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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 10

[NPS-WASO-NAGPRA-15507; PPWOCRADN0, PCU00RP14.R50000]

RIN 1024-AD98

Native American Graves Protection and Repatriation Act Regulations,

Definition of Indian Tribe

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Department is confirming the interim final rule published and effective on July 5, 2011, removing the definition of *Indian tribe* because it is inconsistent with the statutory definition of that term. The July 5, 2011, publication stated that we would review comments on the interim final rule and either confirm the rule or initiate a proposed rulemaking. We are confirming the rule without change.

EFFECTIVE DATE: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Authority

The Secretary of the Interior is responsible for implementing the Native American Graves Protection and Repatriation Act (NAGPRA or Act) (25 U.S.C. 3001 *et seq.*), including the issuing of appropriate regulations that interpret the provisions of the Act.

Background

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. The Act defines *Indian tribe* as any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act) (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 3001(7)).

The Department of the Interior (Department) published the initial rule to implement the Act on December 4, 1995 (60 FR 62158). That rule defined *Indian tribe* to include, in addition to any Alaska Native village, any Alaska Native corporation.

From July 2009 to July 2010, at the request of Congress, the Government Accountability Office (GAO) conducted a performance audit to address the status of NAGPRA implementation among Federal agencies. In its report, “Native American Graves Protection and Repatriation Act: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act” (Report no. GAO-10-768 (July 2010)) the GAO recommended, among other things, that the National NAGPRA Program, in

conjunction with the Department's Office of the Solicitor, reassess whether any Alaska Native corporations should be considered as "eligible entities for purposes of carrying out NAGPRA . . ." (GAO Report, at 55).

The recommendation and analysis in the report created significant uncertainty on the part of museums and Federal agencies concerning the status of Alaska Native corporations under NAGPRA. The Department received a number of questions including whether Alaska Native corporations may assert claims for human remains and other cultural items; whether the NAGPRA requirements for consultation with Indian tribes apply to Alaska Native corporations; whether Alaska Native corporations are authorized under the law to bring matters to the NAGPRA Review Committee; and whether Alaska Native Corporations can be recipients of grants authorized by NAGPRA.

To address these questions, and as recommended by GAO, the Department's Office of the Solicitor examined the legal basis for the existing regulatory provision that included Alaska Native corporations as Indian tribes under the Act. The opinion of the Solicitor's Office is posted on the National NAGPRA Program's website at <http://www.nps.gov/history/nagpra>.

The Solicitor's Office found that in the Act, Congress did not adopt the definition of *Indian tribe* as it is defined in the Indian Self-Determination and Education Assistance Act (ISDEAA)(25 U.S.C. 450b). Although the ISDEAA definition includes Alaska Native corporations, the NAGPRA definition does not. According to the legislative history of NAGPRA, the definition of *Indian tribe* in the Act was deliberately changed from that in the ISDEAA in order to "delete [] land owned by any Alaska Native Corporation from being considered as 'tribal land' (136 Cong. Rec. 36,815 (1990)).

Accordingly, the Solicitor's Office recommended that the regulatory definition of *Indian tribe* be changed to conform to the statutory definition.

In response to the Solicitor's Office recommendation, the Department published an interim final rule that removed and reserved paragraph (b)(2) of 43 CFR 10.2 that had contained the regulatory definition of *Indian tribe* (76 FR 39007, July 5, 2011). The interim final rule also contained a request for comments, and for good cause made the interim final rule effective upon publication in the Federal Register. This good-cause finding was based on the uncertainty caused by the July 2010 GAO NAGPRA report and the need to ensure compliance with the requirements of the Act. Since then, the Department has been using only the statutory definition of *Indian tribe* to implement the Act.

We received one written comment during the 60-day comment period from one member of the public. The commenter supported the removal of the definition of *Indian tribe*.

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Therefore, the interim rule published July 5, 2011, at 76 FR 39007, is confirmed as final without change.

Dated: May 27 2014

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

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