

while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it, if the Registrant complies with the procedures outlined in Rule 418 under the Securities Act [17 CFR 230.418].

7. Each exhibit identified in the exhibit index (other than an exhibit filed in eXtensible Business Reporting Language) must include an active link to an exhibit that is filed with the registration statement or, if the exhibit is incorporated by reference, an active hyperlink to the exhibit separately filed on EDGAR. If the registration statement is amended, each amendment must include active hyperlinks to the exhibits required with the amendment.”

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Note: The text of Form N-3 does not, and these amendments will not, appear in the *Code of Federal Regulations*.

■ 13. Amend Form N-3 (referenced in §§ 239.17a and 274.11b), Cover Page, by adding a new paragraph immediately after the sentence [“t]he Commission also may use the information provided on Form N-3 in its regulatory, disclosure review, inspection, and policy making roles” To read as follows:

* * * * *

A Registrant is required to disclose the information specified by Form N-3, and the Commission will make this information public. A Registrant is not required to respond to the collection of information contained in Form N-3 unless the Form displays a currently valid Office of Management and Budget (“OMB”) control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

* * * * *

Note: The text of Form N-CEN does not, and these amendments will not, appear in the *Code of Federal Regulations*.

■ 14. Amend Form N-CEN (referenced in § 274.101) by replacing the Instruction following Item F.3 and replacing Item F.18 to read as follows:

* * * * *

Part F: Additional Questions for Unit Investment Trusts

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Item F.3. * * *

Instruction. If the answer to Item F.3 is yes, respond to Item F.12 through Item F.19. If the answer to Item F.3 is no, respond to Item F.4 through Item F.11, and Item F.17 through Item F.19.

* * * * *

Item F. 18. Reliance on rule 12d1-4. Did the Registrant rely on rule 12d1-4 under the Act (17 CFR 270.12d1-4) during the reporting period? [Y/N]

* * * * *

Note: The text of Form N-PX does not, and these amendments will not, appear in the *Code of Federal Regulations*.

■ 15. Amend Form N-PX (referenced in § 274.129), Cover Page by removing “§§ 239.24 and 274.5 of this chapter” and adding, in its place, “17 CFR 239.24 and 274.5”.

Note: The text of Form N-MFP does not, and these amendments will not, appear in the *Code of Federal Regulations*.

■ 16. Amend Form N-MFP (referenced in § 274.201), in Item A.14.c. by removing the term “A.14.a-c.” and adding, in its place, the term “A.14.a-b.”

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 17. The authority for part 275 continues to read, in part, as follows:

Authority: 15 U.S.C. 80b-2(a)(11)(G), 80b-2(a)(11)(H), 80b-2(a)(17), 80b-3, 80b-4, 80b-4a, 80b-6(4), 80b-6a, and 80b-11, unless otherwise noted.

* * * * *

Section 275.204-2 is also issued under 15 U.S.C. 80b-6.

* * * * *

Section 275.204-5 is also issued under sec. 913, Public Law 111-203, sec. 124 Stat. 1827-28 (2010).

* * * * *

§ 275.204-2 [Amended]

■ 18. In § 275.204-2 amend paragraph (a)(15)(ii) by removing “.” and adding, in its place, “; and”.

§ 275.204-3 [Amended]

■ 19. In § 275.204-3 amend paragraph (b) by removing “Subject to paragraph (g), you” and adding, in its place, “You”.

§ 275.204-5 [Amended]

■ 20. In § 275.204-5 amend paragraph (e)(1) by removing “§ 275.204-1(b)(3)” and adding, in its place “§ 275.204-1(b)”.

§ 275.206(4)-1 [Amended]

■ 21. In § 275.206(4)-1 amend paragraph (b)(2)(i) by removing “,” and adding in its place “;”.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

■ 22. The authority for part 279 continues to read, in part, as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b-1, *et seq.*, Public Law 111-203, 124 Stat. 1376.

Note: The text of Form ADV does not, and these amendments will not, appear in the *Code of Federal Regulations*.

■ 23. Amend Form ADV (referenced in § 279.1) by:

■ a. In General Instruction 4 to Form ADV removing “Section 10 of Schedule R” and adding, in its place, “Section 4 of Schedule R”; and

■ b. In the Instruction to Section 4.B.7 of Schedule R removing “pre-fill Schedule B with the same indirect owners you have provided in Schedule B” and adding, in its place, “pre-fill the chart below with the same indirect owners you have provided in Schedule B for your *filing adviser*”.

* * * * *

Dated: March 29, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022-06972 Filed 4-14-22; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 79

Office of the Secretary of the Interior

43 CFR Part 3

[NPS-WASO-CR-33054; PPWOCRADIO, PCU00RP14R50000]

RIN 1024-AE58

Curation of Federally Owned or Administered Archeological Collections

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service amends regulations governing the curation of federally owned or administered archeological collections to establish definitions, standards, and procedures to dispose of material remains that have insufficient archeological interest. This rule promotes more efficient and effective curation of archeological collections.

DATES: This rule is effective May 16, 2022.

FOR FURTHER INFORMATION CONTACT:

Karen Mudar, Archeology Program, National Park Service, 1849 C Street NW, Washington, DC 20005, 202-354-2103, email: karen_mudar@nps.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:**Background***Authority To Promulgate Regulations*

The Archaeological Resources Protection Act (ARPA; 16 U.S.C. 470aa-mm) authorizes the Secretary of the Interior (the Secretary) to promulgate regulations for the disposition of archeological and other resources recovered under the authority of ARPA, the Reservoir Salvage Act (RSA; 54 U.S.C. 312501-312508), and the Antiquities Act (54 U.S.C. 320301-320303). 36 CFR part 79's disposition process for resources recovered under ARPA, RSA, and the Antiquities Act is authorized thereunder. In addition, the National Historic Preservation Act (NHPA; 54 U.S.C. 302107 and 306131) authorizes the Secretary to promulgate regulations for the proper curation of archeological collections created under ARPA, RSA, and NHPA. 36 CFR part 79's curation requirements for resources recovered under ARPA, RSA, and NHPA are authorized thereunder. The Department of the Interior's Departmental Manual entitled "Protection of the Cultural Environment" (519 DM 2.3D) requires the Departmental Consulting Archeologist (DCA), located within the National Park Service (NPS), to develop regulations concerning the preservation of prehistoric and historic material remains of archeological interest under ARPA.

Regulatory History

The regulations at 36 CFR part 79 establish definitions, standards, procedures, and guidelines to be followed by Federal agencies to preserve collections of prehistoric and historic material remains and associated records that generally include those resulting from a prehistoric or historic resource survey, excavation, or other study conducted in connection with a Federal action, assistance, license, or permit.

As currently written, 36 CFR part 79 does not discuss processes for Federal

agencies to dispose of particular material remains from archeological collections. It is important for Federal agencies to establish appropriate methods of disposal because prehistoric or historic material remains improperly disposed of could later be rediscovered and misinterpreted by archeologists or others as evidence of activity in the distant past. A proposed rule to establish procedures for discarding particular material remains from Federal collections was published in the **Federal Register** in 1990 (55 FR 37670, September 12, 1990). A final rule was never published. Instead, the DCA focused on the proper curation of federally owned or administered collections and left the subject of disposal of material remains for a future rulemaking.

