



TENNESSEE VALLEY AUTHORITY

BILLING CODE: 8120-08

18 CFR Part 1312

Protection of Archaeological Resources

AGENCY: Tennessee Valley Authority.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the Tennessee Valley Authority (TVA) for the protection of archaeological resources by providing for the issuance of petty offense citations for violations of the Archaeological Resources Protection Act (ARPA) and the Antiquities Act of 1906 (AA). Amending the regulations such that TVA law enforcement agents are authorized to issue citations will help prevent loss and destruction of archaeological resources resulting from unlawful excavations and pillage.

DATES: This final rule becomes effective [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ralph E. Majors, TVA, 865-632-4176; or Erin E. Pritchard, TVA, 865-632-2463.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

These amendments are promulgated under the authority of the TVA Act, as amended, 16 U.S.C. 831-831ee, the Archaeological Resources Protection Act, 16 U.S.C. 470aa-470mm, and the Antiquities Act of 1906, 16 U.S.C.431, 432 & 433.

II. Background for the Amendments

This final rule amends TVA's regulations implementing the Archaeological Resources Protection Act of 1979 (Pub. L. No. 96-95, as amended by Pub. L. No. 100-555, Pub. L. No. 100-588; 93 Stat. 721; 102 Stat. 2983; 16 U.S.C. 470aa-mm) to provide

for the issuance of petty offense citations by TVA's law enforcement agents for violations of ARPA or AA.

Section 10(a) of ARPA requires the Departments of Interior, Agriculture and Defense and the Tennessee Valley Authority to promulgate such uniform rules and regulations as may be necessary to carry out the purposes of ARPA. 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." 16 U.S.C. 470aa(b). The uniform regulations for ARPA originally were published on January 6, 1984 to implement the Act of 1979. The uniform regulations were then revised on January 26, 1995 to incorporate the amendments to ARPA promulgated by Congress in 1988.

Section 10(b) of ARPA requires each Federal land manager (FLM) to promulgate such regulations, consistent with the uniform regulations under Section 10(a), as may be appropriate for the carrying out of the FLM's functions and authorities under the Act. Thus, Section 10(b) allows individual Federal agencies to tailor the uniform regulations to suit their own particular needs with a view to effectively implementing the authorities under the Act. TVA has adopted the uniform regulations as its own. *See* 18 CFR part 1312 (1984 and 1995). This final rule amends TVA's ARPA regulations by enabling TVA's law enforcement agents to issue petty offense citations for violations of ARPA¹ or

¹ The prohibitions under ARPA are set out in Sections 6(a), 6(b) and 6(c) of the Act. *See* 16 U.S.C. 470ee(a), (b) & (c). Any violation of these prohibitions is subject to the criminal sanctions prescribed in Section 6(d). *See* 16 U.S.C. 470ee(d). TVA's regulations implementing ARPA replicate these prohibitions and criminal sanctions. *See* 18 CFR 1312.4.

AA² occurring on lands owned by the United States that are entrusted to TVA.³ The issuance of petty offense citations is consistent with the authority granted to TVA’s law enforcement agents under the TVA Act, and advances the effective prosecution of violations of ARPA and AA.

Under the TVA Act, the TVA Board of Directors “may designate employees of the Corporation to act as law enforcement agents” to “make arrests without warrant for any offense against the United States committed in the agent’s presence” that occurs “on any lands or facilities owned or leased by the Corporation.” *See* 16 U.S.C. 831c-3. Based on this authority, the final rule amends TVA’s regulations for protection of archaeological resources to authorize certain TVA law enforcement agents to issue petty offense citations for the violation of any provision of 16 U.S.C. 470ee or 16 U.S.C. 433. Those TVA law enforcement agents that are designated by the Director of TVA Police and Emergency Management for the purpose of conducting archaeological investigations shall have the authority to issue petty offense citations for ARPA or AA violations committed in the agent’s presence on lands owned by the United States that are entrusted to TVA. For any such petty offense committed on lands entrusted to TVA, the citation may be issued at the site of the offense, or on non-TVA land (a) when the person committing the offense is in the process of fleeing the site of the offense to avoid arrest,

² The AA prohibits, among other things, the excavation, destruction or appropriation of an object of antiquity situated on federal lands without the permission of the head of the agency having jurisdiction over those lands. *See* 16 U.S.C. 433. Any violation of these provisions is subject to criminal sanctions. *Id.*

³ Under Section 21(a) of the TVA Act, “[a]ll general penal statutes relating to larceny, embezzlement, conversion, or to the improper handling, retention, use or disposal of - - - property of the United States, shall apply to the - - - property of the Corporation and to - - - properties of the United States entrusted to the Corporation.” 16 U.S.C. 831t(a) (emphasis added).

or (b) to protect the archaeological artifacts involved in the commission of the offense.⁴

The citation will require the person charged with the violation to appear before a United States Magistrate Judge within whose jurisdiction the affected archaeological resource is located.⁵

III. Comment Period

Public comment was sought for a 30-day period following publication of the proposed amendments in the federal register on May 20, 2016 (81 FR 31873). The comment period closed on June 20, 2016. No comments were received in response to the publication of the proposed amendments.

