

Internal Revenue Code, Section 170(h)

QUALIFIED CONSERVATION CONTRIBUTIONS, AS AMENDED

This Act became law on December 17, 1980 (Public Law 96-541, 26 U.S.C. 170(h) and has been amended three times.

Qualified conservation contribution

26 U.S.C. 170(h)(1),
In general

Section 170(h)

(1) For purposes of subsection (f)(3)(B)(iii), the term **“qualified conservation contribution”** means a contribution—

- (A) of a qualified real property interest,
- (B) to a qualified organization,
- (C) exclusively for conservation purposes.

26 U.S.C. 170(h)(2),
Qualified real property interest

(2) For purposes of this subsection, the term **“qualified real property interest”** means any of the following interests in real property:

- (A) the entire interest of the donor other than a qualified mineral interest,
- (B) a remainder interest, and
- (C) a restriction (granted in perpetuity) on the use which may be made of the real property.

26 U.S.C. 170(h)(3),
Qualified organization

(3) For the purposes of paragraph (1), the term **“qualified organization”** means an organization which—

- (A) is described in clause (v) or (vi) of subsection (b)(1)(A), or
- (B) is described in section 501(c)(3) and—
 - (i) meets the requirements of section 509(a)(2), or
 - (ii) meets the requirements of section 509(a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

26 U.S.C. 170(h)(4),
Conservation purpose defined, in general

(4)(A) For purposes of this subsection, the term **“conservation purposes”** means—

- (i) the preservation of land areas for outdoor recreation by, or the education of, the general public,
- (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
- (iii) the preservation of open space (including farmland and forest land) where such preservation is—
 - (I) for the scenic enjoyment of the general public, or

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(II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or

(iv) the preservation of a historically important land area or a certified historic structure.

Certified historic structure

(B) For purposes of subparagraph (A)(iv), the term “**certified historic structure**” means any building, structure, or land area which—

(i) is listed in the National Register, or

(ii) is located in a registered historic district (as defined in Section 47(c)(3)(B)) and is certified by the Secretary of the Interior to the Secretary [of the Treasury] as being of historic significance to the district.

A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or on due date (including extensions) for filing the transferor’s return under this chapter for the taxable year in which the transfer is made.

26 U.S.C. 170(h)(5),
Exclusively for conservation purposes

(5) For purposes of this subsection—

(A) A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.

Conservation purpose must be protected

(B)(i) Except as provided in clause (ii), in the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

No surface mining permitted

(ii) With respect to any contribution of property in which the ownership of the surface estate and mineral interests has been and remains separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.

Special rule

(6) For purposes of this subsection, the term “**qualified mineral interest**” means—

26 U.S.C. 170(h)(6),
Qualified mineral interest

(A) subsurface oil, gas, or other minerals, and

(B) the right to access to such minerals.

Abandoned Shipwreck Act

This Act became law on April 28, 1988 (Public Law 100-298; 43 U.S.C. 2101-2106). It has not been amended. This description of the Act tracks the language of the United States Code except that (following common usage) we refer to the “Act” rather than to the “subchapter” or the “title” of the Code.

43 U.S.C. 2101,
Findings

Section 2

The Congress finds that—

- (a) States have the responsibility for management of a broad range of living and nonliving resources in State waters and submerged lands; and
- (b) included in the range of resources are certain abandoned shipwrecks, which have been deserted and to which the owner has relinquished ownership rights with no retention.

43 U.S.C. 2102,
Definitions

Section 3

For purposes of this Act—

- (a) the term “**embedded**” means firmly affixed in the submerged lands or in coralline formations such that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof;
- (b) the term “**National Register**” means the National Register of Historic Places maintained by the Secretary of the Interior under section 101 of the National Historic Preservation Act [16 U.S.C. 470a];
- (c) the terms “**public lands**”, “**Indian lands**”, and “**Indian tribe**” have the same meaning given the terms in the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-470ll);
- (d) the term “**shipwreck**” means a vessel or wreck, its cargo, and other contents;
- (e) the term “**State**” means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands; and
- (f) the term “**submerged lands**” means the lands—
 - (1) that are “lands beneath navigable waters,” as defined in section 2 of the Submerged Lands Act [43 U.S.C. 1301];

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(2) of Puerto Rico, as described in section 8 of the Act of March 2, 1917, as amended [48 U.S.C. 749];

(3) of Guam, the Virgin Islands and American Samoa, as described in section 1 of Public Law 93-435 [48 U.S.C. 1705]; and

(4) of the Commonwealth of the Northern Mariana Islands, as described in section 801 of Public Law 94-241 (48 U.S.C. 1681).

43 U.S.C. 2103,
Rights of access

43 U.S.C. 2103(a),
Access rights, historic
preservation, environ-
mental protection

Section 4

(a) In order to—

(1) clarify that State waters and shipwrecks offer recreational and educational opportunities to sport divers and other interested groups, as well as irreplaceable State resources for tourism, biological sanctuaries, and historical research; and

(2) provide that reasonable access by the public to such abandoned shipwrecks be permitted by the State holding title to such shipwrecks pursuant to section 6 of this Act [43 U.S.C. 2105];

it is the declared policy of the Congress that States carry out their responsibilities under this Act to develop appropriate and consistent policies so as to—

(A) protect natural resources and habitat areas;

(B) guarantee recreational exploration of shipwreck sites; and

(C) allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites.

43 U.S.C. 2103(b),
Parks and protected
areas, grants

(b) In managing the resources subject to the provisions of this Act, States are encouraged to create underwater parks or areas to provide additional protection for such resources. Funds available to States from grants from the Historic Preservation Fund shall be available, in accordance with the provisions of title I of the National Historic Preservation Act [16 U.S.C. 470 et seq.], for the study, interpretation, protection, and preservation of historic shipwrecks and properties.

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43 U.S.C. 2104,
Preparation of
guidelines

43 U.S.C. 2104(a),
Purpose of guidelines,
Federal Register
publication

43 U.S.C. 2104(b),
Consultation in
developing guidelines

43 U.S.C. 2104(c),
Guidelines, regula-
tions, and legislation

43 U.S.C. 2105,
Rights of ownership

43 U.S.C. 2105(a),
United States title

Section 5

(a) In order to encourage the development of underwater parks and the administrative cooperation necessary for the comprehensive management of underwater resources related to historic shipwrecks, the Secretary of the Interior, acting through the Director of the National Park Service, shall within nine months after April 28, 1988, prepare and publish guidelines in the Federal Register which shall seek to:

(1) maximize the enhancement of cultural resources;

(2) foster a partnership among sport divers, fishermen, archeologists, salvors, and other interests to manage shipwreck resources of the States and the United States;

(3) facilitate access and utilization by recreational interests;

(4) recognize the interests of individuals and groups engaged in shipwreck discovery and salvage.

(b) Such guidelines shall be developed after consultation with appropriate public and private sector interests (including the Secretary of Commerce, the Advisory Council on Historic Preservation, sport divers, State Historic Preservation Officers, professional dive operators, salvors, archeologists, historic preservationists, and fishermen).

(c) Such guidelines shall be available to assist States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under this Act.