In recent years, renewed interest from Federal agencies to address the issue of deaccessioning certain material remains has led to the promulgation of this rule. Specifically, Federal agencies such as the Department of Defense asked the DCA to help them find solutions to the growing costs of managing archeological collections. The NPS published a proposed rule in the **Federal Register** on November 18, 2014 (79 FR 68640).

Final Rule

This rule establishes procedures for the disposal of particular material remains of insufficient archeological interest that are held in federally owned or administered archeological collections. The procedures are not intended to apply to entire collections. Material remains refers to artifacts, objects, specimens, and other physical evidence, including human remains, of a historic or prehistoric resource. Federal agencies are responsible for ensuring that disposition of material remains is conducted in accordance with this rule and 36 CFR 79.7

"Methods to fund curatorial services." This rule does not affect any material remains defined as "cultural items" by the Native American Graves Protection and Repatriation Act (NAGPRA; 25 U.S.C. 3001 *et seq.*) and subject to that statute. NAGPRA cultural items include Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony.

In addition to providing a mechanism for appropriate and carefully considered disposition, this rule will improve the curation of federally owned or administered archeological collections, such as by promoting more effective space and cost management. This rule addresses many of the comments submitted in 1990 by incorporating independent advice and opinions

supplied by numerous experts that were consulted between 2005 and 2013. The NPS stresses that the disposition process laid out in this rule must be employed as part of a comprehensive collection management program that emphasizes collection stewardship and responsible accessioning practices. The best deaccession policy is a good accession policy. This rule provides measures to allow for deaccessioning only as a last resort. The NPS recommends that, in addition to proposing deaccession, agencies implement carefully designed field collection policies and create and implement clear and thoughtful scope of collections statements. Consistent with the Secretary's authority to promulgate regulations for ultimate disposition of certain material remains, this rule uses the term disposition throughout. The NPS acknowledges the museum practice of deaccessioning will be an integral and parallel part of the disposition process described in this rule.

In addition to adding a new Subpart E—Disposition of Particular Material Remains (Sections 79.12–79.18), this rule organizes existing sections 79.1–79.11 into Subparts A (Administrative Provisions), B (Archeological Collections Management), C (Public Access to and Use of Collections), and D (Inspections and Inventories of Collections). This rule also revises sections 79.1–79.4 to update legal citations, removes paragraph designations for defined terms in section 79.4 as recommended by the Office of the Federal Register's Document Drafting Handbook, and adds two defined terms that are used in Subpart E. A section-by-section analysis of the rule can be found in the Background section of the proposed rule.

Summary of Public Comments

The NPS published a proposed rule in the **Federal Register** on November 18, 2014 (79 FR 68640). The NPS accepted comments on the proposed rule through the mail, hand delivery, and through the Federal eRulemaking Portal at <http://www.regulations.gov>. Comments were accepted through February 17, 2015. The NPS received comments from individuals, federally recognized tribes, state and local government agencies, public institutions, and professional organizations. Summaries of the issues raised in the comments and responses from the NPS are provided below.

Disposition Process

1. Comment: Several commenters addressed the notification and consultation requirements in the

proposed rule. Commenters requested more time be given to interested parties to comment on a proposed disposition, and that additional direct notice be given to interested parties during the disposition process. Commenters asked that the Federal Agency Official (FAO) take additional steps to engage with public stakeholders during the disposition process.

NPS Response: The NPS made several changes in the final rule to ensure there is sufficient notice provided to interested parties during the disposition process. The NPS added a requirement that the FAO provide at least 60 days for notified entities to comment on a proposed disposition. The NPS increased the time allowed for objecting to a final determination of disposition from 30 to 60 days. The NPS added to the list of parties who must receive notice of proposed dispositions by including state archeologists, certain private landowners, broader categories of Indian tribes with cultural relationships to material remains in the collections, and organizations and institutions for which the agency has an existing relationship for research, excavation, curation, education, or other partnership in the state and region from which the material remains to be disposed were recovered. The NPS believes these notice requirements will sufficiently involve the relevant stakeholders in the disposition process prior to any determination of disposition published in the **Federal Register**.

2. Comment: Two commenters recommended that the rule limit the amount of time given to the FAO to choose a method of disposition.

NPS Response: The NPS declines to adopt this recommendation because it is important to preserve flexibility in this part of the disposition process, so that the most appropriate method is chosen. Time limits are required in other phases of the process such as during the periods for commenting on and objecting to determinations of disposition. A time limit at this stage would not further the purpose of the rule because agencies could be motivated to forego considered deliberation in order to select a method of disposition merely to meet a time limit.

3. Comment: One commenter argued that judgements other than those of the Indian Claims Court, as well as other types of documentation, should be allowed to determine aboriginal occupancy of land for purposes of whether an Indian tribe may receive deaccessioned materials excavated from lands other than Indian lands. Another

commenter argued that culturally affiliated tribes that request deaccessioned material remains should be allowed to receive them.

NPS Response: The NPS has added two methods of disposition in paragraph 79.13(b) to accommodate these requests. Aboriginal occupation of lands where material remains were removed can now be documented by any type of evidence. The final rule allows material remains to be conveyed to federally recognized Indian tribes for the purposes of traditional, cultural, educational, or religious practices.

4. Comment: One commenter asked whether deaccessioned materials could be reused for educational or interpretive purposes (*i.e.*, adaptive reuse).

NPS Response: Deaccessioned materials may be used for educational or interpretive purposes. The methods of disposition in section 79.13 allow for such reuse. The rule is therefore sufficiently flexible to allow adaptive reuse after material remains have been deaccessioned.

5. Comment: One commenter argued that all methods of disposition are unacceptable because disposition is not a preservation activity.

NPS Response: ARPA section 5 (16 U.S.C. 470dd) specifically authorizes the Secretary of the Interior to promulgate regulations providing for the ultimate disposition of archeological resources. A requirement for specific disposition methods to constitute a preservation activity has no basis in the statutory authority.

6. Comment: Two commenters requested that the NPS list the methods of disposition in priority order for material remains excavated from public lands. One commenter requested that the rule provide a clear step-by-step process.

NPS Response: The NPS declines to impose a priority order on the methods of disposition because this would unduly restrict the discretion given to FAOs to dispose of deaccessioned material remains in the manner most appropriate to the situation. With the goal of making the disposition process as clear as possible, the NPS has provided a step-by-step process for an FAO to follow.

Federal Agency Official (FAO)

7. Comment: One commenter asked the NPS to identify the level of government where the FAO is located.

NPS Response: The FAO is defined in section 79.4 to mean “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.” In practice, the FAO is typically situated at the departmental, national, headquarters, or equivalent level of the agency, unless the agency has a different policy.

