

4310-70

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: Proposed rule

SUMMARY: This proposed rule and request for comments relates to one section of 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. Publication of this section is intended to solicit comments from Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and members of the public prior to its publication in final form.

DATE: Written comments will be accepted until [*insert date 90 days from date of publication in the Federal Register*].

ADDRESSES: Comments (2 copies) should be addressed to: Dr. Robert Stearns, Manager, National NAGPRA Program, National Park Service, Docket No. 1024-AC84, 1849 C Street NW-350NC, Washington, DC 20240, or hand deliver comments to room 350, 800 North Capitol Street, Washington DC.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Stearns, Manager, National NAGPRA Program, National Park Service, 1849 C Street NW-350NC, Washington, DC 20240. Telephone: 202/343-8161. Fax: 202/343-5260.

SUPPLEMENTARY INFORMATION:

On November 16, 1990, President George Bush signed into law the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*), hereafter referred to as the Act. 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.

Regulations implementing the Act were published as final in the Federal Register on December 6, 1995. Five sections were reserved in the final regulations with the intention that they would be published in the future. This proposed rule for §10.13 develops procedures regarding the future applicability of the Act to museums and Federal agencies.

SECTION-BY-SECTION:

Section 10.13

This section clarifies 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 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 the proposed rule establishes deadlines for the required summaries, inventories, or notices.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS will review all comments and consider making changes to the rule based upon analysis of the comments.

Copies of this proposed rule may be obtained by submitting a request to the Manager, National NAGPRA Program, National Park Service, at the address noted at the beginning of this rulemaking. Commentors wishing the National Park Service to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No 1024-AC84." The postcard will be date stamped and returned to the commentor.

Drafting Information

This final rule was prepared by Dr. C. Timothy McKeown (National NAGPRA Program), Dr. Francis P. McManamon (Archeology and Ethnography Program), and Mr. Lars Hanslin (Office of the Solicitor) in consultation with the Native American Graves Protection and Repatriation Review Committee as directed by section 8(c)(7) of the Act.

Regulatory Planning and Review

This rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

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.

This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

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 does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this document 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

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not: (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, local or tribal government agencies, or geographic regions; or (3) 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

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. Museums are only required to repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony for which they can not prove right of possession [25 U.S.C. 3005(c)]. This rule applies to museums that fail to comply with the administrative provisions of the Act.

Federalism

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

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 D.C. 20240, and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, Washington, D.C. 20503.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Clarity of this Regulation

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

List of Subjects in 43 CFR Part 10

Administrative practice and procedure, Graves, Hawaiian Natives, Historic preservation, Indians-claims, Museums, Reporting and record keeping requirements.

In consideration of the foregoing, 43 CFR Subtitle A is proposed to be amended 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 collections.* (1) Any museum or Federal agency that, after expiration of the statutory deadlines for completion of summaries and inventories, receives a new collection or locates a previously unreported current collection that may include human remains, funerary objects, sacred objects or objects of cultural patrimony, must:

(i) Within six months of the receipt or location, provide a summary of the collection pursuant to §10.8 of these regulations to any Indian tribe or Native Hawaiian organization that is, or is likely to be, culturally affiliated with the collection; and

(ii) Within two years of the receipt or location, prepare, in consultation with any culturally affiliated Indian tribe or Native Hawaiian organization, an inventory pursuant to §10.9 of these regulations.

(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 constitute a substantive change in the notice published at the time of the original repatriation. For example, repatriation of newly found sherds from a previously repatriated funerary bowl would not require a new Federal Register notice, while another previously unreported ceramic vessel from the same burial site would require a new Federal Register notice prior to repatriation.

(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 previously non-Federally recognized Native American group, must:

(i) Within six 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, provide a summary of the collection pursuant to §10.8 of these regulations to that Indian tribe; and

(ii) Within two 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 Service from the United States Bureau of Indian Affairs, prepare, in consultation with the newly recognized culturally affiliated Indian tribe an inventory pursuant to §10.9 of these regulations.

(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 pursuant to provisions of the Federally Recognized Indian Tribe List Act of 1994 [P.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 three years of the date of receipt of Federal funds, provide a summary of the

collection pursuant to §10.8 of these regulations to any Indian tribe or Native Hawaiian organization that is, or is likely to be, culturally affiliated with the collections; and

(2) Within five years of the date of receipt of Federal funds, prepare, in consultation with any culturally affiliated Indian tribe or Native Hawaiian organization, an inventory pursuant to §10.9 of these regulations.

(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 pursuant to §10.8(f), or the completion of an inventory of Native American human remains and associated funerary objects pursuant to §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 thirty (30) days after publication of the amended notice in the Federal Register.

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

Assistant Secretary for Fish and Wildlife and Parks

Date