Section 6

(a) The United States asserts title to any abandoned shipwreck that is—

(1) embedded in submerged lands of a State;

(2) embedded in coralline formations protected by a State on submerged lands of a State; or

(3) on submerged lands of a State and is included in or determined eligible for inclusion in the National Register.

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43 U.S.C. 2105(b),
Public notice of
shipwreck location,
National Register
eligibility

(b) The public shall be given adequate notice of the location of any shipwreck to which title is asserted under this section. The Secretary of the Interior, after consultation with the appropriate State Historic Preservation Officer, shall make a written determination that an abandoned shipwreck meets the criteria for eligibility for inclusion in the National Register of Historic Places under subsection (a)(3) of this section.

43 U.S.C. 2105(c),
Transfer of title to
States

(c) The title of the United States to any abandoned shipwreck asserted under subsection (a) of this section is transferred to the State in or on whose submerged lands the shipwreck is located.

43 U.S.C. 2105(d),
Shipwrecks on Federal
or Indian land

(d) Any abandoned shipwreck in or on the public lands of the United States is the property of the United States Government. Any abandoned shipwreck in or on any Indian lands is the property of the Indian tribe owning such lands.

43 U.S.C. 2105(e),
Reservation of rights

(e) This section does not affect any right reserved by the United States or by any State (including any right reserved with respect to Indian lands) under—

(1) section 3, 5, or 6 of the Submerged Lands Act [43 U.S.C. 1311, 1313, or 1314]; or

(2) section 19 or 20 of the Act of March 3, 1899 [33 U.S.C. 414 and 415].

43 U.S.C. 2106,
Relationship to other
laws

Section 7

43 U.S.C. 2106(a),
Law of salvage and
the law of finds

(a) The law of salvage and the law of finds shall not apply to abandoned shipwrecks to which section 6 of this Act [43 U.S.C. 2105] applies.

43 U.S.C. 2106(b),
Laws of the United
States

(b) This Act shall not change the laws of the United States relating to shipwrecks, other than those to which this Act applies.

43 U.S.C. 2106(c),
Effective date

(c) This Act shall not affect any legal proceeding brought prior to April 28, 1988 [the date of enactment of this Act].

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REHABILITATION CREDIT

This Act became law on November 5, 1990 (Public Law 101-508; 26 U.S.C. 47). It is the current version of the certified rehabilitation section previously contained in Section 48(g) of the Internal Revenue Code of 1986 [26 U.S.C. 48(f)]. The Act has not been amended since the re-codification into Section 47. Public Law 95-600 (1978) and six amendments contributed to the development of the rehabilitation credit while it was codified in 26 U.S.C. 48(g).

Rehabilitation credit

26 U.S.C. 47(a),
Amount of credit

Section 47

(a) For purposes of section 46, the rehabilitation credit for any taxable year is the sum of—

(1) 10 percent of the qualified rehabilitation expenditures with respect to any qualified rehabilitated building other than a certified historic structure, and

(2) 20 percent of the qualified rehabilitation expenditures with respect to any certified historic structure.

26 U.S.C. 47(b),
Correct timing for claiming credit, in general

(b)(1) Qualified rehabilitation expenditures with respect to any qualified rehabilitated building shall be taken into account for the taxable year in which such qualified rehabilitated building is placed in service.

Progress expenditure-related recapture, coordination with subsection (d)

(2) The amount which would (but for this paragraph) be taken into account under paragraph (1) with respect to any qualified rehabilitated building shall be reduced (but not below zero) by any amount of qualified rehabilitation expenditures taken into account under subsection (d) by the taxpayer or a predecessor of the taxpayer (or, in the case of a sale and leaseback described in section 50(a)(2)(C), by the lessee), to the extent any amount so taken into account has not been required to be recaptured under section 50(a).

26 U.S.C. 47(c),
Definitions

(c) For the purposes of this section—

Qualified rehabilitated building, in general

(1)(A) The term “**qualified rehabilitated building**” means any building (and its structural components) if—

(i) such building has been substantially rehabilitated,

(ii) such building was placed in service before the beginning of the rehabilitation,

(iii) in the case of any building other than a certified historic structure, in the rehabilitation process—

External wall test for non-certified historic structure

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(I) 50 percent or more of the existing external walls of such building are retained in place as external walls,

(II) 75 percent or more of the existing external walls of such building are retained in place as internal or external walls, and

(III) 75 percent or more of the existing internal structural framework of such building is retained in place, and

(iv) depreciation (or amortization in lieu of depreciation) is allowable with respect to such building.

Requirement for non-certified historic buildings

(B) In the case of a building other than a certified historic structure, a building shall not be a qualified rehabilitated building unless the building was first placed in service before 1936.

Substantial rehabilitation defined, in general

(C)(i) For purposes of subparagraph (A)(i), a building shall be treated as having been substantially rehabilitated only if the qualified rehabilitation expenditures during the 24-month period selected by the taxpayer (at the time and in the manner prescribed by regulation) and ending with or within the taxable year exceed the greater of—

(I) the adjusted basis of such building (and its structural components), or

(II) \$5,000.

The adjusted basis of the building (and its structural components) shall be determined as of the beginning of the 1st day of such 24-month period, or of the holding period of the building, whichever is later. For purposes of the preceding sentence, the determination of the beginning of the holding period shall be made without regard to any reconstruction by the taxpayer in connection with the rehabilitation.

Special rule for phased rehabilitations

(ii) In the case of any rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, clause (i) shall be applied by substituting “60-month period” for “24-month period.”

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Provisions for lessees

(iii) The Secretary shall prescribe by regulation rules for applying this subparagraph to lessees.

Reconstruction

(D) Rehabilitation includes reconstruction.

Qualified rehabilitation expenditures, in general

(2)(A) The term “**qualified rehabilitation expenditure**” means any amount properly chargeable to capital account—

(i) for property for which depreciation is allowable under section 168 and which is—

(I) nonresidential real property,

(II) residential rental property,

(III) real property which has a class life of more than 12.5 years, or

(IV) an addition or improvement to property described in subclause (I), (II), or (III), and

(ii) in connection with the rehabilitation of a qualified rehabilitated building.

Certain expenditures not included

(B) The term “**qualified rehabilitation expenditure**” does not include—

Straight-line depreciation

(i) Any expenditure with respect to which the taxpayer does not use the straight line method over a recovery period determined under subsection (c) or (g) of section 168. The preceding sentence shall not apply to any expenditure to the extent the alternative depreciation system of section 168(g) applies to such expenditure by reason of subparagraph (B) or (C) of section 168(g)(1).

Cost of acquisition, enlargements

(ii) The cost of acquiring any building or interest therein.

(iii) Any expenditure attributable to the enlargement of an existing building.

Certified historic structure eligible only for historic tax credit

(iv) Any expenditure attributable to the rehabilitation of a certified historic structure or a building in a registered historic district, unless the rehabilitation is a certified rehabilitation (within the meaning of subparagraph (C)). The preceding sentence shall not apply to a building in a registered historic district if—

(I) such building was not a certified historic structure,

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(II) the Secretary of the Interior certified to the Secretary that such building is not of historic significance to the district, and

(III) if the certification referred to in subclause (II) occurs after the beginning of the rehabilitation of such building, the taxpayer certifies to the Secretary that, at the beginning of such rehabilitation, he in good faith was not aware of the requirements of subclause (II).