Collections Advisory Committee

8. Comment: Several commenters asked that individuals from outside of the Federal government be invited to participate on the collections advisory committee. One commenter proposed that any disposition should be contingent on a consensus recommendation from the collections advisory committee. Another commenter suggested that the DCA should not be eligible to serve on a collections advisory committee. Several commenters recommended that qualified experts be given more influence on the committee, while one commenter argued that the collections advisory committee should be made up of individuals who are professionally disinterested or distanced from the material remains being considered for disposition.

NPS Response: The NPS has revised the rule to clarify the qualifications necessary to serve on a collections advisory committee. The NPS added a requirement that the committee make consensus recommendations to the FAO about proposed dispositions. The NPS also added a provision stating that the DCA may not participate on the committee, because the DCA may be called upon to make recommendations in the case of a dispute. With the exception of certain Tribal officials specified in paragraph 79.15(e)(3), the NPS declines to delegate the responsibilities of Federal agencies for federally owned or administered property to non-Federal employees through an expansion of the composition of the committee. In order to increase the transparency of the committee, the final rule requires the collections advisory committee to prepare a written report for the FAO that contains, at a minimum, the following:

- The information required for the **Federal Register** notice of determination of disposition identified in paragraphs (i)(1)(i) through (iii) of section 79.15;
- The membership of the committee and their role and expertise pertinent to the deliberations;
- The committee’s recommendations, including any conditions of transfer or conveyance; and
- An explanation of why the committee determined other methods of disposition were of lesser public benefit.

9. *Comment:* Several commenters asked the NPS to include specific procedures in the rule that collections advisory committee members must follow in order to make recommendations to the FAO about proposed dispositions, rather than allowing the committee to determine their own rules. One commenter recommended that the committee have clearly written procedures, including timelines and opportunities for public consultation and input. Another argued that the rule should identify the specific tasks and procedures of the collections advisory committee. One commenter proposed that the regulations establish a single committee to review every proposed disposition.

NPS Response: The rule supports the need for flexibility in the disposition process, including in the formation and operation of collection advisory committees. The NPS believes these committees must address the unique circumstances of each proposed disposition, as well as reflect the unique needs, capacities, and operating environments of the responsible Federal agencies, which a single central committee could not do. However, the rule also establishes some basic requirements about the composition and operation of the committees to enable appropriate recommendations. In order to strike a balance between fostering flexibility and imposing standard requirements, the rule establishes qualifications for committee membership and requires written procedures to be approved by the FAO. The NPS believes this is sufficient to ensure all recommendations are fair, open, timely, and in the best interest of the public. Mandating specific rules of procedure for each committee would be unduly rigid and make the work of the committees more difficult because they would be forced to apply strict rules to the unique situations and capacities of each committee. Although the regulations require that the composition of the committees be tailored to the characteristics of each disposition, nothing in the regulations prevents the same committee from reviewing more than one disposition of a similar nature. Under these circumstances, the Federal agency would not need to form a new committee for each proposed disposition provided the members of the committee meet the requirements in the regulations with respect to the particular collection under review.

Insufficient Archeological Interest

10. *Comment:* One commenter argued that a determination of insufficient archeological interest should be made

on the basis of independent peer review that includes experts outside of the Federal government.

NPS Response: The NPS added a requirement in the final rule that the FAO must consult with qualified museum professionals at non-Federal repositories about the appropriateness of a proposed disposal. The NPS acknowledges that the perspective of qualified museum professionals responsible for the care and curation of the subject materials is necessary for the FAO to make an informed determination. FAOs must use appropriate judgment and base determinations of disposition on appropriate supporting information. Because the rule regulates federally owned or administered collections, however, it remains appropriate that Federal agency staff and officials, with verifiable knowledge of the materials, make decisions regarding the disposition of material remains in those collections.

11. *Comment:* One commenter argued that a lack of original records should not be sufficient to presume a determination of insufficient archeological interest if provenience can be reconstructed through other means.

NPS Response: The loss or destruction of associated records is one factor in determining whether there is a lack of provenience information. Under section 79.12, a qualified archeological or museum professional must determine that a disposition will not negatively impact the overall value of the collection in order to make a finding of insufficient archeological interest. In doing so, the professional must make a concerted effort to research all records, including museum records, associated with a collection. In addition, the FAO must determine that disposition of the material remains will not negatively impact the overall integrity of the original collection.

12. *Comment:* One commenter stated that it is unclear who makes the determination of insufficient archeological interest and what that individual's qualifications should be.

NPS Response: At least one qualified archeological or museum professional with verifiable knowledge of and experience in the type of material remains being evaluated makes a determination of insufficient archeological interest. The FAO determines whether the professional is qualified, using the Professional Qualification Standards set by the Secretary of the Interior as a benchmark, and considering the professional's verifiable knowledge of the material remains. The FAO then determines,

under section 79.15, whether the material remains are eligible for disposition under this subpart.

13. *Comment:* Two commenters requested that the rule define the following terms related to insufficient archeological interest: Material remains, physical integrity, irreparable damage, overly abundant, and representative sample.

NPS Response: Existing regulations define material remains as "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." This definition goes on to provide illustrative examples of different classes of material remains. The NPS declines to define the other terms requested by the commenters. These terms are commonly used by the archeological community and must be applied in context using the professional judgement of qualified personnel. For example, the amount sampled and sampling method for a representative sample must be determined on a case-by-case basis, using the professional discretion of subject matter experts and best available information. The rule requires subject matter experts to have verifiable knowledge of the material remains to be examined.

14. *Comment:* One commenter questioned whether material remains could possess increasing archeological interest over time.

NPS Response: For material remains that are overly redundant and not useful for research, the rule requires that a sampling strategy be developed and implemented in order that the retained samples may be subjected to new or improved analytical technologies in the future that could demonstrate those materials remains have greater archeological interest than previously known. The NPS has revised the rule to clarify that samples of material remains determined to be overly redundant and not useful for research must be representative of the population as a whole from which the sample was taken. This will help ensure the integrity and potential future worth of samples that are retained.

15. *Comment:* One commenter suggested that the criterion "overly redundant and not useful for research" be split into two separate criteria, each of which could support a determination of insufficient archeological interest.

NPS Response: The NPS declines to split this criterion into separate criteria because both elements of this criterion are necessary to establish insufficient

archeological interest. Fulfilling only one of these two elements (overly redundant or not useful for research) could not result in a determination of insufficient archeological interest. A redundant set of material remains that is still useful for research could have sufficient archeological interest. For instance, two sets of similar material remains derived from different archeological contexts are likely, by virtue of their spatial disparity, to provide some information about the past, even though those material remains may seem similar or identical in a museum setting. Alternatively, material remains not useful for research but not overly redundant could still have archeological interest because: (1) Their uniqueness may render them inherently informative about the past and (2) they may become useful for research in the future as new technologies are developed. Thus, to meet this test, material remains must be both overly redundant and not useful for research.

16. Comment: One commenter suggested that the NPS establish a hierarchy of levels of archeological interest and provide a range of disposition options for each level.

NPS Response: The rule only addresses the ultimate disposition of certain materials that have insufficient archeological interest. Identifying different degrees or levels of insufficient archeological interest and assigning different disposal options for each level would unnecessarily complicate the process.

