



Billing Code 4312-50

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 10

[NPS-WASO-NAGPRA-7724]

[PPWOCRADN0-PCU00RP14.R50000]

RIN 1024-AE00

Disposition of Unclaimed Human Remains and Other Cultural Items Discovered on Federal Lands after November 16, 1990

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: This rule proposes procedures for the disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony discovered on Federal lands after November 16, 1990. It would implement section 3 (b) of the Native American Graves Protection and Repatriation Act of 1990.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by the Regulation Identifier Number (RIN) 1024-AE00, by any of the following methods:

- Federal rulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail or hand delivery to: Dr. Sherry Hutt, Manager, National NAGPRA Program, National Park Service, 1201 Eye Street, NW, (2253), Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Sherry Hutt, Manager, National NAGPRA Program, National Park Service, 1201 Eye Street NW, 8th floor, Washington, DC 20005; telephone (202) 354-1479; facsimile (202) 371-5197.

SUPPLEMENTARY INFORMATION:

Authority

The Native American Graves Protection and Repatriation Act of 1990 (NAGPRA, or the Act) requires the Secretary of the Interior to:

(1) Promulgate regulations for disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony (“cultural items” under NAGPRA) not claimed under section 3(a) of the Act.

(2) Develop these regulations in consultation with the Review Committee established under the Act, Native American groups, representatives of museums and the scientific community pursuant to Section 3(b) of the Act.

To the extent that Federal agencies have possession of and responsibility to care for human remains, funerary objects, sacred objects, or objects of cultural patrimony, the authority in 36 CFR Part 79 under section 101(a)(7)(A) of the National Historic Preservation Act (16 U.S.C. 470a) applies. When we published the NAGPRA regulations on December 4, 1995 (60 FR 62134), we reserved section 10.7, where we are now proposing to locate this new rule.

Background

Consultation History

Consultation regarding 43 CFR 10.7 began in 2005. On three separate occasions, we (the National Native American Graves Protection and Repatriation Program) consulted with

representatives of Indian tribes, Native Hawaiian organizations, museums, and scientific organizations. We also consulted with the Review Committee during its scheduled meetings in Albuquerque, NM (November 2005); Washington, DC (April 2007); Phoenix, AZ (October 2007); and again in Washington, DC (November 2010). Before the first three meetings with tribal representatives, museums, and scientific organizations, we published a Notice of Consultation in the *Federal Register* that provided meeting details, as well as a list of proposed questions for consideration by consultation participants. In addition, each notice outlined a process and deadline for submission of written comments.

Albuquerque, NM, November 2005

We published the proposed questions for the consultation at Albuquerque, NM on November 15-17, 2005 as part of the Notice of Consultation on October 7, 2005 (70 FR 58741).

They were as follows:

(1) How should the regulations deal with the distinction between cultural items for which ownership or control has been ascertained under 43 CFR 10.6(a) but the identified lineal descendant, Indian tribe, or Native Hawaiian organization has not claimed the cultural items and cultural items for which ownership or control cannot be ascertained under 43 CFR 10.6(a)?

(2) How long may a cultural item removed from Federal land after November 16, 1990 remain in Federal agency possession before it is considered unclaimed?

(3) What are the appropriate dispositions for unclaimed cultural items?

(4) How should the regulations deal with the management, preservation, and use of unclaimed cultural items?

Over 100 people attended the consultation meetings. Oral and written comments and recommendations were provided from representatives of 18 Indian tribes and 7 museums and scientific organizations. The oral comments were transcribed and all comments retained.

Results of the comments and recommendations according to the four published questions were as follows:

(1) How should the regulations deal with the distinction between cultural items for which ownership or control has been ascertained under 43 CFR 10.6(a) but the identified lineal descendant, Indian tribe, or Native Hawaiian organization has not claimed the cultural items and cultural items for which ownership or control cannot be ascertained under 43 CFR 10.6(a)? This question elicited the greatest diversity of opinion.