Tax-exempt use property, in general

(v)(I) Any expenditure in connection with the rehabilitation of a building which is allocable to the portion of such property which is (or may reasonably be expected to be) tax-exempt use property (within the meaning of section 168(h)).

Clause not to apply for purposes of paragraph (1)(C)

(II) This clause shall not apply for purposes of determining under paragraph (1)(C) whether a building has been substantially rehabilitated.

Lessee provisions

(vi) Any expenditure of a lessee of a building if, on the date the rehabilitation is completed, the remaining term of the lease (determined without regard to any renewal periods) is less than the recovery period determined under section 168(c).

Certified rehabilitation

(C) For purposes of subparagraph (B), the term “**certified rehabilitation**” means any rehabilitation of a certified historic structure which the Secretary of the Interior has certified to the Secretary as being consistent with the historic character of such property or the district in which such property is located.

Non-residential real property, residential rental property, and class life

(D) For purposes of subparagraph (A), the terms “**nonresidential real property**,” “**residential rental property**,” and “**class life**” have the respective meanings given such terms by section 168.

Certified historic structure defined, in general

(3)(A) The term “**certified historic structure**” means any building (and its structural components) which—

(i) is listed in the National Register, or

(ii) is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

Registered historic district

(B) The term “**registered historic district**” means—

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- (i) any district listed in the National Register, and
- (ii) any district—

(I) which is designated under a statute of the appropriate State or local government, if such statute is certified by the Secretary of the Interior to the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, and

(II) which is certified by the Secretary of the Interior to the Secretary as meeting substantially all of the requirements for the listing of districts in the National Register.

26 U.S.C. 47(d),
Progress expenditures,
in general

(d)(1) In the case of any building to which this subsection applies, except as provided in paragraph (3)—

(A) if such building is self-rehabilitated property, any qualified rehabilitation expenditure with respect to such building shall be taken into account for the taxable year for which such expenditure is properly chargeable to capital account with respect to such building, and

(B) if such building is not self-rehabilitated property, any qualified rehabilitation expenditure with respect to such building shall be taken into account for the taxable year in which paid.

Property to which
subsection applies,
in general

(2)(A) This subsection shall apply to any building which is being rehabilitated by or for the taxpayer if—

(i) the normal rehabilitation period for such building is 2 years or more, and

(ii) it is reasonable to expect that such building will be a qualified rehabilitated building in the hands of the taxpayer when it is placed in service.

Clauses (i) and (ii) shall be applied on the basis of facts known as of the close of the taxable year of the taxpayer in which the rehabilitation begins (or, if later, at the close of the first taxable year to which an election under this subsection applies).

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Normal rehabilitation period

(B) For purposes of subparagraph (A), the term “**normal rehabilitation period**” means the period reasonably expected to be required for the rehabilitation of the building—

(i) beginning with the date on which physical work on the rehabilitation begins (or, if later, the first day of the first taxable year to which an election under this subsection applies), and

(ii) ending on the date on which it is expected that the property will be available for placing in service.

Special rules for applying paragraph (1)

(3) For purposes of paragraph (1)—

Component parts, etc.

(A) Property which is to be a component part of, or is otherwise to be included in, any building to which this subsection applies shall be taken into account.—

(i) at a time not earlier than the time at which it becomes irrevocably devoted to use in the building, and

(ii) as if (at the time referred to in clause (i)) the taxpayer had expended an amount equal to that portion of the cost to the taxpayer of such component or other property which, for purposes of this subpart, is properly chargeable (during such taxable year) to capital account with respect to such building.

Certain borrowing disregarded

(B) Any amount borrowed directly or indirectly by the taxpayer from the person rehabilitating the property for him shall not be treated as an amount expended for such rehabilitation.

Limitation for buildings which are not self-rehabilitated, in general

(C)(i) In the case of a building which is not self-rehabilitated, the amount taken into account under paragraph (1)(B) for any taxable year shall not exceed the amount which represents the portion of the overall cost to the taxpayer of the rehabilitation which is properly attributable to the portion of the rehabilitation which is completed during such taxable year.

Carryover of certain amounts

(ii) In the case of a building which is not a self-rehabilitated building, if for the taxable year—

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(I) the amount which (but for clause (i)) would have been taken into account under paragraph (1)(B) exceeds the limitation of clause (i), then the amount of such excess shall be taken into account under paragraph (1)(B) for the succeeding taxable year, or

(II) the limitation of clause (i) exceeds the amount taken into account under paragraph (1)(B), then the amount of such excess shall increase the limitation of clause (i) for the succeeding taxable year.

Determination of percentage of completion

(D) The determination under subparagraph (C)(i) of the portion of the overall cost to the taxpayer of the rehabilitation which is properly attributable to rehabilitation completed during any taxable year shall be made, under regulations prescribed by the Secretary, on the basis of engineering or architectural estimates or on the basis of cost accounting records. Unless the taxpayer establishes otherwise by clear and convincing evidence, the rehabilitation shall be deemed to be completed not more rapidly than ratably over the normal rehabilitation period.

No progress expenditures for certain prior periods

(E) No qualified rehabilitation expenditures shall be taken into account under this subsection for any period before the first day of the first taxable year to which an election under this subsection applies.

No progress expenditures for property for year it is placed in service, etc.

(F) In the case of any building, no qualified rehabilitation expenditures shall be taken into account under this subsection for the earlier of—

(i) the taxable year in which the building is placed in service, or

(ii) the first taxable year for which recapture is required under section 50(a)(2) with respect to such property, or for any taxable year thereafter.

Self-rehabilitated building

(4) For purposes of this subsection, the term “**self-rehabilitated building**” means any building if it is reasonable to believe that more than half of the qualified rehabilitation expenditures for such building will be made directly by the taxpayer.

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Election

(5) This subsection shall apply to any taxpayer only if such taxpayer has made an election under this paragraph. Such an election shall apply to the taxable year for which made and all subsequent taxable years. Such an election, once made, may be revoked only with the consent of the Secretary.

Native American Graves Protection and Repatriation Act

AS AMENDED

This Act became law on November 16, 1990 (Public Law 101-601; 25 U.S.C. 3001 et seq.) and has been amended twice. This description of the Act, as amended, tracks the language of the United States Code except that (following common usage) we refer to the "Act" (meaning the Act, as amended) rather than to the "subchapter" or the "title" of the Code.

25 U.S.C. 3001,
Definitions

Section 2

For purposes of this Act, the term—

(1) "**burial site**" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.

(2) "**cultural affiliation**" means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.

(3) "**cultural items**" means human remains and—

(A) "**associated funerary objects**" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.

(B) "**unassociated funerary objects**" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,

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(C) “**sacred objects**” which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and

(D) “**cultural patrimony**” which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

(4) “**Federal agency**” means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution.

(5) “**Federal lands**” means any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971 [43 U.S.C. 1601 et seq.].

(6) “**Hui Malama I Na Kupuna O Hawai’i Nei**” means the nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawaii by that name on April 17, 1989, for the purpose of providing guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues.