Costs

17. Comment: Several commenters addressed the costs for Federal agencies and recipient entities of complying with the disposition process under the rule. Several commenters were concerned that the rule would place financial strain on repositories for retaining materials during the disposition process without addressing a general shortfall of personnel and funding. One commenter expressed concern that several methods of disposition (e.g., conveyance to suitable repositories or institutions) would impose unfair financial burdens on recipients of deaccessioned material remains.

NPS Response: The rule will impose little or no direct cost upon the public. Section 79.7 makes Federal agencies responsible for funding the curation of material remains. This includes costs associated with deaccessioning material remains in federally owned or administered collections, including costs borne by repositories that retain materials during the disposition

process. Federal agencies must accession and catalog material remains before deaccessioning, and must follow relevant law and agency policy in ensuring that funding decisions address all aspects of collection stewardship, not just deaccessioning. The rule provides a series of options for disposition and does not require any group or individual to accept material remains that are eligible for disposal. The rule does not impose unfair financial burdens on recipients of deaccessioned material remains because those recipients are under no obligation to accept the material remains. A recipient must independently choose to accept deaccessioned material, thus it will have an opportunity in advance to consider the financial impact of its participation in the disposition process. The NPS believes the disposition process in the rule is financially achievable for Federal agencies.

18. Comment: Two commenters inquired about the costs of deaccessioning material remains of insufficient archeological interest. They were concerned that resources, which could be used to catalog and curate collections, might be diverted to deaccessioning instead.

NPS Response: To limit the possibility that Federal agencies allocate resources to deaccessioning rather than to curating collections, the rule provides controls, under section 79.12, on the disposition process, intended to limit its use only to appropriate circumstances. Deaccessioning is one part of a comprehensive curation methodology. In order to be eligible for disposition, material remains must be part of a Federal collection, and thus have undergone appropriate intake and accessioning procedures, which must be documented in accordance with agency protocols. Agency staff responsible for determining whether particular material remains lack archeological interest must consider the relationship of the material remains to the collection as a whole. Any effort to determine the archeological interest of material remains must include a review of the overall collection, along with associated documentation, from which those material remains are derived. For these reasons, the NPS does not believe that the disposition process will divert funds from curation because deaccessioning is part of a responsible curation program.

19. Comment: One commenter suggested that the disposition process will impose new costs for excavation because allowing for disposition will force archeologists to perform a more thorough analysis of material remains prior to curating them in a repository.

NPS Response: The NPS does not consider this scenario as likely to occur. However, a more thorough analysis of collections during an initial excavation project could be a desirable outcome because it means that the documentation concerning material remains will provide a better understanding of the archeological interest and improve the value of the resulting curated collections to the public. Any increase in the initial cost of analysis would be voluntary.

Compliance

20. Comment: Several commenters discussed ways that implementation of the rule will support and interplay with compliance regimes for laws such as the NHPA and the National Environmental Policy Act (NEPA).

NPS Response: Under section 106 of the NHPA, Federal agencies must consider the effect of an undertaking on any historic property that is included in or eligible for inclusion in the National Register. Museum collections, including archeology collections, are not generally considered historic properties (see National Register Bulletin 15). Further, material remains determined to be of insufficient archeological interest are not likely to be included in or eligible for inclusion in the National Register because, characteristically, they would not be worthy of preservation. NEPA requires Federal agencies to fully consider the impacts of proposals that would affect the human environment prior to deciding to take an action. The disposal of material remains under this rule will generally not constitute a Federal action under NEPA that would have a significant effect on the human environment. Nevertheless, FAOs must consider the context related to each proposed disposal of material remains and comply with all applicable laws, including the NHPA and NEPA, before making a final determination. The FAO must consider the opinions, as appropriate, of the collections advisory committee, Indian Tribes, and other available experts in making disposition decisions to ensure compliance with Federal law. In cases where collections are held under a compliance agreement, such as a Memorandum of Agreement under section 106 of NHPA, the FAO must consider the context and the terms of the agreement to determine whether disposal is appropriate.

Administrative Record

21. Comment: Several commenters focused on the creation and preservation of the administrative record of the disposition process. One commenter asked that the

administrative record be provided to tribes and SHPOs, particularly when they possess additional data about the site or collection. Other commenters asked the NPS to clarify the requirement in paragraph 79.15(i)(2)(i) to prepare a detailed list of material remains to be deaccessioned and better define when photographic documentation would be considered appropriate.

NPS Response: Section 79.18 requires Federal agencies to include in their administrative record specific documentation of the determination of disposition. Consistent with these requirements, Federal agencies should follow their own procedures for preparing, preserving, and distributing administrative records. The FAO should follow existing practices that comply with applicable state and Federal standards for recording material remains in archeological collections when preparing the detailed list of material remains required by paragraph 79.15(i)(2)(i). This paragraph specifies that the list must include a description of each object, or lot of objects if there are multiples of a particular type, and photograph(s) of the objects when appropriate. The FAO should also consider standard practices to determine when photographic documentation is appropriate.

Authority and Applicability of Regulations

22. Comment: Two commenters questioned whether the authorities cited in section 79.2 authorize the NPS to allow the disposition of material remains. Two commenters questioned the applicability of the rule to material remains excavated under the Antiquities Act and the interplay with prior regulations.

NPS Response: Section 5 of ARPA (16 U.S.C. 470dd) gives the Secretary the explicit and sole authority to promulgate regulations providing for “the ultimate disposition” of ARPA archeological resources and other resources removed pursuant to the Antiquities Act and the RSA. These authorities are cited in paragraph 79.2(b)(2) which, except for updated citations, is not changed by this rule. The explicit statutory authority to promulgate this rule supersedes any preceding regulatory requirements regarding similar subject matter, in particular, 43 CFR 3.17. This more recent statutory authority thus makes it appropriate to include those resources excavated under the Antiquities Act and eligible for disposal via the process described in the new Subpart E as subject to this rule. For clarity, this rule adds a note to 43 CFR 3.17 stating that

resources excavated under the Antiquities Act are eligible for disposal via Subpart E of 36 CFR 79.

23. Comment: Several commenters requested clarification about the term “practical management authority” and the meaning of “indirect” practical management authority.

NPS Response: Part 79 applies to federally owned or administered collections. Section 79.3(a) uses the term “practical management authority” to further explain the circumstances under which collections that are owned by the United States are subject to Part 79. Federal agencies have ownership of collections due to specific laws, activities on Federal lands, or other circumstances, and these collections are managed in a variety of ways. In order for those collections to be subject to Part 79, a Federal agency that owns a collection also must have “practical management authority” over that collection, either directly or indirectly. Otherwise, Federal agencies would be responsible for curating collections that they do not control. Direct practical management authority generally includes situations where a Federal agency is directly administering collections at Federal facilities. Indirect practical management authority includes situations in which a Federal agency has legal responsibility and control over collections but a non-Federal entity has responsibility for curating the collection. This is usually documented through the terms of an agreement, contract, permit, or authorized expenditures.

24. Comment: One commenter stated that the rule should only apply to federally owned collections and that there should be no question about who has legal title over material remains that are proposed for disposal.

