

Part 229 -- Protection of archaeological resources: uniform regulations

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Sec. 229.1 Purpose.

- (a) The regulations in this part implement provisions of the Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa-mm) by establishing the uniform definitions, standards, and procedures to be followed by all Federal land managers in providing protection for archaeological resources, located on public lands and Indian lands of the United States. These regulations enable Federal land managers to protect archaeological resources, taking into consideration provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996), through permits authorizing excavation and/or removal of archaeological resources, through civil penalties for unauthorized excavation and/or removal, through provisions for the preservation of archaeological resource collections and data, and through provisions for ensuring confidentiality of information about archaeological resources when disclosure would threaten the archaeological resources.

- (b) The regulations in this part do not impose any new restrictions on activities permitted under other laws, authorities, and regulations relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands. [49 FR 1027, Jan. 6, 1984, as amended at 60 FR 5260, Jan. 26, 1995]

Sec. 229.2 Authority.

- (a) The regulations in this part are promulgated pursuant to section 10(a) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ii), which requires that the Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority jointly develop uniform rules and regulations for carrying out the purposes of the Act.
- (b) In addition to the regulations in this part, section 10(b) of the Act (16 U.S.C. 470ii) provides that each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations in this part, as may be necessary for carrying out the purposes of the Act.

Sec. 229.3 Definitions.

As used for purposes of this part:

- (a) Archaeological resource means any material remains of human life or activities which are at least 100 years of age, and which are of archaeological interest.
 - (1) Of archaeological interest means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation.
 - (2) Material remains means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated.
 - (3) The following classes of material remains (and illustrative examples), if they are at least 100 years of age, are of archaeological interest and shall be considered archaeological resources unless determined otherwise pursuant to paragraph (a)(4) or (a)(5) of this section:
 - (i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, artificial mounds, earthworks, fortifications, canals, reservoirs, horticultural/ agricultural gardens or fields, bedrock mortars or grinding surfaces, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, burial pits or graves, hearths, kilns, post molds, wall trenches, middens);
 - (ii) Surface or subsurface artifact concentrations or scatters;
 - (iii) Whole or fragmentary tools, implements, containers, weapons and weapon projectiles, clothing, and ornaments (including, but not limited to, pottery and other ceramics, cordage, basketry and other weaving, bottles and other glassware, bone, ivory, shell, metal, wood, hide, feathers, pigments, and flaked, ground, or pecked stone);
 - (iv) By-products, waste products, or debris resulting from manufacture or use of human-made or natural materials;
 - (v) Organic waste (including, but not limited to, vegetal and animal remains, coprolites);
 - (vi) Human remains (including, but not limited to, bone, teeth, mummified flesh, burials, cremations);
 - (vii) Rock carvings, rock paintings, intaglios and other works of artistic or symbolic representation;

- (viii) Rockshelters and caves or portions thereof containing any of the above material remains;
 - (ix) All portions of shipwrecks (including, but not limited to, armaments, apparel, tackle, cargo);
 - (x) Any portion or piece of any of the foregoing.
- (4) The following material remains shall not be considered of archaeological interest, and shall not be considered to be archaeological resources for purposes of the Act and this part, unless found in a direct physical relationship with archaeological resources as defined in this section:
- (i) Paleontological remains;
 - (ii) Coins, bullets, and unworked minerals and rocks.
- (5) The Federal land manager may determine that certain material remains, in specified areas under the Federal land manager's jurisdiction, and under specified circumstances, are not or are no longer of archaeological interest and are not to be considered archaeological resources under this part. Any determination made pursuant to this subparagraph shall be documented. Such determination shall in no way affect the Federal land manager's obligations under other applicable laws or regulations.
- (6) For the disposition following lawful removal or excavations of Native American human remains and "cultural items", as defined by the Native American Graves Protection and Repatriation Act (NAGPRA; Pub. L. 101-601; 104 Stat. 3050; 25 U.S.C. 3001-13), the Federal land manager is referred to NAGPRA and its implementing regulations.
- (b) Arrowhead means any projectile point which appears to have been designed for use with an arrow.
- (c) Federal land manager means:
- (1) With respect to any public lands, the secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands, including persons to whom such management authority has been officially delegated;
 - (2) In the case of Indian lands, or any public lands with respect to which no department, agency or instrumentality has primary management authority, such term means the Secretary of the Interior;
 - (3) The Secretary of the Interior, when the head of any other agency or instrumentality has, pursuant to section 3(2) of the Act and with the consent of the Secretary of the Interior, delegated to the Secretary of the Interior the responsibilities (in whole or in part) in this part.
- (d) Public lands means:
- (1) Lands which are owned and administered by the United States as part of the national park system, the national wildlife refuge system, or the national forest system; and
 - (2) All other lands the fee title to which is held by the United States, except lands on the Outer Continental Shelf, lands under the jurisdiction of the Smithsonian Institution, and Indian lands.

- (e) Indian lands means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for subsurface interests not owned or controlled by an Indian tribe or Indian individual.
- (f) Indian tribe as defined in the Act means any Indian tribe, band, nation, or other organized group or community, including any Alaska village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688). In order to clarify this statutory definition for purposes of this part, "Indian tribe" means:
 - (1) Any tribal entity which is included in the annual list of recognized tribes published in the Federal Register by the Secretary of the Interior pursuant to 25 CFR part 54;
 - (2) Any other tribal entity acknowledged by the Secretary of the Interior pursuant to 25 CFR part 54 since the most recent publication of the annual list; and
 - (3) Any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and any Alaska Native village or tribe which is recognized by the Secretary of the Interior as eligible for services provided by the Bureau of Indian Affairs.
- (g) Person means an individual, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the United States, or of any Indian tribe, or of any State or political subdivision thereof.
- (h) State means any of the fifty states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.
- (i) Act means the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-mm).

[49 FR 1027, Jan. 6, 1984, as amended at 49 FR 5923, Feb. 16, 1984; 60 FR 5260, Jan. 26, 1995]

Sec. 229.4 Prohibited acts and criminal penalties.

- (a) Under section 6(a) of the Act, no person may excavate, remove, damage, or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under Sec. 229.8 or exempted by Sec. 229.5(b) of this part.
- (b) No person may sell, purchase, exchange, transport, or receive any archaeological resource, if such resource was excavated or removed in violation of:
 - (1) The prohibitions contained in paragraph (a) of this section; or
 - (2) Any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.
- (c) Under section (d) of the Act, any person who knowingly violates or counsels, procures, solicits, or employs any other person to violate any prohibition contained in section 6 (a), (b), or (c) of the Act will, upon conviction, be fined not more than \$10,000.00 or imprisoned not more than one year, or both: provided, however, that if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$500.00, such person will be fined not more than \$20,000.00 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person will be

fined not more than \$100,000.00, or imprisoned not more than five years, or both.

