EXAMPLES OF AUTHORITY OF SECRETARY OF AGRICULTURE OR SECRETARY OF THE INTERIOR TO MAKE REGULATIONS:


"THE SECRETARY OF AGRICULTURE SHALL MAKE PROVISIONS FOR THE PROTECTION AGAINST DESTRUCTION BY FIRE AND DEPREDATIONS UPON THE PUBLIC FORESTS AND NATIONAL FORESTS WHICH MAY HAVE BEEN SET ASIDE OR WHICH MAY BE HEREAFTER SET ASIDE ...; AND HE MAY MAKE SUCH RULES AND REGULATIONS AND ESTABLISH SUCH SERVICE AS WILL INSURE THE OBJECTS OF SUCH RESERVATIONS ..." (30 STAT 35; 16 U.S.C. 551)
EXAMPLES OF STATUTES WHICH APPLY ANY PLACE WHERE THEY ARE VIOLATED:

18 USC 111. ASSAULTING, RESISTING, OR IMPEDING CERTAIN OFFICERS OR EMPLOYEES

WHOEVER FORCIBLY ASSAULTS, RESISTS, OPPOSES, IMPedes, INTIMIDATES, OR INTERFERES WITH ANY PERSON DESIGNATED IN SECTION 1114 OF THIS TITLE WHILE ENGAGED IN OR ON ACCOUNT OF THE PERFORMANCE OF HIS OFFICIAL DUTIES, SHALL BE FINED NOT MORE THAN $5,000 OR IMPRISONED NOT MORE THAN THREE YEARS, OR BOTH.

WHOEVER, IN THE COMMISSION OF ANY SUCH ACTS USES A DEADLY OR DANGEROUS WEAPON, SHALL BE FINED NOT MORE THAN $10,000 OR IMPRISONED NOT MORE THAN TEN YEARS, OR BOTH.

EXAMPLES OF OTHER TITLE 18 STATUTES THAT APPLY WHEREVER THEY OCCUR:

18 USC 3 - ACCESSORY AFTER THE COMMISSION OF A FEDERAL FELONY.
18 USC 43 - TRANSPORTATION OF WILDLIFE TAKEN IN VIOLATION OF STATE, NATIONAL OR FOREIGN LAWS.
18 USC 201 - BRIBERY OF PUBLIC OFFICIALS
18 USC 231 - CIVIL DISORDERS
18 USC 241 - CONSPIRACY AGAINST THE RIGHTS OF CITIZENS
18 USC 242 - DEPRIVATION OF RIGHTS UNDER COLOR OF LAW
18 USC 371 - CONSPIRACY
18 USC 471 - COUNTERFEITING AND FORGERY
18 USC 641 - EMBEZZLEMENT AND THEFT OF PUBLIC MONEY, PROPERTY OR RECORDS.
18 USC 711, 714 - UNAUTHORIZED USE OF "SMOKEY BEAR," "WOODSY OWL," AND "JOHNNY HORIZON."
18 USC 872 - EXTORTION BY OFFICIALS OR EMPLOYEES OF THE UNITED STATES.
18 USC 873 - BLACKMAIL
18 USC 924 - FIREARMS PENALTIES
18 USC 1001 - FALSE STATEMENTS ON OFFICIAL DOCUMENTS
18 USC 1114 - KILLING OFFICERS AND EMPLOYEES OF UNITED STATES.
18 USC 1201 - KIDNAPING
18 USC 1202 - RANSOM MONEY
EXAMPLES OF STATUTES THAT SPECIFICALLY APPLY TO CERTAIN DESIGNATED PLACES

18 USC 1856. FIRES LEFT UNATTENDED AND UNEXTINGUISHED

WHOEVER, HAVING KINDLED ..., A FIRE IN OR NEAR ANY FOREST, TIMBER, OR OTHER INFLAMMABLE MATERIAL UPON ANY LANDS OWNED, CONTROLLED OR LEASED BY, OR UNDER THE PARTIAL, CONCURRENT, OR EXCLUSIVE JURISDICTION OF THE UNITED STATES, ..., LEAVES SAID FIRE WITHOUT TOTALLY EXTINGUISHING THE SAME, OR PERMITS OR SUFFERS SAID FIRE TO BURN OR SPREAD BEYOND HIS CONTROL, OR LEAVES OR SUFFERS SAID FIRE TO BURN UNATTENDED, SHALL BE FINED NOT MORE THAN $500 OR IMPRISONED NOT MORE THAN SIX MONTHS, OR BOTH.

EXAMPLES OF OTHER TITLE 18 STATUTES THAT APPLY TO CERTAIN DESIGNATED PLACES

18 USC 41 - HUNTING, FISHING, TRAPPING: DISTURBANCE OR INJURY ON WILDLIFE REFUGES.

18 USC 1852 - CUTTING OR REMOVING TIMBER ON PUBLIC LANDS OF UNITED STATES.

18 USC 1853 - CUTTING OR INJURING TREES ON LAND RESERVED OR PURCHASED BY U.S. OR ANY INDIAN RESERVATION.

18 USC 1854 - TREES BOXED FOR PITCH OR TURPENTINE ON LAND BELONGING TO U.S.

18 USC 1855 - TIMBER SET AFIRE ON PUBLIC DOMAIN OR UPON ANY LANDS OWNED OR LEASED BY U.S.
CATEGORIES OF FEDERAL JURISDICTION

EXCLUSIVE JURISDICTION

WHERE THE FEDERAL GOVERNMENT HAS RECEIVED, BY WHATEVER METHOD, ALL THE AUTHORITY OF THE STATE, WITH NO RESERVATIONS MADE TO THE STATE EXCEPT THE RIGHT TO SERVE PROCESS PAPERS RESULTING FROM ACTIVITIES WHICH OCCURRED OFF THE LAND INVOLVED.

CONCURRENT JURISDICTION

WHERE THE STATE HAS GRANTED AUTHORITY WHICH WOULD OTHERWISE AMOUNT TO EXCLUSIVE JURISDICTION OVER AN AREA BUT THE STATE HAS RESERVED TO ITSELF THE RIGHT TO EXERCISE CONCURRENTLY WITH THE UNITED STATES, ALL STATE AUTHORITY.

PARTIAL JURISDICTION

WHERE THE FEDERAL GOVERNMENT HAS BEEN GRANTED THE RIGHT TO EXERCISE CERTAIN OF THE STATE'S AUTHORITY, WITH THE STATE RESERVING THE RIGHT TO EXERCISE BY ITSELF, OR CONCURRENTLY, OTHER AUTHORITY BEYOND THE MERE RIGHT TO SERVE PROCESS PAPERS (E.G. THE RIGHT TO TAX PRIVATE PROPERTY)

PROPRIETARY JURISDICTION

WHERE THE FEDERAL GOVERNMENT HAS ACQUIRED SOME RIGHT OR TITLE TO AN AREA IN A STATE BUT HAS NOT OBTAINED ANY MEASURE OF THE STATE'S AUTHORITY OVER THE AREA.
18 USC 7: Special Maritime and Territorial Jurisdiction of the United States Defined

The Term "Special Maritime and Territorial Jurisdiction of the United States", as used in this Title includes:...

(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the state in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building...

18 USC 13: Laws of States Adopted for Areas within Federal Jurisdiction

Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in Section 7 of this Title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the state, territory, possession, or district in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.
18 USC 1111. Murder

(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, rape, burglary, or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

Any other murder is murder in the second degree.

(b) Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty of murder in the first degree, shall suffer death unless the jury qualifies its verdict by adding thereto "without capital punishment", in which event he shall be sentenced to imprisonment for life;

Whoever is guilty of murder in the second degree, shall be imprisoned for any term of years or for life.

Other Federal Statutes Limited to Special Territorial and Maritime Jurisdiction of United States:

18 USC 81 - Arson
18 USC 1112 - Manslaughter
18 USC 1113 - Attempted Murder or Manslaughter
18 USC 2031 - Rape
18 USC 2111 - Robbery and Burglary
18 USC 2032 - Carnal Knowledge of a Female Under 16
18 USC 113 - Assaults
18 USC 114 - Maiming
18 USC 661 - Theft
18 USC 662 - Receiving Stolen Property
16 USC 559. Arrests by Employees of Forest Service for Violations of Laws and Regulations

All persons employed in the Forest Service of the United States shall have authority to make arrests for the violation of the laws and regulations relating to the national forests, and any person so arrested shall be taken before the nearest United States magistrate within whose jurisdiction the forest is located, for trial; and upon sworn information by any competent person any United States magistrate in the proper jurisdiction shall issue process for the arrest of any person charged with the violation of said laws and regulations; but nothing herein contained shall be construed as preventing the arrest by any officer of the United States, without process, of any person taken in the act of violating said laws and regulations.