- Some commenters acknowledged the distinction as posed. Cultural items in the first category would be subject to special conditions, such as restrictions on research, exhibition, conservation without the written permission of the appropriate lineal descendant or tribal official.
- Some commenters rejected the distinction, recommending that all cultural items must be treated with respect while in Federal control.
- Some commenters proposed alternative distinctions among cultural items for which ownership or control is “inherent” under 25 U.S.C. 3002(a)(1) and (a)(2)(B); cultural items that are claimable under 25 U.S.C. 3002(a)(2)(B) or (a)(2)(C); and cultural items that are not claimable under 25 U.S.C. 2002(a)(2)(B) or (a)(2)(C). Only cultural items in the second category would be subject to regulations regarding the disposition of unclaimed cultural items.
- Some commenters proposed another alternative distinction between human remains and funerary objects and sacred objects and objects of cultural patrimony.

As a general matter, participants emphasized that human remains and funerary objects would be subject to a common understanding of respect for the dead and the right to a proper

burial.

(2) How long may a cultural item removed from Federal land after November 16, 1990, remain in Federal agency possession before it is considered unclaimed?

Most commenters recommended that Federal agencies should maintain cultural items removed from Federal land until a claim is made, although some proposed that unclaimed human remains and funerary objects should be reburied in a timely manner.

(3) What are the appropriate dispositions for unclaimed cultural items?

Most commenters recommended that unclaimed cultural items should be held indefinitely until claimed by a lineal descendant, Indian tribe, or Native Hawaiian organization, although some proposed that unclaimed human remains and funerary objects should be reburied in a timely manner.

(4) How should the regulations deal with the management, preservation, and use of unclaimed cultural items?

Commenters generally agreed that unclaimed cultural items should be managed, preserved, and used in accordance with provisions of the regulations at 36 CFR Part 79 governing federally owned and administered archeological collections.

Washington, DC, April 2007

We published the proposed questions for comment at the consultation meeting scheduled for Washington, DC, as part of the Notice of Consultation on April 11, 2007 (69 FR 18192).

They were as follows:

(1) How should the regulations address distinctions between human remains, funerary objects, sacred objects, or objects of cultural patrimony that remain in Federal care and for which ownership or control is with a lineal descendant or an Indian tribe or Native Hawaiian organization on whose lands the cultural items were discovered; an Indian tribe or Native

Hawaiian organization has stated a claim based on cultural affiliation, aboriginal land, or cultural relationship; a non-federally recognized Indian group has stated a claim based on relationship of shared group identity; and no claim has been made?

(2) Do current regulations regarding the curation of federally owned and administered archaeological collections at 36 CFR 79 adequately address management, preservation, and use of human remains, funerary objects, sacred objects, or objects of cultural patrimony remaining in Federal care?

Oral and written comments and recommendations were provided from representatives of 16 Indian tribes and 5 museums and scientific organizations. The comments were as follows:

- Tribal representatives spoke to the general importance of treating all human remains and cultural objects with respect. Information about unclaimed remains or objects should be widely accessible by Native peoples and not limited to distribution only to recognized tribes.
- For many tribal people, “unclaimed” is a concept in law but without cultural meaning. Others may be willing to undertake repatriation on behalf of those tribes. Reinterment is paramount. If there are cases of unclaimed remains and items, the first critical question that should be answered is “why?”
- The ability to respond with claims may be limited by scarce tribal resources. This does not diminish the importance of cultural beliefs about remains and objects. Often, the difficulty of assessing the significance of scientific knowledge relative to traditional knowledge derives from misunderstandings when either is not well understood.
- Tribal representatives stated there should be no time limits for consultation on disposition. This is especially important when healing is a critical aspect of repatriation.

There should be early consultation among tribes and Federal agencies regarding appropriate treatments, repatriation procedures, and the potential for formal agreements. This should include archival care for records about Native Americans and considerations to ensure confidentiality and security for those records.

