

**DEPARTMENT OF STATE**  
**DIVISION OF HISTORICAL AND CULTURAL AFFAIRS**  
Statutory Authority: 7 Delaware Code, Section 5302 (7 **Del.C.** §5302)

**FINAL**

**ORDER**

**902 Curation Fee For Archaeological Collections**

In accordance with 7 **Del.C.** Ch. 53, 7 **Del.C.** §5302, and 29 **Del.C.** §8705, for the reasons set forth herein, the Delaware Department of State, Division of Historical and Cultural Affairs enters this Order adopting and establishing a Curation Fee for Archaeological Collections.

**NATURE OF THE PROCEEDINGS**

Pursuant to its authority under 7 **Del.C.** §5301, the Department of State has charged the Division of Historical and Cultural Affairs with the duties relative to archaeology in the state (7 **Del.C.** Ch. 53, and 29 **Del.C.** §8705) and authorizes the Division to formulate and adopt regulations as it deems necessary for the effective execution of these duties (7 **Del.C.** §5302). The Division is defined as a qualified repository for the State's archeological collections (7 **Del.C.** §5310), and is responsible for the long-term curation of Delaware's archaeological artifacts and associated documents. The purpose of these proposed regulations is to establish a fee structure to help offset the ever-rising costs associated with the long-term preservation, care, and management of the State's pre-existing and future archaeological collections. These collections are generated through federally-mandated regulation, municipal directive, and by professional, semi-professional, and avocational endeavors within the State. Archaeological collections are regarded as an irreplaceable, non-renewable resource. To care for these archaeological collections, the Division adheres to modern professional practices and collection standards. Foremost of these are the federal regulations defined in Title 36 CFR Part 79, Curation of Federally-owned and Administered Archaeological Collections. These regulations provide methods to fund curatorial services (36 CFR §79.7) and specify, in general, that charging costs for curatorial activities is a reasonable means of funding long-term care of collections.

The Division gave notice of its intent to adopt the proposed revised regulation in the May 1, 2018 issue of the Delaware *Register of Regulations*. At that same time, the Division submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation, as required by 29 **Del.C.** Ch. 104. The Division solicited written comments from the public for thirty (30) days as mandated by 29 **Del.C.** §10118(a).

**SUMMARY OF EVIDENCE**

In accordance with Delaware law, public notice regarding the establishment of the proposed Curation Fee for Archaeological Collections regulation was published in the Delaware *Register of Regulations*. The public comment period was open from May 1, 2018 through May 31, 2018, and the Division received written comments.

**SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES**

The Division received written comments from the Delaware Department of Transportation (DelDOT), RGA Cultural Resource Consultants, and the University of Delaware, Department of Anthropology. The Division of Historical and Cultural Affairs has reviewed and considered each comment, summarized below, and responds as follows:

First, Public Access: The Division received written comments from DelDOT indicating that they hoped that additional funding from the new fee will allow greater access to the collections by both researchers and the public benefiting all Delawareans.

**Division Response:** In reference to DelDOT's interest in greater public access to the collections, the Division recognizes that with the added revenue generated by the Curation Fee for Archaeological Collections it will be possible to rehouse, conserve, and even make collections available on-line to allow for greater public and professional access.

Second, Pro-rating and Fee Waiving: The Division received written comments from DelDOT inquiring about a need for "Checks and Balances" in regard to agencies or entities who may apply political pressure to pro-rate and waive fees in Section 4.2.1

**Division Response:** In reference to Pro-rating and Fee Waiving and "Checks and Balances" the Division addressed this concern in Section 4.2.1 of the regulation by adding that pro-rating or waiving the fee waiving requires approval by the State Collections Committee.

Third, Culling and Discard Policy: The Division received written comments from DelDOT encouraging the Division to

implement a Culling and Discard Policy in conjunction with proposed curation fees to ensure sustainable curation practices while maintaining the quality of archaeology projects. They offered that the implementation of culling guidelines prior to curation can aid all phases of the archaeology project and ensure integrity of the overall archaeology.