NPS Response: The FAO should be able to discern the ownership of material remains when determining if those remains are eligible for disposal under paragraph 79.12(a) and when reviewing the provenience information to determine if those remains have insufficient archeological interest under paragraph 79.12(e)(2)(i). Directions from ascertainable owners or questions regarding ownership must inform the FAO’s proposed disposition determination. Clear legal ownership by the United States is not a prerequisite for disposal of material remains under Part 79; the rule also applies to material remains that are not owned by the United States but that are managed or controlled by a Federal agency pursuant to the Antiquities Act, NHPA, RSA and ARPA. Other provisions of the rule explicitly ensure that certain owners of

federally administered collections, such as Indian individuals or tribes under 79.13(a), have an opportunity to receive them or to object to a proposed disposition. This aspect of the rule is intended to ensure that the government cares for archeological collections in its possession in accordance with applicable laws.

25. Comment: Based on established practices that allow for the re-interment of human remains not subject to NAGPRA, several commenters suggested that this rule should apply to human remains not subject to NAGPRA and identify reburial as a method of disposition. One commenter suggested that the rule establish a disposition process for human remains that are not subject to NAGPRA.

NPS Response: During consultation for the proposed rule, Federal agencies, Tribes, and professional organizations suggested that excluding all human remains from the disposition process for materials of insufficient archeological interest described in this subpart would simplify the rule and avoid confusion with NAGPRA and its implementing regulations. As a result, the proposed rule excluded all human remains from disposition and, in doing so, did not distinguish between human remains subject to NAGPRA and other human remains. The final rule clarifies in paragraph 7.12(b)(1) that Native American cultural items under NAGPRA, which can include human remains, are not eligible for disposition under this rule. Native American human remains are subject to disposition or repatriation under NAGPRA. In paragraph 7.12(b)(2), the final rule also states that other human remains not subject to NAGPRA are ineligible for disposition under Subpart E. The NPS does not intend for this subpart to affect established practices that otherwise allow for the disposition and re-interment of human remains not subject to NAGPRA. The final rule clarifies that human remains not subject to NAGPRA are excluded only from the process described in Subpart E. The NPS is reserving section 79.14 to address this issue in the future if necessary.

Disputes

26. Comment: Several commenters addressed the procedures for objecting to determinations of disposition. One commenter asked that the public have 90 days to dispute a determination of disposition, and that the requirement for submission of documentation be removed. Another commenter recommended that those objecting to a disposition should be responsible for finding a new repository. One

commenter suggested that the DCA should make binding decisions for all objections instead of non-binding recommendations to the FAO. Another commenter requested that the rule require the DCA to thoroughly explain their recommendation to the FAO. Two commenters asked that the rule include a dispute resolution process in section 79.16 to help resolve disagreements over which tribes should receive material remains that have been determined to be eligible for disposal. One commenter specifically recommended adopting the dispute resolution language from NAGPRA.

NPS Response: The NPS made several changes in section 79.16 of the final rule to provide a more effective and inclusive process for objecting to a determination of disposition. The NPS lengthened the timeframe to object to a determination of disposition from 30 to 60 days. The NPS believes this will provide sufficient time for interested parties to file an objection, in part because the list of those notified and consulted with prior to the determination of disposition is comprehensive. It is important that the objecting party document the reasons for the objection so that the DCA and the FAO are able to evaluate the merits of the objection. While objecting parties may suggest a different repository, they are not required to as a condition to filing an objection. The NPS also shortened the timeframe for the FAO to respond to the DCA's non-binding recommendation from 60 to 30 days and added a requirement that the DCA forward a copy of the objection to the FAO within 5 days of receipt of the objection. The final rule also requires the DCA to consult with the objecting party and the FAO with the aim of resolving the objection. This will ensure that the DCA plays a significant role in the resolution of disputes over determinations of disposition. The final rule requires that the DCA explain their recommendation to the FAO.

The NPS declines to make the DCA's decision binding because the DCA's role to other government agencies is advisory in nature. The DCA has no authority to broker binding arbitration with other Federal agencies, nor does the DCA have the authority to make decisions on their behalf. Similarly, the NPS declines to outline a dispute resolution process specifically for tribes because such a process would be duplicative of the appeal process in section 79.16. In addition, the NPS notes that the dispute resolution process in NAGPRA is specifically authorized in 25 U.S.C. 3006(c); no such authorization

exists in ARPA or the other applicable authorities for this rule.

Rulemaking Process

27. Comment: Several commenters stated that the rulemaking process was inadequate because of insufficient opportunities for public comment. One commenter asked for an extension of the public comment period.

NPS Response: The NPS consulted widely with Tribes and interest groups before publishing the proposed rule. The proposed rule was open for public comment for 90 days, from November 18, 2014, through February 17, 2015. This is 30 days longer than the standard comment period of 60 days that is identified in Department of the Interior Policy (318 Departmental Manual, section 5.3). The NPS received a substantial number of comments and has worked to address or respond to all issues raised by those comments in this final rule.

Impacts to Federal Collections

28. Comment: Two commenters stated that many collections were made with the understanding that they would be held in perpetuity by the government for future study, and that perpetual curation might be required by agreements entered into for purposes of complying with section 106 of the NHPA.

NPS Response: Legal instruments for the curation of materials, including those created under the section 106 consultation process, such as memoranda of agreement or programmatic agreements, may contain provisions requiring curation of materials beyond what otherwise would be required by this rule. When considering the potential disposal of materials covered by any such agreement, the FAO must review the terms of the agreement to determine whether the agreement and section 79.12 can be reconciled to allow disposal. Legally binding requirements for the perpetual curation of materials that appear in an agreement or other written instrument will not be affected by the disposition process established in this rule.

29. Comment: One commenter argued that deaccessioning would greatly reduce the volume of material remains available for study, which would lead to increased excavation.

NPS Response: The disposition process established in this rule applies narrowly to material remains of insufficient archeological interest. The rule does not compel the wholesale divestment by the government of its collections, but instead allows for small

reductions in the size of some collections under specific circumstances. Samples of material remains to be deaccessioned under this rule must be retained when those materials are deemed overly redundant and not useful for research. The cautious approach to disposition required by this rule makes it unlikely that the rule will result in a steep reduction in the amount of materials available for study in Federal collections, and a consequential need for additional excavations.

NAGPRA Consultation

30. Comment: Two commenters sought stronger requirements to consult with Tribes regarding the determination that material remains are not subject to NAGPRA. One commenter asked the NPS to clarify the FAO's responsibilities to consider NAGPRA compliance.

NPS Response: Federal agencies have separate procedural requirements under NAGPRA to ensure that NAGPRA cultural items in their collections are included in inventories and summaries. Extensive consultation is required during the inventory and summary process under 43 CFR 10.8 and 10.9. In general, Federal agencies were required to complete their NAGPRA summaries by November 16, 1993, and their NAGPRA inventories by November 16, 1995, so, in most cases, Federal agencies will have already determined which items in their collections are NAGPRA cultural items. Section 79.12 provides an additional measure to ensure NAGPRA cultural items are handled pursuant to NAGPRA and not subject to disposition under this rule. Prior to making a final determination of disposition, the FAO must determine that the material remains are not NAGPRA cultural items. The rule further states that, when Native American material remains are proposed for disposition, the collections advisory committee must include one or more elected officers (or their designees) of federally recognized Indian Tribes that are regularly consulted by the Federal agency. The rule also contains robust notification requirements that will help ensure that interested Tribes are aware of proposed dispositions. Further, any Tribe may object to determinations of disposition if it believes the materials are NAGPRA cultural items. The NPS believes that these requirements are sufficient to ensure that Native American cultural items subject to NAGPRA will not be disposed of under this rule.

