

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 5, 2007.

#### Lois Rossi,

*Director, Registration Division, Office of Pesticide Programs.*

- Therefore, 40 CFR chapter I is amended as follows:

#### PART 180—[AMENDED]

- 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

- 2. Section 180.439 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

#### § 180.439 Thifensulfuron methyl; Tolerances for residues.

(a) \* \* \*

Commodity	Parts per million
* * *	*
Rice, grain .....	0.05
Rice, straw .....	0.05
Sorghum, grain, forage. ..	0.05
Sorghum, grain, grain .....	0.05
Sorghum, grain, stover ...	0.05
* * *	*

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#### DEPARTMENT OF THE INTERIOR

#### Office of the Secretary

#### 43 CFR Part 10

**RIN 1024-AC84**

#### Native American Graves Protection and Repatriation Act Regulations—Future Applicability

**AGENCY:** Department of the Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule relates to one section of the regulations implementing the Native American Graves Protection and Repatriation Act of 1990 (“the Act”). This section outlines procedures for the future applicability of the Act to museums and Federal agencies.

**DATES: Effective Date:** This rule is effective April 20, 2007.

**ADDRESSES:** Mail inquires to Dr. Sherry Hutt, Manager, National NAGPRA Program, National Park Service, 1849 C Street, NW. (2253), Washington, DC 20240-0001. Telephone: (202) 354-1479. Fax: (202) 371-5197.

**FOR FURTHER INFORMATION CONTACT:** Jerry Case, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7241, Washington, DC 20240. Phone: (202) 208-4206. E-mail: [jerry\\_case@nps.gov](mailto:jerry_case@nps.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

On November 16, 1990, the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*) was signed into law. The Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony with which they are affiliated. Section 13 of the Act requires the Secretary of the Interior to promulgate regulations to carry out provisions of the Act.

Final regulations implementing the Act were published in the **Federal Register** on December 4, 1995, (60 FR 62138), and codified as 43 CFR part 10. Five sections were reserved in the final regulations with the intention that they would be published in the future. One of the five reserved sections, designated § 10.13, was set aside to clarify the applicability of the Act to museums and Federal agencies following the statutory deadlines for completion of summaries and inventories.

The Act requires museums and Federal agencies, as defined by the Act, to provide summaries of their collections to any Indian tribe or Native Hawaiian organization that is, or is likely to be, culturally affiliated with the collection by November 16, 1993. The Act also requires museums and Federal agencies to prepare, in consultation with culturally affiliated Indian tribes and Native Hawaiian organizations, inventories of human remains and associated funerary objects by November 16, 1995. The Act also requires museums and Federal agencies to submit notices for publication in the **Federal Register** prior to repatriation.

Four types of situations are anticipated where a museum or Federal agency may fall under the jurisdiction of the Act after the statutory deadlines: (1) The museum or Federal agency receives new collections; (2) a previously unrecognized Indian group is recognized as an Indian tribe; (3) an institution in possession or control of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony receives Federal funds for the first time; and (4) the museum or Federal agency revises a decision previously published in the **Federal Register**. In each case, this final rule establishes deadlines for the required summaries, inventories, or notices.

This final rule provides museums and Federal agencies with a uniform set of procedures to ensure that lineal descendants, Indian tribes, and Native Hawaiian organizations know of the existence and location of cultural items with which they are affiliated and which they may be able to repatriate. These procedures facilitate the existing repatriation provisions of the Act, and are essential to the continued effectiveness of the Act.

#### Preparation of the Rulemaking

The proposed rule to clarify future applicability of the Act was published in the **Federal Register** on October 20, 2004 (69 FR 61613). Public comment was invited for a 90-day period, ending on January 18, 2005. The proposed rule was also posted on the National NAGPRA Program Web site. The Native American Graves Protection and Repatriation Review Committee commented on the proposed rule at its November 2, 2004 teleconference. In addition, ten written comments were received during the comment period, representing three museums; three national scientific or museum organizations; two Federal agencies; one national Native American organization; and one non-Federally recognized Native American group. Comments addressed all sections of the proposed rule. All comments were fully considered when revising the proposed rule as a final rulemaking.