**Division Response:** In reference to the Culling and Discard Policy the Division currently has informal guidance on culling and discard, and will adopt a formal policy in consultation with DeIDOT, State Historic Preservation Office, the Curator of Archaeology and others interested parties as appropriate following the enactment of this regulation.

Fourth, Digital Curation: The Division received written comments from DeIDOT regarding the move to digital curation within the Cultural Resource Management field related to efficiently transitioning between fieldwork and lab phases of projects. They indicated they expect the submission of more digital records, and that the need to provide digital storage in perpetuity, may be potentially costly. They hope that the Division recognizes this and that the revenue will go to enhancing digital storage solutions.

**Division Response:** In reference to Digital Curation the Division recognizes the significant need for potentially costly digital storage, in perpetuity, for archaeological digital data and the Curation Fee for Archaeological Collections can help offset these costs.

Fifth, Reallocation of Curation Fees: The Division received written comments from DeIDOT stating that they hope that the intent of the Division is to utilize the revenue to supplement the current budget instead of being used to cover current costs and reallocate the current funding sources to other projects.

**Division Response:** In reference to Reallocation of Curation Funds the Division will not reallocate or replace funds already dedicated to archaeological curation with the revenue generated by the Curation Fee for Archaeological Collections or use it for purposes other than those stated in 6.4 of the regulation.

Sixth, Support of Curation Fees: The Division received written comments from DeIDOT indicating that they fully support the use of the revenue to support all aspects of archaeology curation. DeIDOT recognized that Delaware is the only state in the Middle Atlantic region that currently does not charge a fee, and they support the need to implement a curation fee to support the long-term care and management of Delaware archaeology collections.

**Division Response:** The Division thanks DeIDOT for its support of this proposed regulation, Curation Fee for Archaeological Collections.

Seventh, Definitions, Curation: The Division received written comment from RGA Cultural Resource Consultants regarding the lack of a definition of professional standards within the term Curation in Section 3.0 of the proposed regulation.

**Division Response:** The professional standards by which the Division adheres are addressed in Section 1.0 of the regulation and do not need to be expanded in Section 3.0.

Eighth, Definitions, Qualified Repository: The Division received written comment from RGA Cultural Resource Consultants regarding the lack of a definition of Qualified Repository in Section 3.0.

**Division Response:** The Division definition of the term Qualified Repository in Section 3.0 is used verbatim from 7 Del.C. §5310.

Ninth, Definitions, Adding "Orphaned or Abandoned Collections:" The Division received written comment from RGA Cultural Resource Consultants regarding the need for including in 3.0 Definitions the term "Orphaned or Abandoned Collections."

**Division Response:** The Division finds that adding a definition for orphaned or abandoned collections is not necessary, as such collections would be subject to the same provisions as any collection considered for curation by the State. Under 5.1.2 of the proposed regulations, the fee is not applicable to collections derived from fieldwork that was initiated prior to the effective date of the fee. After the effective date, the Division would first determine if it will accept the collection in accordance with its Collections Policy, and if so then determine if the fee will be pro-rated or waived by the provisions of Section 4.2 of the regulation.

Tenth, Applicability: The Division received written comment from RGA Cultural Resource Consultants asking if Section 4.1, and subsequent sub-sections (4.1.1 through 4.1.4), identifies the entirety of the individuals and/or entities to which the fees will be applied or collection types that will not be charged a fee, such as "Orphaned or Abandoned collections."

**Division Response:** The Division finds that Section 4.1 of the regulation adequately identifies instances where a fee is to be charged, and that Section 4.2 provides an opportunity to pro-rate or waive fees if an entity not defined in 4.1.4 seeks to curate a collection with the Division. The Division finds that adding a specific reference to orphaned or abandoned collections is not necessary (see response to Ninth comment).

Eleventh, Process/Guidance for Pro-rating and Waiving of Fee: The Division received written comment from RGA Cultural Resource Consultants regarding Section 4.2 Pro-rating and waiving of fee, suggesting the addition of subsequent sub-section(s) that included guidelines and process for pro-rating or waiver process.

