

and therefore are not to be considered archaeological resources under this part.

(b) The Federal land manager may make such a determination if he/she finds that the material remains are not capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics.

(c) Prior to making a determination that material remains are not or are no longer archaeological resources, the Federal land manager shall ensure that the following procedures are completed:

(1) A professional archaeological evaluation of material remains and similar materials within the area under consideration shall be completed, consistent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716, Sept. 29, 1983) and with 36 CFR parts 60, 63, and 65.

(2) The principal bureau archaeologist or, in the absence of a principal bureau archaeologist, the Department Consulting Archeologist, shall establish whether the material remains under consideration contribute to scientific or humanistic understandings of past human behavior, cultural adaptation and related topics. The principal bureau archaeologist or the Department Consulting Archeologist, as appropriate, shall make a recommendation to the Federal land manager concerning these material remains.

(d) The Federal land manager shall make the determination based upon the facts established by and the recommendation of the principal bureau archaeologist or the Departmental Consulting Archeologist, as appropriate, and shall fully document the basis therefor, including consultation with Indian tribes for determinations regarding sites of religious or cultural importance.

(e) The Federal land manager shall make public notice of the determination and its limitations, including any permitting requirements for activities associated with the materials determined not to be archaeological resources for purposes of this part.

(f) Any interested individual may request in writing that the Departmental

Consulting Archeologist review any final determination by the Federal land manager that certain remains, are not, or are no longer, archaeological resources. Two (2) copies of the request should be sent to the Departmental Consulting Archeologist, National Park Service, P.O. Box 37127, Washington, DC 20013-7127, and should document why the requestor disagrees with the determination of the Federal land manager. The Departmental Consulting Archeologist shall review the request, and, if appropriate, shall review the Federal land manager's determination and its supporting documentation. Based on this review, the Departmental Consulting Archeologist shall prepare a final professional recommendation, and shall transmit the recommendation and the basis therefor to the head of the bureau for further consideration within 60 days of the receipt of the request.

(g) Any determination made pursuant to this section shall in no way affect the Federal land manager's obligations under other applicable laws or regulations.

#### **§ 7.34 Procedural information for securing permits.**

Information about procedures to secure a permit to excavate or remove archaeological resources from public lands or Indian lands can be obtained from the appropriate Indian tribal authorities, the Federal land manager of the bureau that administers the specific area of the public lands or Indian lands for which a permit is desired, or from the state, regional, or national office of that bureau.

#### **§ 7.35 Permitting procedures for Indian lands.**

(a) If the lands involved in a permit application are Indian lands, the consent of the appropriate Indian tribal authority or individual Indian landowner is required by the Act and these regulations.

(b) When Indian tribal lands are involved in an application for a permit or a request for extension or modification of a permit, the consent of the Indian tribal government must be obtained. For Indian allotted lands outside reservation boundaries, consent from only

### §7.36

the individual landowner is needed. When multiple-owner allotted lands are involved, consent by more than 50 percent of the ownership interest is sufficient. For Indian allotted lands within reservation boundaries, consent must be obtained from the Indian tribal government and the individual landowner(s).

(c) The applicant should consult with the Bureau of Indian Affairs concerning procedures for obtaining consent from the appropriate Indian tribal authorities and submit the permit application to the area office of the Bureau of Indian Affairs that is responsible for the administration of the lands in question. The Bureau of Indian Affairs shall insure that consultation with the appropriate Indian tribal authority or individual Indian landowner regarding terms and conditions of the permit occurs prior to detailed evaluation of the application. Permits shall include terms and conditions requested by the Indian tribe or Indian landowner pursuant to §7.9 of this part.

(d) The issuance of a permit under this part does not remove the requirement for any other permit required by Indian tribal law.

### §7.36 Permit reviews and disputes.

(a) Any affected person disputing the decision of a Federal land manager with respect to the issuance or denial of a permit, the inclusion of specific terms and conditions in a permit, or the modification, suspension, or revocation of a permit may request the Federal land manager to review the disputed decision and may request a conference to discuss the decision and its basis.

(b) The disputant, if unsatisfied with the outcome of the review or conference, may request that the decision be reviewed by the head of the bureau involved.

(c) Any disputant unsatisfied with the higher level review, and desiring to appeal the decision, pursuant to §7.11 of this part, should consult with the appropriate Federal land manager regarding the existence of published bureau appeal procedures. In the absence of published bureau appeal procedures, the review by the head of the bureau

### 43 CFR Subtitle A (10-1-07 Edition)

involved will constitute the final decision.

(d) Any affected person may request a review by the Departmental Consulting Archeologist of any professional issues involved in a bureau permitting decision, such as professional qualifications, research design, or other professional archaeological matters. The Departmental Consulting Archeologist shall make a final professional recommendation to the head of the bureau involved. The head of the bureau involved will consider the recommendation, but may reject it, in whole or in part, for good cause. This request should be in writing, and should state the reasons for the request. See §7.33(f) for the address of the Departmental Consulting Archeologist.

### §7.37 Civil penalty hearings procedures.

(a) *Requests for hearings.* Any person wishing to request a hearing on a notice of assessment of civil penalty, pursuant to §7.15(g) of this part, may file a written, dated request for a hearing with the Hearing Division, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203-1923. The respondent shall enclose a copy of the notice of violation and the notice of assessment. The request shall state the relief sought, the basis for challenging the facts used as the basis for charging the violation and fixing the assessment, and respondent's preference as to the place and date for a hearing. A copy of the request shall be served upon the Solicitor of the Department of the Interior personally or by registered or certified mail (return receipt requested), at the address specified in the notice of assessment. Hearings shall be conducted in accordance with 43 CFR part 4, subparts A and B.

(b) *Waiver of right to a hearing.* Failure to file a written request for a hearing within 45 days of the date of service of a notice of assessment shall be deemed a waiver of the right to a hearing.

(c) *Commencement of hearing procedures.* Upon receipt of a request for a hearing, the Hearing Division shall assign an administrative law judge to the case. Notice of assignment shall be