the word "knowingly" alone. It should remain this way.

In sum, subject to the above comments, we endorse H.R. 1825.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

PATRICIA M. WALD,
Assistant Attorney General.