

§ 1104.1

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AUTHORITY: Pub. L. 96-95, 93 Stat. 721 (16 U.S.C. 470aa-11) (Sec. 10(a).) Related Authority: Pub. L. 59-209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86-523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470a-t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95-341, 92 Stat. 469 (42 U.S.C. 1996).

SOURCE: 56 FR 21590, May 10, 1991, unless otherwise noted.

§ 1104.1 Purpose.

(a) The regulations in this part implement provisions of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-11) by establishing the definitions, standards, and procedures to be followed by the Commissioner in providing protection for archaeological resources, located on public lands through permits authorizing excavation and/or removal of archaeological resources, through civil penalties for unauthorized excavation and/or removal, through provisions for the preservation of archaeological resource collections and data, and through provisions for ensuring confidentiality of information about archaeological resources when disclosure would threaten the archaeological resources.

(b) The regulations in this part do not impose any new restrictions on activities permitted under other laws, authorities, and regulations relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

§ 1104.2 Definitions.

As used for purposes of this part:

(a) *Archaeological resource* means any material remains of human life or activities which are at least 100 years of age, and which are of archaeological interest.

(1) *Of archaeological interest* means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation.

(2) *Material remains* means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated.

(3) The following classes of material remains (and illustrative examples), if they are at least 100 years of age, are of archaeological interest and shall be considered archaeological resources unless determined otherwise pursuant to paragraph (a)(4) or (a)(5) of this section:

(i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, artificial mounds, earthworks, fortifications, canals, reservoirs, horticultural/agricultural gardens or fields, bedrock mortars or grinding surfaces, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, burial pits or graves, hearths, kilns, post molds, wall trenches, middens);

(ii) Surface or subsurface artifact concentrations or scatters;

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

(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, vegetable and animal remains, coprolites);

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

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

(viii) Rockshelters 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) Any portion or piece of any of the foregoing.

(4) The following material remains shall not be considered of archaeological interest, and shall not be considered to be archaeological resources for purposes of the Act and this part, unless found in a direct physical relationship with archaeological resources as defined in this section:

(i) Paleontological remains;

(ii) Coins, bullets, and unworked minerals and rocks.

(5) The Commissioner may determine that certain material remains, in specified areas under the Commissioner's jurisdiction, and under specified circumstances, are not or are no longer of archaeological interest and are not to be considered archaeological resources under this part. Any determination made pursuant to this subparagraph shall be documented. Such Determination shall in no way affect the Commissioner's obligations under other applicable laws or regulations.

(b) *Arrowhead* means any projectile point which appears to have been designed for use with an arrow.

(c) *Commissioner* means the head of the United States Section, International Boundary and Water Commission, United States and Mexico, and his delegate.

(d) *Public lands* means lands to which the United States of America holds fee title, and which are under the control of the U.S. Section, International Boundary and Water Commission, United States and Mexico.

(e) *Indian tribe* as defined in the Act means any Indian tribe, band, nation, or other organized group or community. In order to clarify this statutory definition for purposes of this part, *Indian tribe* means:

(1) Any tribal entity which is included in the annual list of recognized tribes published in the FEDERAL REG-

ISTER by the Secretary of the Interior pursuant to 25 CFR part 54;

(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;

(f) *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, or of any Indian tribe, or of any State or political subdivision thereof.

(g) *State* means any of the fifty states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(h) *Act* means the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-11.), as amended.

§ 1104.3 Prohibited acts.

(a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands unless such activity is pursuant to a permit issued under § 1104.7 or exempted by § 1104.4(b) of this part.

(b) No person may sell, purchase, exchange, transport, or receive any archaeological 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.

§ 1104.4 Permit requirements and exceptions.

(a) Any person proposing to excavate and/or remove archaeological resources from public lands, and to carry out activities associated with such excavation and/or removal, shall apply to the Commissioner for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued. The Commissioner may issue a permit to any qualified person, subject to appropriate terms and conditions, provided that the person applying for a permit meets conditions in § 1104.7(a) of this part.

(b) Exceptions: