DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 10

RIN 1024-AC07

Native American Graves Protection and Repatriation Act Regulations

AGENCY: Department of the Interior. ACTION: Final rule.

SUMMARY: This final rule establishes definitions and procedures for lineal descendants, Indian tribes, Native Hawaiian organizations, museums, and Federal agencies to carry out the Native American Graves Protection and Repatriation Act of 1990. These regulations develop a systematic process for determining the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated.

EFFECTIVE DATE: This final rule will take effect on January 3, 1996.

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SUPPLEMENTARY INFORMATION:

Background

On November 16, 1990, President George Bush signed into law the Native American Graves Protection and Repatriation Act, hereafter referred to as the Act. The Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated. Section 13 of the Act requires the Secretary of the Interior to publish regulations to carry out provisions of the Act.

Preparation of the Rulemaking

The proposed rule (43 CFR Part 10) for carrying out the Act was published in the Federal Register on May 28, 1993 (58 FR 31122). Public comment was invited for a 60-day period, ending on July 27, 1993. Copies of the proposed rule were sent to the chairs or chief executive officers of all Indian tribes, Alaska Native villages and corporations, Native Hawaiian organizations, national Indian organizations and advocacy groups, national scientific and museum organizations, and State and Federal agency Historic Preservation Officers and chief archeologists.

Eighty-two written comments were received representing 89 specific organizations and individuals. These included thirteen Indian tribes, ten Native American organizations, nine museums, seven universities, three national scientific and museum organizations, eleven state agencies, nineteen Federal agencies, nine other organizations, and eight individuals. Several letters represent more than one organization. Comments addressed nearly all sections and appendices of the proposed rule. All comments were fully considered when revising the proposed rule for publication as a final rulemaking.

Given the volume of comments, it is impractical to respond in detail in the preamble to every question raised or suggestion offered. Some commenters pointed out errors in spelling, syntax, and minor technical matters. Those errors were corrected and are not mentioned further in the preamble. In addition, many commenters made similar suggestions or criticisms, or repeated the same suggestion for different sections of the proposed rule. In the interest of reducing the length of the text, comments that are similar in nature are grouped and discussed in the most relevant section in the preamble. Some comments pointed out vague and unclear language. Clarifying and explanatory language was added to the rule and preamble.

Changes in Response to Public Comment

Section 10.1

This section outlines the purpose and applicability of the regulations. Three commenters recommended including specific reference to the applicability of the rule to provisions of the United States Code regarding illegal trafficking. Section 4 of the Act, which deals with illegal trafficking in "Native American Human Remains and Cultural Items," is incorporated directly into Chapter 53 of title 18, United States Code, and does not require implementing regulations. For that reason, a section regarding section 4 of the Act has not been included in these regulations.

One commenter recommended including language to guarantee "that these collections will remain intact and always be available to qualified researchers..." Another commenter recommended amending the regulations to preclude the removal of prehistoric skeletal and cultural materials from the nation's museums. The drafters consider the proposed changes contrary to the intent of the Act as reflected in statutory language and legislative history.

One commenter recommended additional language addressing Federal trust responsibilities and tribal sovereignty. These regulations are consistent with the United States' trust responsibilities to Indian tribes.

Three commenters recommended amending the rule to apply to territories of the United States. The rule of statutory construction stipulates that Federal law applies to United States territories only when specifically indicated. No such reference is indicated in either the statute or its legislative history. It is inappropriate to use regulations to extend applicability to areas not defined in the Act.

Section 10.2

This section defines terms used throughout the regulations. One commenter recommended listing the definitions alphabetically instead of thematically under the present categories of "participants," "human remains and cultural items," "cultural affiliation," "location," and "procedures." A thematic organization has been retained. However, the subsections have been retitled and reorganized. The new subsections are (a) who must comply with these regulations?; (b) who has standing to make a claim under these regulations?; (c) who is responsible for carrying out these regulations?; (d) what objects are covered by these regulations?; (e) what is cultural affiliation?; (f) what types of lands do the excavation and discovery provisions of these regulations apply to?; and (g) what procedures are required by these regulations?

Subsection 10.2 (a) includes definitions of those persons or organizations who must comply with these regulations.

One commenter asked for clarification as to whether all Federal agencies as defined in §10.2 (a)(4) (renumbered as §10.2 (a)(1)) must comply with provisions of the Act. All Federal agencies, except the Smithsonian Institution, are responsible for completing summaries and inventories of collections in their control and with ensuring compliance regarding inadvertent discoveries and intentional excavations conducted as part of activities on Federal or tribal lands. Three commenters and the Review Committee authorized under section 8 of the Act requested clarification of the exclusion of the Smithsonian Institution as a Federal agency. Sections 2 (4) and 2 (8) of the Act specifically exclude the