The final rule corrects a typographical error in the proposed rule published on May 20, 2016. The reference to “Title 8” in the final sentence of § 1312.22 (on page 31875 of the proposed rule) has been corrected to “Title 18” in this final rule.

IV. Administrative Requirements

A. Unfunded Mandates Reform Act and various Executive Orders including E.O. 12866, Regulatory Planning and Review; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 13045, Protection of Children from Environmental Health Risks; E.O. 13132, Federalism; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; and E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, and Use; E.O. 12988, Civil Justice Reform Act.

⁴ See 16 U.S.C. 831c-3(c)(2) (authorizing TVA’s law enforcement agents to exercise their law enforcement duties and powers on non-TVA lands (1) when the person to be arrested is in the process of fleeing to avoid arrest or (2) in conjunction with the protection of TVA property.)

⁵ Section 3401 of Title 18, United States Code, provides that “any United States magistrate judge shall have jurisdiction to try persons accused of, and sentence persons convicted of, misdemeanors committed within that judicial district.” 18 U.S.C. 3401(a).

This final rule amends TVA's regulations for the protection of archaeological resources by providing for issuance of petty offense citations by TVA's law enforcement agents for violations of ARPA or AA. The rule is not subject to Office of Management and Budget Review under Executive Order 12866. The rule contains no Federal mandates for State, local, or tribal government or for the private sector. TVA has determined that these amendments will not have a significant annual effect of \$100 million or more or result in expenditures of \$100 million in any one year by State, local, or tribal governments or by the private sector. Nor will the amendments have concerns for environmental health or safety risks that may disproportionately affect children, have significant effect on the supply, distribution, or use of energy, or disproportionately impact low-income or minority populations. Accordingly, this final rule has no implications for any of the referenced authorities.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., TVA is required to prepare a regulatory flexibility analysis unless the head of the agency certifies that the proposal will not have a significant economic impact on a substantial number of small entities. TVA's Chief Executive Officer has certified that the amendments promulgated in this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. This determination is based on the finding that the amendments are directed toward Federal resource management to help prevent loss or destruction of archaeological resources, with no economic impact on the public.

C. Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act.

List of Subjects in 18 CFR Part 1312

Administrative practice and procedure, Historic Preservation, Indians – lands, Penalties, Public Lands, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 18 CFR Part 1312 is amended as follows:

PART 1312—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

1. The authority citation for Part 1312 is revised to read as follows:

Authority: Pub. L. 96-95, 93 Stat. 721, as amended, 102 Stat. 2983 (16 U.S.C. 470aa-mm) (Sec. 10(a) & (b)); 16 U.S.C. 831-831ee (2012). Related Authority: Pub. L. 59-209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86-523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470a-t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95-341, 92 Stat. 469 (42 U.S.C. 1996);

2. In § 1312.1, a sentence is added at the end of paragraph (a) to read as follows:

§ 1312.1 Purpose.

(a) ***. The regulations in this part also enable TVA's law enforcement agents to issue petty offense citations for violations of any provision of 16 U.S.C. 470ee or 16 U.S.C. 433.

3. In §1312.2, paragraph (c) is added to read as follows:

§ 1312.2 Authority.

(c) Provisions pertaining to the issuance of petty offense citations are based on the duties and powers assigned to TVA's law enforcement agents under 16 U.S.C. 831-831ee.

4. In §1312.3, paragraph (j) is added to read as follows:

§ 1312.3 Definitions.

(j) *Director* means the Director of TVA Police and Emergency Management assigned the function and responsibility of supervising TVA employees designated as law enforcement agents under 16 U.S.C. 831c-3(a).

5. Section 1312.22 is added to read as follows:

§ 1312.22 Issuance of citations for petty offenses.

Any person who violates any provision contained in 16 U.S.C. 470ee or 16 U.S.C. 433 in the presence of a TVA law enforcement agent may be tried and sentenced in accordance with the provisions of section 3401 of Title 18, United States Code. Law enforcement agents designated by the Director for that purpose shall have the authority to issue a petty offense citation for any such violation, requiring any person charged with the violation to appear before a United States Magistrate Judge within whose jurisdiction the archaeological resource impacted by the violation is located. The term "petty offense" has the same meaning given that term under section 19 of Title 18, United States Code.

Dated: August _8_, 2016

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