#### Changes in Response to Public Comment

##### Subsection 10.13(a)

This subsection outlines the purpose of the proposed rule to clarify the applicability of the Act to museums and Federal agencies after expiration of the statutory deadlines for completion of summaries and inventories.

**Comment 1:** Six commenters questioned whether the Department of the Interior has authority to promulgate regulations establishing new deadlines for completion of summaries and inventories after those specified in the Act.

**Our Response:** Three conditions must be satisfied before the Secretary can be said to have sufficient authority to extend the reporting requirements of the Act beyond that expressly provided: (1) The cultural items affected by the rule's new reporting requirements must be subject to repatriation or disposition under the existing terms of the Act; (2) Congress must have delegated to the Secretary the authority to create regulations to implement the terms of the Act; and (3) the regulations crafted by the Secretary must constitute a legitimate and lawful exercise of the implementation authority delegated by Congress.

The scope of cultural items subject to repatriation under Section 7 of Act is best discerned from the language of the statute itself. Section 7 addresses the "repatriation of Native American human remains and objects possessed or controlled by Federal agencies and museums." The only limitations of Section 7 are by item type (Native American human remains and objects), party (Federal agencies and museums), and the party's interest in the cultural item (possessed or controlled). Section 7 establishes procedures by which all cultural items in the possession or control of Federal agencies and museums can be repatriated upon demand. Subsections (a)(1) and (a)(2) provide conditions for the repatriation of cultural items listed in the inventories and summaries completed according to Sections 5 and 6 of the Act, respectively, to known lineal descendants or culturally affiliated Indian tribes and Native Hawaiian organization. Subsections (a)(4) and (a)(5) provide conditions for the repatriation of cultural items not listed in such inventories or summaries. Subsection (c) provides additional standards for repatriating unassociated funerary objects, sacred objects, and objects of cultural patrimony separate and apart from the standards in subsection (a). When added together, these individual provisions in Section 7 establish procedures by which all cultural items in the possession or control of Federal agencies and museums can be repatriated upon demand. Thus, the scope of items subject to repatriation under Section 7 extends to all NAGPRA-defined "cultural items" that are "possessed or

controlled by Federal agencies and museums."

There are three Congressional grants of authority that give the Secretary the power to issue regulations to implement the Act. Section 13 of the Act specifically directs the Secretary to promulgate regulations to carry out the Act. In addition, 25 U.S.C. 2 and 9 give the President and his subordinates a broad, general authority to issue regulations necessary to manage Indian affairs and implement legislation related to Indians. These three grants of legislative authority lead us to conclude that Congress has given the Secretary sufficient power to promulgate regulations to implement the various provisions of the Act, including the provisions governing the repatriation of cultural items in Section 7.

The Supreme Court established the test for assessing the propriety of an exercise of rulemaking authority in *Chevron v. NRDC*, 467 U.S. 837 (1984). "The power of an administrative agency to administer a congressionally created \* \* \* program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress. If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute. Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." *Chevron v. NRDC*, 467 U.S. 837, 843.

The Act does not clearly indicate how museums that become subject to the Section 7 requirements after the expiration of the statutory reporting requirements are to disseminate information about cultural items in their possession or control to potential repatriation claimants. The Act also does not set clear procedures for Indian tribes or Native Hawaiian organizations to learn of cultural items for which they have a right to repatriate under Section 7. This rule facilitates the repatriation process, a core function of the Act, by requiring museums and Federal agencies to prepare and disseminate information regarding their newly acquired or newly regulated collections. It addresses a gap left in the statute regarding how the Section 7 repatriation process is to be implemented once the statutory reporting requirements end.

