

nation shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

(2) The term “Federal land manager” means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this chapter of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term “Federal land manager” means the Secretary of the Interior.

(3) The term “public lands” means—

(A) lands which are owned and administered by the United States as part of—

- (i) the national park system,
  - (ii) the national wildlife refuge system,
- or
- (iii) the national forest system; and

(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution.

(4) The term “Indian lands” means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

(5) The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.].

(6) The term “person” means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term “State” means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(Pub. L. 96-95, §3, Oct. 31, 1979, 93 Stat. 721; Pub. L. 100-588, §1(a), Nov. 3, 1988, 102 Stat. 2983.)

#### REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (5), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

#### AMENDMENTS

1988—Par. (3). Pub. L. 100-588 substituted a period for semicolon at end.

### § 470cc. Excavation and removal

#### (a) Application for permit

Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this chapter, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

#### (b) Determinations by Federal land manager prerequisite to issuance of permit

A permit may be issued pursuant to an application under subsection (a) of this section if the Federal land manager determines, pursuant to uniform regulations under this chapter, that—

(1) the applicant is qualified, to carry out the permitted activity,

(2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interest,

(3) the archaeological resources which are excavated or removed from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, and

(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

#### (c) Notification to Indian tribes of possible harm to or destruction of sites having religious or cultural importance

If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 470hh of this title.

#### (d) Terms and conditions of permit

Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this chapter, as the Federal land manager concerned deems necessary to carry out the purposes of this chapter.

**(e) Identification of individuals responsible for complying with permit terms and conditions and other applicable laws**

Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this chapter and other law applicable to the permitted activity.

**(f) Suspension or revocation of permits; grounds**

Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of subsection (a), (b), or (c) of section 470ee of this title. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 470ff of this title against the permittee or upon the permittee's conviction under section 470ee of this title.

**(g) Excavation or removal by Indian tribes or tribe members; excavation or removal of resources located on Indian lands**

(1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431),<sup>1</sup> for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section.

(2) In the case of any permits for the excavation or removal of any archaeological<sup>2</sup> resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

**(h) Permits issued under chapter 3203 of title 54**

(1) No permit or other permission shall be required under chapter 3203 of title 54 for any activity for which a permit is issued under this section.

(2) Any permit issued under chapter 3203 of title 54 shall remain in effect according to its terms and conditions following the enactment of this chapter. No permit under this chapter shall be required to carry out any activity under a permit issued under chapter 3203 of title 54 before October 31, 1979, which remains in effect as provided in this paragraph, and nothing in this chapter shall modify or affect any such permit.

**(i) Compliance with provisions relating to undertakings on property listed in the National Register not required**

Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 306108 of title 54.

**(j) Issuance of permits to State Governors for archaeological activities on behalf of States or their educational institutions**

Upon the written request of the Governor of any State, the Federal land manager shall issue

a permit, subject to the provisions of subsections (b)(3), (b)(4), (c), (e), (f), (g), (h), and (i) of this section for the purpose of conducting archaeological research, excavation, removal, and curation, on behalf of the State or its educational institutions, to such Governor or to such designee as the Governor deems qualified to carry out the intent of this chapter.

(Pub. L. 96-95, §4, Oct. 31, 1979, 93 Stat. 722; Pub. L. 113-287, §5(d)(6), Dec. 19, 2014, 128 Stat. 3264.)

REFERENCES IN TEXT

The Act of June 8, 1906, referred to in subsec. (g)(1), is act June 8, 1906, ch. 3060, 34 Stat. 225, known as the Antiquities Act of 1906, which was classified generally to sections 431, 432, and 433 of this title. The Act was repealed and restated as section 1866(b) of Title 18, Crimes and Criminal Procedure, and sections 320301(a) to (c), 320302, and 320303 of Title 54, National Park Service and Related Programs, by Pub. L. 113-287, §§3, 4(a)(1), 7, Dec. 19, 2014, 128 Stat. 3094, 3260, 3272. For complete classification of this Act to the Code, see Tables. For disposition of former sections of this title, see Disposition Table preceding section 100101 of Title 54.

Following the enactment of this chapter, referred to in subsec. (h)(2), means following the enactment of Pub. L. 96-95, approved Oct. 31, 1979.

AMENDMENTS

2014—Subsec. (h)(1). Pub. L. 113-287, §5(d)(6)(A)(i), substituted “chapter 3203 of title 54” for “the Act of June 8, 1906 (16 U.S.C. 431-433).”

Subsec. (h)(2). Pub. L. 113-287, §5(d)(6)(A)(ii), substituted “chapter 3203 of title 54” for “the Act of June 8, 1906,” in two places.

Subsec. (i). Pub. L. 113-287, §5(d)(6)(B), substituted “section 306108 of title 54” for “section 470f of this title”.

**§ 470dd. Custody of archaeological resources**

The Secretary of the Interior may promulgate regulations providing for—

(1) the exchange, where appropriate, between suitable universities, museums, or other scientific 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 chapter 3125 or chapter 3203 of title 54.

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; Pub. L. 113-287, §5(d)(7), Dec. 19, 2014, 128 Stat. 3264.)

AMENDMENTS

2014—Par. (2). Pub. L. 113-287 substituted “chapter 3125 or chapter 3203 of title 54” for “the Act of June 27, 1960 (16 U.S.C. 469-469c) or the Act of June 8, 1906 (16 U.S.C. 431-433).”

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. Probably should be “archaeological”.