

Department of the Interior Departmental Manual

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Series: Environmental Quality Programs

Part 519: Protection of the Cultural Environment

Chapter 2: Preservation of American Antiquities and Treatment and Disposition of Native American Cultural Items

Originating Office: National Park Service

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2.1 Purpose. This chapter describes the policies and responsibilities of the Department of the Interior for managing, preserving, and protecting prehistoric and historic resources and Native American human remains and cultural objects that are located on Indian lands and public lands which the Department administers (hereinafter collectively referred to as lands over which the Department has jurisdiction), other than lands on the Outer Continental Shelf. It also describes the policies and responsibilities of the Department of the Interior for the treatment and disposition of Native American Cultural items.

2.2 Authority. The Secretary of the Interior has the responsibility to manage, preserve and protect prehistoric and historic resources and to ensure the proper treatment and disposition of Native American human remains and cultural items that are located on lands over which the Department has jurisdiction. The Secretary of the Interior also has the responsibility to provide guidance in these matters to other agencies and organizations covered by the following statutes, implementing regulations, and Executive order:

A. Antiquities Act (AA) of 1906 (16 U.S.C. 431-433) and uniform regulations for the Preservation of American Antiquities (43 CFR 3);

B. Archaeological Resources Protection Act (ARPA) of 1979, as amended (16 U.S.C. 470aa-mm) and uniform and supplemental regulations for the Protection of Archaeological Resources (43 CFR 7);

C. Historic Sites Act of 1935 (16 U.S.C. 461-467);

D. National Historic Preservation Act of 1966, as amended (16 U.S.C. 470);

E. Executive Order 11593, "Protection and Enhancement of the Cultural Environment", May 13, 1971;

F. Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732);

G. National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd-ee) and implementing regulations (50 CFR 25);

H. National Park System Organic Act of 1916 (16 U.S.C. 1 et seq.), General Provisions regulations (36 CFR 1), and regulations for Resource Protection, Public Use and Recreation (36 CFR 2); and

I. Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (25 U.S.C. 3001-3013).

2.3 Responsibilities.

A. The Assistant Secretaries for Fish and Wildlife and Parks, Land and Minerals Management, Water and Science, and Indian Affairs will be responsible for overseeing implementation of the Secretary of the Interior's responsibilities under AA, ARPA, NAGPRA, and other authorities for lands and programs under their jurisdiction.

B. The Office of Hearings and Appeals will:

(1) conduct hearings and issue consequent decisions, as provided for in 43 CFR 7 Subpart A ' 7.15(g), for persons who are making appeals of civil penalties assessed under ARPA and 43 CFR 7 concerning their activities on lands under the jurisdiction of the Department of the Interior; and

(2) pursuant to a Memorandum of Agreement (Appendix 1) entered into between the Departments of the Interior and Agriculture for implementing administrative procedures under ARPA, conduct hearings and issue consequent decisions, as provided for in 36 CFR 296.15(g), for persons who are accused of violating provisions of ARPA while on lands under the jurisdiction of the Forest Service, Department of Agriculture.

C. Serving as the agent of the Secretary of the Interior for lands and programs under their jurisdiction, the Bureau Heads of the National Park Service, the U. S. Fish and Wildlife Service, the Bureau of Land Management, the Bureau of Reclamation, and the Bureau of Indian Affairs will:

(1) develop bureau-specific procedures, regulations, standards, policies, or other guidance concerning the issuance of permits for archeological work and the survey, excavation, and preservation and curation of prehistoric and historic materials;

(2) develop bureau-specific procedures, regulations, standards, policies, or other guidance concerning the identification, treatment, disposition and repatriation of Native American human remains and cultural items to the affiliated lineal descendants, Indian tribes, or Native Hawaiian organizations;

(3) review disputes regarding issuance, modification, suspension, revocation or denial of permits, or the inclusion of specific terms and conditions of permits, in accordance with

43 CFR 7;

(4) issue, modify, monitor, suspend, revoke or deny permits for archeological work in accordance with AA, ARPA, NAGPRA, 43 CFR 3 and 7, and any Departmental and bureau-specific procedures, regulations, standards and policies on the survey, excavation, and preservation of prehistoric and historic resources, and for the identification, treatment, disposition, and repatriation of Native American human remains and cultural objects;

(5) ensure that archeological work which is conducted by bureau personnel or under contract for the bureau meets the permit requirements of AA, ARPA, NAGPRA, and implementing regulations, and is in accordance with any Departmental and bureau-specific procedures, regulations standards, and policies on the survey, excavation, preservation and curation of prehistoric and historic resources and for the identification, treatment disposition, and repatriation of Native American human remains and cultural items;