- Museum and scientific organization representatives spoke to the general importance of treating all human remains and cultural objects with dignity and respect. There was support for all of the procedures and types of information needed to establish the priorities of claimants. The paramount role of federally recognized tribes was supported.
- The regulations should include a definition of “unclaimed.” This is particularly important because sound curation methods should ensure that care is sensitive and effective until a substantiated claim and decision about disposition can be made. The Federal curation regulations at 36 CFR Part 79 are sufficient. They also are sufficiently flexible to allow consideration of a variety of sensitive treatments in consultation with tribes and Native Hawaiian organizations.
- Information about collections should be shared. One of the most important aspects of this is that claimants have the opportunity to have a broader understanding about curatorial procedures, the potential for cooperative relationships, and the availability of the widest range of disposition alternatives.

Phoenix, AZ, October 2007

We published the proposed questions for comment at the consultation meeting scheduled for Phoenix, AZ, as part of the Notice of Consultation on August 13, 2007 (72 FR 45213); they were the same questions as those in the prior notice.

The consultation meetings were attended by representatives of more than 13 Indian tribes and 5 museums and scientific organizations. Oral and written comments and recommendations were provided from representatives of 12 Indian tribes and 11 museum and scientific organizations.

Participants made general comments and recommendations as follows:

- For remains with lineal descendants on or off of tribal land it was stressed by tribal representatives that the care of these remains should be addressed in full consultation with the tribes. Further analysis should be addressed only with tribal consent. Tribes should have access to all burial records regardless of where they originate. One tribe recommended that when control is determined to be vested with a tribe, that tribe must determine proper and respectful disposition of remains, funerary objects, sacred objects or objects of cultural patrimony.
- For remains where there has been a claim based on cultural affiliation or aboriginal land consultation with the tribes must take place and analysis must take place only with tribal consent. Tribes should have access to all burial records regardless where they originate. Tribal representatives stressed that when cultural affiliation has been established, tribal representatives may designate a lead tribe to address consultation. It was stressed that it can be hard to understand ownership from a tribal perspective. While the concept of ownership can be hard for traditional tribal people to comprehend, museums and universities embrace the concept of ownership, making mutual understanding more difficult. Tribal representatives emphasized another major perspective about the difficulty of conducting research to determine cultural affiliation without economic and human resources.

- From the perspective of the tribal representatives, the treatment of unclaimed human remains must be done with the utmost respect. One scientific organization stated that there should be no statute of limitations on NAGPRA claims. Curation should continue in accordance with applicable law until a lineal descendent or group authorized by NAGPRA directs otherwise. All parties should be encouraged to communicate with applicable institutions regarding their rights and interests, especially to reduce the risk of other claimants with lesser rights obtaining repatriation due to lack of knowledge about the existence of higher priority claimants' rights.
- Tribal leaders noted that if the culturally affiliated tribe does not wish to repatriate the remains, funerary objects, objects of cultural patrimony, or sacred objects, they must be consulted on proper and respectful housing for the remains or objects.
- If a non-federally recognized Indian group states a claim based on a cultural connection, a determination about the extent of that connection with that group should be made. The remains must be housed in accordance to specifications determined through consultation with the culturally connected group, regardless of the Federal status of the tribe, until a decision regarding permanent disposition can be reached. Tribal representatives concurred that remains or objects should be repatriated to the lineal descendent or an Indian tribe or Native Hawaiian organization most closely connected for appropriate care and handling regardless of the Federal status of the tribe or group. If the culturally connected group does not wish to accept repatriation, they still should be consulted about proper and respectful housing.
- Tribes recognized that claims might not be made because potential claimant tribes do not have information or do not have resources necessary to receive remains or other

collections. These facts do not diminish the cultural or spiritual beliefs associated with remains or objects, especially with regard to basic conditions of respect and dignity that should be accorded to human remains. There was discussion about the government-to-government relationship that must be maintained between Federal agencies and Indian tribes. Tribes noted that tribal sovereignty also was an issue that should be considered by institutions, universities, and states. They considered that the importance of traditional knowledge should be part of effective consultation. Respect and dignity were described as including avoidance of:

- Separation of human remains from associated funerary objects.
 - Public displays of human remains and funerary objects.
 - Unnecessary disturbance, handling or transport of human remains.
 - Archeological processing of human remains and funerary objects.
 - Physical modifications of human remains and associated funerary objects.
 - Housing together sacred objects and objects of cultural patrimony.
- Tribes were concerned about the extent to which the regulations for curation of federally owned and administered archeological collections at 36 CFR Part 79 adequately address the management, preservation, and use of human remains, funerary objects, sacred objects, or objects of cultural patrimony. One tribe recommended amendment of the curation regulations to reflect the fact that human remains cannot be “owned.” Others noted that the care aspects listed above should be incorporated into the curation regulations. Tribes discussed amendments on the section on “uses of collections” to include limitations on scientific or educational purposes, limitations on loans and access by tribes for religious or cultural purposes.

- Tribal representatives noted that, regardless of the provisions in the Federal statutes, working closely with the states to address state burial laws was important.

Summary of consultation with the NAGPRA Review Committee

The meeting agendas were made public 30 days or more before each meeting, and notice of the date and place of each meeting was published in the *Federal Register* 30-180 days before the meetings in Albuquerque, NM, November 2005; Washington, DC, April 2007; Phoenix, AZ, October 2007; De Pere, WI, May 2008; Sarasota, FL, October 2009; and Washington, DC, November 2010. Review Committee suggestions were as follows:

- There should be ways to provide technical assistance through the National NAGPRA Program for making determinations involving aboriginal lands, for accessing reference materials, and for using databases.
- Potential claimants should be fully informed, and should be consulted when no claims are made and alternative dispositions are considered. Until determinations are made, collections should remain with Federal agencies.
- Sensitivity toward traditional cultural practices, respect, and dignity regarding treatment of human remains and associated funerary objects was important.
- Reinterment was acknowledged as an important option.
- New categories for unclaimed remains should be avoided, especially given the potential for new information that may be developed which would help in any determinations about disposition.
- There is a need for a database of unclaimed remains and objects.
- Human remains and funerary objects should remain separate from other cultural objects and should be subject to special care and handling in consultation with priority claimants.

- Study or documentation of the unclaimed human remains and cultural items should proceed only with consent of the priority claimants or after consultation with the culturally affiliated or culturally related tribes. Baseline documentation, however, such as number of individuals, age, sex, should be recorded.
- No time limit should be imposed for responding to potential claimants, and human remains and cultural items should remain in Federal care until such time as a claimant comes forward and disposition is determined.
- To facilitate claims, Federal agencies should hold consultations with lineal descendants, tribes or Native Hawaiian organizations on whose tribal lands such objects or remains were discovered, and other tribal entities that may have a cultural affiliation or relationship with the human remains or cultural objects.
- Federal agencies considering treatments should be guided by the regulations at 36 CFR Part 79.
- There is a need for a definition of “unclaimed.” It is important to shield unclaimed cultural items from educational uses.
- It is important to allow access for traditional cultural practices.

Section-by-section analysis

§ 10.2 Definitions

A definition of “unclaimed cultural items” (that is, human remains, funerary objects, sacred objects, or objects of cultural patrimony) clarifies that this is a category subject to the provisions of the NAGPRA and of regulations to determine priority of ownership and control. Those procedures are the subject of 43 CFR 10.3 through 10.6. Once priority of ownership has been determined, some priority claimants may choose not to exercise their right. Alternatively,

no potential claimants may have been identified. These two conditions constitute the category of unclaimed cultural items. The procedures defined in the new §10.7 provide guidance on how to proceed.

§ 10.7 Disposition of unclaimed cultural items.

A general statement in paragraph 10.7(a) about the purposes of the new section clarifies the applicable statutory authority, how the new section is to be applied, and what procedures in the regulations must be completed. The results of work done previously, particularly with regard to consultation and appropriate determination of disposition, have continued applicability, and the new section imposes no new requirements for consultation and documentation.

The rule is limited to Federal lands, as NAGPRA's provision on new discoveries on tribal lands puts the tribal land owner in control of cultural items above all claimants except lineal descendants.