Congress expressly delegated to the Secretary, through Section 13 of Act, and through 25 U.S.C. 2 and 9, the authority to fill such gaps. Without the dissemination of information about the collections held by Federal agencies and museums as envisioned by the proposed rule, the repatriation of cultural items under Section 7 would be frustrated. Without such information, lineal descendants and Indian tribes may not otherwise learn about the existence or location of cultural items to which they have rights under the statute. Furthermore, the process provided in this rule is consistent with the Secretary's longstanding interpretation that additional procedures were necessary for implementing the summary and inventory provisions after the statutory deadlines. The present section was initially proposed as a reserved section on May 28, 1993, (58 FR 31127), and finalized as a reserved section on December 4, 1995, (60 FR 62115). In its December 21, 2004 Chief's Directive, the Fish and Wildlife Service directed its officers to comply with Section 7's repatriation process for all cultural items "that are seized or in the possession of Service officers as a result of Service investigations." The National Park Service, as well, has issued letters stating that a museum "does have an obligation to update its summaries and inventories to reflect newly acquired collections and newly recognized Indian tribes," and that cultural items that came into a museum's possession after January 1, 2000, are subject to the Act [Letter from Francis P. McManamon, Departmental Consulting Archaeologist, National Park Service, to Michael Sims, Middle Tennessee Support Group, American Indian Movement (Jul. 31, 1997) (emphasis in original)]. These administrative statements demonstrate the Department's understanding that the Section 7 repatriation process applies, without limitation, to all cultural items within the possession or control of a Federal agency or museum. We conclude that facilitating the repatriation process by administratively requiring the dissemination of information about cultural items subject to repatriation is neither arbitrary, capricious, nor manifestly contrary to the Act, but instead constitutes a reasoned approach to implementing the Section 7 of the Act. As such, we find that this rule constitutes a proper exercise of the Secretary's delegated rulemaking authority.

**Comment 2:** One commenter thought the proposed deadline for summaries and inventories were reasonable as long as the Act's recognition of good faith

effort when those deadlines cannot be met continues to apply.

*Our Response:* The Act explicitly authorizes the Secretary of the Interior to extend the inventory time requirement for any museum which has made a good faith effort but has been unable to complete the inventory process [25 U.S.C. 3003(c)]. The statutory provisions are reiterated in § 10.9 of the regulations, which were incorporated by reference in the proposed future applicability rule. However, additional text has been added to § 10.13(b)(1)(ii) and (c)(1)(ii) to explicitly state that inventory extensions are available to museums that have made a good faith effort but have been unable to complete the inventory process.

*Comment 3:* The drafters noted that the consultation requirements in § 10.13(b)(i), (b)(ii), (d)(i), and (d)(ii) of the proposed rule were limited to “culturally affiliated” Indian tribes and Native Hawaiian organizations while the consultation requirements in § 10.8(c) and 10.9(b) applies to a broader group of Indian tribes and Native Hawaiian organizations.

*Our Response:* Section 10.8(c) and 10.9(b) require museums and Federal agencies to consult with Indian tribe officials and traditional religious leaders: (1) From whose tribal lands cultural items originated; (2) that are, or are likely to be, culturally affiliated with cultural items; and (3) from whose aboriginal lands cultural items originated. The drafters intend the same consultation standards to apply to consultation situations covered in this rule. The text has been revised to require consultation with “affiliated” Indian tribes and Native Hawaiian organizations, to include the range specified in § 10.8(c) and 10.9(b).

#### *Subsection 10.13(b)*

This subsection establishes deadlines for completing summaries and inventories of collections received after expiration of the statutory deadlines.

*Comment 4:* One commenter requested clarification as to whether the term “collection” can refer to a single human remain, funerary object, sacred object, or object of cultural patrimony.

*Our Response:* The summary and inventory requirements of the Act apply to “holdings or collections” of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony [25 U.S.C. 3003(a) and 3004(a)]. The phrase “holding or” has been added before “collection” throughout the section to clarify that the summary and inventory requirements of the Act apply to both single and

multiple human remains, funerary objects, sacred objects, or objects of cultural patrimony.