[49 FR 1027, Jan. 6, 1984, as amended at 60 FR 5260, Jan. 26, 1995]

Sec. 229.5 Permit requirements and exceptions.

(a) Any person proposing to excavate and/or remove archaeological resources from public lands or Indian lands, and to carry out activities associated with such excavation and/or removal, shall apply to the Federal land manager for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued. The Federal land manager may issue a permit to any qualified person, subject to appropriate terms and conditions, provided that the person applying for a permit meets conditions in Sec. 229.8(a) of this part.

(b) Exceptions:

(1) No permit shall be required under this part for any person conducting activities on the public lands under other permits, leases, licenses, or entitlements for use, when those activities are exclusively for purposes other than the excavation and/or removal of archaeological resources, even though those activities might incidentally result in the disturbance of archaeological resources. General earth-moving excavation conducted under a permit or other authorization shall not be construed to mean excavation and/or removal as used in this part. This exception does not, however, affect the Federal land manager's responsibility to comply with other authorities which protect archaeological resources prior to approving permits, leases, licenses, or entitlements for use; any excavation and/or removal of archaeological resources required for compliance with those authorities shall be conducted in accordance with the permit requirements of this part.

(2) No permit shall be required under this part for any person collecting for private purposes any rock, coin, bullet, or mineral which is not an archaeological resource as defined in this part, provided that such collecting does not result in disturbance of any archaeological resource.

(3) No permit shall be required under this part or under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this part;

(4) No permit shall be required under this part for any person to carry out any archaeological activity authorized by a permit issued under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), before the enactment of the Archaeological Resources Protection Act of 1979. Such permit shall remain in effect according to its terms and conditions until expiration.

(5) No permit shall be required under section 3 of the Act of June 8, 1906 (16 U.S.C. 432) for any archaeological work for which a permit is issued under this part.

(c) Persons carrying out official agency duties under the Federal land manager's direction, associated with the management of archaeological resources, need not follow the permit application procedures of Sec. 229.6. However, the Federal land manager shall insure that provisions of Sec. 229.8 and Sec. 229.9 have been met by other documented means, and that any official duties which might result in harm to or destruction of any Indian tribal religious or cultural site, as determined by the Federal land manager, have been the subject of consideration under Sec. 229.7.

(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Federal land manager shall issue a permit, subject to the provisions of Secs.

229.5(b)(5), 229.7, 229.8(a)(3), (4), (5), (6), and (7), 229.9, 229.10, 229.12, and 229.13(a) to such Governor or to such designee as the Governor deems qualified to carry out the intent of the Act, for purposes of conducting archaeological research, excavating and/or removing archaeological resources, and safeguarding and preserving any materials and data collected in a university, museum, or other scientific or educational institution approved by the Federal land manager.

- (e) Under other statutory, regulatory, or administrative authorities governing the use of public lands and Indian lands, authorizations may be required for activities which do not require a permit under this part. Any person wishing to conduct on public lands or Indian lands any activities related to but believed to fall outside the scope of this part should consult with the Federal land manager, for the purpose of determining whether any authorization is required, prior to beginning such activities.

Sec. 229.6 Application for permits and information collection.

- (a) Any person may apply to the appropriate Federal land manager for a permit to excavate and/or remove archaeological resources from public lands or Indian lands and to carry out activities associated with such excavation and/or removal.
- (b) Each application for a permit shall include:
 - (1) The nature and extent of the work proposed, including how and why it is proposed to be conducted, proposed time of performance, locational maps, and proposed outlet for public written dissemination of the results.
 - (2) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training, and experience in accord with the minimal qualifications listed in Sec. 229.8(a).
 - (3) The name and address of the individual(s), if different from the individual(s) named in paragraph (b)(2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.
 - (4) Evidence of the applicant's ability to initiate, conduct, and complete the proposed work, including evidence of logistical support and laboratory facilities.
 - (5) Where the application is for the excavation and/or removal of archaeological resources on public lands, the names of the university, museum, or other scientific or educational institution in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents and to safeguard and preserve these materials as property of the United States.
 - (6) Where the application is for the excavation and/or removal of archaeological resources on Indian lands, the name of the university, museum, or other scientific or educational institution in which the applicant proposes to store copies of records, data, photographs, and other documents derived from the proposed work, and all collections in the event the Indian owners do not wish to take custody or otherwise dispose of the archaeological resources. Applicants shall submit written certification, signed by an authorized official of the institution, or willingness to assume curatorial responsibility for the collections, if applicable, and/or the records, data, photographs, and other documents derived from the proposed work.
- (c) The Federal land manager may require additional information, pertinent to land management responsibilities, to be included in the application for permit and shall so inform the applicant.

- (d) Paperwork Reduction Act. The information collection requirement contained in this section of these regulations has been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1024-0037. The purpose of the information collection is to meet statutory and administrative requirements in the public interest. The information will be used to assist Federal land managers in determining that applicants for permits are qualified, that the work proposed would further archaeological knowledge, that archaeological resources and associated records and data will be properly preserved, and that the permitted activity would not conflict with the management of the public lands involved. Response to the information requirement is necessary in order for an applicant to obtain a benefit.

Sec. 229.7 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.

- (a) If the issuance of a permit under this part may result in harm to, or destruction of, any Indian tribal religious or cultural site on public lands, as determined by the Federal land manager, at least 30 days before issuing such a permit the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9 of the Act.
- (1) Notice by the Federal land manager to any Indian tribe shall be sent to the chief executive officer or other designated official of the tribe. Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the tribe and the Federal land manager.
- (2) The Federal land manager may provide notice to any other Native American group that is known by the Federal land manager to consider sites potentially affected as being of religious or cultural importance.
- (3) Upon request during the 30-day period, the Federal land manager may meet with official representatives of any Indian tribe or group to discuss their interests, including ways to avoid or mitigate potential harm or destruction such as excluding sites from the permit area. Any mitigation measures which are adopted shall be incorporated into the terms and conditions of the permit under Sec. 229.9.
- (4) When the Federal land manager determines that a permit applied for under this part must be issued immediately because of an imminent threat of loss or destruction of an archaeological resource, the Federal land manager shall so notify the appropriate tribe.
- (b)(1) In order to identify sites of religious or cultural importance, the Federal land manager shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under the Federal land manager's jurisdiction and seek to determine, from the chief executive officer or other designated official of any such tribe, the location and nature of specific sites of religious or cultural importance so that such information may be on file for land management purposes. Information on sites eligible for or included in the National Register of Historic Places may be withheld from public disclosure pursuant to section 304 of the Act of October 15, 1966, as amended (16 U.S.C. 470w-3).
- (2) If the Federal land manager becomes aware of a Native American group that is not an Indian tribe as defined in this part but has aboriginal or historic ties to public lands under the Federal land manager's jurisdiction, the Federal land manager may seek to communicate with official representatives of that group to obtain information on sites they may consider to be of religious or cultural importance.
- (3) The Federal land manager may enter into agreement with any Indian tribe or other Native American group for determining locations for which such tribe or group wishes to receive notice under this section.

(4) The Federal land manager should also seek to determine, in consultation with official representatives of Indian tribes or other Native American groups, what circumstances should be the subject of special notification to the tribe or group after a permit has been issued. Circumstances calling for notification might include the discovery of human remains. When circumstances for special notification have been determined by the Federal land manager, the Federal land manager will include a requirement in the terms and conditions of permits, under Sec. 229.9(c), for permittees to notify the Federal land manager immediately upon the occurrence of such circumstances. Following the permittee's notification, the Federal land manager will notify and consult with the tribe or group as appropriate. In cases involving Native American human remains and other "cultural items", as defined by NAGPRA, the Federal land manager is referred to NAGPRA and its implementing regulations.

[49 FR 1027, Jan. 6, 1984, as amended at 60 FR 5260, 5261, Jan. 26, 1995]

Sec. 229.8 Issuance of permits.

(a) The Federal land manager may issue a permit, for a specified period of time appropriate to the work to be conducted, upon determining that:

(1) The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological theory and methods, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also meets the following minimum qualifications:

(i) A graduate degree in anthropology or archaeology, or equivalent training and experience;

(ii) The demonstrated ability to plan, equip, staff, organize, and supervise activity of the type and scope proposed;

(iii) The demonstrated ability to carry research to completion, as evidenced by timely completion of theses, research reports, or similar documents;

(iv) Completion of at least 16 months of professional experience and/or specialized training in archaeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity the individual proposes to conduct under authority of a permit; and

(v) Applicants proposing to engage in historical archaeology should have had at least one year of experience in research concerning archaeological resources of the historic period. Applicants proposing to engage in prehistoric archaeology should have had at least one year of experience in research concerning archaeological resources of the prehistoric period.

(2) The proposed work is to be undertaken for the purpose of furthering archaeological knowledge in the public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data;

(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of the public lands concerned;

(4) Where the proposed work consists of archaeological survey and/or data recovery undertaken in accordance with other approved uses of the public lands or Indian lands, and the proposed work has been agreed to in writing by the Federal land manager pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f), paragraphs (a) (2) and (3) shall be deemed satisfied by the prior

approval.

(5) Written consent has been obtained, for work proposed on Indian lands, from the Indian landowner and the Indian tribe having jurisdiction over such lands;

(6) Evidence is submitted to the Federal land manager that any university, museum, or other scientific or educational institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records; and

(7) The applicant has certified that, not later than 90 days after the date the final report is submitted to the Federal land manager, the following will be delivered to the appropriate official of the approved university, museum, or other scientific or educational institution, which shall be named in the permit:

(i) All artifacts, samples, collections, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit where the permit is for the excavation and/or removal of archaeological resources from public lands.

(ii) All artifacts, samples and collections resulting from work under the requested permit for which the custody or disposition is not undertaken by the Indian owners, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit, where the permit is for the excavation and/or removal of archaeological resources from Indian lands.

(b) When the area of the proposed work would cross jurisdictional boundaries, so that permit applications must be submitted to more than one Federal land managers, the Federal land manager shall coordinate the review and evaluation of applications and the issuance of permits.

[49 FR 1027, Jan. 6, 1984, as amended at 49 FR 5923, Feb. 16, 1984]

Sec. 229.9 Terms and conditions of permits.

(a) In all permits issued, the Federal land manager shall specify:

(1) The nature and extent of work allowed and required under the permit, including the time, duration, scope, location, and purpose of the work;

(2) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit;

(3) The name of any university, museum, or other scientific or educational institutions in which any collected materials and data shall be deposited; and

(4) Reporting requirements.

(b) The Federal land manager may specify such terms and conditions as deemed necessary, consistent with this part, to protect public safety and other values and/or resources, to secure work areas, to safeguard other legitimate land uses, and to limit activities incidental to work authorized under a permit.

(c) The Federal land manager shall include in permits issued for archaeological work on Indian lands such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands, and for archaeological work on public lands shall include such terms and conditions as may have been developed pursuant to Sec. 229.7.

(d) Initiation of work or other activities under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.

(e) The permittee shall not be released from requirements of a permit until all outstanding obligations have been satisfied, whether or not the term of the permit has expired.

(f) The permittee may request that the Federal land manager extend or modify a permit.

(g) The permittee's performance under any permit issued for a period greater than 1 year shall be subject to review by the Federal land manager, at least annually.

Sec. 229.10 Suspension and revocation of permits.

(a) Suspension or revocation for cause. (1) The Federal land manager may suspend a permit issued pursuant to this part upon determining that the permittee has failed to meet any of the terms and conditions of the permit or has violated any prohibition of the Act or Sec. 229.4. The Federal land manager shall provide written notice to the permittee of the suspension, the cause thereof, and the requirements which must be met before the suspension will be removed.

(2) The Federal land manager may revoke a permit upon assessment of a civil penalty under Sec. 229.15 upon the permittee's conviction under section 6 of the Act, or upon determining that the permittee has failed after notice under this section to correct the situation which led to suspension of the permit.

(b) Suspension or revocation for management purposes. The Federal land manager may suspend or revoke a permit, without liability to the United States, its agents, or employees, when continuation of work under the permit would be in conflict with management requirements not in effect when the permit was issued. The Federal land manager shall provide written notice to the permittee stating the nature of and basis for the suspension or revocation.

[49 FR 1027, Jan. 6, 1984, as amended at 49 FR 5923, Feb. 16, 1984]

Sec. 229.11 Appeals relating to permits.

Any affected person may appeal permit issuance, denial of permit issuance, suspension, revocation, and terms and conditions of a permit through existing administrative appeal procedures, or through procedures which may be established by the Federal land manager pursuant to section 10(b) of the Act and this part.

Sec. 229.12 Relationship to section 106 of the National Historic Preservation Act.

Issuance of a permit in accordance with the Act and this part does not constitute an undertaking requiring compliance with section 106 of the Act

of October 15, 1966 (16 U.S.C. 470f). However, the mere issuance of such a permit does not excuse the Federal land manager from compliance with section 106 where otherwise required.

Sec. 229.13 Custody of archaeological resources.

(a) Archaeological resources excavated or removed from the public lands remain the property of the United States.

(b) Archaeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources.

(c) The Secretary of the Interior may promulgate regulations providing for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, for the ultimate disposition of archaeological resources, and for standards by which archaeological resources shall be preserved and maintained, when such resources have been excavated or removed from public lands and Indian lands.

(d) In the absence of regulations referenced in paragraph (c) of this section, the Federal land manager may provide for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, when such resources have been excavated or removed from public lands under the authority of a permit issued by the Federal land manager.

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, the Federal land manager will follow the procedures required by NAGPRA and its implementing regulations for determining the disposition of Native American human remains and other "cultural items", as defined by NAGPRA, that have been excavated, removed, or discovered on public lands.