Use of Deaccessioned Material Remains

31. *Comment:* One commenter argued that enforcing the restrictions on disposition of material remains in the proposed rule would constitute a taking of property under the Fifth Amendment of the Constitution, specifically for material remains excavated and removed from Indian lands and returned to the Indian individual or Indian tribe having rights of ownership over the resources. Commenters sought to ensure that deaccessioned material remains may not be sold in the future. Another commenter questioned the ability of the FAO to enforce prohibitions on government employees receiving deaccessioned material remains.

NPS Response: The NPS has clarified in paragraph 79.13(b) that, as a condition of disposal, the FAO will reasonably ensure that material remains from public lands that are not Indian lands may not be traded, sold, bought, or bartered after disposal is completed. This condition will not apply to material remains from Indian lands. The NPS has removed the prohibition on government employees receiving deaccessioned material remains because

it is redundant with government-wide ethics requirements that address the concerns originally underlying this proposed restriction. Indian individuals who are also Federal employees must work with their agency’s ethics officials to determine a course of action in the event that they wish to receive deaccessioned material remains.

General Support and Opposition

32. *Comment:* Some commenters expressed general support for the rule, praising its clear language and stringent and rigorous disposition process. Commenters recognized the need for the rule and its potential to improve the value of collections and reduce careless accession of material remains. Other commenters expressed general opposition to the rule, citing their belief that material remains should not be deaccessioned and that the rule will not provide a complete solution to the curation crisis.

NPS Response: Responsible deaccessioning is a necessary tool for maintaining the scientific value of collections. Several Federal agencies requested this rule, which supports the proper curation of Federal collections.

This rule establishes a rigorous and deliberative disposition process that, when properly implemented, will prevent the careless deaccessioning of material remains. Supporting agency stewardship of archeological collections is the foundational goal of 36 CFR 79.

Changes in the Final Rule

After considering the public comments and after additional review, the NPS made the following substantive changes in the final rule. The NPS made other non-substantive, editorial changes for clarity and ease of reading. In many places, the NPS replaced outdated citations to Title 16 of the U.S. Code with correct citations to Title 54. The NPS also removed the paragraph designations in section 79.4 and organized the defined terms alphabetically, as recommended in the Office of the Federal Register’s Document Drafting Handbook. In order to make these changes, the entire section 79.4 appears below in the regulatory text even though the only changes to that section are to add definitions of “Departmental Consulting Archeologist” and “provenience information.”

Final rule section or paragraph	Change	Reason for change
79.4	Added definitions of the terms “Departmental Consulting Archeologist” and “provenience information”.	Clarifies the meaning of these terms for non-specialists.
79.12(b)(2)	Specified that the term “human remains” refers to human remains that are not “cultural items” under NAGPRA.	Clarifies that no human remains may be disposed of under this rule, whether or not they are subject to NAGPRA.
79.12(c)	Clarified that only persons who meet the applicable Professional Qualification Standards set by the Secretary may propose the disposal of material remains.	Helps ensure that only qualified experts may initiate the disposition process. Ensures that disposition is not undertaken casually or as a matter of convenience. The professional standards are available here: https://www.nps.gov/articles/sec-standards-prof-quals.htm .
79.12(c)(1)	Added a requirement that Federal agency staff members must have verifiable knowledge of the particular material remains that are proposed for disposal.	Helps ensure that disposition is not undertaken improperly because qualified experts were not involved.
79.12(e)	Added a requirement that archeological or museum professionals must have verifiable knowledge of the particular material remains in order to determine whether those material remains have insufficient archeological interest.	Helps ensure that disposition is not undertaken improperly because qualified experts were not involved.
79.12(e)(2)(i)(C)	Clarified that a lack of provenience information may be established if associated records never existed, have been lost, or have been destroyed.	Addresses a legitimate circumstance where there is no existing provenience information.
79.12(e)(2)(iii)	Clarified that representative samples of material remains that are overly redundant and not useful for research must be representative of the population as a whole from which the sample was taken.	Helps ensure that a statistically valid sample is retained in the event that new analytical techniques are developed that allow the sample to generate useful information about the past.
79.13(a)(2)	Clarified that the FAO must receive written consent and relinquishment of ownership from the Indian individual or tribe having rights of ownership before otherwise disposing of material remains excavated from Indian lands.	Helps ensure that the FAO will not dispose of material remains owned by Indian individuals or tribes without their consent.
79.13(b)(5)	Added the following method of disposal for material remains excavated or removed from public lands: Convey to a federally recognized Indian tribe for the purpose of traditional cultural, educational, or religious practices.	Responds to public comment and improves consistency between the acceptable methods of disposition for materials removed from Indian and public lands.