**Division Response:** The Division amended Section 4.2.1 and added Section 4.2.2 to clarify the avenue by which the Division Director will consider pro-rating and waiving of fee. Further criteria will be outlined in the anticipated update to the Guidelines and Standards for the Curation of Archaeological Collections.

Twelfth, Responsibility for Payment of Fee: The Division received written comment from RGA Cultural Resource Consultants regarding Section 6.0 Responsibility, Collection, and Use of Fee indicating that the regulation does not specify who shall be responsible for remitting the curation fee to the state of Delaware.

**Division Response:** The Division has added a new Section 6.1 and 6.1.1 to clarify who is to pay the fee at the time of curation.

Thirteenth, Applicability to the University of Delaware: The Division received written comment from the University of Delaware, Department of Anthropology asking to what extent the fee applies to the University of Delaware.

**Division Response:** The Division does not intend for this fee to apply to the University of Delaware's "qualified repository." Language was added to Sections 1.4 and 6.0 to clarify this within the regulation.

## FINDINGS OF FACT

The public was given the required notice of the Division's intention to establish the Curation Fee for Archaeological Collections regulation and was given opportunity to provide the Division with comments. The required Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation was submitted. Public comments were received. The Division has responded to the public comments in the Summary of Comments Received with Agency Response and Explanation of Changes. Thus, the Division finds that the proposed regulation, which adds subsections 4.2.2 and 6.1.1, and adds a definition for "Fee" and deletes the definition for the "National Register of Historic Places" or "National Register" in Section 3.0 should be adopted in the best interest of the general public of the State of Delaware. Additionally, some grammatical amendments and edits were made to the proposed regulations.

**THEREFORE, IT IS SO ORDERED**, this 12<sup>th</sup> day of June 2018 that the proposed Division of Historical and Cultural Affairs Curation Fee for Archaeological Collections Regulation 902 is adopted and shall become effective ten (10) days from the date of its publication in the July 2018 Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(e) and (g).

Jeffery Bullock  
Secretary of State

### 902 Curation Fee For Archaeological Collections

#### 1.0 Introduction

- 1.1 The Division of Historical and Cultural Affairs is responsible for the **[long-term]** curation of Delaware's archaeological **[artifact]** collections **[and associated documents]**. These collections are generated through federally-mandated regulation, municipal directive, and by professional, semi-professional[,], and avocational endeavors within the State. Archaeological collections are regarded as an irreplaceable, non-renewable resource.
- 1.2 Most new archaeological collections are accessioned into Delaware's qualified repositories as a result of investigations conducted for compliance with provisions of the National Historic Preservation Act of 1966 and as amended in Title 54 United States Code, Subtitle III - National Preservation Programs, Division A - Historic Preservation (54 USC §§306108, 306101) governing federal and federally-assisted construction projects.
- 1.3 To care for Delaware's **[preexisting pre-existing]** and future archaeological collections, the Division adheres to modern professional practices and collections standards. Foremost of these are the federal regulations defined in Title 36 CFR Part 79, Curation of Federally-Owned and Administered Archaeological Collections. These regulations provide for methods to fund curatorial services (36 CFR §79.7) and specify, in general, that charging costs for curatorial activities is a reasonable means of funding the long-term care of collections.
- 1.4 **[This fee will be applied in its entirety, to]** The Division will charge, collect, retain, and use the fee for] the long-term **[preservation,]** care, **[and]** management~~[-, and conservation]~~ of **[the pre-existing and future State-owned]** archaeological collections **[and associated documents]**.

#### 2.0 Statutory Authority

- 2.1 These regulations are created pursuant to 7 **Del.C.** §5302 which authorizes the Division, with the approval of the Department of State, to promulgate regulations as it deems necessary for the effective execution of its purposes under the chapter, Archaeological Resources in the State.
- 2.2 7 **Del.C.** Ch. 53 defines the Department's duties relative to archaeology in the State.
- 2.3 29 **Del.C.** §8705 delegates the Department's responsibility for 7 **Del.C.** Ch. 53, thus relating archaeological resources and activities in the State to the Division.
- 2.4 7 **Del.C.** §~~5344~~ 5310] defines the Division as a qualified repository for the State's archaeological collections.

