sites. This same commentor also noted that the uniform regulations should reflect requirements in NAGPRA that consultation, and not just notification, is required before excavation of imbedded materials.

Two commentors directed their comments at setting conditions for consultation. One of these commentors stated that it should identify protocols to be followed when special notice is necessary including specification of time periods for completion of a tribe's response following a notification. The other commentor stated that minimum standards should be established setting the "extent of circumstances" that call for optional circumstances. One commentor inquired how the uniform regulations apply to non-Native American human remains and if there were any provisions for notification to non-Native American groups.

_.7(a) provides procedures Section for notification to Indian tribes and consultation 30 days prior to the issuance of a permit. Section _ provides for Federal land managers and Indian tribes to cooperate in advance to identify sites of religious or cultural importance to prevent harm to them. Existing rules allow for the suspension or revocation of permits for management purposes, such as to insure consistency with NAGPRA. Also, ARPA requires consent from tribes when the permit applies to Indian lands. ARPA stipulates that Federal land managers shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under their agency's jurisdiction. This section of the uniform regulations applies to sites on public lands having religious or cultural importance for Indian tribes. For cases involving non-Native Americans, the Federal land manager may consult with any concerned groups prior to permit issuance. In response to comments concerning the consistency of this section with NAGPRA, the final rule was modified to clarify the relationship of this section with NAGPRA.

Section ____.13 Custody of Archaeological Resources

Two commentors stated that § ____.13(a) should be amended to read that archaeological resources that are excavated or removed from pubic lands will remain the property of the United States "except when lineal descendants have rights of ownership" or "except in those instances where NAGPRA recognizes ownership or control in a lineal descendent or Indian tribe" in order to conform with NAGPRA. One of these same commentors noted that the Federal land manager is given too much

power to decide the custody of items when no descendants can be identified and that NAGPRA has a resolution process, whereas, ARPA does not. This commentor also said that Federal land managers should be charged with identifying all aboriginal lands within their jurisdiction that meet the standards in NAGPRA and be instructed to defer decisions regarding custody to the appropriate tribe. Two commentors noted that § ____.13(e) should read that the Federal land manager shall determine, not may determine, that human remains and directly associated material remains need not be preserved and maintained in a scientific or educational institution. Seven commentors noted that the procedures for reaching a determination in .13(e)(2) should be consistent with NAGPRA. One of these commentors noted that allowing Federal land managers alone to consider religious and cultural importance is inconsistent with NAGPRA, which reserves this right to Native American individuals and groups. Another of these commentors stated that while the uniform regulations allow Federal land managers the right to consider remains as a "source of information about the past, NAGPRA does not give this consideration. Another of these commentors stated that § __.13(e)(2), in general, sets the context for allowing the study and curation of remains to be more important than repatriation. Three of these commentors stated that it needs to define conditions for applicability with regard to the disposition of human remains. Regarding § .13(e)(4), one commentor noted that NAGPRA provides the basis for reaching a determination of custody. Three commentors noted that the cancellation of the agreement by the Federal land manager over the tribe's failure to comply is contradictory to NAGPRA. Two commentors stated that there is a written agreement provision implied on activity pursuant to Section 106 of the National Historic Preservation Act, and that they were opposed to any process involving the Advisory Council or the SHPO. Another comment, regarding the same topic, suggested that written agreements should not rule out face-toface communications. Two commentors stated that § _.13(e)(4) appears to allow Federal land managers to impose 'appropriate terms and conditions' to dictate the manner of repatriation, when tribal religious practices should govern, instead, and that this would be contrary to Section 3 of NAGPRA. Regarding .13(e)(5), one commentor stated that it needs to explain how, when, and

who determines the custody of "remains" during a criminal investigation. One commentor stated that § _____.13 needs to include procedures for custody of resources on Indian lands, not just public lands.

Federal land managers are ultimately responsible for archaeological resources under their agencies' jurisdictions. When Native American human remains and other "cultural items", as defined by NAGPRA, are returned to lineal descendants or culturally affiliated Indian tribes, then these items are no longer the responsibility of the United States. The claimants have complete authority over their future treatment. Archaeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources, and who, as stated in ARPA, determine the appropriate treatment. Under ARPA the Federal land manager will identify tribes with historic or aboriginal ties to the lands under the Federal land manager's jurisdiction and through consultation will determine if there are religious or cultural sites which could be harmed.

The commentors are correct in noting that the term "when applicable" is too general to provide useful guidance for the Federal land manager to consider the manner of disposition of the remains as proposed by the Indian tribe, group or individual. ARPA also is intended to enhance the protection of archaeological resources that are a source of information about the past. With regard to the custody of material remains during a criminal investigation, the status of archaeological resources is determined through law enforcement. Only when archaeological resources that are secured as evidence in a civil or criminal proceeding have been released officially by law enforcement, may they then be considered for treatment under this section. As for criminal proceedings involving Native American human remains and other "cultural items", as defined by NAGPRA, the Federal land manager is referred to the requirements in NAGPRA and its implementing regulations.

In response to the comments, the final rule includes guidance to Federal land managers about treatments of Native American human remains and other "cultural items", as defined by NAGPRA. Section_____.13(e)(1)–(4) was deleted from the final rule. The Federal land manager is referred to the requirements in NAGPRA and its implementing regulations.