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Two commenters recommended changes to the definition of inadvertent discovery in 10.2 (e)(4) (renumbered § 10.2 (g)(4)). One commenter recommended replacing "inadvertent" with "accidental, unintended, unpredictable, or unexpected in spite of all precaution," to avoid any presumption that such discoveries were made without forethought or through negligence. Another commenter recommended expanding the definition to include inadvertent discoveries on private lands. These changes are unnecessary or not appropriate and were not made.

Section 10.3

This section carries out section 3 (c) of the Act regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are excavated intentionally from Federal or tribal lands after November 16, 1990. One commenter recommended stating explicitly that the section applies only to Native American human remains and not to non-Native American human remains such as mountain men or early settler burials. The language has not been changed as all provisions of these regulations apply only to Native American human remains, funerary objects, sacred objects or objects of cultural patrimony. One commenter requested reviewing use of the term "intentional excavation" throughout the section to ensure consistency with the statutory language. Section 3 (c) of the Act applies to the "intentional removal from or excavation of Native American [human remains and] cultural items from Federal or tribal lands for the purposes of discovery, study, or removal." This definition includes scientific archeological excavations for independent research, public interpretation, or as part of planned removal of human remains during land-disturbing activities such as construction projects.

One commenter recommended the regulations focus on "more protection of archeological sites ... for research by the scientific community." The Act certainly has as one goal improved protection of *in situ* archeological sites. However, this protection is afforded not simply to allow for more scientific study. Rather, the intent is to preserve and protect Native American graves, allowing for their scientific examination only as necessary and appropriate.

Two commenters requested clarification of the clause "if otherwise required" regarding the necessity for

obtaining a permit issued pursuant to the Archeological Resources Protection Act (ARPA) in § 10.3 (b)(1). The clause has been deleted. The Review Committee recommended additional clarification in § 10.3 (b)(1) regarding issuance of ARPA permits on private holdings within the exterior boundaries of Indian reservations and on lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act. Language regarding issuance of permits on these lands has been included.

One commenter recommended requiring the consent of culturally affiliated Indian tribes and Native Hawaiian organizations for intentional excavations on both Federal and tribal lands. Another commenter recommended requiring the consent of traditional religious leaders for intentional excavations on both Federal and tribal lands. These changes have not been made. Section 3 (c)(2) of the Act authorizes excavation or removal of human remains, funerary objects, sacred objects, or objects of cultural patrimony only after consultation with or, in the case of tribal lands, consent of the appropriate Indian tribe or Native Hawaiian organization. One commenter recommended that § 10.3 (b)(4) not be "the only requisite for intentional excavation." The requirements of § 10.3 (b)(1) through (4) must all be met before conducting an intentional excavation.

One commenter recommended changing the title of § 10.3 (c) from "Procedures" to "Disturbances during authorized land use." The procedures outlined in this subsection apply to intentional removal or excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal or tribal land and not disturbance during authorized land use, which is dealt with under § 10.4 regarding inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal or tribal lands. One commenter suggested that § 10.3 (c)(1) confuses the issue of who — "any person" or the Federal official — is responsible for complying with the provisions of the regulations regarding intentional excavations, and recommended deleting the section. Two commenters requested clarification of an "activity" as referred to in the first sentence of § 10.3 (c)(1). The subsection has been deleted and subsequent subsections renumbered.

One commenter requested clearly defining "responsible Federal agency." The Federal agency with the responsibility for issuing approvals or permits on actions within their

designated Federal lands is the responsible Federal agency under the Act. In situations when two or more Federal agencies share regulatory or management jurisdiction of Federal land, the Federal agency with primary management authority will have control for purposes of carrying out these regulations unless otherwise agreed.

One commenter recommended requiring any person who proposes to undertake an activity on Federal or tribal lands that may result in the intentional excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony to notify all affected parties, including culturally affiliated Indian tribes and Native Hawaiian organizations. The Federal agency official — and not a person proposing to undertake an activity on Federal lands — is responsible for the management of lands under his or her control and is the appropriate person to notify Indian tribes and Native Hawaiian organizations of intentional excavations. The Federal agency official, once notified by a person of such an activity, is required to take reasonable steps to determine whether the planned activity may result in the intentional excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony. Prior to issuing any approvals or permits, the Federal agency official must notify in writing the Indian tribe or Native Hawaiian organizations that are likely to be affiliated with any excavated items. A person proposing to undertake an activity on tribal lands should contact the appropriate tribal official directly.

One commenter recommended requiring the Federal official identified in the first sentence of § 10.3 (c)(2) (renumbered § 10.3 (c)(1)) to meet the Secretary's standards for persons conducting ethnohistoric research. There currently are no Secretary's standards for ethnohistoric research. Each agency is responsible for ensuring that their employees are qualified to conduct the work required of them. One commenter recommended clarifying the "reasonable steps" required of Federal officials to explicitly include completion of Stage I surveys for of all planned ground-disturbing activities as required under section 106 of the NHPA. The type of steps taken by a Federal agency official are expected of vary from case-to-case and have not been specified in these regulations.

One commenter recommended requiring Federal officials to take reasonable steps regarding planned activities "or Federal actions." The recommended language has not been