

(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(c) If the waiver is no longer in effect at the time the Federal Agency Head receives recommendations from the Secretary or comments from the Advisory Council or the State Historic Preservation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.

PART 79—CURATION OF FEDERALLY-OWNED AND ADMINISTERED ARCHAEOLOGICAL COLLECTIONS

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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 memorandum of understanding between a Federal agency and a repository for long-term curatorial services for a federally-owned collection.

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

(4) The three appendices are meant to illustrate how such agreements might

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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.