*Comment 5:* One commenter recommended exempting a museum or Federal agency from completing a summary or inventory of a newly acquired collection if that collection had been previously reported in a summary or inventory by another museum or Federal agency.

*Our Response:* The drafters do not intend to require museums or Federal agencies to complete a summary or inventory of a holding or collection if it had been previously reported in a summary or inventory by another museum or Federal agency. However, the receiving museum or Federal agency does have an obligation to notify lineal descendants and culturally affiliated Indian tribes identified in the earlier summary or inventory of the change in possession and control of the holding or collection. Text has been added to clarify that a museum or Federal agency may rely upon a previously prepared summary or inventory. The receiving museum or Federal agency must provide a copy of the previously prepared summary or inventory to all affiliated Indian tribes or Native Hawaiian organizations, along with notification that the museum or Federal agency has assumed possession and control of the holding or collection.

*Comment 6:* One commenter recommended defining “substantive change.”

*Our Response:* The term “substantive change,” along with the example in the following sentence, has been replaced with text indicating that publication of a notice in the **Federal Register** is not required if there is no change in the number or cultural affiliation of the cultural items listed in the previous notice.

*Comment 7:* One commenter recommended allowing a museum or Federal agency to proceed with repatriation of newly found fragments from previously repatriated cultural items regardless of whether the previous repatriation occurred prior to or after establishment of the Act.

*Our Response:* The Act may not be construed to delay actions on repatriation requests that were pending on November 16, 1990 [25 U.S.C. 3009 (2)]. Newly found fragments from cultural items that were repatriated prior to November 16, 1990 may be repatriated to the same party without publication of a notice in the **Federal Register**. Newly found fragments from cultural items that were repatriated after November 16, 1990 may not be repatriated without publication of a

notice in the **Federal Register**, unless the newly found fragments do not result in a change in the number or cultural affiliation of the cultural items listed in the previous notice.

*Comment 8:* One commenter recommended that the regulation clarify that there is no obligation to revisit collections that had been previously repatriated in good faith.

*Our Response:* The only obligation to revisit previously repatriated holdings or collections would be to determine if the newly found fragments will result in a change in the number or cultural affiliation of the cultural items listed in a previously published notice. While such a review may reveal discrepancies in the original summary or inventory, Section 7 (f) of the Act states that any museum that repatriates cultural items in good faith is not liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of state law that are inconsistent with provisions of the Act.

#### *Subsection 10.13(c)*

This subsection establishes deadlines for completing summaries and inventories when a previously non-Federally recognized Indian group is acknowledged as an Indian tribe by the Secretary.

*Comment 9:* One commenter recommended that museums and Federal agencies should be required to provide summaries and inventories to newly recognized Indian tribes “as soon as practicable.”

*Our Response:* Specific deadlines are necessary to ensure that summaries and inventories are completed expeditiously. The recommended change has not been made.

*Comment 10:* Seven commenters recommended that the National Park Service ensure that information regarding the acknowledgment of new Indian tribes is made available to museums and Federal agencies.

*Our Response:* The Secretary is required to publish a list of Indian Entities Recognized and Eligible to Receive Services from the United States in the **Federal Register** on or before January 30 of each year [Pub. L. 103-454, 108 Stat. 4791]. The purpose of the list is to assist various departments and agencies of the United States in determining the eligibility of certain groups to receive Federal services. Since 1990, six tribal entities have been newly acknowledged as eligible for funding and services by virtue of their status as Indian tribes. These are the Jena Band of Choctaws, Huron Potawatomi Inc., and Samish Indian Tribe (listed on November 13, 1996); Snoqualmie Indian

Tribe and Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan (listed on March 13, 2000); and Cowlitz Tribe of Indians (listed on July 12, 2002). In order to facilitate consultation with newly acknowledged Indian tribes, the National Park Service will identify newly acknowledged Indian tribes on the National NAGPRA Program Web site—<http://www.cr.nps.gov/nagpra/>—and will include contact and other relevant information as it comes available for each Indian tribe on the National Consultation Database.

