

## §9.13

(c) The Secretary reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if its contents meet Federal requirements.

### §9.13 May the Secretary waive any provision of these regulations?

In an emergency, the Secretary may waive any provision of these regulations.

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

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AUTHORITY: 25 U.S.C. 3001 *et seq.*, 16 U.S.C. 470dd (2), 25 U.S.C. 9.

SOURCE: 60 FR 62158, Dec. 4, 1995, unless otherwise noted.

## 43 CFR Subtitle A (10–1–10 Edition)

### Subpart A—Introduction

#### §10.1 Purpose, applicability, and information collection.

(a) *Purpose.* These regulations carry out provisions of the Native American Graves Protection and Repatriation Act of 1990 (Pub.L. 101–601; 25 U.S.C. 3001–3013; 104 Stat. 3048–3058). These regulations develop a systematic process for determining the rights of lineal descendants and Indian tribes and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated.

(b) *Applicability.* (1) These regulations pertain to the identification and appropriate disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are:

(i) In Federal possession or control; or

(ii) In the possession or control of any institution or State or local government receiving Federal funds; or

(iii) Excavated intentionally or discovered inadvertently on Federal or tribal lands.

(2) These regulations apply to human remains, funerary objects, sacred objects, or objects of cultural patrimony which are indigenous to Alaska, Hawaii, and the continental United States, but not to territories of the United States.

(3) Throughout this part are decision points which determine how this part applies in particular circumstances, e.g., a decision as to whether a museum “controls” human remains and cultural objects within the meaning of the regulations, or a decision as to whether an object is a “human remain,” “funerary object,” “sacred object,” or “object of cultural patrimony” within the meaning of the regulations. Any final determination making the Act or this part inapplicable is subject to review under section 15 of the Act. With respect to Federal agencies, the final denial of a request of a lineal descendant, Indian tribe, or Native Hawaiian organization for the repatriation or disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony brought under, and in compliance with, the Act and this

part constitutes a final agency action under the Administrative Procedure Act (5 U.S.C. 704).

(c) The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned control number 1024-0144. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[60 FR 62158, Dec. 4, 1995, as amended at 62 FR 41293, Aug. 1, 1997; 75 FR 12402, Mar.15, 2010]

#### § 10.2 Definitions.

In addition to the term *Act*, which means the Native American Graves Protection and Repatriation Act as described above, definitions used in these regulations are grouped in seven classes: Parties required to comply with these regulations; Parties with standing to make claims under these regulations; Parties responsible for implementing these regulations; Objects covered by these regulations; Cultural affiliation; Types of land covered by these regulations; and Procedures required by these regulations.

(a) *Who must comply with these regulations?* (1) *Federal agency* means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution as specified in section 2 (4) of the Act.

(2) *Federal agency official* means any individual authorized by delegation of authority within a Federal agency to perform the duties relating to these regulations.

(3) *Museum* means any institution or State or local government agency (including any institution of higher learning) that has possession of, or control over, human remains, funerary objects, sacred objects, or objects of cultural patrimony and receives Federal funds.

(i) The term “*possession*” means having physical custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony with a sufficient legal interest to lawfully treat the objects as part of its collection for purposes of these regulations. Generally, a museum or Federal agen-

cy would not be considered to have possession of human remains, funerary objects, sacred objects, or objects of cultural patrimony on loan from another individual, museum, or Federal agency.

(ii) The term “*control*” means having a legal interest in human remains, funerary objects, sacred objects, or objects of cultural patrimony sufficient to lawfully permit the museum or Federal agency to treat the objects as part of its collection for purposes of these regulations whether or not the human remains, funerary objects, sacred objects or objects of cultural patrimony are in the physical custody of the museum or Federal agency. Generally, a museum or Federal agency that has loaned human remains, funerary objects, sacred objects, or objects of cultural patrimony to another individual, museum, or Federal agency is considered to retain control of those human remains, funerary objects, sacred objects, or objects of cultural patrimony for purposes of these regulations.

(iii) The phrase “*receives Federal funds*” means the receipt of funds by a museum after November 16, 1990, from a Federal agency through any grant, loan, contract (other than a procurement contract), or other arrangement by which a Federal agency makes or made available to a museum aid in the form of funds. Federal funds provided for any purpose that are received by a larger entity of which the museum is a part are considered Federal funds for the purposes of these regulations. For example, if a museum is a part of a State or local government or a private university and the State or local government or private university receives Federal funds for any purpose, the museum is considered to receive Federal funds for the purpose of these regulations.

(4) *Museum official* means the individual within a museum designated as being responsible for matters relating to these regulations.

(5) *Person* means an individual, partnership, corporation, trust, institution, association, or any other private entity, or, any official, employee, agent, department, or instrumentality of the United States, or of any Indian tribe or Native Hawaiian organization, or of any State or political subdivision