The provisions in paragraph 10.7(b) provide guidance about disposition. They:

- Clarify which regulatory procedures must be completed before any potential implementation of §10.7;
- Provide options for disposition, according to the new definition of “unclaimed cultural items” in paragraph 10.2(h), including considerations for reinterment;
- Require public notification before disposition;
- Establish Federal curation regulations at 36 CFR Part 79 as standards for care and management;
- Encourage consideration of care with specific sensitivity to tribal and Native Hawaiian traditions;
- Provide flexibility to house human remains and associated funerary objects separately;

- Require appropriate information about remains and objects to be made publicly accessible via a nationwide database to be maintained by the National NAGPRA Program;
- Require Federal agencies to submit their lists of unclaimed cultural items, with descriptive information, within two years of the excavation; and
- Acknowledge that, while human remains and funerary objects are intrinsically protected under NAGPRA, no items are intrinsically sacred objects or objects of cultural patrimony, but instead they rely on tribal or group context to qualify as protected items under NAGPRA.

Compliance with Other Laws and Executive Orders

Regulatory Planning and Review (Executive Order 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is significant because it could interfere with an action taken or planned by another agency.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the

rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

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.). This rule will affect the disposition of only those Native American human remains and cultural items for which potential claimants have chosen not to take ownership or control, or when no potential claimants have been identified.

Small Business Regulatory Enforcement Fairness Act (SBREFA).

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This 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 (UMRA).

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 UMRA (2 U.S.C. 1531 et seq.) is not required.

Takings (E.O. 12630).

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12603. A takings implication assessment is not required.

This rule concerns the discretionary disposition of only those Native American cultural items for which identified potential claimants, upon notice, have not exercised their right to claim or no potential claimants can reasonably be identified.

Federalism (E.O. 13132).

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. A Federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988).

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian Tribes (Executive Order 13175).

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 218), and Department of Interior Manual 512 DM 2, "Departmental Responsibilities for Indian Trust Resources," this rule has a potential effect on federally recognized Indian tribes. The proposed rule was developed in consultation with the NAGPRA Review Committee, which includes members nominated by Indian tribes. Formal consultation with the NAGPRA Review Committee was held on November 16-17, 2005, in Albuquerque, NM; on April 19-20, 2007, in

Washington, DC; on October 15-16, 2007, in Phoenix, AZ; on May 15-16, 2008, in De Pere, WI; on October 30-31, 2009, in Sarasota, FL; and on November 18-19, 2010, in Washington, DC.

Formal consultation with Indian tribes began on November 15, 2005, in Albuquerque, NM, and continued on April 18, 2007, in Washington, DC, and October 14, 2007, in Phoenix, AZ. Testimony or comments were received from representatives of 18 Indian tribes and three Indian organizations. We will fully consider tribal and Review Committee views in the final rule.

Paperwork Reduction Act (PRA).

This rule does not contain any new collection of information that requires approval by the Office of Management and Budget under the PRA of 1995 (44 U.S.C. 3501 *et seq.*). OMB has approved the information collection requirements associated with regulations implementing NAGPRA and has assigned OMB control number 1024-0144 (expires 11/30/15). An agency may not conduct or sponsor and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number.

National Environmental Policy Act of 1969(NEPA).

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required because the rule is covered by a categorical exclusion under 516 DM 2, Appendix 1.10, Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case. We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the NEPA.

Effects on the Energy Supply (Executive Order 13211).

This rule is not a significant energy action under the definition in Executive Order 13211.

A statement of Energy Effects is not required.

Clarity of this rule.

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Drafting Information.

This proposed rule was prepared by staff of the National NAGPRA Program and counsel of the Division of Parks and Wildlife and the Division of Indian Affairs in the Office of the Solicitor.

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 identified by the RIN 1024-AE00 to <http://www.regulations.gov> (by following the website's instructions for submitting comments), or by mail to: Dr. Sherry Hutt, Manager, National NAGPRA Program, National Park Service, 1201 Eye Street, NW (2253), Washington, DC 20005. We specifically request comments from Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and other interested persons regarding:

1. The applicability of Federal curation regulations at 36 CFR Part 79 or other standards, guidelines, and protocols being used by state, local, or tribal governments that address the preservation or management of Native American cultural items.