*Comment 11:* One commenter recommended that the Department of the Interior provide specific notice that a new Indian tribe has been acknowledged to each museum and Federal agency and have the deadlines run from that notification.

*Our Response:* The summary and inventory provisions of the Act apply to Federal agencies and institutions that receive Federal funds that have possession or control of Native American cultural items. There is no centralized information source to identify all institutions that receive Federal funds nor of all institutions that have possession or control of Native American cultural items. Providing specific notification that a new Indian tribe has been acknowledged is thus impractical. The National Park Service will ensure that information regarding new Indian tribes is readily available through the National NAGPRA Program Web site.

*Comment 12:* One commenter recommended that the rule require museums and Federal agencies to provide summaries and inventories to all non-Federally recognized Indian groups currently involved in the Federal acknowledgement process.

*Our Response:* Nothing in the Act or regulations precludes museums and Federal agencies from consulting with or providing information to non-Federally recognized Indian groups. Disposition of human remains and associated funerary objects to non-Federally recognized Indian groups is currently facilitated by the Native American Graves Protection and Repatriation Review Committee and a recommendation from the Secretary. Requiring the disposition of cultural items to a non-Federally recognized Indian group would appear to be beyond the Secretary's authority under the Act.

#### *Subsection 10.13(d)*

This subsection establishes deadlines for completing summaries and

inventories by any institution that receives Federal funds for the first time.

*Comment 13:* One commenter recommended that the National Park Service provide notification of the summary and inventory requirements to all institutions that receive Federal funds for the first time.

*Our Response:* There is no centralized information source to identify all institutions that receive Federal funds.

#### *Subsection 10.13(e)*

This subsection establishes requirements for amending previously published **Federal Register** notices when a museum or Federal agency revises its identification of cultural items or determination of cultural affiliation.

*Comments 14:* One commenter identified the requirements as reasonable, but questioned that perhaps such requirements are already covered by existing regulations.

*Our Response:* As currently written, § 10.8 does not establish a deadline for a museum or Federal agency to complete a summary if it acquires new holdings or collections, or a new Indian tribe is recognized, or it receives Federal funds for the first time. Similarly, § 10.9 does not establish a deadline for a museum or Federal agency to complete an inventory if it acquires new holdings or collections, or a new Indian tribe is recognized, or it receives Federal funds for the first time. Without the information provided in summaries and inventories, an Indian tribe and Native Hawaiian organization has no way to have its right to repatriate under Section 7 of the Act. While many museums and Federal agencies have continued to update their summaries and inventories to accommodate new collections and newly recognized Indian tribes, the absence of regulations leaves them without clear guidance on how and when to provide summaries and inventories to possible claimants. The absence of regulations is likely to result in museums and Federal agencies accumulating a growing number of culture items that could otherwise rightfully be repatriated by lineal descendants or culturally affiliated Indian tribes or Native Hawaiian organizations.

#### *Other Issues*

*Comment 15:* One commenter recommended revising references in other sections of the rule to the Departmental Consulting Archeologist, to whom the Secretary had previously delegated some responsibilities under the Act, to the Manager, National NAGPRA Program.

*Our Response:* These duties were reassigned to the Manager, National NAGPRA Program by means of a technical amendment. September 30, 2005, (70 FR 57177).

*Comment 16:* One commenter questioned the legal citation for the right of possession as used in the discussion of Executive Order 12630 in the preamble.

*Our Response:* The commenter accurately points out that 25 U.S.C. 3005 (c) specifically addresses the standard of repatriation for unassociated funerary objects, sacred objects, and objects of cultural patrimony. Reference to that section has been removed from the preamble to the rule. However, nothing in the Act requires museums to repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony for which they can prove right of possession.

*Comment 17:* One commenter questioned the public reporting burden estimated in the preamble.

*Our Response:* The commenter failed to provide evidence showing that the estimated public reporting burden of an average of 20 hours for the exchange of summary/inventory information between a museum and an Indian tribe and six hours per response for the notification to the Secretary of the Interior, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed and completing and reviewing the collected information is not reasonable.