(7) “**Indian tribe**” means 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.

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(8) “**museum**” means any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency.

(9) “**Native American**” means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

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

(11) “**Native Hawaiian organization**” means any organization which—

(A) serves and represents the interests of Native Hawaiians,

(B) has as a primary and stated purpose the provision of services to Native Hawaiians, and

(C) has expertise in Native Hawaiian Affairs, and

shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei.

(12) “**Office of Hawaiian Affairs**” means the Office of Hawaiian Affairs established by the constitution of the State of Hawaii.

(13) “**right of possession**” means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, unless the phrase so defined would, as applied in section 7(c) of this Act [25 U.S.C. 3005(c)], result in a Fifth Amendment taking by the United States as determined by the United States Court of Federal Claims pursuant to

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28 U.S.C. 1491 in which event the “right of possession” shall be as provided under otherwise applicable property law. The original acquisition of Native American human remains and associated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains.

(14) “**Secretary**” means the Secretary of the Interior.

(15) “**tribal land**” means—

(A) all lands within the exterior boundaries of any Indian reservation;

(B) all dependent Indian communities;

(C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920 [42 Stat. 108], and section 4 of Public Law 86-3 [note preceding 48 U.S.C. 491].

25 U.S.C. 3002,
Ownership

25 U.S.C. 3002(a),
Native American
human remains and
objects

Section 3

(a) The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after November 16, 1990, shall be (with priority given in the order listed)—

(1) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American; or

(2) in any case in which such lineal descendants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony—

(A) in the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered;

(B) in the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects; or

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(C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of some Indian tribe—

(1) [sic] in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or

(2) [sic] if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph (1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.

25 U.S.C. 3002(b),
Unclaimed Native
American remains and
objects

(b) Native American cultural items not claimed under subsection (a) of this section shall be disposed of in accordance with regulations promulgated by the Secretary in consultation with the review committee established under section 8 of this Act [25 U.S.C. 3006], Native American groups, representatives of museums and the scientific community.

25 U.S.C. 3002(c),
Intentional excavation
and removal of Native
American human
remains and objects

(c) The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if—

(1) such items are excavated or removed pursuant to a permit issued under section 4 of the Archaeological Resources Protection Act of 1979, as amended, [16 U.S.C. 470cc] which shall be consistent with this Act;

(2) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;

(3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b) of this section; and

(4) proof of consultation or consent under paragraph (2) is shown.

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25 U.S.C. 3002(d),
Inadvertent discovery
of Native American
remains and objects

(d)(1) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands after November 16, 1990, shall notify, in writing, the Secretary of the Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable, and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971 [43 U.S.C. 1601 et seq.], the appropriate corporation or group. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.

(2) The disposition of and control over any cultural items excavated or removed under this subsection shall be determined as provided for in this section.

(3) If the Secretary of the Interior consents, the responsibilities (in whole or in part) under paragraphs (1) and (2) of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary with respect to any land managed by such other Secretary or agency head.

25 U.S.C. 3002(e),
Relinquishment

(e) Nothing in this section shall prevent the governing body of an Indian tribe or Native Hawaiian organization from expressly relinquishing control over any Native American human remains, or title to or control over any funerary object, or sacred object.

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18 U.S.C. 1170,
Illegal trafficking
in Native American
human remains and
cultural items

Section 4

(a) Chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new section:

Section 1170

“(a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.”

“(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both.”

(b) The table of contents for chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new item:

“1170, Illegal Trafficking in Native American Human Remains and Cultural Items.”

25 U.S.C. 3003,
Inventory for human
remains and associ-
ated funerary objects

25 U.S.C. 3003(a),
In general

25 U.S.C. 3003(b),
Requirements

Section 5

(a) Each Federal agency and each museum which has possession or control over holdings or collections of Native American human remains and associated funerary objects shall compile an inventory of such items and, to the extent possible based on information possessed by such museum or Federal agency, identify the geographical and cultural affiliation of such item.

(b)(1) The inventories and identifications required under subsection (a) of this section shall be—

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(A) completed in consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders;

(B) completed by not later than the date that is 5 years after November 16, 1990, [the date of enactment of this Act], and

(C) made available both during the time they are being conducted and afterward to a review committee established under section 8 of this Act [25 U.S.C. 3006].

(2) Upon request by an Indian tribe or Native Hawaiian organization which receives or should have received notice, a museum or Federal agency shall supply additional available documentation to supplement the information required by subsection (a) of this section. The term “**documentation**” means a summary of existing museum or Federal agency records, including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American human remains and associated funerary objects subject to this section. Such term does not mean, and this Act shall not be construed to be an authorization for, the initiation of new scientific studies of such remains and associated funerary objects or other means of acquiring or preserving additional scientific information from such remains and objects.

25 U.S.C. 3003(c),
Extension of time for
inventory

(c) Any museum which has made a good faith effort to carry out an inventory and identification under this section, but which has been unable to complete the process, may appeal to the Secretary for an extension of the time requirements set forth in subsection (b)(1)(B) of this section. The Secretary may extend such time requirements for any such museum upon a finding of good faith effort. An indication of good faith shall include the development of a plan to carry out the inventory and identification process.

25 U.S.C. 3003(d),
Notification

(d)(1) If the cultural affiliation of any particular Native American human remains or associated funerary objects is determined pursuant to this section, the Federal agency or museum concerned shall, not later than 6 months after the completion of the inventory, notify the affected Indian tribes or Native Hawaiian organizations.

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(2) The notice required by paragraph (1) shall include information—

(A) which identifies each Native American human remains or associated funerary objects and the circumstances surrounding its acquisition;

(B) which lists the human remains or associated funerary objects that are clearly identifiable as to tribal origin; and

(C) which lists the Native American human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with that Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the remains or objects, are determined by a reasonable belief to be remains or objects culturally affiliated with the Indian tribe or Native Hawaiian organization.

(3) A copy of each notice provided under paragraph (1) shall be sent to the Secretary who shall publish each notice in the Federal Register.

25 U.S.C. 3003(e),
Definition of
inventory

(e) For the purposes of this section, the term “inventory” means a simple itemized list that summarizes the information called for by this section.

25 U.S.C. 3004,
Summary for unassociated
funerary objects,
sacred objects, and
cultural patrimony

Section 6

(a) Each Federal agency or museum which has possession or control over holdings or collections of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony shall provide a written summary of such objects based upon available information held by such agency or museum. The summary shall describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition and cultural affiliation, where readily ascertainable.

25 U.S.C. 3004(a),
In general

(b)(1) The summary required under subsection (a) of this section shall be—

25 U.S.C. 3004(b),
Requirements for the
summary

(A) in lieu of an object-by-object inventory;

(B) followed by consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders; and

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(C) completed by not later than the date that is 3 years after November 16, 1990, [the date of enactment of this Act].

(2) Upon request, Indian Tribes and Native Hawaiian organizations shall have access to records, catalogues, relevant studies or other pertinent data for the limited purposes of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American objects subject to this section. Such information shall be provided in a reasonable manner to be agreed upon by all parties.