2. The appropriateness of using a priority structure in determining the disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony.

3. The alternative of reinterment.

4. Using newspaper notice for potential claimants of unclaimed items, and any other approaches of notifying the public that are equally or more effective. Is there a role in other technological means to provide effective notice to tribes? Is it necessary for notices under this section be published in the Federal Register as are notices in the collections provisions?

This proposed rule may also be viewed at <http://www.nps.gov/nagpra>. A hardcopy of this proposed rule may be obtained by submitting a request to the Manager, National NAGPRA Program, National Park Service, 1201 Eye Street, NW (2253) Washington, DC 20005.

Commenters wishing the National Park Service to acknowledge receipt of their comments must submit those comments with a self-addressed, stamped postcard on which the following

statement is made: “Comments to RIN 1024-AE00.” The postcard will be date stamped and returned to the commenter.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment- including your personal identifying information - may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 43 CFR Part 10

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

In consideration of the foregoing, the NPS proposes to amend 43 CFR Part 10 as follows:

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

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

Authority: 16 U.S.C. 470dd, 25 U.S.C. 9 and 3001 *et seq.*

2. In § 10.2 add paragraph (h) to read as follows:

§ 10.2 Definitions.

* * * * *

(h) *Unclaimed cultural items* means Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony:

(1) That have been excavated or removed from Federal lands after November 16, 1990;
and

(2) Whose disposition of ownership or control under 25 U.S.C. 3002(a) and § 10.6 of this part has not occurred because either:

(i) No identified potential claimant, upon notice, has exercised its right to claim ownership or control of the cultural items; or

(ii) No potential claimant can reasonably be identified.

* * * * *

3. Add § 10.7 to read as follows:

§ 10.7 Disposition of unclaimed cultural items.

(a) A Federal agency that has unclaimed cultural items (human remains, funerary objects, sacred objects, or objects of cultural patrimony) must:

(1) Submit a list of the items to the Manager, National NAGPRA Program that describes the place of discovery and the nature of the unclaimed cultural items. This list must be received by [DATE 2 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], or within 2 years after excavating or removing the items, whichever is later.

(2) Care for and manage unclaimed cultural items consistent with the regulations at 36 CFR Part 79.

(3) To the maximum extent feasible, consider and respect the traditions of any potential claimants concerning the unclaimed cultural items, including, but not limited to, traditions regarding housing, maintenance, and preservation.

(b) Subject to paragraph (d) of this section, a Federal agency that has unclaimed cultural items may transfer them to another Indian tribe or Native Hawaiian organization.

(c) Subject to paragraph (d) of this section, a Federal agency that has unclaimed human remains and funerary objects may reinter them or offer them for disposition according to applicable State or other law.

(d) Before a Federal agency makes a transfer or reinterment under paragraphs (b) or (c) of this section, it must:

(1) Submit the list required under paragraph (a)(1) of this section to the Manager, National NAGPRA Program.

(2) Publish a notice of the proposed transfer or reinterment in a newspaper of general circulation in the area in which the unclaimed cultural items were excavated or removed and in a newspaper of general circulation in the area in which each potential claimant now resides. The notice must explain the nature and affiliation, if any, of the unclaimed cultural items, and solicit claims under the priority of ownership or control in section 3(a) of the Act and §10.6 of this part. The notice must be published at least two times at least a week apart. The transfer or reinterment may not take place until at least 30 days after publication of the second notice to allow time for any claimants under the priority of ownership or control in section 3(a) of the Act and §10.6 of this part to come forward.

(3) Send to the Manager, National NAGPRA Program a copy of the notice published under paragraph (d)(2) of this section and information on when and in what newspaper(s) the notice was published.

(e) This section implements section 3(b) of the Native American Graves Protection and Repatriation Act at 25 U.S.C. 3002(b).

Rachel Jacobson
Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

October 21, 2013_
Date

[FR Doc. 2013-25511 Filed 10/28/2013 at 8:45 am; Publication Date: 10/29/2013]