STATUTES WHICH MAY BE ENFORCED, INCLUDING ARREST, IF VIOLATION RELATES TO PROPERTY RESOURCES OR ADMINISTRATION OF THE NATIONAL FORESTS:

18 USC  3  Accessory After the Fact

111  Assaulting, Resisting or Impeding Federal officers

201  Bribery of Public Officials and Witnesses

287  False, Fictitious, or Fraudulent Claims

371  Conspiracy to Commit Offense or to Defraud U.S.

372  Conspiracy to Impede or Injure Officer

641  Public Money, Property, or Records

701  Official Badges, Identification Cards, etc.

912  Pretending to be an Officer or Employee of U.S.

913  Impersonator making Arrest or Search

1001  False Statements or Entries

1301-62  Malicious Mischief

1501-03-05-10  Obstruction of Justice

1621  Perjury

1851, 52, 53, 55, 57, 58, '59, 63  Public Lands, (Crimes)

2101  Riots

2112  Robbery of Personal Property of U.S.

2231  Assault or Resistance

16 USC 433  American Antiquities

470(cc)  Archeological Resources Protection Act

1338  Wild Horses and Burros
16 U.S.C. 1a-6. Law Enforcement Personnel within National Park System

(a) Designation Authority of Secretary; Powers and Duties of Designees

In addition to any other authority conferred by law, the Secretary of the Interior is authorized to designate, pursuant to standards prescribed in regulations by the Secretary, certain officers or employees of the Department of the Interior who shall maintain law and order and protect persons and property within areas of the National Park System. In the performance of such duties, the officers or employees, so designated, may -

(1) carry firearms and make arrests without warrant for any offense against the United States committed in his presence, or for any felony cognizable under the laws of the United States if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony, provided such arrests occur within that system or the person to be arrested is fleeing therefrom to avoid arrest;

(2) execute any warrant or other process issued by a court or officer of competent jurisdiction for the enforcement of the provisions of any Federal law or regulation issued pursuant to law arising out of an offense committed in that system or, where the person subject to the warrant or process is in that system, in connection with any Federal offense; and

(3) conduct investigations of offenses against the United States committed in that system in the absence of investigation thereof by any other Federal law enforcement agency having investigative jurisdiction over the offense committed or with the concurrence of such other agency.
4.3 Authority

The Secretary of the Interior delegates enforcement authority through the Director to enforce all Fish and Wildlife administered acts to Special Agents, other Fish and Wildlife Service enforcement officers and Deputy Game Wardens.

A. Special Agents: The responsibilities and policy restrictions imposed upon Special Agents are defined in LE Manual and LE Memoranda.

(1) Authorities:

Assault Act 18 U.S.C. 111
Eagle Protection Act 16 U.S.C. 668-668d
Black Bass Act 16 U.S.C. 851-856
Lacey Act 18 U.S.C. 42-44
National Wildlife Refuge System Administration Act 16 U.S.C. 668dd-668ee
Migratory Bird Treaty Act 16 U.S.C. 703-711
Upper Mississippi River Wild Life and Fish Refuge Act 16 U.S.C. 721-731
Bear River Migratory Bird Refuge Act 16 U.S.C. 690-690h
Fish and Wildlife Recreation Act 16 U.S.C. 46ok
Airborne Hunting Act 16 U.S.C. 742j-1
Tariff Classification Act 19 U.S.C. 1202

B. Refuge Officers: Refuge Officers are authorized to protect Service property and enforce wildlife and public use laws and regulations in localized areas or as directed. However, some of the wildlife acts are extremely complex and require extensive investigation. For that reason, refuge officers are generally limited to enforcement of the following acts and regulations within the confines of the Service lands involved and, the immediate vicinity thereof, unless specifically authorized by the Regional Director.

(1) Authorities:

Migratory Bird Hunting and Conversation Stamp Act 16 U.S.C. 718-718h
Bald Eagle Protection Act - 16 U.S.C. 668-668d
Airborne Hunting Act - 16 U.S.C. 742j-i
Endangered Species Act - 16 U.S.C. 1531-1543

C. Law Enforcement Officers - Fish Hatcheries:
Designated hatchery personnel are authorized to protect service property and enforce fish and wildlife laws and regulations in localized areas as directed. They will be limited to enforcement of the following regulations: 50 CFR 26, 27, 70 and 71.

Prior authority will be secured from the Regional Director with approval from the SAC to enforce any other Fish and Wildlife acts. This does not preclude refuge officers from undertaking preliminary investigations on violations of other acts that they encounter in their localized areas. However, in all such cases, discretion should be exercised and information referred directly to the Special Agent in Charge for guidance.

4.4 Enforcement Procedures

A. Federal Government Employees: No additional authorization is necessary to arrest for alleged violations of laws and regulations under FWS jurisdiction committed by Federal officials or employees. For guidelines regarding violations committed by Service employees, if time is not of the essence, instructions should be received from the SAC. The same is true for guidelines regarding violations by military personnel.

The Washington Office (LE) is to be notified through the SAC when an arrest is made of any employee of the Federal Government so that office can advise the employee's agency and the Department of Justice, if appropriate (28 U.S.C. 535).

B. State and Local Government Employees: No additional authorization is necessary to arrest or apprehend for alleged violations of laws or regulations under Fish and Wildlife Service jurisdiction committed by State or local government officials or employees.

Upon issuing a Violation Notice to or arrest of any senior political official, the Regional Manager and the SAC or SA in the area should be notified as soon as possible. The same is true when a senior political official of a State or local government or any employee of the State game and fish department is apprehended or arrested. (See 14.4 for policy on Serious Incident Reporting).

USFWS
SAMPLE STATE CITIZEN'S ARREST STATUTES


Arrest by Private Person—Allowed to:

(1) when a person to be arrested has in his presence committed a misdemeanor amounting to a breach of the peace or a felony.

(2) when a felony has been in fact committed and he has reasonable ground to believe that the person to be arrested has committed it.

California General Laws Annotated. PC 837 (Deering 1971)

A private person may arrest another:

(1) for a public offense committed or attempted in his presence.

(2) when the person arrested has committed a felony, although not in his presence.

Consolidated Laws of New York. CPL 140.30 (McKinney 1971)

...Any person may arrest another person (a) for a felony when the latter has in fact committed such felony, and (b) for any offense when the latter has in fact committed such offense in his presence.

General Statutes of North Carolina. 15A-404 (1973)

No private person may arrest another except when requested to assist law enforcement officers in effecting arrest. A private person may detain another person when he has probable cause to believe that the person detained has committed in his presence:

(1) a felony,

(2) a breach of the peace,

(3) a crime involving physical injury to another person, or

(4) A crime involving theft or destruction of property.
14. **Arrest Without a Warrant**

The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on a warrant.
36 CFR 1.3: Penalties

(a) Any person convicted of violating any provision of the regulations contained in Parts 1 through 7 of this chapter, or as the same may be amended or supplemented, within any park area not embraced in paragraphs (b) or (c) of this section, shall be punished by a fine not exceeding $500 or by imprisonment not exceeding 6 months, or both, and shall be adjudged to pay all costs of the proceedings. (16 U.S.C. 3)

(b) Any person who knowingly and willfully violates any provision of the regulations contained in Parts 1 through 7 of this chapter, or as the same may be amended or supplemented, within any of the national military parks, battlefield sites, national monuments, or miscellaneous memorials transferred to the jurisdiction of the Secretary of the Interior from that of the Secretary of War by Executive Order No. 6166, June 10, 1933, and enumerated in Executive Order No. 6228, July 28, 1933, shall be punished upon conviction thereof by a fine of not more than $100, or by imprisonment for not more than 3 months, or by both. (16 U.S.C. 9a)

(c) Any person convicted of violating any provision of the regulations contained in Parts 1 through 7 of this chapter, or as the same may be amended or supplemented within any park area established pursuant to the Act of August 21, 1935 (49 Stat., 666), shall be punished by a fine of not more than $500 and shall be adjudged to pay all costs of the proceedings. (16 U.S.C. 462)

16 U.S.C. 551: Protection of national forests; rules and regulations

The Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon the public forests and national forests which may have been set aside or which may be hereafter set aside under the provisions of section 471 of this title, and which may be continued; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction; and any violation of the provisions of this section, sections 473 to 478 and 479 to 482 of this title or such rules and regulations shall be punished by a fine of not more than $500 or imprisonment for not more than six months, or both. Any person charged with the violation of such rules and regulations may be tried and sentenced by any United States magistrate specially designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401(b) to (3) of title 18.
LACEY ACT

18 USC 42
18 USC 43
18 USC 44

18 USC 42 Importation or Shipment of injurious mammals, birds, fish, (including mollusks and crustacea), amphibia, and reptiles; permits, specimens for museums, regulations.

1. Importation prohibited
   (a) Mongoose
   (b) "Flying foxes" or fruit bats

2. Wild mammals, wild birds, fish (crustacea and mollusks), amphibians, reptiles or egg or offspring.
   (a) Prohibited by secretary
   (b) If injurious
   (c) Agriculture, Horticulture, Forestry
   (d) Wildlife or Wildlife Resources

3. Wild
   (a) Creatures - in wild state or captivity

4. Wildlife or Wildlife Resources.
   (a) All inclusive

5. Permits
   (a) Responsibility
   (b) Zoological
   (c) Educational
   (d) Medicinal
   (e) Scientific

6. Importation of Dead Specimens not restricted.

7. Penalty
   (a) Not more than $500.00
   (b) Not more than 6 months
   (c) or both

18 USC 43 - Transportation of Wildlife taken in violation of state, national, or foreign laws; receipt; making false records.

1. Any person who -
   (a) Deliver, carries, transports, ships by any means
   (b) Causes to be delivered, carried, transported, shipped
   (c) For commercial or noncommercial purposes
   (d) Sells or causes to be sold any wildlife taken, transported
   (e) Or sold in any manner
   (f) In violation of Act of Congress or regulation
2. Interstate or foreign commerce
   (a) Violation of any law or regulation of any state or foreign country.
3. Products manufactured, made or processed from any wildlife taken (Congress) (State or foreign country).
4. Purchased or received a false record account, label or identification.
5. Civil Penalty
   (a) Knowingly violates or in the exercise or due care, should know
   (b) $5,000.00 each violation
6. Criminal Provision
   (a) Knowingly and willfully violates
   (b) $10,000.00 - 1 year - or both

18 USC 44 Marking packages or containers

1. Whoever -
   (a) Ships, transports, carries, brings or conveys
   (b) In interstate or foreign commerce
   (c) Wild mammal, wild bird, amphibian, reptile, mollusk, crustacean - dead body parts or eggs.
   (d) Without plainly marking, labeling or tagging such package.
   (e) Name and address of shipper and receiver
   (f) Contents - number and kind
2. Migratory Birds (Treaty)
3. Furs, hides, skins
4. Penalty - $500.00 - 6 months - or both
5. Symbol instead of label authorized by secretary.
MIGRATORY BIRD TREATY ACT
16 U.S.C. 703 - 11

1. General Information and Background
a. Treaty between U.S. and Great Britian (for Canada) in 1916 - MBTA passed in 1918. Mexico was added as a party in 1936. Since then, treaties have been concluded with Japan (1972) and Russia (1976).
b. "Strict Liability Offense" - No intent required.
c. MBTA is the source of waterfowl hunting regulations, seasons etc. - falconry regulations (50 CFR 20.1 - 20.143)
d. Penalties - $500.00 and/or 6 months; if taken with intent to sell, barter or offer to barter -- $2000.00 and/or two years.