25 U.S.C. 3005,
Repatriation

25 U.S.C. 3005(a),
Repatriation of Native American human remains and objects possessed or controlled by Federal agencies and museums

Section 7

(a)(1) If, pursuant to section 5 of this Act [25 U.S.C. 3003], the cultural affiliation of Native American human remains and associated funerary objects with a particular Indian tribe or Native Hawaiian organization is established, then the Federal agency or museum, upon the request of a known lineal descendant of the Native American or of the tribe or organization and pursuant to subsections (b) and (e) of this section, shall expeditiously return such remains and associated funerary objects.

(2) If, pursuant to section 6 of this Act [25 U.S.C. 3004], the cultural affiliation with a particular Indian tribe or Native Hawaiian organization is shown with respect to unassociated funerary objects, sacred objects or objects of cultural patrimony, then the Federal agency or museum, upon the request of the Indian tribe or Native Hawaiian organization and pursuant to subsections (b), (c) and (e) of this section, shall expeditiously return such objects.

(3) The return of cultural items covered by this Act shall be in consultation with the requesting lineal descendant or tribe or organization to determine the place and manner of delivery of such items.

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(4) Where cultural affiliation of Native American human remains and funerary objects has not been established in an inventory prepared pursuant to section 5 of this Act [25 U.S.C. 3003], or the summary pursuant to section 6 of this Act [25 U.S.C. 3004], or where Native American human remains and funerary objects are not included upon any such inventory, then, upon request and pursuant to subsections (b) and (e) of this section and, in the case of unassociated funerary objects, subsection (c) of this section, such Native American human remains and funerary objects shall be expeditiously returned where the requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion.

(5) Upon request and pursuant to subsections (b), (c) and (e) of this section, sacred objects and objects of cultural patrimony shall be expeditiously returned where—

(A) the requesting party is the direct lineal descendant of an individual who owned the sacred object;

(B) the requesting Indian tribe or Native Hawaiian organization can show that the object was owned or controlled by the tribe or organization; or

(C) the requesting Indian tribe or Native Hawaiian organization can show that the sacred object was owned or controlled by a member thereof, provided that in the case where a sacred object was owned by a member thereof, there are no identifiable lineal descendants of said member or the lineal descendants, upon notice, have failed to make a claim for the object under this Act.

25 U.S.C. 3005(b),
Scientific study

(b) If the lineal descendant, Indian tribe, or Native Hawaiian organization requests the return of culturally affiliated Native American cultural items, the Federal agency or museum shall expeditiously return such items unless such items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States. Such items shall be returned by no later than 90 days after the date on which the scientific study is completed.

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25 U.S.C. 3005(c),
Standard for
repatriation

(c) If a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony pursuant to this Act and presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Federal agency or museum did not have the right of possession, then such agency or museum shall return such objects unless it can overcome such inference and prove that it has a right of possession to the objects.

25 U.S.C. 3005(d),
Sharing of information
by Federal agencies
and museums

(d) Any Federal agency or museum shall share what information it does possess regarding the object in question with the known lineal descendant, Indian tribe, or Native Hawaiian organization to assist in making a claim under this section.

25 U.S.C. 3005(e),
Competing claims

(e) Where there are multiple requests for repatriation of any cultural item and, after complying with the requirements of this Act, the Federal agency or museum cannot clearly determine which requesting party is the most appropriate claimant, the agency or museum may retain such item until the requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to the provisions of this Act or by a court of competent jurisdiction.

25 U.S.C. 3005(f),
Museum obligation

(f) Any museum which repatriates any item in good faith pursuant to this Act shall not be liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of state law that are inconsistent with the provisions of this Act.

25 U.S.C. 3006,
Review committee

Section 8

25 U.S.C. 3006(a),
Establishment

(a) Within 120 days after November 16, 1990, the Secretary shall establish a committee to monitor and review the implementation of the inventory and identification process and repatriation activities required under sections 5, 6 and 7 of this Act [25 U.S.C. 3003, 3004, and 3005].

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25 U.S.C. 3006(b),
Committee
membership

(b)(1) The Committee established under subsection (a) of this section shall be composed of 7 members,

(A) 3 of whom shall be appointed by the Secretary from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders with at least 2 of such persons being traditional Indian religious leaders;

(B) 3 of whom shall be appointed by the Secretary from nominations submitted by national museum organizations and scientific organizations; and

(C) 1 who shall be appointed by the Secretary from a list of persons developed and consented to by all of the members appointed pursuant to subparagraphs (A) and (B).

(2) The Secretary may not appoint Federal officers or employees to the committee.

(3) In the event vacancies shall occur, such vacancies shall be filled by the Secretary in the same manner as the original appointment within 90 days of the occurrence of such vacancy.

(4) Members of the committee established under subsection (a) of this section shall serve without pay, but shall be reimbursed at a rate equal to the daily rate for GS-18 of the General Schedule for each day (including travel time) for which the member is actually engaged in committee business. Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5 [United States Code].

25 U.S.C. 3006(c),
Committee
responsibilities

(c) The committee established under subsection a) of this section shall be responsible for—

(1) designating one of the members of the committee as chairman;

(2) monitoring the inventory and identification process conducted under sections 5 and 6 of this Act [25 U.S.C. 3003 and 3004] to ensure a fair, objective consideration and assessment of all available relevant information and evidence;

(3) upon the request of any affected party, reviewing and making findings related to—

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(A) the identity or cultural affiliation of cultural items, or

(B) the return of such items;

(4) facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;

(5) compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;

(6) consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;

(7) consulting with the Secretary in the development of regulations to carry out this Act;

(8) performing such other related functions as the Secretary may assign to the committee; and

(9) making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated.

25 U.S.C. 3006(d),
Admissibility of
records

(d) Any records and findings made by the review committee pursuant to this Act relating to the identity or cultural affiliation of any cultural items and the return of such items may be admissible in any action brought under section 15 of this Act [25 U.S.C. 3013].

25 U.S.C. 3006(e),
Recommendations
and report

(e) The committee shall make the recommendations under paragraph (c)(5) of this section in consultation with Indian tribes and Native Hawaiian organizations and appropriate scientific and museum groups.

25 U.S.C. 3006(f),
Committee access

(f) The Secretary shall ensure that the committee established under subsection (a) of this section and the members of the committee have reasonable access to Native American cultural items under review and to associated scientific and historical documents.

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25 U.S.C. 3006(g),
Duties of the
Secretary, regulations,
and administrative
support

(g) The Secretary shall—

(1) establish such rules and regulations for the committee as may be necessary, and

(2) provide reasonable administrative and staff support necessary for the deliberations of the committee.

25 U.S.C. 3006(h),
Annual report to
Congress

(h) The committee established under subsection (a) of this section shall submit an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

25 U.S.C. 3006(i),
Committee
termination

(i) The committee established under subsection (a) of this section shall terminate at the end of the 120-day period beginning on the day the Secretary certifies, in a report submitted to Congress, that the work of the committee has been completed.

25 U.S.C. 3007,
Penalty assessment,
museums

Section 9

(a) Any museum that fails to comply with the requirements of this Act may be assessed a civil penalty by the Secretary of the Interior pursuant to procedures established by the Secretary through regulation. A penalty assessed under this subsection shall be determined on the record after opportunity for an agency hearing. Each violation under this subsection shall be a separate offense.