*Comment 18:* One commenter questioned whether time limits should be set for repatriation.

*Our Response:* This issue will be considered in a future rulemaking for the currently reserved section at 10.15 (b) regarding failure to claim where no repatriation or disposition has occurred.

#### **Compliance With Other Laws**

##### *Regulatory Planning and Review (Executive Order 12866)*

This document is not a significant rule and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other

agencies or local government plans, policies or controls. This rule is an agency specific rule.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs, or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does not raise novel legal or policy issues.

#### *Regulatory Flexibility Act*

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This final rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

#### *Takings (Executive Order 12630)*

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required, since the rule does not compel the repatriation of Native American cultural items, nor does it affect any item not already subject to repatriation under NAGPRA. Further, museums are only required to repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony for which they cannot prove right of possession [25 U.S.C. 3001(13) and 3005(c)].

#### *Federalism (Executive Order 12612)*

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. A Federalism Assessment is not required.

#### *Civil Justice Reform (Executive Order 12988)*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b) of the order.

#### *Paperwork Reduction Act*

The collection of information contained in this rule has been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget. Public reporting burden for this collection of information is expected to average 20 hours for the exchange of summary/inventory information between a museum and an Indian tribe and six hours per response for the notification to the Secretary of the Interior, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collected information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, Attn: Docket No. 1024-AC84, National Park Service, Department of Interior Building, 1849 C Street, NW., Room 3317, Washington, DC 20240, and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, Washington, DC 20503.

#### *National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment and can be Categorically Excluded under NPS exclusion 3.4A(8) "Modifications or revisions to existing regulations, or the promulgation of new regulations for NPS-administered areas, provided the modifications, revisions, or new regulations do not:

- (a) Increase public use to the extent of compromising the nature and character of the area or cause physical damage to it.

(b) Introduce non-compatible uses that might compromise the nature and characteristics of the area or cause physical damage to it.

(c) Conflict with adjacent ownerships or land uses.

(d) Cause a nuisance to adjacent owners or occupants."

#### *Government-to-Government Relationship With Tribes*

The rule clarifies the circumstances in which museums and Federal agencies are required to provide summaries and inventories thereby increasing notice and opportunity for Indian tribes to repatriate cultural items. As required by Executive Order 13175, the drafters consulted with representatives of Indian tribal governments prior to and during the development of the proposed rule as part of multiple, duly-noticed public meetings held by the Native American Graves Protection and Repatriation Review Committee. No Indian tribes raised concerns regarding the proposed rule during the comment period.

#### *Clarity of Rule*

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following—(1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, § 10.13 Future Applicability.) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to: [exsec@os.doi.gov](mailto:exsec@os.doi.gov).

#### *Drafting Information*

This final rule was prepared by Dr. C. Timothy McKeown in consultation with the Native American Graves Protection and Repatriation Review Committee as directed by Section 8(c)(7) of the Act.

**List of Subjects in 43 CFR Part 10**

Administrative practice and procedure, Graves, Hawaiian Natives, Historic preservation, Indians—claims, Museums, Reporting and recordkeeping requirements, Repatriation.

- In consideration of the foregoing, 43 CFR Subtitle A is amended as follows.

**PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS**

- 1. The authority for part 10 continues to read as follows:

**Authority:** 25 U.S.C. 3001 *et seq.*

- 2. Add § 10.13 to read as follows:

**§ 10.13 Future applicability.**

(a) General. This section sets forth the applicability of the Act to museums and Federal agencies after expiration of the statutory deadlines for completion of summaries and inventories.