2. The Act in Pertinent Part

Unless and except as permitted by regulations...it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill,...possess, offer for sale, sell...purchase...ship, export, import,...transport or cause to be transported,...any migratory bird, any part, nest, or eggs of any such bird, or any product,...of any such bird or any part, nest or egg thereof, included in the terms of the conventions between the United States and Great Britian, ... the United Mexican States... Japan and ...Russia.

a. Migratory Birds Protected (50 CFR 10.13) --includes almost all native North American birds. Exotic species have been excluded from coverage and some nonmigratory birds such as prairie chickens and turkeys, have been omitted from the protected list. Eagles and hawkes are included. Birds raised in captivity are included.

b. Take means pursue, hunt, shoot, wound, kill, trap, capture or collect and any attempt to do so. Many unsporting means of hunting are banned. Hunters can use only certain types of guns and shot and cannot use aids such as sinkboxes, motor vehicles, bait or recorded bird calls.
c. Possession means the detention and control or the manual or ideal custody of anything which may be the subject of property, for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name.

3. Arrests; Search Warrants (16 U.S.C. 706)

"Any employee of the Department of the Interior authorized...to enforce (MBTA)...shall have power, without warrant, to arrest any person committing a violation...in his presence or view...; shall have power to execute any warrant for the enforcement of the (MBTA)...; and shall have authority, with a search warrant, to search any place..."


"All guns, traps, nets and other equipment, vessels, vehicles and other means of transportation used by any person when engaged in (violating the MBTA)... shall be forfeited to the United States and may be seized and held pending the prosecution of any person arrested for violating said (MBTA) and upon conviction..., such forfeiture shall be adjudicated as a penalty...Such forfeited property shall be disposed of and accounted for by and under the authority of the Secretary of the Interior."
OUTLINE
EAGLE ACT

16 USC 668 Bald and Golden Eagles - Prohibited acts; criminal penalties.

668.
1. Bald Eagle protected June 8, 1940.
2. Golden Eagle protected October 24, 1962
3. Whoever -
   (a) Shall knowingly, or with wanton disregard for the consequences of his act.
   (b) Take, possess, sell, purchase, barter, transport, import, export.
   (c) Penalty - $5000.00 - 1 year - or both.
   (d) Subsequent conviction after October 23, 1972 - $10,000 - 2 years - or both.
4. "Citizen reward"
   (a) One half of fine not to exceed $2,500.00 if information leads to conviction.
5. Possession and transportation not prohibited if taken prior to protection dates.

Civil Penalties
1. Whoever -
   (a) Take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export
   (b) Any time in any manner
Penalty - $5,000.00 - each offense

668a.
1. Secretary authorized to permit taking, possession, transportation.
   (a) Scientific or exhibition
   (b) Public museums, scientific societies, zoological parks
   (c) Indian Tribes
2. Request of Governor of State
   (a) Depredation
   (b) Falconry

668b.
1. Department employee - may arrest without warrant
   (a) May execute warrant
   (b) May with or without a warrant search any place
2. Forfeiture
   (a) Eagles
   (b) Equipment
   (c) Vehicles

668c.
1. Whoever - Associations, partnerships, corporations.
2. Take - pursue, shoot, shoot at, poison, wound, kill capture, trap, collect, molest, disturb.
3. Transport - ship, convey, carry or transport.
PUBLIC LAW 96-95—OCT. 31, 1979

An Act

To protect archaeological resources on public lands and Indian lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the “Archaeological Resources Protection Act of 1979”.

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

1. archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation’s heritage;
2. these resources are increasingly endangered because of their commercial attractiveness;
3. existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and
4. there is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this Act 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, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act.

DEFINITIONS

SEC. 3. As used in this Act—

1. The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination 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 an 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 Act 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).

(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.

EXCAVATION AND REMOVAL

Sec. 4. (a) 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 Act, 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) A permit may be issued pursuant to an application under subsection (a) if the Federal land manager determines, pursuant to uniform regulations under this Act, 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) 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 9.

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

(e) 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 Act and other law applicable to the permitted activity.

(f) 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 6. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 7 against the permittee or upon the permittee's conviction under section 6.

(g)(1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431), 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 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)(1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 431-433), for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906, shall remain in effect according to its terms and conditions following the enactment of this Act. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before the date of the enactment of this Act which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.
(i) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 917, 16 U.S.C. 470f).

(j) 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 Act.

CUSTODY OF RESOURCES

SEC. 5. 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 Act, 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) 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 Act.

PROHIBITED ACTS AND CRIMINAL PENALTIES

SEC. 6. (a) No person may 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 4, a permit referred to in section 4(h)(2), or the exemption contained in section 4(g)(1).

(b) 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), or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) 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) 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 $5,000, such person shall be fined not more than $20,000 or impris-
onen 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) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

(f) 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 the date of the enactment of this Act.

(g) 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.

CIVIL PENALTIES

SEC. 7. (a)(1) Any person who violates any prohibition contained in an applicable regulation or permit issued under this Act 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 Act, 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)(1) Any person aggrieved by an order assessing a civil penalty under subsection (a) 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 held during proceedings for the assessment of civil penalties authorized by subsection (a) shall be conducted in accordance with section 554 of title 5 of the United States Code. The Federal land manager may issue subpenas 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 subpena 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.

REWARDS; FORFEITURE

SEC. 8. (a) 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 6 and 7 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) All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 6 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 6,
(2) assessment of a civil penalty against such person under section 7 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) In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 6 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 7 and for the transfer to such Indian or Indian tribe of all items forfeited under this section.

16 USC 470gg.
CONFIDENTIALITY

Sec. 9. (a) Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 of the United States Code or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

(1) further the purposes of this Act or the Act of June 27, 1960 (16 U.S.C. 469-469c), and

(2) not create a risk of harm to such resources or to the site at which such resources are located.

(b) Notwithstanding the provisions of subsection (a), upon the written request of the Governor of any State, which request shall state—

(1) the specific site or area for which information is sought,

(2) the purpose for which such information is sought,

(3) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation,

the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor.

REGULATIONS; INTERGOVERNMENTAL COORDINATION

Sec. 10. (a) The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). Each uniform rule or regulation promulgated under this Act shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives, and no such uniform rule or regulation may take effect before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

COOPERATION WITH PRIVATE INDIVIDUALS

Sec. 11. The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this Act, to foster and improve the communication, cooperation, and exchange of information between—

(1) private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act, and

(2) Federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and
professional archaeologists and associations of professional archaeologists.

In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this Act, make efforts to expand the archaeological data base for the archaeological resources of the United States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations.

SAVINGS PROVISIONS

16 USC 470kk.

Sec. 12. (a) Nothing in this Act shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

(b) Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock, coin, bullet, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 3(1).

(c) Nothing in this Act shall be construed to affect any land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land.

REPORT

16 USC 470ll.

Sec. 13. As part of the annual report required to be submitted to the specified committees of the Congress pursuant to section 5(c) of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469-469a), the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this Act, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this Act. Such report shall include a brief summary of the actions undertaken by the Secretary under section 11 of this Act, relating to cooperation with private individuals.


LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-311 (Comm. on Interior and Insular Affairs).
SENATE REPORT No. 96-179 accompanying S. 490 (Comm. on Energy and Natural Resources).
CONGRESSIONAL RECORD, Vol. 125 (1979):
    July 9, considered and passed House.
    July 30, considered and passed Senate, amended, in lieu of S. 490.
    Oct. 12, House agreed to Senate amendments with an amendment.
    Oct. 17, Senate concurred in House amendment.
Part XX

Department of Interior

Heritage Conservation and Recreation Service

Archaeological Resources Protection Act of 1979; Proposed Uniform Rulemaking and Notice of Public Hearings
DEPARTMENT OF THE INTERIOR
Heritage Conservation and Recreation Service

36 CFR Part 1215

Archaeological Resources Protection Act of 1979; Proposed Uniform Rulemaking and Notice of Public Hearings

AGENCY: Heritage Conservation and Recreation Service, Department of the Interior.

ACTION: Proposed Rulemaking and Notice of Public Hearings.

SUMMARY: This proposed uniform rulemaking, implementing the provisions of the Archaeological Resources Protection Act of October 31, 1979 (Public Law 96-95), is in response to Section 10(a) of the Act. This uniform rulemaking will serve as the foundation and basic policy standard for additional regulations which Departments and independent agencies may promulgate pursuant to Section 10(b) of the Act.

DATES: Written comments are invited and should be submitted on or before March 20, 1981. Participation is invited at public hearings to be held February 7, 1981; February 14, 1981; February 21, 1981; February 28, 1981; March 7, 1981; and March 14, 1981. See Supplementary Information below for details.

ADDRESSES: Written comments should be forwarded to the Director, Heritage Conservation and Recreation Service, Department of the Interior, CODE: W5T2, Washington, D.C. 20243. Public hearings will be held in Albuquerque, New Mexico; Anchorage, Alaska; San Francisco, California; Denver, Colorado; Chicago, Illinois; and Atlanta, Georgia. See Supplementary Information below for details.


SUPPLEMENTARY INFORMATION: The public is invited to submit written comments on the proposed rulemaking. Comments should include the name and address of the person making the submission, should identify the specific section(s) and/or paragraph(s) commented on, should state reasons for the comments and, where appropriate, suggest an alternative approach.