25 U.S.C. 3007(a),
Penalty

25 U.S.C. 3007(b),
Amount of penalty

(b) The amount of a penalty assessed under subsection (a) of this section shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

(1) the archaeological, historical, or commercial value of the item involved;

(2) the damages suffered, both economic and noneconomic, by an aggrieved party, and

(3) the number of violations that have occurred.

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25 U.S.C. 3007(c),
Legal actions to
recover penalties

(c) If any museum fails to pay an assessment of a civil penalty pursuant to a final order of the Secretary that has been issued under subsection (a) of this section and not appealed or after a final judgment has been rendered on appeal of such order, the Attorney General may institute a civil action in an appropriate district court of the United States to collect the penalty. In such action, the validity and amount of such penalty shall not be subject to review.

25 U.S.C. 3007(d),
Authority to issue
subpoenas

(d) In hearings held pursuant to subsection (a) of this section, subpoenas may be issued for the attendance and testimony of witnesses and the production of relevant papers, books, and documents. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

25 U.S.C. 3008,
Grants

Section 10

25 U.S.C. 3008(a),
Grants to Indian tribes
and Native Hawaiian
organizations

(a) The Secretary is authorized to make grants to Indian tribes and Native Hawaiian organizations for the purpose of assisting such tribes and organizations in the repatriation of Native American cultural items.

25 U.S.C. 3008(b),
Grants to museums

(b) The Secretary is authorized to make grants to museums for the purpose of assisting the museums in conducting the inventories and identification required under sections 5 and 6 of this Act [25 U.S.C. 3003 and 3004].

25 U.S.C. 3009,
Limitations on apply-
ing the Act

Section 11

Nothing in this Act shall be construed to—

(1) limit the authority of any Federal agency or museum to—

(A) return or repatriate Native American cultural items to Indian tribes, Native Hawaiian organizations, or individuals, and

(B) enter into any other agreement with the consent of the culturally affiliated tribe or organization as to the disposition of, or control over, items covered by this Act;

(2) delay actions on repatriation requests that are pending on November 16, 1990;

(3) deny or otherwise affect access to any court;

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(4) limit any procedural or substantive right which may otherwise be secured to individuals or Indian tribes or Native Hawaiian organizations; or

(5) limit the application of any State or Federal law pertaining to theft or stolen property.

25 U.S.C. 3010,
Special relationship
between the Federal
Government and
Indian tribes and
Native Hawaiian
organizations

Section 12

This Act reflects the unique relationship between the Federal Government and Indian tribes and Native Hawaiian organizations and should not be construed to establish a precedent with respect to any other individual, organization or foreign government.

25 U.S.C. 3011,
Regulations

Section 13

The Secretary shall promulgate regulations to carry out this Act within 12 months of November 16, 1990.

25 U.S.C. 3012,
Authorization of
appropriations

Section 14

There is authorized to be appropriated such sums as may be necessary to carry out this Act.

25 U.S.C. 3013,
Judicial jurisdiction
and enforcement

Section 15

The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this Act and shall have the authority to issue such orders as may be necessary to enforce the provisions of this Act.

Intermodal Surface Transportation Efficiency Act (ISTEA), PORTIONS, AS AMENDED

This Act became law on December 18, 1991 (Public Law 102-240; 23 U.S.C. 101(a)(35) [Transportation Enhancement Activities]; 23 U.S.C. 101 (note) [Scenic Byways Program]; 23 U.S.C. 109(b), (c), and (p) [National Highway System, Scenic and Historic Values]. It was amended by Public Law 105-178 (1998) [Transportation Equity Act for the 21st Century, TEA 21]. This description of the Act, as amended, tracks the language of the United States Code except that (following common usage) we refer to the "Act" (meaning the Act, as amended) rather than to the "subchapter" or the "title" of the Code."

23 U.S.C. 101,
Definitions and
declaration of policy

23 U.S.C. 101(a),
Definitions

Transportation
enhancement
activities defined

Section 101

(a) In this title, the following definitions apply:

(Definitions (1) through (34) omitted)

(35) The term "**transportation enhancement activities**" means, with respect to any project or the area to be served by the project, any of the following activities if such activity relates to surface transportation: provision of facilities for pedestrians and bicycles, provision of safety and educational activities for pedestrians and bicyclists, acquisition of scenic easements and scenic or historic sites, scenic or historic highway programs (including the provision of tourist and welcome center facilities), landscaping and other scenic beautification, historic preservation, rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals), preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails), control and removal of outdoor advertising, archaeological planning and research, environmental mitigation to address water pollution due to highway runoff or reduce vehicle-caused wildlife mortality while maintaining habitat connectivity, and establishment of transportation museums.

(Remainder of Section 101 and Section 102
through Section 1016(e) omitted)

23 U.S.C. 109,
Federal-aid highways,
standards

23 U.S.C. 109(p),
Scenic and historic
values

Section 1016 (f)(1)(A)

(Sections 1016(f)(A)(a) through (o) omitted)

(p) Notwithstanding subsections (b) and (c) [of 23 U.S.C. 109], the Secretary may approve a project for the National Highway System if the project is designed to—

(1) allow for the preservation of environmental, scenic, or historic values;

(2) ensure safe use of the facility; and

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(3) comply with subsection (a) [of 23 U.S.C. 109].

(Remainder of Section 1016 and
Section 1017 through Section 1046 omitted)

23 U.S.C. 101 note,
Scenic Byways
Program and Scenic
Byways Advisory
Committee

Establishment

Membership

Section 1047

(a)(1) Not later than 180 days after December 18, 1991, the Secretary shall establish in the Department of Transportation an advisory committee to assist the Secretary with respect to establishment of a national scenic byways program under title 23, United States Code.

(2) The advisory committee established under this section shall be composed of 17 members as follows:

(A) The Administrator of the Federal Highway Administration or the designee of the Administrator who shall serve as chairman of the advisory committee.

(B) The Chief of the Forest Service of the Department of Agriculture or the designee of the Chief.

(C) The Director of the National Park Service of the Department of the Interior or the designee of the Director.

(D) The Director of the Bureau of Land Management of the Department of the Interior or the designee of the Director.

(E) The Under Secretary for Travel and Tourism of the Department of Commerce or the designee of the Under Secretary.

(F) The Assistant Secretary for Indian Affairs of the Department of the Interior or the designee of the Assistant Secretary.

(G) 1 individual appointed by the Secretary who is specially qualified to represent the interests of conservationists on the advisory committee.

(H) 1 individual appointed by the Secretary of Transportation who is specially qualified to represent the interests of recreational users of scenic byways on the advisory committee.

(I) 1 individual appointed by the Secretary who is specially qualified to represent the interests of the tourism industry on the advisory committee.

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(J) 1 individual appointed by the Secretary who is specially qualified to represent the interests of historic preservationists on the advisory committee.

(K) 1 individual appointed by the Secretary who is specially qualified to represent the interests of highway users on the advisory committee.

(L) 1 individual appointed by the Secretary to represent State highway and transportation officials.

(M) 1 individual appointed by the Secretary to represent local highway and transportation officials.