#### 3.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context

clearly indicates otherwise:

**"Archaeological [artifacts artifact(s)]"** means man-made objects, such as, but not limited to, fragments of glass and ceramic vessels or stone tools, found on archaeological sites, and providing information on the function and time period of a site.

**"Archaeological [collections collection(s)]"** means the objects, material remains[,] and artifacts recovered from an archaeological context, along with the associated documents, that are curated by the Division. These collections document the pre-history, history[,] and material culture of the people of Delaware.

**"Archaeological investigation"** means any surface collection, subsurface tests, excavation, or other activity that result in the disturbance, removal, or collection of archaeological resources.

**"Archaeological resource"** means any artifact or material remains of past human life or activities which are at least 50 years old and are of archaeological interest, including but not limited to pottery, basketry, whole or fragmentary tools, implements, containers, weapons, weapon projectiles, by-products resulting from manufacture or use of man-made or natural materials, surface or subsurface structures or portions thereof, earthworks, fortifications, ceremonial structures or objects, cooking pits, refuse pits, hearths, kilns, post molds, middens, and shipwrecks; the site, location, or context in which such artifacts or material remains are situated; and any portion or piece of any of the foregoing.

**"Associated documents"** means the original paper, photographic[,] and digital **[documents records]** generated in the evaluation, testing, excavation, mapping, analysis, synthesis, and reporting on an archaeological investigation.

**"Cultural resource management firms"** means private companies that are hired **[by various clients]** to perform professional archaeological services.

**["Curated" or "Curation"]** means the **[long-term]** preservation, care, and management of a collection according to professional standards.

**"Data recovery"** means an archaeological treatment of a threatened site involving the detailed excavation and analysis of a National Register-listed or eligible site, based on a research design developed as a result of an evaluation-level survey.

**"Department"** means the Department of State.

**"Director"** means the Director of the Division of Historical and Cultural Affairs of the Department of State.

**"Division"** means the Division of Historical and Cultural Affairs of the Department of State.

**"Evaluation-level survey"** means an investigation to determine the eligibility of an archaeological site or property for listing in the National Register of Historic Places.

**["Fee"]** means a monetary amount, based on the specified rates, to be charged for the curation of archaeological collections at the Division's qualified repository; as well as the total revenue generated by these charges.]

**"Flat"** means a box container (measuring **[24 20]** by 20 by 3 inches) made of archival-quality plastic or acid-free cardboard used in the curation of **[archaeological]** artifacts.

**"Half-standard box"** means a box container (measuring **[16 by 8 6 by 15]** by 10 inches) made of archival-quality plastic or acid-free cardboard used in the curation of **[associated]** documents.

**"Identification-level survey"** means an investigation to locate and identify archaeological sites. This level of investigation provides a preliminary assessment of a site's integrity, horizontal boundaries, and possibly, its data potential.

**~~["National Register of Historic Places" or "National Register" means the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture that the United States Secretary of the Interior is authorized to expand and maintain pursuant to Chapter 3021 of the National Historic Preservation Act of 1966, as amended (54 USC § 300101 et seq.).]~~**

**"Oversized artifact"** means an artifact that does not fit into a flat or standard box due to its size or weight.

**"Qualified repositories"** means the University of Delaware and the Division of Historical and Cultural Affairs, which are designated as properly qualified repositories within the meaning of 7 Del.C. Ch. 53.

**"Specialized storage"** means curating an artifact in a location or environment that is different than the general artifact collection.

**"Standard box"** means a box container (measuring **[16 by 13 12 by 15]** by 10 inches) made of archival-quality plastic or acid-free cardboard used in the curation of **[archaeological]** artifacts and associated documents.

