

§ 262.3

25 CFR Ch. I (4–1–07 Edition)

§ 262.3 Consultation to determine need for a permit.

(a) Any person, except as provided in the uniform regulations at 43 CFR 7.5(b) through (d), who proposes to excavate or remove archaeological resources on Indian lands or on properties owned or administered by the BIA must first apply for and secure a permit under the Act. Procedures relating thereto are set forth in §262.5 of this part.

(b) No permit under the Act, nor any other Federally issued license or authorization, is required for archaeological investigations that do not involve the excavation or removal of archaeological resources on these lands, except for BIA consent on properties that it owns or administers. Notwithstanding, persons other than those covered under 43 CFR 7.5(b) through (d) shall, before engaging in such investigations:

(1) Write to the head of each tribal government having jurisdiction over the lands where investigations are to be conducted and request that he or she provide, within 30 days, written information on any permit, license or other form of authorization the tribe might require for the work proposed; and

(2) Provide the BIA Area Director with a copy of the tribe's written response (or a copy of the request to the tribe if 30 days have elapsed without any response) plus a brief but clear written description of the proposed work and obtain his or her written determination as to whether or not a permit under the Act is required. Area Directors shall provide determinations within 10 working days after receiving such documentation.

§ 262.4 Activities by Indian tribes or individuals that require a permit.

(a) No Indian tribe may, without a permit under the Act, excavate or remove archaeological resources on:

(1) Lands of another Indian tribe; or

(2) Lands of Indian individuals, except those on which the law of that tribe regulates such activity.

(b) No individual Indian may, without a permit under the Act, excavate or remove archaeological resources on any Indian lands (including his or her

own) other than those on which the law of the tribe of which he or she is a member regulates such activity.

(c) No person, as an employee, consultant, advisor or in any other capacity as an agent for any Indian tribe, shall be exempt from the permit requirements of the Act, except in the cases listed below:

(1) No permit shall be required if a person is a member of the tribe having jurisdiction over the resources in question and the law of that tribe regulates the excavation or removal of archaeological resources on its lands.

(2) Tribal employees need not submit permit applications to the BIA if:

(i) The proposed excavation or removal of archaeological resources is within the normal scope of their duties or otherwise carried out by direction of the tribal government;

(ii) The work is on Indian lands of the tribe or on which the law of that tribe regulates the excavation or removal of archaeological resources;

(iii) The tribe ensures that the provisions for permit issuance in this part and at 43 CFR part 7 have been met by other documented means; and

(iv) Before beginning the work, the tribe notifies the Area Director about the nature and location of the proposed work and allows 10 working days after mailing a notification or 5 working days after an oral notification (provided this is documented) for the Area Director to respond. The Area Director need only respond when action is required under §262.7 of this part, and may do so either in writing or, if documented, orally.

(3) Consultants, advisors, and others serving by contractual agreement as agents for Indian tribes may use the provisions in §262.5(f) of this part to expedite the process of obtaining a permit.

(4) Persons serving as agents for Indian tribes as employees or by contractual agreement may abbreviate the consultation required in §262.3(b) of this part by disregarding the requirement to consult first with the tribe and, provided the communication is documented, by consulting with the Area Director orally. In these cases, the Area Director need only respond when a permit is deemed necessary and