[49 FR 1027, Jan. 6, 1984, as amended at 60 FR 5260, 5261, Jan. 26, 1995]

Sec. 229.14 Determination of archaeological or commercial value and cost of restoration and repair.

(a) Archaeological value. For purposes of this part, the archaeological value of any archaeological resource involved in a violation of the prohibitions in Sec. 229.4 of this part or conditions of a permit issued pursuant to this part shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(b) Commercial value. For purposes of this part, the commercial value of any archaeological resource involved in a violation of the prohibitions in Sec. 229.4 of this part or conditions of a permit issued pursuant to this part shall be its fair market value. Where the violation has resulted in damage to the archaeological resource, the fair market value should be determined using the condition of the archaeological resource prior to the violation, to the extent that its prior condition can be ascertained.

(c) Cost of restoration and repair. For purposes of this part, the cost of restoration and repair of archaeological resources damaged as a result of a violation of prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following:

(1) Reconstruction of the archaeological resource;

(2) Stabilization of the archaeological resource;

(3) Ground contour reconstruction and surface stabilization;

(4) Research necessary to carry out reconstruction or stabilization;

(5) Physical barriers or other protective devices, necessitated by the disturbance of the archaeological

resource, to protect it from further disturbance;

(6) Examination and analysis of the archaeological resource including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;

(7) Reinterment of human remains in accordance with religious custom and State, local, or tribal law, where appropriate, as determined by the Federal land manager.

(8) Preparation of reports relating to any of the above activities.

Sec. 229.14 Determination of archaeological or commercial value and cost of restoration and repair.

(a) Archaeological value. For purposes of this part, the archaeological value of any archaeological resource involved in a violation of the prohibitions in Sec. 229.4 of this part or conditions of a permit issued pursuant to this part shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(b) Commercial value. For purposes of this part, the commercial value of any archaeological resource involved in a violation of the prohibitions in Sec. 229.4 of this part or conditions of a permit issued pursuant to this part shall be its fair market value. Where the violation has resulted in damage to the archaeological resource, the fair market value should be determined using the condition of the archaeological resource prior to the violation, to the extent that its prior condition can be ascertained.

(c) Cost of restoration and repair. For purposes of this part, the cost of restoration and repair of archaeological resources damaged as a result of a violation of prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following:

(1) Reconstruction of the archaeological resource;

(2) Stabilization of the archaeological resource;

(3) Ground contour reconstruction and surface stabilization;

(4) Research necessary to carry out reconstruction or stabilization;

(5) Physical barriers or other protective devices, necessitated by

the disturbance of the archaeological resource, to protect it from further disturbance;

(6) Examination and analysis of the archaeological resource including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;

(7) Reinterment of human remains in accordance with religious custom and State, local, or tribal law, where appropriate, as determined by the Federal land manager.

(8) Preparation of reports relating to any of the above activities.

Sec. 229.15 Assessment of civil penalties.

(a) The Federal land manager may assess a civil penalty against any person who has violated any prohibition contained in Sec. 229.4 or who has violated any term or condition included in a permit issued in accordance with the Act and this part.

(b) Notice of violation. The Federal land manager shall serve a notice of violation upon any person believed to be subject to a civil penalty, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall include in the notice:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provision(s) of this part or to a permit issued pursuant to this part allegedly violated;

(3) The amount of penalty proposed to be assessed, including any initial proposal to mitigate or remit where appropriate, or a statement that notice of a proposed penalty amount will be served after the damages associated with the alleged violation have been ascertained;

(4) Notification of the right to file a petition for relief pursuant to paragraph (d) of this section, or to await the Federal land manager's notice of assessment, and to request a hearing in accordance with paragraph (g) of this section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

(c) The person served with a notice of violation shall have 45 calendar days from the date of its service (or the date of service of a proposed penalty amount, if later) in which to respond. During this time the person may:

(1) Seek informal discussions with the Federal land manager;

(2) File a petition for relief in accordance with paragraph (d) of this section;

(3) Take no action and await the Federal land manager's notice of assessment;

(4) Accept in writing or by payment the proposed penalty, or any mitigation or remission offered in the notice. Acceptance of the proposed penalty or mitigation or remission shall be deemed a waiver of the notice of assessment and of the right to request a hearing under paragraph (g) of this section.

(d) Petition for relief. The person served with a notice of violation may request that no penalty be assessed or that the amount be reduced, by filing a petition for relief with the Federal land manager within 45 calendar days of the date of service of the notice of violation (or of a proposed penalty amount, if later). The petition shall be in writing and signed by the person served with the notice of violation. If the person is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

(e) Assessment of penalty. (1) The Federal land manager shall assess a civil penalty upon expiration of the period for filing a petition for relief, upon completion of review of any petition filed, or upon completion of informal discussions, whichever is later.

(2) The Federal land manager shall take into consideration all available information, including information provided pursuant to paragraphs (c) and (d) of this section or furnished upon further request by the Federal land manager.

(3) If the facts warrant a conclusion that no violation has occurred, the Federal land manager shall so notify the person served with a notice of violation, and no penalty shall be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Federal land manager shall determine a penalty amount in accordance with Sec. 229.16.

(f) Notice of assessment. The Federal land manager shall notify the person served with a notice of violation of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall include in the notice of assessment:

(1) The facts and conclusions from which it was determined that a violation did occur;

(2) The basis in Sec. 229.16 for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(3) Notification of the right to request a hearing, including the procedures to be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

(g) Hearings. (1) Except where the right to request a hearing is deemed to have been waived as provided in paragraph (c)(4) of this section, the person served with a notice of assessment may file a written request for a hearing with the adjudicatory body specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request as specified in the notice of assessment, personally or by registered or certified mail (return receipt requested).

(2) Failure to deliver a written request for a hearing within 45 days of

the date of service of the notice of assessment shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. 554. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part, and shall not be limited by the amount assessed by the Federal land manager under paragraph (f) of this section or any offer of mitigation or remission made by the Federal land manager.

(h) Final administrative decision. (1) Where the person served with a notice of violation has accepted the penalty pursuant to paragraph (c)(4) of this section, the notice of violation shall constitute the final administrative decision;

(2) Where the person served with a notice of assessment has not filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the notice of assessment shall constitute the final administrative decision;

(3) Where the person served with a notice of assessment has filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the decision resulting from the hearing or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(i) Payment of penalty. (1) The person assessed a civil penalty shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal has been filed with a U.S. District Court as provided in section 7(b)(1) of the Act.

(2) Upon failure to pay the penalty, the Federal land manager may request the Attorney General to institute a civil action to collect the penalty in a U.S. District Court for any district in which the person assessed a civil penalty is found, resides, or transacts business. Where the Federal land manager is not represented by the Attorney General, a civil action may be initiated directly by the Federal land manager.

(j) Other remedies not waived. Assessment of a penalty under this section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

Sec. 229.16 Civil penalty amounts.

