

entific or educational institutions, of archaeological resources removed from public lands and Indian lands pursuant to this chapter, and

(2) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 (16 U.S.C. 469-469c) [16 U.S.C. 469-469c-1] or the Act of June 8, 1906 (16 U.S.C. 431-433).

Any exchange or ultimate disposition under such regulation of archaeological resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe which owns or has jurisdiction over such lands. Following promulgation of regulations under this section, notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this chapter.

(Pub. L. 96-95, §5, Oct. 31, 1979, 93 Stat. 724.)

#### REFERENCES IN TEXT

Act of June 27, 1960 (16 U.S.C. 469-469c), referred to in par. (2), is act June 27, 1960, Pub. L. 86-523, 74 Stat. 220, as amended, which is classified generally to sections 469 to 469c-1 of this title. For complete classification of this Act to the Code, see Tables.

Act of June 8, 1906 (16 U.S.C. 431-433), referred to in par. (2), is act June 8, 1906, ch. 3060, 34 Stat. 225, known as the Antiquities Act of 1906, which is classified generally to sections 431, 432, and 433 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 431 of this title and Tables.

#### § 470ee. Prohibited acts and criminal penalties

##### (a) Unauthorized excavation, removal, damage, alteration, or defacement of archaeological resources

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 section 470cc of this title, a permit referred to in section 470cc(h)(2) of this title, or the exemption contained in section 470cc(g)(1) of this title.

##### (b) Trafficking in archaeological resources the excavation or removal of which was wrongful under Federal law

No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

- (1) the prohibition contained in subsection (a) of this section, or
- (2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

##### (c) Trafficking in interstate or foreign commerce in archaeological resources the excavation, removal, sale, purchase, exchange, transportation or receipt of which was wrongful under State or local law

No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any

archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

##### (d) Penalties

Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than \$10,000 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, such person shall be fined not more than \$20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than \$100,000, or imprisoned not more than five years, or both.

##### (e) Effective date

The prohibitions contained in this section shall take effect on October 31, 1979.

##### (f) Prospective application

Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to October 31, 1979.

##### (g) Removal of arrowheads located on ground surface

Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground.

(Pub. L. 96-95, §6, Oct. 31, 1979, 93 Stat. 724; Pub. L. 100-588, §1(b), (c), Nov. 3, 1988, 102 Stat. 2983.)

#### AMENDMENTS

1988—Subsec. (a). Pub. L. 100-588, §1(b), inserted “, or attempt to excavate, remove, damage, or otherwise alter or deface” after “deface”.

Subsec. (d). Pub. L. 100-588, §1(c), substituted “\$500” for “\$5,000”.

#### § 470ff. Civil penalties

##### (a) Assessment by Federal land manager

(1) Any person who violates any prohibition contained in an applicable regulation or permit issued under this chapter may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this chapter, taking into account, in addition to other factors—

(A) the archaeological or commercial value of the archaeological resource involved, and

(B) the cost of restoration and repair of the resource and the archaeological site involved.

Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed an amount equal to double the cost of restoration and repair of resources and archaeological sites damaged and double the fair market value of resources destroyed or not recovered.

(3) No penalty shall be assessed under this section for the removal of arrowheads located on the surface of the ground.

**(b) Judicial review of assessed penalties; collection of unpaid assessments**

(1) Any person aggrieved by an order assessing a civil penalty under subsection (a) of this section may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after a court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty,

the Federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

**(c) Hearings**

Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) of this section shall be conducted in accordance with section 554 of title 5. The Federal land manager may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before

the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Pub. L. 96-95, §7, Oct. 31, 1979, 93 Stat. 725.)

**§ 470gg. Enforcement**

**(a) Rewards**

Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay from penalties and fines collected under sections 470ee and 470ff of this title an amount equal to one-half of such penalty or fine, but not to exceed \$500, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

**(b) Forfeitures**

All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 470ee of this title occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

(1) such person's conviction of such violation under section 470ee of this title,

(2) assessment of a civil penalty against such person under section 470ff of this title with respect to such violation, or

(3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

**(c) Disposition of penalties collected and items forfeited in cases involving archaeological resources excavated or removed from Indian lands**

In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 470ee of this title involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to section 470ff of this title and for the transfer to such Indian or Indian tribe of all items forfeited under this section.

(Pub. L. 96-95, §8, Oct. 31, 1979, 93 Stat. 726.)

**§ 470hh. Confidentiality of information concerning nature and location of archaeological resources**

**(a) Disclosure of information**

Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this chapter or under