Public Hearings

Public hearings were held during March and April 1980, in Denver, Colorado; Phoenix, Arizona; Portland, Oregon; and Knoxville, Tennessee, following publication of a notice of public hearings in the March 19, 1980, issue of the Federal Register (45 FR 17622). These public hearings were held to provide an opportunity for early public input into the rulemaking process and to initiate an early dialogue among various groups interested in the use and/or protection and conservation of archeological resources. Six additional hearings will be held during the comment period on the proposed rules according to the following schedule:

University of Illinois, Chicago, Circle Campus, Room 509-10, 750 South Halstead Street.
Host: National Park Service, Department of the Interior.

Atlanta, Georgia—February 14, 1981.
Marriott Hotel, Courtland and International Blvd., N.E.
Host: Department of the Army, Department of Defense.

Albuquerque, New Mexico—February 21, 1981. Southwestern Indian Polytechnical Institute, 9189 Coors Road, N.W.
Host: Bureau of Indian Affairs, Department of the Interior.

Host: Department of the Army, Department of Defense.

Anchorage, Alaska—March 7, 1981.
Main Auditorium, 1011 E. Tudor Road.
Host: Fish and Wildlife Service, Department of the Interior.

Denver, Colorado—March 14, 1981.
Lecture Hall, Building No. 25, Denver Federal Center, West 6th and Kipling Streets.
Host: Water and Power Resources Service, Department of the Interior.

All six hearings are scheduled on Saturdays in order to provide ample opportunity for maximum public participation. All hearings are scheduled to begin at 10 a.m. and conclude by 4 p.m. Host agencies will provide local arrangements, including meeting space for a minimum of 100 persons and recording facilities, at each hearing. Charles M. McKinney, Manager, Federal Antiquities Program [Chairman, Interagency Rulemaking Task Force] will serve as the principal hearings officer, and a representative from the host agency or bureau will serve as co-hearing officer for each hearing.

Background

The Archaeological Resources Protection Act of 1979 ("the Act") has two fundamental purposes: to protect irreplaceable archeological resources on public lands and Indian lands which are subject to loss or destruction from the actions of persons who would excavate, remove, damage, alter, or deface them for commercial or personal reasons; and to increase communication and exchange of information among governmental authorities, the professional archeological community, Native Americans, collectors, and the general public toward the goal of protecting and conserving archeological resources nationwide.

Provisions of the Act which address the first purpose, protection, include requirements for a permit, issued by the appropriate Federal land manager, for any qualified person who would make use of archeological resources for the purpose of furthering archeological knowledge in the public interest. For any person who would make unpermitted (unauthorized) use of archeological resources, criminal and civil penalty and forfeiture provisions are prescribed in the Act. Basic governmentwide standards for the issuance of permits and for the implementation of penalty provisions are a principal focus of the proposed uniform regulations.

The Act directs that certain of its provisions are to be implemented through actions of the Secretary of the Interior. For this reason, a section of the proposed uniform regulations has been reserved to allow for future incorporation of regulations to provide guidance for cooperation with private individuals. These will be promulgated by the Secretary of the Interior and will be applicable to all Federal land managers.

Section 10(a) of the Act calls for uniform regulations to be written by the Secretaries of the Interior, Defense, Agriculture, and the Chairman of the Board of the Tennessee Valley Authority, as may be appropriate to carry out the purposes of the Act. Specific reference to uniform regulations is also included in section 3(l) (definition of "archaeological resource"), section 4(e) (permit application requirements), section 4(b) (standards for permit application evaluation), section 4(d) (permit terms and conditions), and section 10(b) (agency-specific regulations consistent with uniform regulations). The proposed rulemaking is...
not limited to provisions of the Act where uniform regulations are specified. In order to meet the responsibility of carrying out the purposes of the Act and to insure the required governmentwide consistency, it is also necessary to provide a basic framework for those provisions of the Act which will be more fully implemented by separate rulemaking by individual agencies. In addition, it is important for the general public to be able to look to a single document for guidance regarding prohibited and permitted activities. Therefore, this proposed rulemaking provides general, and where appropriate, specific, procedures and guidelines covering all aspects of protecting archeological resources under the Act. Where guidelines are minimal or general, it is anticipated that agencies will establish their own agency-specific procedures through promulgation of further regulations and manuals within the scope and intent of these uniform regulations.

Major issues

The Act and this proposed uniform rulemaking revolve around three major areas of concern: the definition of the term "archaeological resource"; the development of a permitting system to allow for the scientific excavation and removal of archeological resources from public lands and Indian lands; and the delineation of criminal and civil prohibitions and penalties.

1. Scope of the term "archaeological resource":

Public participation preparatory to the drafting of this proposed rulemaking revealed a high level of concern on the part of hobbyists who collect a variety of items which might be considered "archaeological resources." Concern is centered on section 3(1) of the Act which defines "archaeological resources," sections 6(g) and 7(a)(3) which exempt removal of arrowheads located on the surface of the ground from criminal and civil penalties under the Act, and section 12(b) which exempts collection of any rock, coin, bullet, or mineral which is not an archeological resource from all provisions of the Act.

Section 3(1) of the Act requires that uniform regulations expand the Act's definition of "archaeological resource" by determining what constitutes "archaeological interest," by including the examples of objects listed in the Act in a more comprehensive listing, and by excluding non-archaeological paleontological specimens and items less than 100 years of age. The definition in § 1215 3(a) of the proposed rulemaking meets these requirements with an eye toward accommodating the extremely broad range of archeological resources that might be found on any of the various public lands and Indian lands as defined in the Act. The definition has to be able to account for archeological resources found throughout the coterminus United States, Alaska and Hawaii, and on islands of the Caribbean and the western Pacific. The proposed solution to this problem was found in a reasonably brief list of general classes of material remains which can be archeological resources. Where needed, the class is followed by a list of illustrative examples. It is intended that any archeological specimen will be found to fit clearly and without question somewhere among the classes of material remains. During the comment period, archeologists are encouraged to test this part of the definition against archeological resources known by them to occur in various parts of the large area covered by the Act.

Some early public suggestions were directed toward defining, for the benefit of collectors, what is not an archeological resource. Comments suggested that the definition should state that only Indian materials from the prehistoric period should be considered archeological resources, and items such as coins, bullets, bottles, rocks, mine specimens, and surface arrowheads should be given blanket exclusion from protection. These suggestions have been rejected on the basis that the field of archeology is not confined to the study of prehistoric Indian cultural remains and that items suggested for complete exclusion may be archeological resources which the Act was intended to protect.

It was determined that a preferable approach was to provide a flexible test for determining whether or not such items should be included. Thus, a key concept in defining archeological resources relates to whether or not the material remains in question are of "archeological interest".

Material remains are of "archeological interest" under the proposed rulemaking if, through their scientific study and analysis, information or knowledge can be obtained concerning past human life or activities. This definition is intended to incorporate the varied archeological techniques applicable to the study of material remains without resorting to a highly technical listing or description of such techniques. Whether or not an item is of archeological interest should, despite the intricacies of archeological scientific methods, be a matter of common understanding. Thus, for example, most objects of prehistoric periods are clearly of archeological interest since the application of archeological techniques to these remains may provide information pertaining to methods of manufacture, levels of technological sophistication or levels of subsistence. Moreover, the location and context of such items may be of great value to an archeologist in determining whether or not a scientific item is intrusive in the site.

Conversely, historic non-native products of industrial manufacture such as coins, bullets and bottles have little intrinsic archeological value and, if found in isolation, would generally not be of archeological interest under the definition. However, if found in the context of other material remains of archeological interest, such items may be of great value for establishing the minimum age of associated materials, for demonstrating cultural contact, for determining the function of a site now in ruin, for providing new data about historic cultures and people, or for other purposes of archeological inquiry. It is thus incumbent upon the potential collector of such items to determine whether or not a given item might be considered of archeological interest; if so, it should be left in place and, in the spirit of cooperation, reported to the Federal land manager.

With regard to arrowheads located on the surface of the ground, the Act and the legislative history (e.g., 125 CRS 14722 Oct. 17, 1979) make it clear that criminal and civil penalties under the Act are not to be imposed for their removal. However, arrowheads are archeological resources. Their removal without a permit is in violation of prohibitions in the Act and the proposed regulations; and they remain the property of the United States or the Indian individual or Indian tribe when found on public lands or Indian lands, respectively.

It should be noted that the definition of "archeological resource" in this proposal is not the sole criterion for whether or not items on public or Indian lands can be the object of personal collection. There are other statutes and regulations governing the use of public lands which may prohibit such collection notwithstanding the fact that the items are not archeological resources. For example, nothing in the Act or this proposal addresses the use of metal detectors on public lands and Indian lands. However, as stated in the legislative history (125 CRS 14722, Oct. 17, 1979), the Act does not change existing law, regulations, or policy with regard to metal detectors.

2. Permitting system.
Section 4 of the act provides for the permitted use of archeological resources on public lands and Indian lands. It provides for the Federal land to issue permits to qualified persons for the excavation and removal of archeological resources, and for related activities. The Act addresses several areas relating to the issuance of permits, including: minimal application content (section 4(a)); permit issuance (section 4(b)); consideration of Indian religious and cultural concerns prior to issuance of a permit (section 4(c)); specification of terms and conditions of permits (section 4(d)); suspension of permits (section 4(f)); and others. This proposed uniform rulemaking addresses and expands on each of these areas. It attempts to provide a logical and comprehensive framework for Federal land managers to follow in providing, through the issuance of permits, for the scientific use of archeological resources on public lands and Indian lands. While this proposed uniform rulemaking provides the overall procedures and guidelines to be followed by Federal land managers and potential permittees, it is expected that, where appropriate, agencies will develop agency-specific procedures, guidelines, and administrative processes, through regulations and manuals, in order to effectively manage the permitted use of archeological resources under their immediate jurisdiction. For example, section 1215.9 of this proposed uniform rulemaking specifies certain terms and conditions which Federal land managers must include in any permit issued for the excavation or removal of archeological resources on public lands and Indian lands. In addition, paragraph (b) § 1215.9 allows the Federal land manager to define and attach to a permit such terms and conditions as may be necessary to protect other values and resources and for other purposes. This allows the Federal land manager to custom tailor the terms and conditions of a permit to meet particular requirements and circumstances of the area(s) under his/her jurisdiction, as long as they are consistent with the uniform rules and regulations.