(a) Maximum amount of penalty. (1) Where the person being assessed a civil penalty has not committed any previous violation of any prohibition in Sec. 229.4 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be the full cost of restoration and repair of archaeological resources damaged plus the archaeological or commercial value of archaeological resources destroyed or not recovered.

(2) Where the person being assessed a civil penalty has committed any previous violation of any prohibition in Sec. 229.4 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be double the cost of restoration and repair plus double the archaeological or commercial value of archaeological resources destroyed or not recovered.

(3) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

(b) Determination of penalty amount, mitigation, and remission. The Federal land manager may assess a penalty amount less than the maximum amount of penalty and may offer to mitigate or remit the penalty.

(1) Determination of the penalty amount and/or a proposal to mitigate or remit the penalty may be based upon any of the following factors:

(i) Agreement by the person being assessed a civil penalty to return to the Federal land manager archaeological resources removed from public lands or Indian lands;

(ii) Agreement by the person being assessed a civil penalty to assist the Federal land manager in activity to preserve, restore, or otherwise contribute to the protection and study of archaeological resources on public lands or Indian lands;

(iii) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this part;

(iv) Demonstration of hardship or inability to pay, provided that this factor shall only be considered when the person being assessed a civil penalty has not been found to have previously violated the regulations in this part;

(v) Determination that the person being assessed a civil penalty did not willfully commit the violation;

(vi) Determination that the proposed penalty would constitute excessive punishment under the circumstances;

(vii) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

(2) When the penalty is for a violation on Indian lands, the Federal land manager shall consult with and consider the interests of the Indian landowner and the Indian tribe having jurisdiction over the Indian lands prior to proposing to mitigate or remit the penalty.

(3) When the penalty is for a violation which may have had an effect on a known Indian tribal religious or cultural site on public lands, the Federal land manager should consult with and consider the interests of

the affected tribe(s) prior to proposing to mitigate or remit the penalty.

[49 FR 1027, Jan. 6, 1984, as amended at 52 FR 47721, Dec. 16, 1987]

Sec. 229.17 Other penalties and rewards.

(a) Section 6 of the Act contains criminal prohibitions and provisions for criminal penalties. Section 8(b) of the Act provides that archaeological resources, vehicles, or equipment involved in a violation may be subject to forfeiture.

(b) Section 8(a) of the Act provides for rewards to be made to persons who furnish information which leads to conviction for a criminal violation or to assessment of a civil penalty. The Federal land manager may certify to the Secretary of the Treasury that a person is eligible to receive payment. Officers and employees of Federal, State, or local government who furnish information or render service in the performance of their official duties, and persons who have provided information under Sec. 229.16(b)(1)(iii) shall not be certified eligible to receive payment of rewards.

(c) In cases involving Indian lands, all civil penalty monies and any item forfeited under the provisions of this section shall be transferred to the appropriate Indian or Indian tribe.

Sec. 229.18 Confidentiality of archaeological resource information.

(a) The Federal land manager shall not make available to the public, under subchapter II of chapter 5 of title 5 of the U.S. Code or any other provision of law, information concerning the nature and location of any archaeological resource, with the following exceptions:

(1) The Federal land manager may make information available, provided that the disclosure will further the purposes of the Act and this part, or the Act of June 27, 1960, as amended (16 U.S.C. 469-469c), without risking harm

to the archaeological resource or to the site in which it is located.

(2) The Federal land manager shall make information available, when the Governor of any State has submitted to the Federal land manager a written request for information, concerning the archaeological resources within the requesting Governor's State, provided that the request includes:

(i) The specific archaeological resource or area about which information is sought;

(ii) The purpose for which the information is sought; and

(iii) The Governor's written commitment to adequately protect the confidentiality of the information.

[49 FR 1027, Jan. 6, 1984, as amended at 49 FR 5923, Feb. 16, 1984]

Sec. 229.19 Report.

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

(b) The Secretary of the Interior will include in the annual comprehensive report, submitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the

Committee on Energy and Natural Resources of the United States Senate under section 13 of the Act, information on public awareness programs submitted by each Federal land manager under Sec. 229.20(b). Such submittal will fulfill the Federal land manager's responsibility under section 10(c) of the Act to report on public awareness programs.

(c) The comprehensive report by the Secretary of the Interior also will include information on the activities carried out under section 14 of the Act. Each Federal land manager, when requested by the Secretary, will submit any available information on surveys and schedules and suspected violations in order to enable the Secretary to summarize in the comprehensive report actions taken pursuant to section 14 of the Act.

[60 FR 5260, 5261, Jan. 26, 1995]

Sec. 229.20 Public awareness programs.

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

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

[60 FR 5260, 5261, Jan. 26, 1995]

Sec. 229.21 Surveys and schedules.

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

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

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

and Guidelines for Archeology and Historic Preservation.

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

(e) The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Tennessee Valley Authority will develop a system for documenting and reporting suspected violations of the various provisions of the Act. This system will reference a set of procedures for use by officers, employees, or

agents of Federal agencies to assist them in recognizing violations, documenting relevant evidence, and reporting assembled information to the appropriate authorities. Methods employed to document and report such violations should be compatible with existing agency reporting systems for documenting violations of other appropriate Federal statutes and regulations. Summary information to be included in the Secretary's comprehensive report will be based upon the system developed by each Federal land manager for documenting suspected violations.

[60 FR 5260, 5261, Jan. 26, 1995]

Sec. 4364. Expenditure of funds for research and development related to regulatory program activities

(a) Coordination, etc., with research needs and priorities of program offices and Environmental Protection Agency The Administrator of the Environmental Protection Agency shall assure that the expenditure of any funds appropriated pursuant to this Act or any other provision of law for environmental research and development related to regulatory program activities shall be coordinated with and reflect the research needs and priorities of the program offices, as well as the overall research needs and priorities of the Agency, including those defined in the five-year research plan.

(b) Program offices subject to coverage For purposes of subsection (a) of this section, the appropriate program offices are -

- (1) the Office of Air and Waste Management, for air quality activities;
- (2) the Office of Water and Hazardous Materials, for water quality activities and water supply activities;
- (3) the Office of Pesticides, for environmental effects of pesticides;
- (4) the Office of Solid Waste, for solid waste activities;
- (5) the Office of Toxic Substances, for toxic substance activities;
- (6) the Office of Radiation Programs, for radiation activities; and
- (7) the Office of Noise Abatement and Control, for noise activities.

(c) Report to Congress; contents The Administrator shall submit to the President and the Congress a report concerning the most appropriate means of assuring, on a continuing basis, that the research efforts of the Agency reflect the needs and priorities of the regulatory program offices, while maintaining a high level of scientific quality. Such report shall be submitted on or before March 31, 1978.