(6) ensure that archeological work which is conducted by tribes or tribal members on Indian lands meets the permit requirements of ARPA and its implementing regulations when there is not tribal law regulating such activities;

(7) except in those cases where an Indian owner, lineal descendent, Indian tribe, or Native Hawaiian organization maintains custody of material remains that are excavated or removed from prehistoric and historic resources located on Indian or Federal lands, ensure that material remains and associated records documenting prehistoric and historic resources located on lands over which the bureau has jurisdiction are preserved and maintained in a suitable repository in accordance with 43 CFR Parts 3 and 7, and with 36 CFR 79;

(8) investigate and assist in prosecutions of persons accused of violating provisions of AA, ARPA, NAGPRA, or other authorities, and assess civil penalties against those persons who have violated the provisions of ARPA or NAGPRA;

(9) withhold information concerning the nature and location of prehistoric and historic resources in accordance with 43 CFR 7;

(10) determine that certain prehistoric and historic resources are not or are no longer of archeological interest in accordance with 43 CFR 7;

(11) foster and improve the communication, cooperation and exchange of information between private individuals having collections of prehistoric and historic resources and data which were obtained before enactment of ARPA from lands over which the bureau has jurisdiction, the bureau and other Federal agency personnel and the professional archeological community; and

(12) report annually to the Departmental Consulting Archeologist on archeological activities carried out under AA, ARPA, NAGPRA, and other authorities, and make recommendations for appropriate changes or improvements needed in the provisions of statutory and regulatory authorities;

D. The **Departmental Consulting Archeologist** will serve as the agent of the Secretary of the Interior in:

- (1) overseeing and coordinating the Department of the Interior's archeological activities under AA, ARPA, NAGPRA, and other authorities;
- (2) developing procedures, regulations, standards, policies, or other guidance concerning the issuance of AA or ARPA permits and the survey, excavation, and preservation of prehistoric and historic materials and disposition of human remains and cultural items;
- (3) in accordance with 43 CFR 7 Subpart B ' 7.36(d), upon request from any affected person, reviewing and making recommendations to a Bureau/Office Head regarding any professional issues involved in any of the bureau's archeological permitting decisions;
- (4) responding to requests from Bureau/Office Heads for professional advice regarding any archeological permitting decision or determination of archeological interest;
- (5) fostering and improving the communication, cooperation, and exchange of information between private individuals having collections of prehistoric and historic resources and data which were obtained before enactment of ARPA, and Federal land managing agencies and the professional archeological community;
- (6) reporting to the Congress on archeological activities carried out under AA, ARPA, and other authorities, and making recommendations for appropriate changes or improvements needed in the provisions of statutory and regulatory authorities;
- (7) providing staff and administrative support for the Native American Graves Protection and Repatriation Act Review Committee of seven persons who monitor, review, and report to Congress on the inventory, identification, and repatriation activities required by NAGPRA;
- (8) serving as the Designated Federal Official for the Review Committee;
- (9) developing and providing regulations to implement the statute, guidelines, technical information, training, and other programs to assist Indian tribes, Native Hawaiian organizations, museums, and Federal agencies in meeting their obligations under NAGPRA;
- (10) reviewing requests from museums receiving Federal funding for extensions in time to complete the inventory of human remains and associated funerary objects in their collections as required by NAGPRA; and
- (11) administering a grants-in-aid program, authorized by Congress under NAGPRA, to assist Indian tribes, Native Hawaiian organizations, and museums in their inventory, identification, and repatriation activities.

2.4 Archeological Activities Requiring a Permit. Except as provided in 519 DM 2.6C, permits are required for survey, surface collection, subsurface testing or excavation or removal of prehistoric and historic remains that are located on lands over which the Department has jurisdiction. Permit applications are to be processed in accordance with AA, ARPA, or other authorities, their respective implementing regulations, and any Departmental and bureau-specific procedures, regulations, standards, and policies on the survey, excavation, and preservation of prehistoric and historic resources.

2.5 Issuance of Permits. The land managing bureaus in the Department of the Interior will issue permits for archeological work located on lands under their jurisdiction.