(N) 1 individual appointed by the Secretary who is specially qualified to serve on the advisory committee as a planner.

(O) 1 individual appointed by the Secretary who is specially qualified to represent the motoring public.

(P) 1 individual appointed by the Secretary who is specially qualified to represent groups interested in scenic preservation.

(Q) 1 individual appointed by the Secretary who represents the outdoor advertising industry.

Individuals appointed as members of the advisory committee under subparagraphs (G) through (P) may be State and local government officials. Members shall serve without compensation other than for reasonable expenses incident to functions of the advisory committee.

Functions of advisory committee

(3) The advisory committee established under this subsection shall develop and make to the Secretary recommendations regarding minimum criteria for use by State and Federal agencies in designating highways as scenic byways and as all-American roads for purposes of a national scenic byways program to be established under title 23, United States Code. Such recommendations shall include recommendations on the following:

(A) Consideration of the scenic beauty and historic significance of highways proposed for designation as scenic byways and all-American roads and the areas surrounding such highways.

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(B) Operation and management standards for highways designated as scenic byways and all-American roads, including strategies for maintaining or improving the qualities for which a highway is designated as a scenic byway or all-American road, for protecting and enhancing the landscape and view corridors surrounding such a highway, and for minimizing traffic congestion on such a highway.

(C)(i) Standards for scenic byway-related signs, including those which identify highways as scenic byways and all-American roads.

(ii) The advisability of uniform signs identifying highways as components of the scenic byway system.

(D) Standards for maintaining highway safety on the scenic byway system.

(E) Design review procedures for location of highway facilities, landscaping, and travelers' facilities on the scenic byway system.

(F) Procedures for reviewing and terminating the designation of a highway designated as a scenic byway.

(G) Such other matters as the advisory committee may deem appropriate.

(H) Such other matters for which the Secretary may request recommendations.

(Remainder of Subsection 1047(a) and Subsections (b) through (f) omitted)

Limitation

(g) The Secretary shall not make a grant under this section for any project which would not protect the scenic, historic, recreational, cultural, natural, and archeological integrity of the highway and adjacent area. The Secretary may not use more than 10 percent of the funds authorized for each fiscal year under subsection (f)(5) for removal of any outdoor advertising sign, displays, or device.

American Battlefield Protection Act

AS AMENDED

This Act became law on November 12 (Public Law 104-333, 16 U.S.C. 469 k). It has been amended once. See 16 U.S.C. 469k notes for the Congressional findings and purposes associated with the establishment of Section (d), the Battlefield acquisition grant program. The description of the Act tracks the language of the United States Code except that (following common usage) we refer to the "Act" (meaning the Act, as amended) rather than the "subchapter" or the "title" of the Code.

16 U.S.C. 469k,
American Battlefield
Protection Program

Section 604

(Paragraph (a) omitted)

Purpose

(b) The purpose of this section is to assist citizens, public and private institutions, and governments at all levels in planning, interpreting, and protecting sites where historic battles were fought on American soil during the armed conflicts that shaped the growth and development of the United States, in order that present and future generations may learn and gain inspiration from the ground where Americans made their ultimate sacrifice.

Preservation
assistance

(c)(1) Using the established national historic preservation program to the extent practicable, the Secretary of the Interior, acting through the American Battlefield Protection Program, shall encourage, support, assist, recognize, and work in partnership with citizens, Federal, State, local, and tribal governments, other public entities, educational institutions, and private nonprofit organizations in identifying, researching, evaluating, interpreting, and protecting historic battlefields and associated sites on a National, State, and local level.

Financial assistance

(2) To carry out paragraph (1), the Secretary may use a cooperative agreement, grant, contract, or other generally adopted means of providing financial assistance.

Authorization of
appropriations

(3) There are authorized to be appropriated \$3,000,000 annually to carry out this subsection, to remain available until expended.

Battlefield acquisition
grant program

(d)(1) In this subsection:

Definitions

(A) The term "**Battlefield Report**" means the document entitled "Report on the Nation's Civil War Battlefields," prepared by the Civil War Sites Advisory Commission, and dated July 1993.

Battlefield report

Eligible entity

(B) The term "**eligible entity**" means a State or local government.

American Battlefield Protection Act

Eligible site	(C) The term “ eligible site ” means a site— (i) that is not within the exterior boundaries of a unit of the National Park System; and (ii) that is identified in the Battlefield Report.
Secretary	(D) The term “ Secretary ” means the Secretary of the Interior, acting through the American Battlefield Protection Program.
Establishment	(2) The Secretary shall establish a battlefield acquisition grant program under which the Secretary may provide grants to eligible entities to pay the Federal share of the cost of acquiring interests in eligible sites for the preservation and protection of those eligible sites.
Nonprofit partners	(3) An eligible entity may acquire an interest in an eligible site using a grant under this subsection in partnership with a nonprofit organization.
Non-federal share	(4) The non-Federal share of the total cost of acquiring an interest in an eligible site under this subsection shall be not less than 50 percent.
Limitations on land use	(5) An interest in an eligible site acquired under this subsection shall be subject to section 6(f)(3) of the Land and Water Conservation Fund Act of 1965 [as amended 16 U.S.C. 4601-8(f)(3)].
Reports, In general	(6) (A) Not later than 5 years after December 17, 2002, the Secretary shall submit to Congress a report on the activities carried out under this subsection.
Update of battlefield report	(B) Not later than 2 years after December 17, 2002, the Secretary shall submit to Congress a report that updates the Battlefield Report to reflect— (i) preservation activities carried out at the 384 battlefields during the period between publication of the Battlefield Report and the update; (ii) changes in the condition of the battlefields during that period; and (iii) any other relevant developments relating to the battlefields during that period.

American Battlefield Protection Act

Authorization of appropriations, Battlefield acquisitions

(7)(A) There are authorized to be appropriated to the Secretary from the Land and Water Conservation Fund to provide grants under this subsection \$10,000,000 for each of fiscal years 2004 through 2008.

Appropriation authorization, Update of battlefield report

(B) There are authorized to be appropriated to the Secretary to carry out paragraph (6)(B), \$500,000.

Repeal

(e)(1) This section is repealed on September 30, 2008.

No effect on general authority

(2) The Secretary may continue to conduct battlefield studies and provide battlefield acquisition grants in accordance with other authorities available to the Secretary.

Unobligated funds, after September 30, 2008

(3) Any funds made available under this section that remain unobligated shall be credited to the general fund of the Treasury.

Sunken Military Craft Act

This portion (Division A, Title XIV) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, is commonly known as the Sunken Military Craft Act. It became law on October 28, 2004 (Public Law 108-375, 10 U.S.C. 113 Note and 118 Stat. 2094-2098) This description of the Act tracks the language of the United States Code except that (following common usage) we refer to the "Act" rather than to the "subchapter" or the "title" of the code.

10 U.S.C. 113 Note, Preservation of title to sunken military craft and associated contents

Title XIV, Sunken Military Craft

Section 1401

Right, title, and interest of the United States in and to any United States sunken military craft—

(1) shall not be extinguished except by an express divestiture of title by the United States; and

(2) shall not be extinguished by the passage of time, regardless of when the sunken military craft sank.

