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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

RIN 1024-AD20

Authentic Native Handicrafts

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Parks Omnibus Management Act of 1998 encourages the sale of authentic United States Indian, Alaska Native, Native Samoan and Native Hawaiian handicrafts relating to the cultural, historical, and geographic characteristics of units of the national park system. This final rule implements the requirements of the act.

DATES: Effective Date: This rule is effective on July 12, 2007.

FOR FURTHER INFORMATION CONTACT: Jo Pendry, Concessions Program Manager, National Park Service, 1201 I Street NW., Washington, DC 20005. (202-513-7156).

SUPPLEMENTARY INFORMATION:

Background

For many years it has been the policy of the National Park Service (NPS) to encourage its concessioners to sell native handicrafts to park area visitors. The Congress, through Section 416 of the National Parks Omnibus Management Act of 1998 (1998 Act), embodied this policy into law, stating that:

Promoting the sale of authentic United States Indian, Alaska Native, Native Samoan, and Native Hawaiian handicrafts relating to the cultural, historical, and geographic characteristics of units of the National Park System is encouraged, and the Secretary shall ensure that there is a continuing effort to enhance the handicraft trade where it exists and establish the trade in appropriate areas where the trade currently does not exist.

In furtherance of this objective, Section 416(b) of the 1998 Act exempts the revenue derived by NPS concessioners from the sale of United States Indian, Alaska Native, Native Samoan and Native Hawaiian handicrafts from concession contract franchise fees. This final regulation collectively refers to these handicrafts as ``authentic native handicrafts.''

Also, Section 417 of the 1998 Act requires the Secretary of the Interior (Secretary) to promulgate a regulation that further defines United States Indian, Alaska Native and Native Hawaiian handicrafts. Section 409 of the 1998 Act (16 U.S.C. 5958) requires the National Park Service Concessions Management Advisory Board (Advisory Board) to make recommendations to the Secretary regarding the nature and scope of products that qualify as authentic native handicrafts within the meaning of the 1998 Act. This regulation has been developed in consideration of the recommendations of the Advisory Board.

This regulation will give guidance to the NPS and NPS concessioners to determine what products meet the definition of authentic native handicrafts for purposes of franchise fee exemptions and other elements of the NPS concessions management program.

In developing the regulation, NPS, upon the recommendation of the Advisory Board, incorporated to the extent appropriate the relevant definitions established by the Indian Arts and Crafts Board of the Department of the Interior (IACB) in 25 CFR part 309 in recognition of the native handicraft expertise of the IACB.

Please note that Section 417 of the 1998 Act requires the Secretary to further define ``United States Indian, Alaska Native, and Native Hawaiian handicraft.''. However, section 416 of the 1998 Act additionally refers to Native Samoan handicraft. Accordingly, although the term ``Native Samoan handicraft' is not defined in the

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regulation, the regulation specifies that the sale of Native Samoan handicrafts is encouraged and exempt from NPS concession contract franchise fees. An administrative definition of ``Native Samoan handicraft' will be developed by NPS in consultation with appropriate Samoans and Samoan organizations.

The source for the definition of ``Alaska Native' found in this regulation is from the Alaska Native Claims Settlement Act (43 U.S.C. 1602 (b)). The source of the term ``arts and crafts objects' is 25 CFR part 309 (the regulations of the IACB) as adapted for purposes of this regulation.

The source of the definition of ``authentic native handicrafts' contained in the regulation is 25 CFR part 309 as adapted for the purposes of this regulation.

The source of the term ``Native Hawaiian' is Section 3001(10) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001(10)) and Section 16(11) of the National Museum of the American Indian Act (20 U.S.C. 80q-14(11)).

The source of the term ``United States Indian' is the applicable portion of the term ``Indian' as defined in 25 CFR part 309. The term ``label' means a separate tag, paper, sign, sticker, or signed document attesting to the authenticity of the item as ``authentic native handicraft.''

Notice of Proposed Rulemaking

On March 25, 2004, the National Park Service published a Notice of Proposed Rulemaking (NPRM) for Authentic Native Handicrafts (69 FR 15286). The comment period was open for 60 days. No public comments were received.