Section 10(a) of the Act requires that this uniform rulemaking be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (42 U.S.C. 1996). The Act further requires in Section 4(c) that if a permit issued by a Federal land manager may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, then the Federal land manager shall notify any Indian tribe that may consider the site as having religious or cultural importance before issuing a permit. The purpose of Section 1215.8 of the proposed rulemaking then is to assist the Federal land manager in identifying sites that Indian tribes may consider to be of religious or cultural importance in order to facilitate the notification process under Section 4(c) of the Act and to insure that Federal agencies fulfill the policy of the American Indian Religious Freedom Act to protect and preserve for American Indians their right to freedom to believe, express, and exercise their traditional religions.

The proposed uniform rulemaking provides basic procedures and guidelines to be followed by Federal land managers when considering an application for a permit. In general, the process involves the notification of Indian tribes or groups who are in proximity to the area in question or who have expressed religious or cultural interest in the areas where archeological work is proposed to be conducted. For purposes of determining which groups constitute a bona fide tribe within the intended meaning of the Act, the regulations incorporate the Federal recognition and acknowledgement procedures adopted by the Department of the Interior. Any group that has pending a petition for acknowledgement is entitled to notice under the proposal. It is incumbent upon the Federal land manager to give due consideration to the interests and concerns expressed by any tribe or group which responds to the notification, or any group which comes forward prior to permit issuance. Neither the Act nor this proposal require that religious or cultural concerns prevail over other interests. However, the Federal land manager should make efforts to accommodate such concerns where appropriate. It should be noted that paragraph (h) of Section 1215.8 allows for the consideration of all present day or traditional religious practices, not merely the religious practices of Indian tribes or groups. This extension of the Act’s mandate was incorporated to avoid constitutional questions arising from the consideration of only one set of religious beliefs.

As provided in the Act and this proposed uniform rulemaking, permits are required for the excavation and removal of archeological resources from public and Indian lands. The term “archeological resources” in this statement refers to archeological resources as defined by the Act and the uniform regulations. Archeological activities on public and Indian lands not covered by the Act or the uniform regulations may require permitting under other authorities. For example, archeological activities involving resources less than 100 years of age, which includes a significant portion of the Euroamerican cultural heritage of this Nation, may require a permit under other authorities. Federal land managers should be aware that in addition to this Act, other existing secondary legislation and executive orders impose additional responsibilities for the protection of archeological resources on public lands and Indian lands.

3. Civil Penalties.

1215.18 Assessment of Civil Penalties

This section provides the structural framework for the procedures to be followed in assessing civil penalties. The procedures retain a great deal of flexibility in order to allow agencies to use the civil penalty in a variety of circumstances. Some agencies, for example, may be confronted with numerous violations of a minor nature, where the damage is minimal and the violations often committed unintentionally. Other agencies may be confronted with violations which involve significant resource damage, although there are fewer such occurrences. Civil penalties may be an appropriate enforcement tool in either of these situations. Individual agencies may seek to further refine the procedural outlines provided by these regulations if and when the use to which these penalties will be made becomes somewhat routinized.

If the Federal land manager has reason to believe that a person has violated the act, the regulations, or a term or condition of a permit, a notice of violation must be issued. If assessment of a civil penalty is not contemplated. This can happen when minor, inadvertent violations occur in which imposition of a civil penalty could be viewed as overly harsh. However, if the Federal land manager determines to perform an effective means of educating the public about the need for diligent protection of archeological resources. The Federal land manager may also forego the civil penalty process when criminal prosecution for an offense is being undertaken. The notice of violation should be issued, nevertheless, for purposes of not foreclosing subsequent civil penalty proceedings. If the Federal land manager determines that a civil penalty may be appropriate, a notice of assessment must be served upon the persons charged with a violation. Because the amount of a civil penalty is statutorily limited by the amount of “damage” done to the archeological resources involved, a
1215.19 Civil Penalty Amounts

Determination of civil penalty amounts has been set primarily in a variable format rather than a schedule of fixed penalty amounts or a fixed formula for arriving at the penalty amount. Because the amount of damage can vary extensively for similar violations, it was not deemed practical to predetermine fixed penalty amounts. However, should an agency find that it is confronted with numerous violations with minimal damage to archeological resources, it may wish to establish, by agency specific regulations, one or more small fixed penalty amounts. This would ease the administrative burden associated with individualized penalties. Section 1215.19 provides the framework for such a scheme.

The first step in determining the maximum penalty under §1215.19(a). Under the Act, no civil penalty can exceed double the cost of restoration and repair of the archeological resources and archeological sites damaged, plus double the fair market value of resources destroyed or not recovered. This includes cases of second or subsequent offenses, which may be double the penalty for a first violation. To simplify the distinction between first and subsequent offenses, the maximum penalty for a first violation under the regulations is simply the full cost of restoration and repair of resources damaged plus the fair market value of resources destroyed or not recovered. The maximum penalty for a subsequent violation is double that amount.

Where an agency wishes to establish fixed penalty amounts, such fixed penalty amounts would have to avoid exceeding the damage done. The premise underlying the selection of the amount would be that any violation to which this fixed penalty would be applicable would incur some minimum cost of restoration and repair due to disturbance of a site. The fixed penalty amount must stay within this minimum cost.

Once the maximum penalty amount has been determined, the agency may mitigate that amount based upon the factors enumerated in Section 1215.19(b). The mitigation process is discretionary and conceived as an individualized process. Should an agency find that there are sufficiently similar types of violations and/or violators to warrant a more standardized procedure, it may wish to set out with greater specificity the manner in which various factors should affect the mitigation process.

Although civil penalties can be imposed upon a person who unknowingly commits a violation, the legislative history of the Act indicates an intent by Congress that the civil penalty provisions not be used to harass citizens who are legally upon public lands, engaging in otherwise lawful activities, but who inadvertently damage archeological resources. For example, should a mining claimant, in the process of working his claim, inadvertently excavate archeological resources whose existence were heretofore unknown, the imposition of a civil penalty would be inappropriate, providing the claimant did not retain any objects and ceased to do further damage once it became clear to him that archeological resources were involved. However, where an individual is unlawfully upon the public land or engaged in otherwise prohibited activities, a civil penalty under the Act could be appropriate even when the violation of the Act itself was not intentional, if archeological resources were taken or damaged. In general, the Federal land managers should exercise their authority to mitigate or remit a civil penalty with a view toward fairness. It is also important, however, that the public be made aware of the fact that archeological resources are irreplaceable and that the public lands may no longer be a source for private collections.

It should be noted that arrowheads are defined as an archeological resource under the Act if they are at least 100 years of age. In recognition of the widespread popularity of collecting arrowheads, the Congress has determined that neither criminal nor civil penalties under the Act shall be imposed upon a person for the removal of arrowheads located on the surface of the ground. However, this should not be interpreted as sanctioning their removal from public lands, since they continue to be archeological resources and therefore public property under the authority of the Act. It should also be noted that in certain categories of reserved public lands (such as lands of the National Park and the National Forest Systems) the removal of arrowheads and other artifacts located within their legal boundaries may be prohibited by other statutes or by agency regulations.

Violations of these other prohibitions can result in penalties as provided by those regulations or statutes.

Authorship

This proposed rulemaking document is the product of the Interagency Rulemaking Task Force for the Implementation of Pub. L. 96-96 formally convened by the Secretary of the Interior on March 24, 1980. The Task
§ 1215.3 Definitions.

As used in this part:

(a) "Archaeological resource" means any material remains of past human life or activities which are of archaeological interest and are at least 100 years of age and the physical site, location, or context in which they are found. An object, site, or other material remains is of archaeological interest if, through its scientific study and analysis, information or knowledge can be obtained concerning human life or activities.

(1) "Material remains of past human life or activities" means physical evidence of human habitation, occupation, use, or activity, including, but not limited to:

(i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, human-made mounds, earthworks, canals, reservoirs, horticultural/agricultural gardens or fields, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, middenes, graves, hearths, kilns, post molds);

(ii) Surface or subsurface artifact concentrations or scatters and the three-dimensional relationship of artifacts to each other in the ground;

(iii) Whole or fragmentary tools, implements, containers, weapons and weapon projectiles, clothing, and ornaments (including, but not limited to, pottery and other ceramics, basketry, cordage, weavings, coins, bullets, bottles and other glassware, flaked stone, ground stone, pecked stone, worked bone, metal, wood, hide, feathers, pigments);

(iv) By-products, waste products, or debris resulting from manufacture or use of human-made or natural materials;

(v) Organic waste (including, but not limited to, vegetal and animal remains, coprolites); *

(vi) Human skeletal or mummified remains (including, but not limited to, bone, flesh, teeth, burials, graves, cremations);

(vii) Rock carvings, rock paintings, intaglios and other works of artistic or symbolic representation;

(viii) Rocksiefs and caves or portions thereof containing any of the above material remains;

(ix) All portions of shipwrecks (including, but not limited to, armaments, apparel, tackle, cargo);

(x) Paleontological remains only when they are found in a direct physical relationship with archeological resources;

As used in this part:

(b) "Archaeological Resources Protection Act of 1979 (18 U.S.C. 470aa-11) and establish the uniform procedures and regulations for carrying out the purposes of the Act.