A. Permits will be issued only when:

- (1) the applicant is qualified to carry out the proposed activity;
- (2) the proposed activity is for the purpose of furthering archeological knowledge in the public interest;
- (3) the proposed activity is fully consistent with any management plan or established policy, objectives, or requirements applicable to the management of the public or Indian lands;
- (4) the land managing bureau has notified and consulted with the appropriate Indian tribe(s) or Native Hawaiian organization(s) when an activity proposed on public lands may harm or destroy locations of Indian tribal religious or cultural importance, or site(s) likely to include human remains and/or cultural objects as defined by NAGPRA, as determined by the land managing bureau;

B. For an activity proposed on public lands, the prehistoric and historic resources that are excavated or recovered, except those identified as cultural items under NAGPRA and its implementing regulations, will remain the property of the United States, under the control of the land managing bureau, and any excavated material remains and associated records will be preserved in a suitable repository; and

C. For an activity proposed on Tribal lands as defined under '2 of NAGPRA:

- (1) written consent must be obtained from the Indian tribe or native Hawaiian organization having jurisdiction over such lands prior to the commencement of the activity; and
- (2) the prehistoric and historic resources that are excavated or recovered will remain the property of the Indian owner; however, copies of associated records will be preserved in a suitable repository and, if the Indian owner declines custody of the material remains, such remains also will be preserved in a suitable repository.

2.6 Permit Applications.

A. Researchers. When a researcher proposes to conduct archeological work for scientific and scholarly purposes, the bureau must require that the researcher apply to the bureau for a permit.

B. Contractors.

(1) When a bureau proposes to conduct archeological work under a contract, the bureau must issue a bid solicitation which requires that bidders meet permit requirements. In awarding a contract, the bureau must ensure that permit requirements, including any Indian notifications or consultations, are met and documented. Issuance of the contract constitutes the permit. Any terms and conditions must be stipulated in the contract.

(2) When a bureau proposes to require a non-federal party to conduct archeological work in connection with issuance of a land-use license or other authorization, the bureau must require that the third party archeological consultant under contract to the non-federal party apply to the bureau for a permit. (Such archeological work ordinarily is for environmental compliance work being required by a bureau prior to issuing a land-use license to a non-federal party for development activities and would include the laying of pipelines, constructing drill pads, and mining).

C. Exceptions.

(1) Federal employees. Pursuant to 43 CFR 7 Subpart B ' 7.5(c), persons carrying out official business associated with the management of prehistoric and historic resources on lands under the jurisdiction of the Department of the Interior do not need to complete ARPA permit applications. The Department of the Interior has interpreted this to also exempt its employees from completing AA or other permit applications for archeological work when carrying out official business. However, the bureaus must ensure that:

(a) permit requirements, including any necessary notifications to or consultations with Indian tribes, and any terms and conditions are met and documented (such as through preparation of a professional research design, study proposal, task directive, or similar document); and

(b) archeological work is conducted in accordance with any Departmental and bureau-specific procedures, regulations, standards, and policies on the survey, excavation, and preservation of prehistoric and historic resources.

(2) Indian tribes and their members. Pursuant to section 4(g)(1) of ARPA, if there is tribal law regulating the excavation or removal of prehistoric and historic resources located on an Indian tribe's lands, neither the tribe nor its members need to complete ARPA permit applications. The Department of the Interior has interpreted this to also exempt Indian archeological work if there is tribal law regulating such activities.

D. Emergencies. Under certain limited circumstances, the Department's bureaus may issue permits under expedited review procedures. Such circumstances generally would be

limited to those situations where a prehistoric and historic resource is discovered during construction or is exposed by natural causes. In accordance with the Archeological and Historic Preservation Act of 1974 (as amended) (16 U.S.C. 469-469c), when a prehistoric and historic resource is discovered during construction, the bureau must notify the Departmental Consulting Archeologist who will evaluate the significance of the resource and determine what data recovery or additional testing is necessary. (The land managing bureau will be advised of its responsibilities under section 106 of the National Historic Preservation Act of 1966 (as amended) (16 U.S.C. 470), if those responsibilities have not been fully complied with). Under expedited review procedures, the bureaus may issue permits by telegram based on oral request, but must ensure that permit requirements, including any necessary notifications to Indian tribes, and any terms and conditions are met and documented. In these cases, the 30 day comment period (required in 43 CFR 7) following Indian notification may be waived. However, the Indian tribe must be notified and consulted with prior to initiation of the archeological work. The circumstances of the emergency also must be fully documented in writing for the permanent file.

2.7 Permit Forms.

A. Appropriate, approved forms will be used by persons to apply for a permit under AA or ARPA to conduct archeological work on lands over which the Department has jurisdiction.

B. Other appropriate bureau-specific forms will be used by persons to apply for a permit under other authorities to conduct archeological work on lands over which the land managing bureau has jurisdiction.

C. Appropriate, approved forms will be used by land managing bureaus to issue permits for archeological work under AA and ARPA.

D. Other appropriate bureau-specific forms will be used by the land managing bureaus to issue permits for archeological work under other authorities.

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