Final rule section or paragraph	Change	Reason for change
79.15(d)	Added a requirement that the FAO consult with qualified museum professionals located in the repository that provides curatorial services for material remains proposed for disposal when those museum professionals did not propose the disposal.	Helps ensure that appropriate experts are involved in the disposition process.
79.15(e)	Added a requirement that the collections advisory committee make consensus recommendations to the FAO about proposed dispositions.	Responds to public comment and helps ensure that disposition is not undertaken lightly or improperly.
79.15(e)(1)	Added a provision stating that the DCA may not participate on a collections advisory committee.	Helps maintain the impartiality of the DCA, who serves as the arbiter of disputes about proposed dispositions.
79.15(e)(3)	Clarified that the requirement that collections advisory committees include at least one representative of an Indian tribe only applies if there are Native American material remains proposed for disposal.	Ensures the appropriate inclusion of tribal viewpoints in considering a disposition of Native American material remains.
79.15(e)(5)	Added a requirement that the collections advisory committee submit a written report to the FAO about any proposed disposition.	Responds to public comments and improves the administrative record of a disposition.
79.15(g)	Added a requirement that, for material remains excavated from Indian land, the FAO provide a copy of the associated records to the appropriate Tribal Historic Preservation Officer or tribal official.	Responds to public comments and improves accountability to tribal governments.
79.15(h)	Added a minimum duration of 60 days for the public comment period for a proposed disposition. Made the FAO responsible for responding only to relevant, substantive comments.	Responds to public comments to improve timeliness and public accountability. Reduces the administrative burden on the FAO during the comment review period.
79.15(h)(1)	Added a requirement that the FAO must give notice of proposed dispositions to the State Archeologist if there is one.	Improves coordination with state officials and improves the administrative record.
79.15(h)(3)	Added a requirement that the FAO must give notice of proposed dispositions to private landowners from whose lands the objects to be disposed were removed.	Responds to public comments to provide additional information to landowners.
79.15(h)(5)	Removed the requirement that the FAO must give notice to organizations and institutions with an active department of or program in archeology or anthropology pertaining to the archeology of the state or region from which the material remains to be disposed of were recovered. Clarified that the FAO must give notice of proposed dispositions to organizations and institutions for which the agency has an existing relationship pursuant to a written instrument (e.g., permit, agreement) for research, excavation, curation, education, or other partnership in the state and region from which the objects to be disposed were recovered.	Removes ambiguity about which institutions and organizations must receive notice of proposed dispositions. Reduces the burden of compliance for the FAO by requiring only notification of those entities that have a formal relationship. Improves communication about proposed disposition actions with interested researchers.
79.16	Lengthened the timeframe to object to a determination of disposition from 30 to 60 days after publication of the notice of determination of disposition in the Federal Register .	Responds to public comments and provides more opportunity for the public to object to a proposed disposition.
79.16(a)	Added a requirement that the DCA forward a copy of objections to the FAO within 5 days of receipt.	Improves accountability from the DCA to the FAO and streamlines the objection process.
79.16(c)	Added a requirement that the DCA consult with the objecting party and the FAO with the aim of resolving the objection.	Responds to public comments to improve the fairness of the objection process by providing another opportunity for discussion between the objecting party and the FAO.
79.16(d)	Added a requirement that the DCA must thoroughly explain their non-binding recommendation to the FAO.	Responds to public comment to provide a more effective and inclusive disputes process.
79.16(e)	Shortened the timeframe for the FAO to respond to the DCA and the objector with a final determination from 60 to 30 days.	Streamlines the objection process and encourages timely resolution to objections.
79.16(f)	Clarified that notice of a decision on an objection is a final agency action under the Administrative Procedure Act.	Responds to public comment to make procedures clear to the public.
79.17	Added a requirement that disposition after an objection will occur no sooner than 30 days after the FAO publishes the notice of decision on the objection and any amendments in the Federal Register .	Responds to public comment to make procedures clear to the public.
43 CFR 3.17	Added a note that resources excavated under the Antiquities Act may be eligible for disposal under Subpart E of 36 CFR 79.	Responds to public comments questioning the applicability of the rule to material remains excavated under the Antiquities Act.

Compliance With Other Laws, Executive Orders and Department Policy. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. Executive Order 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The NPS has developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

This rule 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.*). This certification is based on information contained in the economic analyses found in the report entitled "Cost-Benefit and Regulatory Flexibility Analyses: Proposed Regulations on the Curation of Federally-Owned or Administered Archeological Collections" that is available online at the following URL: https://www.nps.gov/orgs/1187/upload/Regulatory_Analyses_36_CFR_Part_79_12.pdf.

Congressional Review Act (CRA)

This rule is not a major rule under 5 U.S.C. 804(2), the CRA. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

The rule relates to internal administrative procedures and

management of government function. It does not regulate external entities, impose any costs on them, or eliminate any procedures or functions that would result in a loss of employment or income on the part of the private sector.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year. This rule does not have a significant or unique effect on state, local or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule does not regulate, change, or otherwise affect the relationship between Federal and state governments. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. The NPS may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the

quality of the human environment. A detailed statement under the NEPA is not required because this rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it qualifies as a regulation of an administrative and procedural nature. (For further information see 43 CFR 46.210(i)). This rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Federal Advisory Committee Act

Intergovernmental consultation recommended under this rule is exempt from the Federal Advisory Committee Act (FACA). This rule requires that consultation with Indian tribes be conducted between Federal officials and elected tribal officers or their designated employees acting in their official capacities, who meet solely for the purpose of exchanging views, information, or advice related to the management or implementation of this rule. Consultation with Tribes under this rule thus meets the two-part test for an exemption from the FACA set out in the Unfunded Mandates Reform Act of 1995, Public Law 104-4.

Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consult with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. The NPS has evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and has determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes. Nevertheless, the NPS conducted outreach to tribes and Native Hawaiian Organizations, initiated consultation through two letters to tribal leaders, and conducted face-to-face consultation on this rule upon request. Additional information regarding the identified effects on Indian Tribes and these outreach and consultation efforts is contained in a document entitled "Consultation with Indian Tribes (E.O. 13175) regarding the proposed 36 CFR 79.12," which is available at the following URL: https://www.nps.gov/orgs/1187/upload/Tribal_Consultation_36_CFR_Part_79_12.pdf.

Effects on the Energy Supply (E.O. 13211)

This rulemaking is not a significant energy action under the definition in Executive Order 13211; the rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the rule has not otherwise been designated by the Administrator of OIRA as a significant energy action. A Statement of Energy Effects is not required.

Drafting Information

This rule was written with the cooperation and consultation of the following Federal agencies and bureaus: U.S. Bureau of Indian Affairs, U.S. Bureau of Land Management, U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service, U.S. Air Force, U.S. Army Corps of Engineers, U.S. Navy, and U.S. Forest Service. Each agency and bureau provided a specialist in the curation of archeological collections to participate in an informal interagency working group to provide expert advice during the drafting of this rule.

List of Subjects

36 CFR Part 79

Archives and records, Historic preservation, Indians—lands, Museums, Public lands.

43 CFR Part 3

Agriculture Department, Army Department, Historic preservation, Smithsonian Institution.

In consideration of the foregoing, the National Park Service and Department of the Interior amend 36 CFR part 79, and 43 CFR part 2, as set forth below:

PART 79—CURATION OF FEDERALLY OWNED OR ADMINISTERED ARCHEOLOGICAL COLLECTIONS

■ 1. The authority citation for part 79 is revised to read as follows:

Authority: 16 U.S.C. 470aa–mm, 54 U.S.C. 300101 *et seq.*

■ 2. Revise the part heading to read as shown above.

§§ 79.1 through 79.4 [Designated as Subpart A]

■ 3. Designate §§ 79.1 through 79.4 as subpart A and add a heading for subpart A to read as follows:

Subpart A—Administrative Provisions

§ 79.1 [Amended]

■ 4. In § 79.1 amend paragraph (a) by:

■ a. Removing “(16 U.S.C. 431–433)” and adding, in its place, “(54 U.S.C. 320301–320303)”;

■ b. Removing “(16 U.S.C. 469–469c)” and adding, in its place, “(54 U.S.C. 312501–312508)”;

■ c. Removing “(16 U.S.C. 470h-2)” and adding, in its place, “(54 U.S.C. 306101–306114)”.

■ 5. In § 79.2:

■ a. Revise paragraph (a).

■ b. In paragraph (b)(2), remove “(16 U.S.C. 431–433)” and add, in its place, “(54 U.S.C. 320301–320303)” and remove “(16 U.S.C. 469–469c)” and add, in its place, “(54 U.S.C. 312501–312508)”.

The revision reads as follows:

§ 79.2 Authority

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

* * * * *

■ 6. In § 79.3, revise paragraph (a) to read as follows:

§ 79.3 Applicability.

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

* * * * *

■ 7. Revise § 79.4 to read as follows:

§ 79.4 Definitions.