#### **4.0 Fee for ~~[Artifact Curation and Associated Documents]~~ Curation of Archaeological Collections**

##### **4.1 Applicability[.]**

- 4.1.1 Federal agencies and state agencies, acting on behalf of the federal government, which recover archaeological artifacts and create associated documents through an archaeological investigation in the State, will be charged a **[curation]** fee.
- 4.1.2 State agencies, municipalities, universities, colleges, schools, museums, historical societies, for-profit, non-profit, semi-professional, and avocational[, ] organizations or companies, which recover archaeological artifacts and create associated documents through an archaeological investigation in the State, will be charged a **[curation]** fee.
- 4.1.3 Individuals and cultural resource management firms, acting on behalf of an individual, organization[, ] or company, which recover archaeological artifacts and create associated documents through an archaeological investigation in the State, will be charged a **[curation]** fee.
- 4.1.4 Individuals that seek to donate archaeological artifacts and associated documents collected in the State through curiosity or hobby, will not be charged a **[curation]** fee.

4.2 Pro-rating and waiving of fee[.]

- 4.2.1 The Division Director may pro-rate or waive the fee[, with approval of the State Collections Committee].
- [4.2.2 A written request must be submitted to the Division Director for consideration to pro-rate or waive the fee.]**

4.3 Rates to be charged[.]

- 4.3.1 The rate ~~[for a per]~~ flat or standard box of **[archaeological]** artifacts, full or partially full, is \$350.
- 4.3.2 The rate per standard box of **[associated]** documents is \$400.
- 4.3.3 The rate per half-standard box of **[associated]** documents is \$200.
- 4.3.4 The rate per oversized **[archaeological]** artifact or per **[archaeological]** artifact requiring specialized storage is \$500.

4.4 Fee Increase[.]

- 4.4.1 Fee rates will increase by 5% every five years from the effective date, but are not to exceed \$1000.

**5.0 Implementation of Fee**

5.1 Effective date[.]

- 5.1.1 This fee schedule is to take effect on July 1, 2018.
- 5.1.2 This fee shall not apply to **[archaeological]** collections derived from investigations for which the associated phase of fieldwork (identification-level survey, evaluation-level survey[, ] or data recovery) started prior to the effective date.

**6.0 [Responsibility,] Collection[, ] and Use of Fee**

**[6.1 Responsibility for paying the fee.**

- 6.1.1 **The agency, organization, company, or individual (as referenced in subsection 4.1 of this regulation) that is submitting the archaeological collection for curation with the Division is responsible for paying the fee.]**

**6.[12] Collection of ~~[Fee fee]~~**

- 6.[12].1 The **[archaeological curation]** fee shall be paid prior to or at the time an archaeological collection is hand-delivered to the ~~[approved curatorial facility]~~ Division's qualified repository for curation].

**6.[23] Methods of ~~[Fee Collection]~~ fee collection.]**

- 6.[23].1 The **[archaeological curation]** fee shall be paid by check or electronic payment, including debit and credit card.
- 6.[23].1.1 Checks shall be made payable to the State of Delaware.
- 6.[23].1.2 Checks may be mailed or hand-delivered to the Division office prior to curation.
- 6.[23].1.3 Checks may be hand-delivered to the ~~[approved curatorial facility]~~ Division's qualified repository] at the same time that the archaeological collection is hand-delivered **[for curation]**.
- 6.[23].1.4 Electronic payment shall be accepted only at the Division office.

**6.[34] Use of fee[.]**

- 6.[34].1 The Division shall retain the revenue received from ~~[the archaeological curatorial]~~ this] fee.
- 6.[34].2 The Division shall use this revenue ~~[to maintain and conserve the]~~ for the long-term preservation, care, and management of pre-existing and future State-owned] archaeological collections ~~[and associated documents]~~.

6.~~[34]~~.3 The Division shall use this revenue only for the operational, equipment[,], or personnel costs directly associated in the ~~[maintenance and conservation]~~ **long-term preservation, care, and management** of ~~[the pre-existing and future State-owned]~~ archaeological collections ~~[and associated documents]~~.

22 DE Reg. 72 (07/01/18) (Final)