

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We expect to assess civil penalties on a small number of museums that have failed to comply with the Act. The Secretary may exercise discretion to reduce the penalty amount if it seriously impairs the museum's capacity of gaining a business livelihood.

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 rule:

(1) Does not have an annual effect on the economy of \$100 million or more.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local or tribal government agencies, or geographic regions;

(3) 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. We expect to assess civil penalties on a small number of museums that have failed to comply with the Act. The Secretary may exercise discretion to reduce the penalty amount if it seriously impairs the museum's capacity of gaining a business livelihood.

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. 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 (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

This final rule does not require an information collection of 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I is not required.

National Environmental Policy Act

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

Government-to-Government Relationship with Tribes

In accordance with Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249), the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), and 512 DM 2 we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects. NAGPRA makes provisions for the return to lineal descendants, Indian tribes and Native Hawaiian organizations of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. Native American organizations participated in the drafting of this rule.

List of Subjects in 43 CFR Part 10

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

■ In consideration of the forgoing, 43 CFR Subpart A is amended as follows:

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT REGULATIONS

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

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

■ Part 10 is amended by adding § 10.12 to read as follows:

§ 10.12 Civil penalties.

(a) *The Secretary's Authority to Assess Civil Penalties.* The Secretary is authorized by section 9 of the Act to assess civil penalties on any museum

that fails to comply with the requirements of the Act. As used in this Paragraph, "failure to comply with requirements of the Act" also means failure to comply with applicable portions of the regulations set forth in this Part. As used in this Paragraph "you" refers to the museum or the museum official designated responsible for matters related to implementation of the Act.

(b) *Definition of "failure to comply."*

(1) Your museum has failed to comply with the requirements of the Act if it:

(i) After November 16, 1990, sells or otherwise transfers human remains, funerary objects, sacred objects, or objects of cultural patrimony contrary to provisions of the Act, including, but not limited to, an unlawful sale or transfer to any individual or institution that is not required to comply with the Act; or

(ii) After November 16, 1993, has not completed summaries as required by the Act; or

(iii) After November 16, 1995, or the date specified in an extension issued by the Secretary, whichever is later, has not completed inventories as required by the Act; or

(iv) After May 16, 1996, or 6 months after completion of an inventory under an extension issued by the Secretary, whichever is later, has not notified culturally affiliated Indian tribes and Native Hawaiian organizations; or

(v) Refuses, absent any of the exemptions specified in § 10.10(c) of this part, to repatriate human remains, funerary object, sacred object, or object of cultural patrimony to a lineal descendant or culturally affiliated Indian tribe or Native Hawaiian; or

(vi) Repatriates a human remains, funerary object, sacred object, or object of cultural patrimony before publishing the required notice in the Federal Register;

(vii) Does not consult with lineal descendants, Indian tribe officials, and traditional religious leaders as required; or

(viii) Does not inform the recipients of repatriations of any presently known treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony with pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects.

(2) Each instance of failure to comply will constitute a separate violation.

(c) *How to Notify the Secretary of a Failure to Comply.* Any person may bring an allegation of failure to comply to the attention of the Secretary. Allegations must be in writing, and should include documentation