As used for purposes of this part:

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

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

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

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

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

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

Collection means material remains that are excavated or removed during a survey, excavation, or other study of a prehistoric or historic resource, and associated records that are prepared or

assembled in connection with the survey, excavation, or other study.

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

(1) Inventorying, accessioning, labeling, and cataloging a collection;

(2) Identifying, evaluating, and documenting a collection;

(3) Storing and maintaining a collection using appropriate methods and containers, and under appropriate environmental conditions and physically secure controls;

(4) Periodically inspecting a collection and taking such actions as may be necessary to preserve it;

(5) Providing access and facilities to study a collection; and

(6) Handling, cleaning, stabilizing, and conserving a collection in such a manner to preserve it.

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

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

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

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

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

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

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

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

(4) By-products, waste products or debris resulting from the manufacture or use of man-made or natural materials (such as slag, dumps, cores and debitage);

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

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

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

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

(9) Environmental and chronometric specimens (such as pollen, seeds, wood, shell, bone, charcoal, tree core samples, soil, sediment cores, obsidian, volcanic ash, and baked clay); and

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

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

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

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

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

(1) The Office of Personnel Management's "Position Classification Standards for Positions under the General Schedule Classification System" (U.S. Government Printing Office, stock No. 906-028-00000-0 (1981)) are used by Federal agencies to determine appropriate occupational series and grade levels for positions in the Federal service. Occupational series most commonly associated with museum work are the museum curator series (GS/GM-1015) and the museum technician and specialist series (GS/GM-1016). Other scientific and professional series that may have collateral museum duties include, but are not limited to, the archivist series (GS/GM-1420), the archeologist series

(GS/GM-193), the anthropologist series (GS/GM-190), and the historian series (GS/GM-170). In general, grades GS-9 and below are assistants and trainees while grades GS-11 and above are professionals at the full performance level. Grades GS-11 and above are determined according to the level of independent professional responsibility, degree of specialization and scholarship, and the nature, variety, complexity, type, and scope of the work.

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

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

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

Religious remains means material remains that the Federal Agency Official

has determined are of traditional religious or sacred importance to an Indian tribe or other group because of customary use in religious rituals or spiritual activities. The Federal Agency Official makes this determination in consultation with appropriate Indian tribes or other groups.

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

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

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

§§ 79.5 through 79.9 [Designated as Subpart B]

■ 8. Designate §§ 79.5 through 79.9 as subpart B and add a heading for subpart B to read as follows:

Subpart B—Archeological Collections Management

§ 79.10 [Designated as Subpart C]

■ 9. Designate § 79.10 as subpart C and add a heading for subpart C to read as follows:

Subpart C—Public Access to and Use of Collections

§ 79.11 [Designated as Subpart D]

■ 10. Designate § 79.11 as subpart D and add a heading for subpart D to read as follows:

Subpart D—Inspections and Inventories of Collections

■ 11. Add subpart E to read as follows:

Subpart E—Disposition of Particular Material Remains

Sec.

- 79.12 Determining which particular material remains are eligible for disposal.
- 79.13 Acceptable methods for disposition of particular material remains.
- 79.14 [Reserved].
- 79.15 Final determination of disposition of particular material remains.
- 79.16 Objecting to a determination of disposition of particular material remains.
- 79.17 Timing of disposition.
- 79.18 Administrative record of disposition.

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) *When are particular material remains considered to be of insufficient*

archeological interest? Particular material remains are considered to be of insufficient archeological interest when, on a case-by-case basis, at least one qualified archeological or museum professional who meets the Professional Qualification Standards set by the Secretary of the Interior and possesses verifiable knowledge of and experience in the type of material remains being evaluated makes a determination. The determination must follow the process established in § 79.15 and document that:

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

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

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

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

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

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

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

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

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

§ 79.13 Acceptable methods for disposition of particular material remains.

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

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

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

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

(1) Transfer to another Federal agency.

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

(3) Convey to a federally recognized Indian tribe if the material remains were excavated or removed from lands of

religious or cultural importance to that tribe and were identified and documented by a Federal land manager under 43 CFR 7.7(b)(1), 36 CFR 296.7(b)(1), 32 CFR 229.7(b)(1), or 18 CFR 1312.7(b)(1).

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

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

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

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

§ 79.14 [Reserved]

§ 79.15 Final determination of disposition of particular material remains.

The Federal Agency Official is responsible for ensuring that the agency disposes of material remains according to the requirements of this subpart. A determination made under this subpart in no way affects a Federal land manager's obligations under other applicable laws or regulations. The Federal Agency Official must take all the following actions before making a final determination that it is appropriate to dispose of material remains.

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

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

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

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

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

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

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

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

(4) The collections advisory committee must have written

procedures and governing rules, including terms of member appointments and the duration of the committee, approved by the Federal Agency Official, to ensure all recommendations about the appropriateness of disposal are fair, open, timely, and in the best interests of the public.

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

(6) Federal employees or qualified members of federally recognized Indian tribes may be temporarily added to the committee if its existing members determine that specific expertise, including archeological knowledge of the cultural period and cultural area, is needed on a case-by-case basis.

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

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

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

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

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

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

(h) The Federal Agency Official must notify the entities listed in this paragraph of the proposed disposition and solicit comments on the proposal. Notifications must be made in writing, and must include a deadline for submitting comments that is at least 60 days after notice is issued, in accordance with procedures established by the Federal agency. All written comments must be reviewed by the Federal Agency Official and the collections advisory committee. The Federal Agency Official will respond to all relevant, substantive comments received. Notice must be given to the following:

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

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

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

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

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

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

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

(i) The Federal Agency Official must, after the comment period described in paragraph (h) of this section has expired and the Federal Agency Official has responded to all relevant, substantive comments received, publish a notice of determination of disposition in the **Federal Register**.

(1) The notice published in the **Federal Register** must include the following:

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

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

(iii) The method of disposal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) The Federal Agency Official must publish notice of the decision on the objection and any amendments made to the determination of disposition in the **Federal Register**. This may only be done after the objector exhausts any internal

appeal procedures identified in the decision document sent to the objector under § 79.16(e). Publication of the notice of the decision on the objection constitutes a final agency action under the Administrative Procedure Act (5 U.S.C. 704).

§ 79.17 Timing of disposition.

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

§ 79.18 Administrative record of disposition.

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

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

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

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

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

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

(6) A detailed inventory of the representative sample of material

remains retained, when the larger proportion is disposed of because it is overly redundant and not useful for research.

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

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

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

TITLE 43: PUBLIC LANDS: INTERIOR

SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR

PART 3—PRESERVATION OF AMERICAN ANTIQUITIES

■ 12. The authority citation for part 3 is revised to read as follows:

Authority: 54 U.S.C. 320302–320303.

■ 13. Amend § 3.17 by adding a note at the end of the section to read as follows:

§ 3.17 Preservation of Collection

* * * * *

Note to § 3.17: Regulations concerning curation of federally owned or administered archeological collections are found in 36 CFR part 79. Objects excavated under the Antiquities Act may be eligible for disposal under subpart E of 36 CFR part 79.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

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