(b) Section 10(b) of the Act (18 U.S.C. 470ii) provides that each Federal land manager shall promulgate such rules and regulations, consistent with these uniform rules and regulations, as may be necessary for carrying out the purposes of the Act.

(c) The following authorities also pertain to the protection of archaeological resources on public lands and Indian lands under this part:


[xii] The physical site, location, or context in which any of the foregoing are situated;
[xii] Any portion or piece of any of the foregoing.
(b) "Arrowhead" means any metal or stone projectile point triangular in configuration specifically designed for and/or used for an arrow. Arrowhead does not mean any bone artifacts, ceremonial flint, ceremonial knives, spear points, drills, knives, darts, or other metal or stone projectile points not specifically designed and/or used for an arrow.
(c) "Federal land manager" means:
(1) With respect to any public lands, the secretary of the department, or the head of any other independent agency or instrumentality of the United States, having primary management authority over such lands;
(2) In the case of Indian lands, or any public lands with respect to which no department, independent agency, or instrumentality has primary management authority, such term means the Secretary of the Interior;
(3) The Secretary of the Interior, where, pursuant to paragraph (2) of §3 of the act, the head of any other independent agency or instrumentality has with the consent of the Secretary of the Interior, delegated to the Secretary of the Interior the responsibilities (in whole or in part) in this part.
(d) "Public lands" means:
(1) Lands which are owned and administered by the United States as part of the national park system, the national wildlife refuge system, or the national forest system; and
(2) 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.
(e) "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 subsurface interests not owned or controlled by an Indian tribe or Indian individual.
(f) "Indian tribe" as defined in the Act means any Indian tribe, band nation, or other organized group or community, including any Alaska village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688). In order to clarify this statutory definition for purposes of this part, the term "Indian tribe" means:
(1) Any tribal entity which is included in the annual list of recognized tribes published in the Federal Register by the Secretary of the Interior pursuant to 25 CFR 54.6(b);
(2) Any other tribal entity acknowledged by the Secretary of the Interior pursuant to 25 CFR Part 54 since the most recent publication of the annual list; and
(3) 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).
(g) "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, of any State or political subdivision thereof.
(h) "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.
§ 1215.4 Excavation or removal of archeological resources.
(a) Permits are required for persons wishing to conduct excavation and/or removal of archeological resources from public lands or Indian lands, and to carry out activities associated with such excavation and/or removal, and are issued by the Federal land manager to qualified persons, subject to appropriate terms and conditions.
(b) Exceptions:
(1) No permit shall be required under this part or under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), for the excavation or removal by any Indian tribe or member thereof of any archeological resource located on Indian lands of such Indian tribe or members of such tribe, except that in the absence of tribal law regulating the excavation or removal of archeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this part;
(2) No permit shall be required under this part for the collection for private purposes of any rock, coin, bullet, or mineral which is not an archeological resource, providing there is no disturbance of any archeological resource.
(3) No permit shall be required under this part to conduct any archeological activity authorized by a permit issued under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), before the enactment of the Act. Such permit shall remain in effect according to its terms and conditions until expiration.
(4) Employees and agents of the Federal government carrying out official duties associated with the management of archeological resources are deemed to be operating under a valid permit. However, each Federal land manager shall insure that all supervisory archeological personnel meet minimum qualifications as referenced in §1215.7(a) of this part.
(5) No permit or other permission is required under section 3 of the Act of June 8, 1906 (16 U.S.C. 432) for any archeological work for which a permit is issued under this part.
(c) Archeological activities relating to archeological resources less than 100 years of age may require other permits as determined by the Federal land manager. Archeological activities involving no collection or disturbance of archeological resources may require only special use permits.
(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Federal land manager shall issue a permit, subject to the provisions of §1215.7(a) (2), (3), (4), and (5) and §§1215.8, 1215.9, 1215.10 and 1215.11 of this part, to such Governor or to such designee as the Governor deems qualified to carry out the intent of the Act, for the purpose of conducting archeological research, excavation, and removal, and safeguarding and preserving materials and data collected.
§ 1215.5 Application for permits.
(a) Any person may file an application with the appropriate Federal land manager for a permit to excavate and/or remove archeological resources from public lands or Indian lands and to carry out activities associated with such excavation and/or removal.
(b) Each application for a permit shall include:
(1) The exact character of the work proposed, including how and why it is proposed to be conducted, proposed time of performance, locational maps, and proposed outlet for public written dissemination of the results.
(2) The name and address of the individual(s) proposed to be responsible for conducting the work, his/her institutional affiliation, if any, and evidence of his/her education, training, and experience in accord with the minimal qualifications referenced in §1215.7(e) of this part.
(3) The name and address of the individual(s), if different from the individual(s) named in paragraph (b)(2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.
(4) Evidence of the applicant's capability to initiate, conduct, and complete the proposed work, including
§ 1215.6 Consideration of Indian tribal religious and cultural concerns.

(a) For any application received for a permit under this part which may result in harm to or destruction of an Indian tribal religious or cultural site, on public land, the Federal land manager shall provide written notification, as follows, to the official designated by the governing body of the tribe to receive such notification or, if no individual has been designated, to the chief executive officer of the tribal governing body. The Federal land manager shall:

1. Notify any known Indian tribe having a reservation within 200 miles of the area in which the applicant proposes to conduct work. This requirement may be modified by agreement pursuant to section (c) of this section.

2. Notify any other Indian tribe known or believed by the Federal land manager to have religious or cultural interest in the area of the proposed work.

3. Notify any Indian group which has pending before the Secretary of the Interior a petition for acknowledgement pursuant to 25 CFR Part 54.

4. Notify in writing the Bureau of Indian Affairs office and any additional Indian tribes which the area office may identify as having religious or cultural interest in the area of the proposed work.

5. Consult for notification purposes any central listing of interested Indian, Alaska Native or Native Hawaiian groups which may be established within the Department of Interior pursuant to the act, the American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996, or other applicable authority.

(b) Prior to a decision to issue a permit, the Federal land manager shall consider written or verbal comments submitted by any tribe or group notified pursuant to paragraph (a) of this section, which responds to the notification within 45 days of receipt, or any other tribe or group entitled to receive notice under paragraph (a), which expresses a religious or cultural interest within the same period, in order to ascertain the character and nature of the concerns and the general location of the religious or cultural site(s) involved. Upon request during that period, the Federal Land Manager shall meet with any Indian tribe or group to discuss their concerns, including ways to avoid or mitigate adverse impacts. Information derived from such comments or received during any discussions regarding the nature and location of archeological resources and religious or cultural sites shall not be deemed, nor subject to, a disclosure to the public for purposes of section 9 of the Act and § 1215.20 of this part.

(c) Upon issuance of a permit under this part which may result in harm to, or destruction of, a site on public lands which has religious or cultural significance to any Indian tribe or group, pursuant to paragraph (b) of this section, the Federal land manager shall notify the chief executive officer of the governing body of such tribe or group in writing.

(d) Where a permit must be issued because of an imminent threat of loss or destruction of an archeological resource, the Federal land manager may omit compliance with subsections a-c or may shorten the time periods specified. However, the Federal land manager shall notify the Bureau of Indian Affairs area office and any Indian tribe known to or believed to consider the site as having religious or cultural importance of the permit application and the need for expedited procedures. Such notification shall precede issuance of the permit, when possible.

(e) In the case of any application for a permit for the excavation or removal of any archeological resources located on Indian lands, the Federal land manager may issue a permit only after obtaining the consent of the Indian landowner and the Indian tribe having jurisdiction over such lands.

(f) The Federal land manager may enter into agreements with Indian tribes to establish formal and regular procedures for notification and discussion consistent with this section.

(g) Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the Indian tribe and the Federal land manager. The tribal official may assist the Federal land manager in identifying sites located on public lands which are of religious or cultural importance to the Indian tribe.

§ 1215.7 Issuance of permits.

(a) The Federal land manager may issue a permit, upon determining that:

1. The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in theoretical and methodological design, and in collecting, handling, analyzing, evaluating, and reporting archeological data, relative to the type and scope of the work proposed and also meets the following minimal qualifications:

2. A graduate degree in anthropology/archeology, or equivalent training and experience;

3. The demonstrated ability to carry research to completion, as usually evidenced by timely completion of theses, research reports, or similar documents;

4. Completion of at least 16 months of professional experience and/or specialized training in archeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity the individual proposes to conduct under permit authority; and

