

§ 262.3

25 CFR Ch. I (4–1–08 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

may do so either orally or in writing. If a response is not received within 3 working days after an oral description of the proposed work is made or within 7 working days after a written description is mailed to the Area Director, the work may proceed.

§ 262.5 Application for permits.

(a) Permits from the BIA shall be issued when an applicant meets the requirements set out in 43 CFR 7.8, and may be conditioned, modified, suspended, or revoked by the Area Director. Area Directors may delegate this authority to Agency Superintendents, but only on a permit-by-permit basis and only to those who have adequate professional support available.

(b) Prospective applicants may obtain details on how to apply for a permit by contacting the Area Director, at BIA Area Offices in: Aberdeen, SD; Albuquerque, NM; Anadarko, OK; Arlington, VA; Billings, MT; Gallup, NM; Juneau, AK; Minneapolis, MN; Muskogee, OK; Phoenix, AZ; Portland, OR; or Sacramento, CA; or by writing to the Deputy Commissioner of Indian Affairs, Department of the Interior, Washington, DC 20240.

(c) Permit applications proposing the excavation or removal of archaeological resources on Indian lands shall include the following consent documents:

(1) Written permission from the Indian landowner and from the tribe, if any, having jurisdiction over those lands. This must contain such terms and conditions as the landowner or tribe may request be included in the permit. Where the permission is from a tribe, it should either state that no religious or cultural site will be harmed or destroyed by the proposed work or specify terms and conditions that the permit must include in order to safeguard against such harm or destruction.

(i) For lands of Indian tribes, permission must be granted by the tribe.

(ii) For lands of Indian individuals not under tribal jurisdiction, permission must be granted by the owner(s), except as provided in § 262.6.

(iii) For lands of Indian individuals under tribal jurisdiction, permission must be granted by both the owner(s),

except as provided in § 262.6, and the tribe having such jurisdiction. Where an applicant is the owner, consent must still be obtained from the tribe.

(iv) Where the ownership of lands of Indian individuals is multiple, permission must be granted by the owners of a majority of interests, except as provided in § 262.6. The same shall apply where the applicant is one of the owners.

(v) Where the terms and conditions a tribe or landowner requests be included in a permit are in conflict with the provisions of this or any other Act, with Federal regulations, or with each other, the Area Director may negotiate with the requestor to eliminate the conflict. If the conflict remains, the permit may not be issued.

(2) Copies of any permits required by tribal law for archaeological work on lands under tribal jurisdiction. This may serve as written consent from the tribe for the purposes of § 262.5(c)(1).

(3) Written agreement by the Indian landowner(s) to release archaeological resources for curation or study, as specified in § 262.8(b).

(d) Permits issued by the BIA shall include the following or similar condition: "Human remains of Indians, funerary objects, sacred objects, and objects of cultural patrimony may not be excavated or removed unless the permittee has obtained the written consent of the Area Director. In order to obtain consent, the permittee shall present to the Area Director written evidence of prior consultation with the appropriate Indian tribe. If the lands containing the remains or objects are tribal lands, the permittee shall first obtain the written consent of the tribe having jurisdiction over the lands." Determination as to which tribe is the appropriate tribe shall be made in accordance with § 262.8(a). Area Director consent shall be based on the scientific appropriateness of the research objectives and provisions for recovery, recording, and analysis and may, if documented, be oral. This condition may be omitted from the permit when such excavation or removal is proposed, and the requirements of the condition are met, in the permit application.

(e) Information and assistance in contacting Indian tribes and individual