Sec. 4365. Science Advisory Board

(a) Establishment; requests for advice by Administrator of Environmental Protection Agency and Congressional committees The Administrator of the Environmental Protection Agency shall establish a Science Advisory Board which shall provide such scientific advice as may be requested by the Administrator, the Committee on Environment and Public Works of the United States Senate, or the Committee on Science, Space, and Technology, on Energy and Commerce, or on Public Works and Transportation of the House of Representatives.

(b) Membership; Chairman; meetings; qualifications of members Such Board shall be composed of at least nine members, one of whom shall be designated Chairman, and shall meet at such times and places as may be designated by the Chairman of the Board in consultation with the Administrator. Each member of the Board shall be qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board under this section.

(c) Proposed environmental criteria document, standard, limitation, or regulation; functions respecting in conjunction with Administrator

- (1) The Administrator, at the time any proposed criteria document, standard, limitation, or regulation under the Clean Air Act (42 U.S.C. 7401 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.), the Noise Control Act (42 U.S.C. 4901 et seq.), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or under any other authority of the Administrator, is provided to any other Federal agency for formal review and comment, shall make available to the Board

such proposed criteria document, standard, limitation, or regulation, together with relevant scientific and technical information in the possession of the Environmental Protection Agency on which the proposed action is based.

(2) The Board may make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis of the proposed criteria document, standard, limitation, or regulation, together with any pertinent information in the Board's possession.

(d) Utilization of technical and scientific capabilities of Federal agencies and national environmental laboratories for determining adequacy of scientific and technical basis of proposed criteria document, etc. In preparing such advice and comments, the Board shall avail itself of the technical and scientific capabilities of any Federal agency, including the Environmental Protection Agency and any national environmental laboratories.

(e) Member committees and investigative panels; establishment; chairmanship The Board is authorized to constitute such member committees and investigative panels as the Administrator and the Board find necessary to carry out this section. Each such member committee or investigative panel shall be chaired by a member of the Board.

(f) Appointment and compensation of secretary and other personnel; compensation of members

(1) Upon the recommendation of the Board, the Administrator shall appoint a secretary, and such other employees as deemed necessary to exercise and fulfill the Board's powers and responsibilities. The compensation of all employees appointed under this paragraph shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(2) Members of the Board may be compensated at a rate to be fixed by the President but not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title 5.

(g) Consultation and coordination with Scientific Advisory Panel In carrying out the functions assigned by this section, the Board shall consult and coordinate its activities with the Scientific Advisory Panel established by the Administrator pursuant to section 136w(d) of title 7.

US Code as of: 01/05/99 Sec. 4366. Identification and coordination of research, development, and demonstration activities

(a) Consultation and cooperation of Administrator of Environmental Protection Agency with heads of Federal agencies; inclusion of activities in annual revisions of plan for research, etc. The Administrator of the Environmental Protection Agency, in consultation and cooperation with the heads of other Federal agencies, shall take such actions on a continuing basis as may be necessary or appropriate -

(1) to identify environmental research, development, and demonstration activities, within and outside the Federal Government, which may need to be more effectively coordinated in order to minimize unnecessary duplication of programs, projects, and research facilities;

(2) to determine the steps which might be taken under existing law, by him and by the heads of such other agencies, to accomplish or promote such coordination, and to provide for or encourage the taking of such steps; and

(3) to determine the additional legislative actions which would be needed to assure such coordination to the maximum extent possible. The Administrator shall include in each annual revision of the five-year plan provided for by section 4361 [1] of this title a full and complete report on the actions taken and determinations made during the preceding year under this subsection, and may submit interim reports on such actions and determinations at such other times as he deems appropriate.

(b) Coordination of programs by Administrator The Administrator of the Environmental Protection Agency shall coordinate environmental research, development, and demonstration programs of such Agency with the heads of other Federal agencies in order to minimize unnecessary duplication of programs, projects, and research facilities.

(c) Joint study by Council on Environmental Quality in consultation with Office of Science and Technology Policy for coordination of activities; report to President and Congress; report by President to Congress on implementation of joint study and report

(1) In order to promote the coordination of environmental research and development activities, and to

assure that the action taken and methods used (under subsection (a) of this section and otherwise) to bring about such coordination will be as effective as possible for that purpose, the Council on Environmental Quality in consultation with the Office of Science and Technology Policy shall promptly undertake and carry out a joint study of all aspects of the coordination of environmental research and development. The Chairman of the Council shall prepare a report on the results of such study, together with such recommendations (including legislative recommendations) as he deems appropriate, and shall submit such report to the President and the Congress not later than May 31, 1978.

(2) Not later than September 30, 1978, the President shall report to the Congress on steps he has taken to implement the recommendations included in the report under paragraph (1), including any recommendations he may have for legislation.

Sec. 4366a. Development of data base of environmental research articles indexed by geographic location

(a) Research journals Within 6 months following November 16, 1990, and from time to time thereafter, the Environmental Protection Agency shall identify not less than 35 important environmental research journals, conference proceedings or other reference sources in which scientific research or engineering studies related to air, water, or soil quality or pollution or other environmental issues are routinely published. In carrying out the requirements of this subsection, at least 50 journals or proceedings shall be reviewed.

(b) Index

(1) Within 12 months following November 16, 1990, and annually thereafter, the Environmental Protection Agency shall review the journals and other materials identified in subsection (a) of this section and compile, maintain and publish an index of the articles contained therein during the preceding calendar year by geographic location. A copy of such index shall be made available to the Service for distribution to the public, and a copy shall be submitted to the Congress not less than 30 days prior to the date on which it is made available to the Service.

(2) Beginning 12 months after November 16, 1990, the Agency shall identify not less than 20 materials identified in subsection (a) of this section which were published during the time period from 1970 to the year preceding November 16, 1990, and shall compile and publish a series of indices of articles contained therein by geographic location. The time frame which each index contains should not exceed 5 years.

(c) Purchase of information The Environmental Protection Agency is authorized to enter into contracts or other arrangements for the acquisition of data and other information necessary for purposes of this Act.

(d) Revising list The Environmental Protection Agency shall review the list of references developed under this section at least biennially and shall revise the list of sources as appropriate.

(e) Specific location of research projects Unless exempted by the Administrator of the Environmental Protection Agency, all reports resulting from research projects sponsored by the Environmental Protection Agency and initiated after the expiration of the 36-month period following November 16, 1990, shall indicate the specific location to which the research pertains.

Sec. 4367. Reporting requirements of financial interests of officers and employees of Environmental Protection Agency

(a) Covered officers and employees Each officer or employee of the Environmental Protection Agency who -

(1) performs any function or duty under this Act; and

(2) has any known financial interest in any person who applies for or receives grants, contracts, or other forms of financial assistance under this Act, shall, beginning on February 1, 1978, annually file with the Administrator a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

(b) Implementation of requirements by Administrator The Administrator shall -

- (1) act within ninety days after November 8, 1977 -
- (A) to define the term "known financial interest" for purposes of subsection (a) of this section; and
- (B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provision for the filing by such officers and employees of such statements and the review by the Administrator of such statements; and
- (2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.
- (c) Exemption of positions by Administrator In the rules prescribed under subsection (b) of this section, the Administrator may identify specific positions of a nonpolicymaking nature within the Administration and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.
- (d) Violations; penalties Any officer or employee who is subject to, and knowingly violates, this section, shall be fined not more than \$2,500 or imprisoned not more than one year, or both.

