

§ 1104.15

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resulting from the hearing or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(i) *Payment of penalty.* (1) The person assessed a civil penalty 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 has been filed with a United States District Court as provided in section 7(b)(1) of the Act.

(2) Upon failure to pay the penalty, the Commissioner 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 assessed a civil penalty is found, resides, or transacts business. Where the Commissioner is not represented by the Attorney General, a civil action may be initiated directly by the Commissioner.

(j) *Other remedies not waived.* Assessment of a penalty under this section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

§ 1104.15 Civil penalty amounts.

(a) *Maximum amount of penalty.* (1) Where the person being assessed a civil penalty has not committed any previous violation of any prohibition in § 1104.3 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be the full cost of restoration and repair of archaeological resources damaged plus the archaeological or commercial value of archaeological resources destroyed or not recovered.

(2) Where the person being assessed a civil penalty has committed any previous violation of any prohibition in § 1104.3 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be double the cost of restoration and repair plus double the archaeological or commercial value of archaeological 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) *Determination of penalty amount, mitigation, and remission.* The Commissioner may assess a penalty amount less than the maximum amount of penalty and may offer to mitigate or remit the penalty.

(1) Determination of the penalty amount and/or a proposal to mitigate or remit the penalty may be based upon any of the following factors:

(i) Agreement by the person being assessed a civil penalty to return to the Commissioner archaeological resources removed from public lands;

(ii) Agreement by the person being assessed a civil penalty to assist the Commissioner in activity to preserve, restore, or otherwise contribute to the protection and study of archaeological resources on public lands;

(iii) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this part;

(iv) Demonstration of hardship or inability to pay, provided that this factor shall only be considered when the person being assessed a civil penalty has not been found to have previously violated the regulations in this part;

(v) Determination that the person being assessed a civil penalty did not willfully commit the violation;

(vi) Determination that the proposed penalty would constitute excessive punishment under the circumstances;

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

(2) When the penalty is for a violation which may have had an effect on a known Indian tribal religious or cultural site on public lands, the Commissioner should consult with and consider the interests of the affected tribe(s) prior to proposing to mitigate or remit the penalty.

§ 1104.16 Other penalties and rewards.

(a) Section 6 of the Act contains criminal prohibitions and provisions for criminal penalties. Section 8(b) of the Act provides that archaeological resources, vehicles, or equipment involved in a violation may be subject to forfeiture.