During the review process two comments were received from within the Department. One comment from the Office of the Assistant Secretary for Policy, Management, and Budget requested that we consider requiring concessioners to mark sales items that are authentic native handicrafts marked with a label to attest to the item's authenticity, in order to be eligible for franchise fee exemption. This requirement is in addition to the standard concession contract requirement that concessioners provide receipts from the sale of handicrafts that have been approved for sales by the Director as constituting authentic American Indian, Alaska Native, Native Samoan, or Native Hawaiian handicrafts. The regulation was changed to incorporate these recommendations.

The second comment, from the Department's Office of the Solicitor, Division of Indian Affairs, asked that we use the term Alaska Native instead of Alaskan Native or Native Alaskan. It was felt that Native Alaskan was a broader term that included more than those intended to benefit by this rule. The term Native Alaskan would include all people born in Alaska.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget makes the final determination as to the significance of this regulatory action and it has determined that this document is not a significant rule and is not subject to review as:

(1) 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.

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

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) 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.). If there is an effect it will be a positive effect by exempting revenue derived by the sales of Native American Handicraft from concession contract franchise fees.

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 does not have an annual effect on the economy of \$100 million or more; will not cause

a major increase in costs or prices for consumers, individual entities, Federal, State, or local government agencies, or geographic regions; and 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. The effect of the rule is to establish definitions for the sale of native handicrafts in areas of the national park system.

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.

Takings (Executive Order 12630)

In accordance with Executive Order 12360, this rule does not have significant takings implications. A takings assessment is not required.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The rule imposes no requirements on any governmental entity other than NPS.

Civil Justice Reform (Executive Order 12998)

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)(2) of the Order.

Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties. Accordingly, 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 affecting the quality of the human environment. A detailed statement under the National Environment Policy Act is not required. The rule will not increase public use of park areas, introduce non-compatible uses into park areas, conflict with adjacent land ownerships or land uses, or cause a nuisance to property owners or occupants adjacent to park areas. Accordingly, this rule is categorically excluded from procedural requirements of the National Environmental Policy Act by 516 DM 12.5(A)(10). 7.4A(10).

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

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effects on federally recognized Indian tribes and have determined that there are no potential effects on the tribes.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your 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 read if it were divided into more (but shorter) sections? (A ``section'' appears in bold type and is preceded by the symbol ``Sec. '' and a numbered heading; for example Sec. 7.XX)) (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 this address: Exsec@ios.doi.gov.

Drafting Information: The principal contributors to this final rule were: Jo Pendry, Chief Concession Program, WASO; Judy Bassett, Concession Policy Analyst, WASO; Meridith Stanton, Director, and Jill Moran, Program Specialist, IACB, and Jerry Case, Regulations Program Manager, WASO.

List of Subjects in 36 CFR Part 51

Concessions, Government contracts, National parks, Reporting and recordkeeping requirements.

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For the reasons stated in the preamble, the National Park Service amends 36 CFR Part 51 as follows:

PART 51--CONCESSION CONTRACTS

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1. The authority for part 51 continues to read as follows:

Authority: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 et seq., particularly, 16 U.S.C. 3 and Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105-391).

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2. Section 51.83 is added to read as follows:

Sec. 51.83 Sale of Native Handicrafts.

(a) Where authorized by an applicable concession contract, concessioners are encouraged to sell authentic native handicrafts appropriately labeled or denoted as authentic that reflect the cultural, historical, and geographic characteristics of the related park area. To further this objective, concession contracts will contain a provision that exempts the revenue of a concessioner derived from the sale of appropriately labeled or denoted authentic native handicrafts from the concession contract's franchise fee.

(b) The sale of products as authentic native handicrafts is further regulated under the Indian Arts and Crafts Act, Public Law 101-644, as amended.

(c) Definitions. (1) Alaska Native means any citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metalakatla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any person so defined either or both of whose adoptive parents are not Alaska Natives. It also includes, in the absence of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Alaska native village or native groups of which he or she claims to be a member and whose father or mother is (or, if deceased, was) regarded as an Alaska Native by any village or group.

(2) Arts and crafts objects means art works and crafts that are in a traditional or non-traditional style or medium.

(3) Authentic native handicrafts means arts and crafts objects created by a United States Indian, Alaska Native, Native Samoan or Native Hawaiian that are made with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual object.

(4) Native Hawaiian means any individual who is a descendant of the aboriginal people that, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(5) United States Indian means any individual that is a member of an Indian tribe as defined in 18 U.S.C. 1159(c)(3).

Dated: May 22, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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