

remains, funerary objects, sacred objects, or objects of cultural patrimony will vary from site-to-site and have not been specified in this rule.

Seven commenters recommended extending the one (1) day deadline for notification of affiliated Indian tribes by Federal agency officials in § 10.4 (d)(3), with suggestions ranging anywhere from three to ten days. The one (1) day deadline was designed to ensure that Federal agency officials and Indian tribe officials maximize the amount of time available for consultation regarding the treatment and disposition of inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony. The Act requires that the thirty (30)-day cessation of the activity begins with the Federal agency official certifying receipt of notification from the inadvertent discoverer of the human remains, funerary objects, sacred objects, or objects of cultural patrimony. As a result, any additional time provided the Federal agency official to contact the appropriate Indian tribe official is time taken away from the consultation process. In recognition of the inherent notification difficulties, the drafters have modified the initial notification requirements to require the person making the inadvertent discovery to provide immediate telephone notification with written confirmation to the Federal official. Certification of the notification by the Federal official and the required notification of the Indian tribe official occurs upon receipt of the written confirmation, thus providing the Federal agency official with some additional time between the telephone call and receipt of the written notice to identify the appropriate Indian tribe officials. The one (1) day notification deadline has been extended to three (3) working days. One commenter requested clarification for the phrase "Indian tribe or tribes known or likely to be affiliated." It should be noted that this initial contact is designed to notify those Indian tribes or Native Hawaiian organizations that are "likely" to be affiliated with the inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony. Federal agencies are encouraged to compile a listing of the appropriate Indian tribes or Native Hawaiian organizations and their officials as soon as possible to facilitate rapid notification when an inadvertent discovery is made. Determination of the specific affiliation of the inadvertently discovered human remains, funerary objects, sacred objects, or objects of

cultural patrimony can be made during the thirty (30) day cessation of activity. Two commenters requested clarification of the phrase "if known" in § 10.4 (d)(3) (renumbered § 10.4 (d)(1)(iii)) regarding the required notification of Indian tribes which aboriginally occupied the area in which human remains, funerary objects, sacred objects, or objects of cultural patrimony have been discovered inadvertently. Information regarding the aboriginal lands of Indian tribes is readily available to Federal agency officials from the results of Indian Land Claims Commission and Court of Claims decisions. "If known" has been deleted.

One commenter recommended suspending the initiation of consultation required in § 10.4 (d)(4) (renumbered § 10.4(d)(1)(ii)) for up to thirty (30) days in cases of illegal excavation or violation of Federal law, specifically in cases where confidential criminal investigation are being conducted. As the likely custodians of illegally excavated human remains, funerary objects, sacred objects, or objects of cultural patrimony pursuant to section 3 of the Act, the appropriate Indian tribe or Native Hawaiian organization should be notified of the inadvertently discovery and consulted as part of any ongoing investigation. The responsibility to pursue ARPA investigations does not devolve from the land manager's law enforcement agency merely because consultation is required under this Act. If an ARPA investigation is under way, the law enforcement agents involved should immediately notify their superiors and other Federal agency officials involved in NAGPRA consultation if any aspect of NAGPRA consultation is likely to interfere with the investigation.

Six commenters recommended changing the length of the required cessation of activities in § 10.4 (e) (renumbered § 10.4 (d)(2)). Four commenters recommended reducing the period — to fifteen (15) days, seven (7) days, or deleted entirely — while two commenters recommended extending the period until the affiliated Indian tribe or Native Hawaiian organization consents to continuation of the project. The thirty (30) day period for cessation of activities in the area of an inadvertent discovery is stipulated in section 5 (d) of the Act and has not been changed. Three commenters requested clarification of the stipulation that activity may resume after thirty (30) days, "if the resumption of the activity is otherwise lawful." The phrase is used to acknowledge that provisions of other statutes, such as section 106 of the NHPA, may also apply to a particular inadvertent discovery and the

resumption of activities in the area of the inadvertent discovery must comply with other legal requirements as well as those of these regulations.

Four commenters requested clarification of the procedures following the thirty (30)-day cessation of activity. After consulting with the affiliated Indian tribe or Native Hawaiian organization during the thirty day (30) cessation of activity, the Federal agency official must make a decision regarding the treatment, excavation, and disposition of any inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony. The options may include preservation *in situ* or excavation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony. This decision must be informed by the consultation process, but obviously will take into account other considerations as well. One commenter requested clarification regarding the responsibility for costs incurred during the required work cessation. Responsibility for costs incurred during the required work cessation will depend upon the nature of the contract drawn between the Federal agency and the appropriate contractor. One commenter recommended additional language indicating that resumption of an activity in the area of inadvertent discovery can occur only after the human remains, funerary objects, sacred objects, or objects of cultural patrimony have been removed or treated. Determining the disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony discovered inadvertently on Federal and tribe land can only occur after consultation with affiliated Indian tribes and Native Hawaiian organizations. The drafters consider it premature to stipulate the outcomes.

One commenter recommended accompanying the written, binding agreement between the Federal agency and the affiliated Indian tribes or Native Hawaiian organizations in the second sentence of § 10.4 (e) (renumbered 10.4 (d)(2)) by a letter from the appropriate Indian tribe official expressing agreement with a proposed course of action. The nature of agreements between Federal agencies and Indian tribes and Native Hawaiian organizations will depend upon the specific situation and have not been defined precisely in these regulations. Four commenters recommended clarifying the phrase "necessary parties." The phrase has been replaced with "Federal agency and the affiliated Indian tribes or Native Hawaiian