5. Historic site archeologists should have had at least one year of experience in research concerning archeological resources of the historic period. Prehistoric archeologists should have had at least one year of experience in research concerning archeological resources of the prehistoric period.
(2) The proposed work is to be undertaken for the purpose of furthering archeological knowledge in the public interest;
(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan applicable to the public lands;
(4) Written consent has been obtained, for work proposed on Indian lands, from the Indian landowner and the Indian tribe having jurisdiction over such lands;
(5) Evidence is submitted to the Federal land manager that the university, museum, or other scientific or educational institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archeological resources and all associated records; and
(6) The applicant has certified that, not later than the date the final report is submitted to the Federal land manager, the following will be delivered to the appropriate official of the approved university, museum, or other scientific or educational institution, which shall be named in the permit:
(i) All artifacts, samples, collections, records, data, photographs, and other documents resulting from work conducted under the requested permit where the permit is for the excavation and/or removal of archeological resources from public lands.
(ii) All artifacts, samples and collections resulting from work under the requested permit where the permit is for the excavation and/or removal of archeological resources from Indian lands for which the custodian or disposition is not undertaken by the Indian owners, and other documents resulting from work conducted under the requested permit.
(b) For permit applications involving lands under the jurisdiction of more than one Federal land manager, the Federal land managers shall coordinate the review and evaluation of the applications and the issuance of the permits.
§ 1215.8 Time limits of permits.
(a) The Federal land manager may issue a permit for a period appropriate to the work to be conducted, but not to exceed 3 consecutive years from the date of issuance.
(b) A permittee may submit a written request for permit extension when additional time less than 4 months is needed to complete work in progress.
(c) A permittee may apply for permit renewal by following procedures under § 1215.5 of this part.
(d) Subsequent to review of extension requests or renewal applications, and evaluation of past performance, the Federal land manager may extend a permit for up to 4 months or may renew a permit for periods up to 3 additional years.
(e) The Federal land manager may extend a permit only once, but may renew a permit any number of times.
(f) The Federal land manager shall review, at least annually, the permittee's performance under any permit issued for a period greater than 1 year.
§ 1215.9 Terms and conditions of permits.
(a) In all permits issued, the Federal land manager shall specify:
(1) The exact nature and extent of work allowed under the permit, including the time, duration, scope, location, and purpose of the work;
(2) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit;
(3) The name of the university, museum, or other scientific or educational institutions in which any collected materials and data shall be deposited; and
(4) Reporting requirements.
(b) The Federal land manager may specify such terms and conditions as deemed necessary, consistent with this part, to protect public safety and other values and/or resources, to secure work areas, to safeguard other legitimate land uses, and to limit activities incidental to work authorized under a permit.
(c) The Federal land manager shall include in permits issued for archeological work on Indian lands such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands.
(d) The Federal land manager may require adequate security to ensure adherence to terms and conditions of the permit.
(e) Initiation of work or other activities by the permittee under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.
§ 1215.10 Suspension, revocation and termination of permits.
(a) Suspension. (1) The Federal land manager may suspend a permit issued pursuant to this part upon determining that the permittee has violated any prohibition of §1215.14 of this part.
(2) The Federal land manager may suspend a permit upon determining that the permittee has failed to meet the terms and conditions of the permit. The suspension shall remain in effect until such time as the permittee corrects the situation, as determined by the Federal land manager.
(b) Revocation. (1) The Federal land manager may revoke a permit upon assessment of a civil penalty against the permittee under § 1215.18 of this part, or upon the permittee's conviction under § 6 of the Act.
(2) The Federal land manager may revoke a permit if the permittee fails to correct the situation which led to suspension.
(c) The Federal land manager reserves the right to terminate a permit at any time for program purposes.
§ 1215.11 Compliance with regulations of the Advisory Council on Historic Preservation (36 CFR Part 800).
(a) The act of issuing of a permit under this part does not require compliance with Section 106 of the Act of October 15, 1966 (16 U.S.C. 470f). The Federal land manager may, however, seek the advice or assistance of the Advisory Council on Historic Preservation with respect to activities proposed to be conducted under this part. Such action by the Federal land manager shall not be deemed compliance with Section 106 nor create a requirement for compliance where not otherwise required.
(b) If the activities proposed under this part constitute an undertaking in which there is Federal involvement other than the granting of a permit under this part and such Federal involvement requires compliance with Section 106 of the act of October 15, 1966 (16 U.S.C. 470f), then the Federal land manager shall coordinate the issuance of a permit under this part consistently with compliance requirements.
§ 1215.12 Appeals relating to permits.
Any person may appeal permit issuance, denial of permit issuances, suspension, revocation, termination, and terms and conditions of permits through appeal procedures established by the Federal land manager.
§ 1215.13 Custody of archeological resources.
(a) Archeological resources excavated or removed from the public lands remain the property of the United States Government, unless otherwise provided for in law, regulations, or administrative policy.
(b) Archeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources.
(c) The Secretary of the Interior may promulgate regulations establishing procedures and guidelines for the exchange of archeological resources among suitable universities, museums, or other scientific or educational institutions, for the ultimate disposition of archeological resources, and for standards by which archeological resources shall be preserved and maintained, when such resources have been excavated or removed from public lands and Indian lands.

§ 1215.14 Prohibited acts.

(a) No person may excavate, remove, damage, or otherwise alter or deface any archeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under § 1215.7 or exempted by § 1215.4(b) (1), (2), (3), (4) and (5).

(b) No person may sell, purchase, or exchange any archeological resource or offer to sell, purchase, or exchange any archeological resource if such resource was excavated or removed in violation of:

(1) The prohibitions contained in paragraph (a) of this section; or
(2) Any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archeological 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.

§ 1215.15 Criminal penalties.

(a) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in § 1215.15 of this part shall upon conviction be subject to:

(1) Fines of not more than $10,000, or imprisonment of not more than one year, or both, provided that the archeological or commercial value of the archeological resources involved and the cost of restoration and repair of such resources does not exceed the sum of $5,000, as determined under § 1215.17 of this part;
(2) Fines of not more than $20,000, or imprisonment of not more than two years, or both, provided that the archeological or commercial value of the resources involved and the cost of restoration and repair exceed the sum of $5,000, as determined under § 1215.17 of this part;
(3) Fines of not more than $100,000, or imprisonment of not more than five years, or both, in the case of conviction for a second or subsequent violation.

(b) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

§ 1215.16 Determination of archeological or commercial value and cost of restoration and repair.

(a) Archeological value. For purposes of this part, the archeological value of any archeological resource involved in a violation of prohibitions or conditions pursuant to this part shall be the value of the information associated with the archeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information contained in the archeological resource which would have been obtainable if the archeological resource were found in its undisturbed state. These costs may include, but not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(b) Commercial value. For purposes of this part, the commercial value of any archeological resource involved in a violation of prohibitions or conditions pursuant to this part, shall be the fair market value of its condition prior to removal or disturbance.

(c) Cost of restoration and repair. For purposes of this part, the cost of restoration and repair of archeological resources damaged as a result of violation of prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but not be limited to, the costs of the following:

(1) Reconstruction of the archeological resource;
(2) Stabilization of the archeological resource;
(3) Ground contour reconstruction and surface stabilization;
(4) Research necessary to carry out reconstruction or stabilization;
(5) Physical barriers or other protective devices, necessitated by the disturbance of the archeological resource, to protect it from further disturbance;
(6) Examination and analysis of the archeological resource including recording remaining archeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;
(7) Preparation of reports relating to the restoration and repair.

§ 1215.17 Assessment of civil penalties.

(a) Application. The civil penalty may be assessed against any person who has violated any prohibition contained in the Act or in this part, or who has violated a term or condition included in a permit issued pursuant to this part. Where criminal proceedings are being instituted against the person, the Federal land manager may elect not to assess a civil penalty but shall issue a notice of violation pursuant to this part. Where the violation is inadvertant and of a minor nature, the Federal land manager may likewise elect not to assess a civil penalty, but shall issue a notice of violation pursuant to this part.

(b) Notice of violation. Upon reasonable belief that a violation has occurred the Federal land manager shall notify any person believed to have committed the violation, either in person or by registered or certified mail (return receipt requested). The notice shall contain:

(1) A concise statement of the facts believed to show a violation;
(2) A specific reference to the provision(s) of the Act, of this part, or of a permit issued pursuant to this part, allegedly violated;
(3) A statement that a civil penalty may be assessed the person or persons for each referenced violation in an amount to be determined in accordance with this part; or a statement that no civil penalty will be assessed, as appropriate.

(c) Notice of assessment. Upon making a determination to assess a civil penalty for a violation charged in a notice of violation under this section, the Federal land manager shall make a determination of the damages associated with the violation, determine the maximum penalty amount in accordance with § 1215.18 of this part, and serve a notice of assessment on the person charged with the violation. The notice of assessment may be served concurrently with the notice of violation, or so soon thereafter as the maximum penalty amount can be determined. The notice of assessment will be served in person or by registered or certified mail (return receipt requested). The notice shall contain:

(1) A statement of the facts believed to show a violation;
(2) A specific reference to the provisions of the Act, of this part, or of a permit issued pursuant to this part alleged to have been violated;
(3) The amount of penalty proposed to be assessed;
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(4) The basis in § 1215.16 and § 1215.18(a) of this part from which the amount was derived; and

(5) Notification of the right of the person charged to file a petition for relief pursuant to paragraph (c) of this section, or to await the Federal land manager's notice of penalty.

The notice may also contain an initial proposal for compromise or mitigation of the proposed penalty.

(d) The person charged shall have 45 calendar days from the date of service of the notice of assessment in which to respond. During this time they may:

(1) Seek informal discussions with the Federal land manager;

(2) Accept in writing or by payment the proposed penalty or compromise, if any, offered in the notice;

(3) File a petition for relief in accordance with paragraph (e) of this section;

(4) Take no action and await the Federal land manager's notice of penalty pursuant to paragraph (f) of this section. If the person charged accepts the proposed penalty or compromise, this shall be deemed a waiver of the notice of penalty required by paragraph (f) of this section, and of the right to request a hearing.

(e) Petition for relief. Upon receipt of a notice of assessment, the person charged may ask that no penalty be assessed or that the amount be reduced, and may admit or contest the legal sufficiency of the charge and the Federal land manager's allegations of facts, by filing a petition for relief with the Federal land manager within 45 calendar days of the date of service of the notice of assessment. The petition shall be in writing and signed by the person charged. If the person charged is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

(f) Assessment of penalty. (1) The Federal land manager shall proceed to final assessment of a civil penalty upon expiration of the period during which the person charged may file a petition for relief, or upon completion of review of any petition filed, or upon completion of informal mitigation discussions, whichever is latest.

(2) The Federal land manager shall take into consideration all available information, including information provided by the person charged pursuant to paragraphs (b) and (c) of this section, or upon further request by the Federal land manager.

(3) If the facts warrant a conclusion that no violation has occurred, the Federal land manager shall so notify the person charged, and no penalty shall be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Federal land manager shall determine a penalty amount in accordance with §§ 1215.16 and 1215.18 of this part.

(g) Notice of penalty. The Federal land manager shall notify the person charged of the penalty assessed under paragraph (f) of this section by serving a written notice of penalty on the person charged, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall set forth in the notice of penalty the facts and conclusions from which it was determined whether or not a violation did occur and the appropriateness of the penalty assessed and shall notify the person charged of the right to request a hearing pursuant to paragraph (h) of this section.