Sec. 4368. Grants to qualified citizens groups

- (1) There is authorized to be appropriated to the Environmental Protection Agency, for grants to qualified citizens groups in States and regions, \$3,000,000.
- (2) Grants under this section may be made for the purpose of supporting and encouraging participation by qualified citizens groups in determining how scientific, technological, and social trends and changes affect the future environment and quality of life of an area, and for setting goals and identifying measures for improvement.
- (3) The term "qualified citizens group" shall mean a nonprofit organization of citizens having an area based focus, which is not single-issue oriented and which can demonstrate a prior record of interest and involvement in goal-setting and research concerned with improving the quality of life, including plans to identify, protect and enhance significant natural and cultural resources and the environment.
- (4) A citizens group shall be eligible for assistance only if certified by the Governor in consultation with the State legislature as a bonafide organization entitled to receive Federal assistance to pursue the aims of this program. The group shall further demonstrate its capacity to employ usefully the funds for the purposes of this program and its broad-based representative nature.
- (5) After an initial application for assistance under this section has been approved, the Administrator may make grants on an annual basis, on condition that the Governor recertify the group and that the applicant submits to the Administrator annually -
- (A) an evaluation of the progress made during the previous year in meeting the objectives for which the grant was made;
- (B) a description of any changes in the objectives of the activities; and
- (C) a description of the proposed activities for the succeeding one year period.
- (6) A grant made under this program shall not exceed 75 per centum of the estimated cost of the project or program for which the grant is made, and no group shall receive more than \$50,000 in any one year.
- (7) No financial assistance provided under this section shall be used to support lobbying or litigation by any recipient group.

Sec. 4368a. Utilization of talents of older Americans in projects of pollution prevention, abatement, and control

- (a) Technical assistance to environmental agencies Notwithstanding any other provision of law relating to Federal grants and cooperative agreements, the Administrator of the Environmental Protection Agency is authorized to make grants to, or enter into cooperative agreements with, private nonprofit organizations designated by the Secretary of Labor under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq.) to utilize the talents of older Americans in programs authorized by other provisions of law administered by the Administrator (and consistent with such provisions of law) in providing technical assistance to Federal, State, and local environmental agencies for projects of pollution prevention,

abatement, and control. Funding for such grants or agreements may be made available from such programs or through title V of the Older Americans Act of 1965 and title IV of the Job Training Partnership Act (29 U.S.C. 1671 et seq.) or subtitle D of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2911 et seq.).

(b) Pre-award certifications Prior to awarding any grant or agreement under subsection (a) of this section, the applicable Federal, State, or local environmental agency shall certify to the Administrator that such grants or agreements will not -

- (1) result in the displacement of individuals currently employed by the environmental agency concerned (including partial displacement through reduction of nonovertime hours, wages, or employment benefits);
- (2) result in the employment of any individual when any other person is in a layoff status from the same or substantially equivalent job within the jurisdiction of the environmental agency concerned; or
- (3) affect existing contracts for services.

(c) Prior appropriation Acts Grants or agreements awarded under this section shall be subject to prior appropriation Acts.

Sec. 4368b. General assistance program

(a) Short title This section may be cited as the "Indian Environmental General Assistance Program Act of 1992".

(b) Purposes The purposes of this section are to -

- (1) provide general assistance grants to Indian tribal governments and intertribal consortia to build capacity to administer environmental regulatory programs that may be delegated by the Environmental Protection Agency on Indian lands; and
- (2) provide technical assistance from the Environmental Protection Agency to Indian tribal governments and intertribal consortia in the development of multimedia programs to address environmental issues on Indian lands.

(c) Definitions For purposes of this section:

(1) The term "Indian tribal government" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601, et seq.)), which is recognized as eligible for the special services provided by the United States to Indians because of their status as Indians.

(2) The term "intertribal consortia" or "intertribal consortium" means a partnership between two or more Indian tribal governments authorized by the governing bodies of those tribes to apply for and receive assistance pursuant to this section.

(3) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(d) General assistance program

(1) The Administrator of the Environmental Protection Agency shall establish an Indian Environmental General Assistance Program that provides grants to eligible Indian tribal governments or intertribal consortia to cover the costs of planning, developing, and establishing environmental protection programs consistent with other applicable provisions of law providing for enforcement of such laws by Indian tribes on Indian lands.

(2) Each grant awarded for general assistance under this subsection for a fiscal year shall be no less than \$75,000, and no single grant may be awarded to an Indian tribal government or intertribal consortium for more than 10 percent of the funds appropriated under subsection (h) of this section.

(3) The term of any general assistance award made under this subsection may exceed one year. Any awards made pursuant to this section shall remain available until expended. An Indian tribal government or intertribal consortium may receive a general assistance grant for a period of up to four years in each specific media area.

(e) No reduction in amounts In no case shall the award of a general assistance grant to an Indian tribal government or intertribal consortium under this section result in a reduction of Environmental Protection Agency grants for environmental programs to that tribal government or consortium. Nothing in this section shall preclude an Indian tribal government or intertribal consortium from receiving individual media grants or cooperative agreements. Funds provided by the Environmental Protection Agency through the general assistance program shall be used by an Indian tribal government or intertribal consortium to supplement

other funds provided by the Environmental Protection Agency through individual media grants or cooperative agreements.

(f) Expenditure of general assistance Any general assistance under this section shall be expended for the purpose of planning, developing, and establishing the capability to implement programs administered by the Environmental Protection Agency and specified in the assistance agreement. Purposes and programs authorized under this section shall include the development and implementation of solid and hazardous waste programs for Indian lands. An Indian tribal government or intertribal consortium receiving general assistance pursuant to this section shall utilize such funds for programs and purposes to be carried out in accordance with the terms of the assistance agreement. Such programs and general assistance shall be carried out in accordance with the purposes and requirements of applicable provisions of law, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(g) Procedures

(1) Within 12 months following October 24, 1992, the Administrator shall promulgate regulations establishing procedures under which an Indian tribal government or intertribal consortium may apply for general assistance grants under this section.

(2) The Administrator shall publish regulations issued pursuant to this section in the Federal Register.

(3) The Administrator shall establish procedures for accounting, auditing, evaluating, and reviewing any programs or activities funded in whole or in part for a general assistance grant under this section.

(h) Authorization There are authorized to be appropriated to carry out the provisions of this section, such sums as may be necessary for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

(i) Report to Congress The Administrator shall transmit an annual report to the appropriate Committees of the Congress with jurisdiction over the applicable environmental laws and Indian tribes describing which Indian tribes or intertribal consortia have been granted approval by the Administrator pursuant to law to enforce certain environmental laws and the effectiveness of any such enforcement.

