TENNESSEE VALLEY AUTHORITY

18 CFR Part 1312

DEPARTMENT OF DEFENSE

32 CFR Part 229

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 296

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 7

RIN 1024-AA51

Protection of Archaeological Resources; Uniform Regulations

AGENCIES: Departments of the Interior, Agriculture, and Defense and Tennessee Valley Authority.

ACTION: Final rule.

SUMMARY: This final rule revises the uniform regulations that implement the Archaeological Resources Protection Act of 1979 (ARPA) to incorporate the recent amendments. Principally, these changes amend the description of prohibited acts in the final uniform regulations to include attempt to excavate, remove, damage, or otherwise alter or deface archaeological resources, address the lower threshold for felony violations of ARPA, public awareness programs, archaeological surveys and schedules, the Secretary of the Interior's report to Congress about federal archeology, and guidance to Federal land managers about the disposition of Native American human remains and other "cultural items" as defined by the Native American Graves Protection and Repatriation Act (NAGPRA).

EFFECTIVE DATE: The final rule becomes effective February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Francis P. McManamon, National Park Service, Department of the Interior, Washington, D.C., 202-343-4105; Lars Hanslin, Office of the Solicitor, Department of the Interior, Washington, D.C., 202–208–7957; Evan I. DeBloois, U.S. Forest Service, Department of Agriculture, Washington, D.C., 202-205-1754; Peter Walsh, Assistant Deputy Undersecretary of Defense for Environmental Quality, Department of Defense, Washington, D.C., 703-604-5753; or Bennett Graham, Tennessee Valley Authority, Norris, Tennessee, 615-632-1585.

SUPPLEMENTARY INFORMATION:

Background

This final rule revises the uniform regulations that implement the Archaeological Resources Protection Act of 1979 (ARPA; Pub. L. 96–95, as amended by Pub. L. 100–555, Pub. L. 100–588; 93 Stat. 721; 102 Stat. 2983; 16 U.S.C. 470aa–mm). It was prepared by representatives of the Secretaries of the Interior, Agriculture, and Defense, and the Chairman of the Board of the Tennessee Valley Authority, as directed in section 10(a) of the Act.

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

Section 10(a) of ARPA requires the Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian Tribes, representatives of concerned State agencies, and after public notice, to promulgate uniform regulations as may be appropriate to carry out the purposes of ARPA. The uniform regulations are to be promulgated after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). The uniform regulations for ARPA originally were published on January 6, 1984.

The six areas revised by this rulemaking include: (1) Expanding the description of prohibited acts to include attempts to excavate, remove, damage, or otherwise alter or deface archaeological resources, (2) adding the lower threshold provided for felony violations of ARPA, (3) adding public awareness programs, (4) adding archaeological surveys and schedules, (5) the Secretary of the Interior's report, and (6) providing guidance to Federal land managers about the disposition of Native American human remains and other "cultural items", as defined by NAGPRA [Pub. L. 101-601; 104 Stat. 3050; 25 U.S.C. 3001-13]. These topics are covered by adding paragraphs to _.3, _ _.4, .13, and _.7, _ 19; revising §§ _ .4 and and adding new §§ _.20 and _{_}

(1) Expanding prohibited acts. The prohibited acts section of the uniform regulations is revised to conform to the

recent amendments to ARPA. Federal land managers can pursue criminal and civil penalties against persons that *attempt* to excavate, remove, damage, alter, or otherwise deface archaeological resources.

(2) Lower felony threshold. Statutory amendments reduced the figure for distinguishing criminal penalties based upon calculations of damage to archaeological resources caused through violations of ARPA. The figure was reduced from \$5,000.00 to \$500.00. A new paragraph in §_ .4 restates the criminal penalties section in ARPA as well as incorporates the lower felony threshold in the uniform rule. This paragraph was added to the uniform regulations to inform Federal land managers about the criminal provisions of the Act. Those preparing the regulations felt that Federal land managers use the regulations, thus, it was important to restate the penalties section.

(3) Public awareness programs. New .20 identifies the requirements in ARPA for Federal land managers to establish programs to increase public awareness about archaeological resource protection. Federal agencies are already developing public awareness programs. As examples, the Bureau of Land Management implemented the Heritage **Education Program and the Forest** Service developed Passports in Time. There were numerous other examples of public outreach efforts by field personnel from the land management agencies. The development of regulations defining the types of public awareness programs to be used by Federal land managers was not feasible. Rather, public awareness programs including volunteerism, formal education, interpretation, tourism, and others should be part of any archaeological resource activity and incorporated into other current programs where appropriate. The Secretary of the Interior will report to Congress about these programs on behalf of Federal agencies.

(4) Archaeological surveys and schedules. New § .21 discusses the requirements in ARPA for the Departments of the Interior, Agriculture, and Defense and the Tennessee Valley Authority to develop plans and schedules for surveying archaeological resources to determine their nature and extent for purposes of agency resource planning. The surveys should be conducted systematically and cover areas where the most scientifically valuable archaeological resources are likely to exist. For example, the surveys may focus on lands where there is little knowledge of the resource base, on