

an activity planned for tribal lands. A deadline for Indian tribal response regarding proposed intentional excavations on tribal land is not considered appropriate as section 3 (c)(2) of the Act makes it clear that any intentional excavation or removal of human remains, funerary objects, sacred objects, or objects of cultural patrimony on tribal land requires the consent of the appropriate Indian tribe or Native Hawaiian organization. Another commenter recommended clarifying that the Indian tribe should take appropriate steps to make certain that the "treatment and disposition" of human remains, funerary objects, sacred objects, or objects of cultural patrimony be carried out. The recommended language has been included.

#### Section 10.4

This section carries out section 3 (d) of the Act regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are discovered inadvertently on Federal or tribal lands after November 16, 1990. One commenter requested replacement of the word "inadvertent" in the section title with "unintended." Section 3 (d) of the Act addresses the inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony as part of approved work projects as well as other, unintentional discoveries on Federal or tribal lands. The statutory term covers both meanings adequately and has been retained in the title and throughout the text.

One commenter felt the entire section needed to be more specific. One commenter recommended editing the general statement in § 10.4 (a) to state explicitly that the provisions apply only to "Native American" human remains, funerary objects, sacred objects, or objects of cultural patrimony. The definition of human remains, funerary objects, sacred objects, or objects of cultural patrimony in § 10.2 (d) make it clear that these regulations only apply to Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony.

One commenter requested clarification in the regulations regarding treatment of disarticulated and unassociated human remains. Section 10.4 of the Act covers the treatment and disposition of such human remains under "Inadvertent Discoveries."

Two commenters recommended revising the first sentence of § 10.4 (b) to require the person making an inadvertent discovery, and not just anyone that knows of an inadvertent discovery, to notify the responsible

Federal official. The phrase has been revised to more closely reflect the statutory language. Another commenter recommended that the notification of the responsible Federal official be immediate, via telephone or fax, to ensure that the activity is ceased as soon as possible. The text has been modified to require immediate telephone notification of the inadvertent discovery with written confirmation following.

One commenter recommended inclusion of language in this subsection restating that determination of lineal descent or cultural affiliation usually require physical anthropological study, laboratory analysis, radiocarbon dating, and other study to make a legally defensible statement. The criteria for determining lineal descent and cultural affiliation, which may include these kinds of examinations, are contained in § 10.14, and apply throughout these regulations; they have not been repeated in this section. Another commenter recommended requiring professional investigation sufficient to complete an accurate identification of the nature of the inadvertent discovery prior to notifying the responsible Federal agency official or Indian tribe official to ensure that the procedures are not carried out unnecessarily. The drafters consider requiring the complete professional identification of inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony prior to notification of the responsible Federal or Indian tribe officials inconsistent with the statutory language and the legislative history. One commenter requested clarification of the responsibilities of the person making an inadvertent discovery for notifying other agencies, such as the local police, coroner, and the State Historic Preservation Officer.

Requirements for notification of local or state officials vary by jurisdiction and have not been addressed in this rule. Subsection 10.4 (f) of these regulations suggests Federal land managers coordinate their responsibilities under this section with their emergency discovery responsibilities under section 106 of the NHPA which includes notification of the State Historic Preservation Officer. One commenter recommended modifying the text to require Federal agency employees working on tribal lands to immediately notify their supervisor, who in turn will notify the Indian tribe official. Section 3 (d)(1) of the Act requires notification of Indian tribe officials regarding inadvertent discoveries on tribal lands. Federal agency officials conducting activities on tribal lands should ensure

that their employees are familiar with the notification procedures of these regulations. One commenter recommended expanding this subsection to include provisions to ensure that a Federal agency documents and acts on reported inadvertent discoveries. Federal agency officials are required to comply with the provisions of these regulations.

One commenter recommended applying the cessation of activity following inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal or tribal lands in § 10.4 (c) only to burials in areas that will not be disturbed and in emergency discovery situations. This suggestion runs counter to the statutory requirements and the regulatory language has not been changed. Two commenters requested clarification of the phrases "in the area of the discovery" and a "reasonable effort" regarding protection of human remains, funerary objects, sacred objects, or objects of cultural patrimony following inadvertent discovery. The terms have not been precisely defined in recognition of the variability of site locations and types. In general, the terms are interpreted in a fashion that adequately protects the human remains, funerary objects, sacred objects, or objects of cultural patrimony from additional damage.

One commenter recommended editing and renumbering § 10.4 (a), (e), and (f) to more accurately reflect the distinctions between procedures on Federal lands and those for tribal lands. The text of § 10.4 (d) has been renumbered § 10.4 (d)(1) and § 10.4 (e) has been renumbered as § 10.4 (d)(2).

Two commenters recommended including additional text in § 10.4 (d)(1) (renumbered section 10.4 (d)(1)(i)) directing Federal agencies to establish a process for certifying the receipt of inadvertent discovery notifications and training personnel responsible for such certifications by a specific date. Certification procedures for the receipt of notifications — such as those resulting from inadvertent discoveries — are already in place with all land management Federal agencies and need only be modified to the specifics of these regulations. One commenter recommended including additional examples of steps to secure and protect inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony — such as fencing, 24-hour surveillance in populated areas — in § 10.4 (d)(2) (renumbered section 10.4 (d)(1)(i)). Specific steps to secure and protect inadvertently discovered human