(h) Hearings. (1) Except where a right to request a hearing is deemed to have been waived as provided in paragraph (d) of this section, the person charged may, within 45 calendar days from the date of service of the notice of penalty, file a written dated request for a hearing with the appropriate adjudicatory body as specified in the notice of penalty. The person charged shall enclose with the request for hearing a copy of the notice of penalty. A copy of the request shall be served upon the person specified in the notice of penalty, personally, or by registered or certified mail (return receipt requested), at the address specified in the notice.

(2) Failure to file a timely request for a hearing shall be deemed a waiver of the right to request a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. 554 and regulations promulgated pursuant to 5 U.S.C. 554 or pursuant to section 10(b) of the Act. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part and shall not be limited by the amount assessed in a notice of penalty issued under paragraph (f) of this section or any compromise or mitigation offered by the Federal land manager.

(i) Final administrative decision. (1) Where the person charged has accepted the penalty pursuant to paragraph (c) of this section the notice of assessment shall constitute the final administrative decision;

(2) Where the person charged has not filed a timely request for hearing pursuant to paragraph (g)(1) of this section the notice of penalty shall constitute the final administrative decision;

(3) Where the person charged has filed a timely request for hearing pursuant to paragraph (g)(1) of this section the decision of the administrative law judge or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(j) Payment of final assessment. (1) The person charged shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal with a United States District Court as provided in section 7(b)(1) of the Act has been filed.

(2) Upon failure by the person charged to pay the penalty, the Federal land manager may request the Attorney General to institute a civil action to collect the penalty in a United States District Court for any district in which the person charged is found, resides, or transacts business. Where the Federal land manager is not represented by the Attorney General, a civil action may be initiated directly.

(k) Other remedies not waived. Assessment of a civil penalty under this section shall not be deemed a waiver of the right of the Federal land manager's right to any available legal or administrative remedies.

§ 1215.18 Civil penalty amounts.

(a) Maximum amount of penalty. The Federal land manager shall, after establishing pursuant to § 1215.16 of this part the archeological or commercial value and the cost of restoration and repair of the archeological resource(s) involved in a violation, ascertain whether the person charged has committed any previous violation of any prohibition in § 1215.14 or violation of any term or condition included in a permit pursuant to § 1215.8 of this part.

(1) Where the person charged has not committed any previous violation the maximum amount of the penalty shall be:

(i) A fixed amount, determined by the Federal land manager under regulations pursuant to section 10(b) of the Act or by administrative action, where damage to the archeological resource is minimal and all archeological resources have been recovered; or

(ii) Full cost of restoration and repair of archeological resources damaged plus the commercial value of archeological resources destroyed or not recovered.

(2) Where the person charged has been adjudged to have committed any previous violation, the maximum penalty shall be double the cost of

(3) Where the person charged has been held in contempt of court for a violation committed by or on behalf of the person charged, the maximum amount of the penalty shall be double the cost of

(4) Where the facts warrant a conclusion that a violation has occurred, the

(5) Notice of penalty. The Federal land manager shall notify the person charged of the penalty assessed under paragraph (f) of this section by serving a written notice of penalty on the person charged, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall set forth in the notice of penalty the facts and conclusions from which it was determined whether or not a violation did occur and the appropriateness of the penalty assessed and shall notify the person charged of the right to request a hearing pursuant to paragraph (h) of this section.

(6) Hearings. (1) Except where a right to request a hearing is deemed to have been waived as provided in paragraph (d) of this section, the person charged may, within 45 calendar days from the date of service of the notice of penalty, file a written dated request for a hearing with the appropriate adjudicatory body as specified in the notice of penalty. The person charged shall enclose with the request for hearing a copy of the notice of penalty. A copy of the request shall be served upon the person specified in the notice of penalty, personally, or by registered or certified mail (return receipt requested), at the address specified in the notice.

(2) Failure to file a timely request for a hearing shall be deemed a waiver of the right to request a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. 554 and regulations promulgated pursuant to 5 U.S.C. 554 or pursuant to section 10(b) of the Act. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part and shall not be limited by the amount assessed in a notice of penalty issued under paragraph (f) of this section or any compromise or mitigation offered by the Federal land manager.

(7) Final administrative decision. (1) Where the person charged has accepted the penalty pursuant to paragraph (c) of this section the notice of assessment shall constitute the final administrative decision;

(8) Where the person charged has not filed a timely request for hearing pursuant to paragraph (g)(1) of this section the notice of penalty shall constitute the final administrative decision;

(9) Where the person charged has filed a timely request for hearing pursuant to paragraph (g)(1) of this section the decision of the administrative law judge or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(j) Payment of final assessment. (1) The person charged shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal with a United States District Court as provided in section 7(b)(1) of the Act has been filed.

(2) Upon failure by the person charged to pay the penalty, the Federal land manager may request the Attorney General to institute a civil action to collect the penalty in a United States District Court for any district in which the person charged is found, resides, or transacts business. Where the Federal land manager is not represented by the Attorney General, a civil action may be initiated directly.

(k) Other remedies not waived. Assessment of a civil penalty under this section shall not be deemed a waiver of the right of the Federal land manager's right to any available legal or administrative remedies.

§ 1215.18 Civil penalty amounts.

(a) Maximum amount of penalty. The Federal land manager shall, after establishing pursuant to § 1215.16 of this part the archeological or commercial value and the cost of restoration and repair of the archeological resource(s) involved in a violation, ascertain whether the person charged has committed any previous violation of any prohibition in § 1215.14 or violation of any term or condition included in a permit pursuant to § 1215.8 of this part.

(1) Where the person charged has not committed any previous violation the maximum amount of the penalty shall be:

(i) A fixed amount, determined by the Federal land manager under regulations pursuant to section 10(b) of the Act or by administrative action, where damage to the archeological resource is minimal and all archeological resources have been recovered; or

(ii) Full cost of restoration and repair of archeological resources damaged plus the commercial value of archeological resources destroyed or not recovered.

(2) Where the person charged has been adjudged to have committed any previous violation, the maximum penalty shall be double the cost of

(3) Where the person charged has been held in contempt of court for a violation committed by or on behalf of the person charged, the maximum amount of the penalty shall be double the cost of

(4) Where the facts warrant a conclusion that a violation has occurred, the
restoration and repair plus double the commercial value of archeological resources destroyed or not recovered.

(3) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

(b) Compromise, mitigation or remission of penalty. The Federal land manager may propose a compromise or may mitigate or remit the penalty amount determined under paragraph (a) of this section based upon any of the following factors:

(1) Agreement by the person charged to return to the Federal land manager archeological resources removed from public lands or Indian lands;

(2) Agreement by the person charged to assist the Federal land manager in activity to preserve, restore, or otherwise contribute to the protection and study of archeological resources on public lands or Indian lands;

(3) Agreement by the person charged to provide information which will assist in the detection, prevention, or prosecution of violations of regulations in this part;

(4) Demonstration of hardship or inability to pay on the part of the person charged, provided that this factor shall only be considered when the person charged has not previously been found to have violated the regulations in this part;

(5) Determination that the person charged did not intentionally commit the violation.

(6) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

§ 1215.19 Forfeiture and rewards.

(a) All archeological resources removed, and all vehicles or equipment used, in connection with a violation of any prohibition in § 1215.14 of this part are subject to forfeiture to the United States upon conviction under section 6 of the Act, assessment of a civil penalty under § 1215.16–17 of this part, or determination by any court that the archeological resources, vehicles, or equipment were involved in the violation.

(b) A payment shall be made in an amount equal to one-half of any penalty or fine collected, but not to exceed $500, to any person who furnishes information which leads to conviction for a criminal violation or to assessment of a civil penalty. If several persons provided information, the amount shall be divided among all such persons.

(1) Officers and employees of the United States, State, or local government who furnish information or render service in the performance of their official duties shall not be eligible for payment of rewards under this section.

(c) In cases involving Indian lands, all civil penalty monies and any item forfeited under the provisions of this section shall be transferred to the appropriate Indian or Indian tribe.

§ 1215.20 Confidentiality of archeological resource information.

(a) The Federal land manager shall not make available to the public, under subchapter II of chapter 5 of title 5 of the United States Code or any other provision of law, information concerning the nature and location of any archeological resource.

(b) The Federal land manager may make an exception to this rule provided that:

(1) The disclosure will further the purposes of the act and this part without risking harm to the archeological resource or the area in which it is located; or

(2) The Governor of the State in which the archeological resource is located has submitted a written request for information to the Federal land manager, including:

(i) The specific archeological resource or area about which information is sought;

(ii) The purpose for which the information is sought; and

(iii) The Governor’s written commitment to adequately protect the confidentiality of the information.

§ 1215.21 [Reserved]

§ 1215.22 Report.

Each Federal land manager, when requested by the Secretary of the Interior, shall submit such information as is necessary to enable the Secretary to comply with Section 13 of the Act.

§ 1215.23 Interpretive rulings.

Each Federal land manager may publish from time to time, as an appendix to this part, statements of policy and legal opinions relating to the interpretation, enforcement, and implementation of the Act and this part.

Dated: December 4, 1980.

Cecil D. Andrus,
Secretary of the Interior.

2. Notice of violation issued by Director or his authorized representative stating (a) facts believed to show a violation (b) reference to the law or regulation violated, and (c) the amount of penalty proposed to be assessed.

3. Violator has 45 days to respond. During the 45 days the following options are available: (a) undertake informal discussions; (b) accept the proposed penalty; (c) file a petition for relief; or (d) take no action and await the Director's decision.

4. After the 45 day period has expired, the Director makes an assessment of a civil penalty and the violator is notified of the assessment. Within 45 days after the assessment, the violator may request a hearing before an administrative law judge. The decision of the administrative law judge can then be appealed to the office of Hearings and Appeals, United States Department of the Interior.