## (b) New holdings or collections.

(1) Any museum or Federal agency that, after completion of the summaries and inventories as required by §§ 10.8 and 10.9, receives a new holding or collection or locates a previously unreported current holding or collection that may include human remains, funerary objects, sacred objects or objects of cultural patrimony, must:

(i) Within 6 months of receiving a new holding or collection or locating a previously unreported current holding or collection, or within 6 months of the effective date of this rule, whichever is later, provide a summary of the holding or collection as required by § 10.8 to any Indian tribe or Native Hawaiian organization that is, or is likely to be, affiliated with the collection; and

(ii) Within 2 years of receiving a new holding or collection or locating a previously unreported current holding or collection, or within 2 years of the effective date of this rule, whichever is later, prepare, in consultation with any affiliated Indian tribe or Native Hawaiian organization, an inventory as required by § 10.9 of these regulations. Any museum that has made a good faith effort to complete its inventory, but which will be unable to complete the process by this deadline, may request an extension of the time requirements under § 10.9(f).

(2) Additional pieces or fragments of previously repatriated human remains, funerary objects, sacred objects and objects of cultural patrimony may be returned to the appropriate Indian tribe or Native Hawaiian organization without publication of a notice in the **Federal Register**, as otherwise required under §§ 10.8(f) and 10.9(e), if they do

not change the number or cultural affiliation of the cultural items listed in the previous notice.

(3) A museum or Federal agency that receives a new holding or collection for which a summary or inventory was previously prepared, as required by §§ 10.8 or 10.9, may rely upon the previously prepared documents. The receiving museum or Federal agency must provide a copy of the previously prepared summary or inventory to all affiliated Indian tribes or Native Hawaiian organizations, along with notification that the receiving museum or Federal agency has assumed possession and control of the holding or collection.

## (c) New Indian tribes.

(1) Any museum or Federal agency that has possession or control of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are, or are likely to be, culturally affiliated with a newly Federally recognized Native American tribe, must:

(i) Within 6 months of the publication in the **Federal Register** of the Native American group's placement on the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, or within 6 months of the effective date of this rule, whichever is later, provide a summary of the collection as required by § 10.8 to that Indian tribe; and

(ii) Within 2 years of the publication in the **Federal Register** of the Native American group's placement on the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, or within 2 years of the effective date of this rule, whichever is later, prepare, in consultation with the newly recognized culturally affiliated Indian tribe an inventory as required by § 10.9. Any museum that has made a good faith effort to complete its inventory, but which will be unable to complete the process by this deadline, may request an extension of the time requirements under § 10.9(f).

(2) The list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs is published in the **Federal Register** as required by provisions of the Federally Recognized Indian Tribe List Act of 1994 [Pub. L. 103–454, 108 Stat. 4791].

(d) New Federal funds. Any museum that has possession or control of human remains, funerary objects, sacred objects, or objects of cultural patrimony and receives Federal funds for the first time after expiration of the statutory deadlines for completion of summaries and inventories must:

(1) Within 3 years of the date of receipt of Federal funds, or within 3 years of the effective date of this rule, whichever is later, provide a summary of the collection as required by § 10.8 to any Indian tribe or Native Hawaiian organization that is, or is likely to be, culturally affiliated with the collections; and

(2) Within 5 years of the date of receipt of Federal funds, or within 5 years of the effective date of this rule, whichever is later, prepare, in consultation with any affiliated Indian tribe or Native Hawaiian organization, an inventory as required by § 10.9.

## (e) Amendment of previous decision.

(1) Any museum or Federal agency that has previously published a notice in the **Federal Register** regarding the intent to repatriate unassociated funerary objects, sacred objects, and objects of cultural patrimony under § 10.8(f), or the completion of an inventory of Native American human remains and associated funerary objects as required by § 10.9(e), must publish an amendment to that notice if, based on subsequent information, the museum or Federal agency revises its decision in a way that changes the number or cultural affiliation of the cultural items listed.

(2) Repatriation may not occur until at least 30 days after publication of the amended notice in the **Federal Register**.

(f) All actions taken as required by this section must also comply with all other relevant sections of 43 CFR 10.

Dated: March 6, 2007.

**David M. Verhey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 76**

[MB Docket No. 05–311; FCC 06–180]

**Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts rules and provides guidance to implement section 621(a)(1) of the Communications Act. The Commission solicited and reviewed comments on this section and found