Smithsonian Institution from having to comply with the provisions of the Act. The legislative history of the Act is silent as to the reason for this exclusion. The exclusion is likely to have been based on prior passage of the National Museum of the American Indian Act in 1989 that included provisions requiring the repatriation of human remains from all of the Smithsonian Institution's constituent museums.

Seven commenters requested clarification of the definition of Federal agency official in § 10.2 (a)(5) (renumbered as § 10.2 (a)(2)). One commenter recommended changing the term to Federal land manager. The definition included in the proposed rule applies to both individuals with authority for the management of Federal lands and individuals with responsibility for the management of Federal collections that may contain human remains, funerary objects, sacred objects, or objects of cultural patrimony. Since responsibility for the latter task may fall to Federal agency officials who do not manage land, the recommended change has not been made. Four commenters recommended changes in the definition of Federal agency official to reflect that a Federal agency may have more than one delegated authority. The definition was rewritten to reflect this concern. One commenter recommended stipulation of a specific date by which each agency must delegate individuals to perform the duties relating to these regulations. Such a deadline is unnecessary as all Federal agencies have already named their contacts. A listing of Federal agency officials for each agency is available from the Departmental Consulting Archeologist.

Seven commenters requested clarification of the definition of museum in § 10.2 (a)(6) (renumbered § 10.2 (a)(3)). One commenter recommended replacing the term "human remains or cultural items" with "Native American artifacts" to reflect the expanded reporting of "collections that may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony" in the summaries required in § 10.8. The specific focus of the Act and the rule remains limited to Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony, and not the broader category of Native American artifacts.

One commenter recommended providing a definition of the term "possession of, or control over" in the first sentence of the definition. One commenter recommended requiring museums take responsibility for all human remains, funerary objects, sacred

objects, or objects of cultural patrimony in their possession that were originally excavated intentionally or discovered inadvertently by Federal agencies on non-Federal lands. All museums or Federal agencies with Native American collections should consider carefully whether they have possession or control of human remains, funerary objects, sacred objects, or objects of cultural patrimony as defined in § 10.2 (a)(3)(i) and (a)(3)(ii).

Eleven commenters recommended changes to the definitions of possession in § 10.2 (e)(5) (renumbered § 10.2 (a)(3)(i)) and control in § 10.2 (e)(6) (renumbered § 10.2 (a)(3)(ii)). One commenter recommended giving both terms their ordinary and customary meaning in the regulations. Two commenters objected to use of "legal interest" in both definitions on the grounds that under common law, museums and Federal agencies do not have sufficient legal interest in human remains to do anything with them. Two commenters questioned including items on loan to a museum in a summary or inventory since the items are not the property of the museum. One commenter recommended deleting the definition of control as it would require Federal bureaucrats and museum officials to make complicated legal determinations. Examples designed to clarify the uses of possession and control have been added to these sections to address the concerns reflected in these comments. Two commenters questioned whether "control" applied to museum collections or to Federal lands. The term applies to human remains, funerary objects, sacred objects, or objects of cultural patrimony in museum or Federal agency collections or excavated intentionally or discovered inadvertently on Federal or tribal lands. One commenter recommended that the definition specifically address Federal agency responsibilities for collections from Federal lands being held by nongovernmental repositories. Federal agencies are responsible for the appropriate treatment and care of such collections.

One commenter requested clarification of the exclusion of procurement contracts from "Federal funds" in § 10.2 (a)(6) (renumbered § 10.2 (a)(3)(iii)). Procurement contracts are not considered a form of Federal-based aid but are provided to a contractor in exchange for a specific service or product. One commenter requested deletion of the last two sentences of the definition that clarify the applicability of the rule to museums that are part of a larger entity that

receives Federal funds, questioning if the legislative history supports such an interpretation. One commenter supported the present definition of institutions receiving Federal funds. Application of Federal laws to institutions that receive Federal funds is common, being used with such recent legislation as the Americans with Disabilities Act. These laws typically are interpreted to apply to organizations that are part of larger entities that receive Federal funds. Two commenters recommended specifying the applicability of the rule to museums affiliated with certified local governments and Indian tribal museums. The rule applies to museums that are part of certified local governments. A tribal museum is covered by the Act if the Indian tribe of which it is part receives Federal funds through any grant, loan, or contract (other than a procurement contract).

Subsection 10.2(b) includes definitions of those persons or organizations that have standing to make a claim under these regulations.

Eight commenters recommended changes in the definition of lineal descendant in § 10.2 (a)(14) (renumbered § 10.2 (b)(1)). Two commenters identified the definition as too restrictive. The drafters realize that claims of lineal descent require a high standard but feel that this standard is consistent with the preference for repatriation to lineal descendants required by the Act. Another commenter presented a statistical argument to indicate that all members of Indian tribes might be recognized as lineal descendants of human remains over 1,000 year old. Regardless of the statistical possibilities that someone might be related to another, the definition of lineal descent requires that the human remains, funerary objects, or sacred objects under consideration be from a known individual. It is highly unlikely that the identity of an individual that lived 1,000 years ago is known, or that it is possible to trace descent directly and without interruption from that known individual to a living individual. One commenter recommended replacing the "known Native American individual" from which lineal descent is traced with "known individual of a tribe." The term Indian tribe as used in these regulations refers only to those contemporary tribes, bands, nations, or other organized Indian groups or communities that are recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. Requiring the known individual to have been a member of the