Sec. 4369. Miscellaneous reports

(a) Availability to Congressional committees All reports to or by the Administrator relevant to the Agency's program of research, development, and demonstration shall promptly be made available to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Environment and Public Works of the Senate, unless otherwise prohibited by law.

(b) Transmittal of jurisdictional information The Administrator shall keep the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Environment and Public Works of the Senate fully and currently informed with respect to matters falling within or related to the jurisdiction of the committees.

(c) Comment by Government agencies and the public The reports provided for in section 5910 [1] of this title shall be made available to the public for comment, and to the heads of affected agencies for comment and, in the case of recommendations for action, for response.

(d) Transmittal of research information to the Department of Energy For the purpose of assisting the Department of Energy in planning and assigning priorities in research development and demonstration activities related to environmental control technologies, the Administrator shall actively make available to the Department all information on research activities and results of research programs of the Environmental Protection Agency.

Sec. 4369a. Reports on environmental research and development activities of Agency

(a) Reports to keep Congressional committees fully and currently informed The Administrator shall keep the appropriate committees of the House and the Senate fully and currently informed about all aspects of the environmental research and development activities of the Environmental Protection Agency.

(b) Annual reports relating requested funds to activities to be carried out with those funds Each year, at the time of the submission of the President's annual budget request, the Administrator shall make

available to the appropriate committees of Congress sufficient copies of a report fully describing funds requested and the environmental research and development activities to be carried out with these funds.

Sec. 4370. Reimbursement for use of facilities

(a) Authority to allow outside groups or individuals to use research and test facilities; reimbursement The Administrator is authorized to allow appropriate use of special Environmental Protection Agency research and test facilities by outside groups or individuals and to receive reimbursement or fees for costs incurred thereby when he finds this to be in the public interest. Such reimbursement or fees are to be used by the Agency to defray the costs of use by outside groups or individuals.

(b) Rules and regulations The Administrator may promulgate regulations to cover such use of Agency facilities in accordance with generally accepted accounting, safety, and laboratory practices.

(c) Waiver of reimbursement by Administrator When he finds it is in the public interest the Administrator may waive reimbursement or fees for outside use of Agency facilities by nonprofit private or public entities.

Sec. 4370a. Assistant Administrators of Environmental Protection Agency; appointment; duties

(a) The President, by and with the advice and consent of the Senate, may appoint three Assistant Administrators of the Environmental Protection Agency in addition to -

(1) the five Assistant Administrators provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970 (5 U.S.C. Appendix);

(2) the Assistant Administrator provided by section 2625(g) of title 15; and

(3) the Assistant Administrator provided by section 6911a of this title.

(b) Each Assistant Administrator appointed under subsection (a) of this section shall perform such duties as the Administrator of the Environmental Protection Agency may prescribe.

Sec. 4370b. Availability of fees and charges to carry out Agency programs

Notwithstanding any other provision of law, after September 30, 1990, amounts deposited in the Licensing and Other Services Fund from fees and charges assessed and collected by the Administrator for services and activities carried out pursuant to the statutes administered by the Environmental Protection Agency shall thereafter be available to carry out the Agency's activities in the programs for which the fees or charges are made.

Sec. 4370c. Environmental Protection Agency fees

(a) Assessment and collection The Administrator of the Environmental Protection Agency shall, by regulation, assess and collect fees and charges for services and activities carried out pursuant to laws administered by the Environmental Protection Agency.

(b) Amount of fees and charges Fees and charges assessed pursuant to this section shall be in such amounts as may be necessary to ensure that the aggregate amount of fees and charges collected pursuant to this section, in excess of the amount of fees and charges collected under current law -

(1) in fiscal year 1991, is not less than \$28,000,000; and

(2) in each of fiscal years 1992, 1993, 1994, and 1995, is not less than \$38,000,000.

(c) Limitation on fees and charges

(1) The maximum aggregate amount of fees and charges in excess of the amounts being collected under current law which may be assessed and collected pursuant to this section in a fiscal year -

(A) for services and activities carried out pursuant to

[1] the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) is \$10,000,000; and jurisdiction of the

House Committee on Energy and Commerce and administered by the Environmental Protection Agency through the Administrator, shall be limited to such sums collected as of November 5, 1990, pursuant to sections 2625(b) and 2665(e)(2) by the Clean Air Act Amendments of 1990.

(2) Any remaining amounts required to be collected under this section shall be collected from services and programs administered by the Environmental Protection Agency other than those specified in subparagraphs (A) and (B) of paragraph (1).

(d) Rule of construction Nothing in this section increases or diminishes the authority of the Administrator to promulgate regulations pursuant to section 9701 of title 31.

(e) Uses of fees Fees and charges collected pursuant to this section shall be deposited into a special account for environmental services in the Treasury of the United States. Subject to appropriation Acts, such funds shall be available to the Environmental Protection Agency to carry out the activities for which such fees and charges are collected. Such funds shall remain available until expended.

Sec. 4370d. Percentage of Federal funding for organizations owned by socially and economically disadvantaged individuals

The Administrator of the Environmental Protection Agency shall, on and after October 6, 1992, to the fullest extent possible, ensure that at least 8 per centum of Federal funding for prime and subcontracts awarded in support of authorized programs, including grants, loans, and contracts for wastewater treatment and leaking underground storage tanks grants, be made available to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of section 637(a)(5) and (6) of title 15), including historically black colleges and universities. For purposes of this section, economically and socially disadvantaged individuals shall be deemed to include women.

Sec. 4370e. Working capital fund in Treasury

There is hereby established in the Treasury a "Working capital fund", to be available without fiscal year limitation for expenses and equipment necessary for the maintenance and operation of such administrative services as the Administrator determines may be performed more advantageously as central services: Provided, That any inventories, equipment, and other assets pertaining to the services to be provided by such fund, either on hand or on order, less the related liabilities or unpaid obligations, and any appropriations made hereafter for the purpose of providing capital, shall be used to capitalize such fund: Provided further, That such fund shall be paid in advance or reimbursed from funds available to the Agency and other Federal agencies for which such centralized services are performed, at rates which will return in full all expenses of operation, including accrued leave, depreciation of fund plant and equipment, amortization of automated data processing (ADP) software and systems (either acquired or donated), and an amount necessary to maintain a reasonable operating reserve, as determined by the Administrator: Provided further, That such fund shall provide services on a competitive basis: Provided further, That an amount not to exceed four percent of the total annual income to such fund may be retained in the fund for fiscal year 1997 and each fiscal year thereafter, to remain available until expended, to be used for the acquisition of capital equipment and for the improvement and implementation of Agency financial management, ADP, and other support systems: Provided further, That no later than thirty days after the end of each fiscal year amounts in excess of this reserve limitation shall be transferred to the Treasury.