Prohibitions

Section 1402

Unauthorized activities directed at sunken military craft

(a) No person shall engage in or attempt to engage in any activity directed at a sunken military craft that disturbs, removes, or injures any sunken military craft, except—

(1) as authorized by a permit under this Act;

(2) as authorized by regulations issued under this Act; or

(3) as otherwise authorized by law.

Possession of sunken military craft; possession, disturbance, removal, injury prohibited

(b) No person may possess, disturb, remove, or injure any sunken military craft in violation of—

(1) this section; or

(2) any prohibition, rule, regulation, ordinance, or permit that applies under any other applicable law.

Limitations

(c) Limitations on Application—

Actions by United States

(1) This section shall not apply to actions taken by, or at the direction of, the United States.

Foreign persons

(2) This section shall not apply to any action by a person who is not a citizen, national, or resident alien of the United States, except in accordance with—

Sunken Military Craft Act

(A) generally recognized principles of international law;

(B) an agreement between the United States and the foreign country of which the person is a citizen; or

(C) in the case of an individual who is a crew member or other individual on a foreign vessel or foreign aircraft, an agreement between the United States and the flag State of the foreign vessel or aircraft that applies to the individual.

Loan of sunken military craft

(3) This section does not prohibit the loan of United States sunken military craft in accordance with regulations issued by the Secretary concerned.

Permits

Section 1403

Permit exceptions to Section 1402

(a) The Secretary concerned may issue a permit authorizing a person to engage in an activity otherwise prohibited by section 1402 with respect to a United States sunken military craft, for archaeological, historical, or educational purposes, in accordance with regulations issued by such Secretary that implement this section.

Consistency with other laws

(b) The Secretary concerned shall require that any activity carried out under a permit issued by such Secretary under this section must be consistent with all requirements and restrictions that apply under any other provision of Federal law.

Consultation

(c) In carrying out this section (including the issuance after the date of the enactment of this Act of regulations implementing this section), the Secretary concerned shall consult with the head of each Federal agency having authority under Federal law with respect to activities directed at sunken military craft or the locations of such craft.

Application to foreign craft

(d) At the request of any foreign State, the Secretary of the Navy, in consultation with the Secretary of State, may carry out this section (including regulations promulgated pursuant to this section) with respect to any foreign sunken military craft of that foreign State located in United States waters.

Sunken Military Craft Act

Penalties	Section 1404
Civil penalty liability	(a) Any person who violates this Act, or any regulation or permit issued under this Act, shall be liable to the United States for a civil penalty under this section.
Assessment and amount	(b) The Secretary concerned may assess a civil penalty under this section, after notice and an opportunity for a hearing, of not more than \$100,000 for each violation.
Continuing violations	(c) Each day of a continued violation of this Act or a regulation or permit issued under this Act shall constitute a separate violation for purposes of this section.
In rem liability	(d) A vessel used to violate this title shall be liable in rem for a penalty under this section for such violation.
Other relief	(e) If the Secretary concerned determines that there is an imminent risk of disturbance of, removal of, or injury to any sunken military craft, or that there has been actual disturbance of, removal of, or injury to a sunken military craft, the Attorney General, upon request of the Secretary concerned, may seek such relief as may be necessary to abate such risk or actual disturbance, removal, or injury and to return or restore the sunken military craft. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.
Limitations	(f) An action to enforce a violation of section 1402 or any regulation or permit issued under this title may not be brought more than 8 years after the date on which— (1) all facts material to the right of action are known or should have been known by the Secretary concerned; and (2) the defendant is subject to the jurisdiction of the appropriate district court of the United States or administrative forum.

Sunken Military Craft Act

Liability for damages	Section 1405
Reimbursement of enforcement costs and damages	(a) Any person who engages in an activity in violation of section 1402 or any regulation or permit issued under this Act that disturbs, removes, or injures any United States sunken military craft shall pay the United States enforcement costs and damages resulting from such disturbance, removal, or injury.
Included damages	(b) Damages referred to in subsection (a) may include— (1) the reasonable costs incurred in storage, restoration, care, maintenance, conservation, and curation of any sunken military craft that is disturbed, removed, or injured in violation of section 1402 or any regulation or permit issued under this Act; and (2) the cost of retrieving, from the site where the sunken military craft was disturbed, removed, or injured, any information of an archaeological, historical, or cultural nature.
Relationship to other laws	Section 1406
Limitation of Act's application	(a) Except to the extent that an activity is undertaken as a subterfuge for activities prohibited by this Act, nothing in this Act is intended to affect— (1) any activity that is not directed at a sunken military craft; or (2) the traditional high seas freedoms of navigation, including— (A) the laying of submarine cables and pipelines; (B) operation of vessels; (C) fishing; or (D) other internationally lawful uses of the sea related to such freedoms.
International law	(b) This Act and any regulations implementing this Act shall be applied in accordance with generally recognized principles of international law and in accordance with the treaties, conventions, and other agreements to which the United States is a party.

Sunken Military Craft Act

Law of finds	(c) The law of finds shall not apply to— <ol style="list-style-type: none">(1) any United States sunken military craft, wherever located; or(2) any foreign sunken military craft located in United States waters.
Law of salvage	(d) No salvage rights or awards shall be granted with respect to— <ol style="list-style-type: none">(1) any United States sunken military craft without the express permission of the United States; or(2) any foreign sunken military craft located in United States waters without the express permission of the relevant foreign state.
Law of capture or prize	(e) Nothing in this Act is intended to alter the international law of capture or prize with respect to sunken military craft.
Liability not limited by the Harter Act and related statutes	(f) Nothing in sections 4281 through 4287 and 4289 of the Revised Statutes (46 U.S.C. App. 181 et seq.) or section 3 of the Act of February 13, 1893 (chapter 105; 27 Stat. 445; 46 U.S.C. App. 192), shall limit the liability of any person under this section.
Authorities of the Commandant of the Coast Guard	(g) Nothing in this Act is intended to preclude or limit the application of any other law enforcement authorities of the Commandant of the Coast Guard.
Prior Delegations, Authorizations, and Relation Regulations	(h) Nothing in this Act shall invalidate any prior delegation, authorization, or related regulation that is consistent with this Act.
Criminal law	(i) Nothing in this Act is intended to prevent the United States from pursuing criminal sanctions for plundering of wrecks, larceny of Government property, or violation of any applicable criminal law.
Encouragement of agreements with foreign countries	Section 1407 The Secretary of State, in consultation with the Secretary of Defense, is encouraged to negotiate and conclude bilateral and multilateral agreements with foreign countries with regard to sunken military craft consistent with this Act.

Sunken Military Craft Act

Definitions	Section 1408
	In this Act:
Associated contents	(1) The term “ associated contents ” means— (A) the equipment, cargo, and contents of a sunken military craft that are within its debris field; and (B) the remains and personal effects of the crew and passengers of a sunken military craft that are within its debris field.
Secretary concerned	(2) The term “ Secretary concerned ” means— (A) subject to subparagraph (B), the Secretary of a military department; and (B) in the case of a Coast Guard vessel, the Secretary of the Department in which the Coast Guard is operating.
Sunken military craft	(3) The term “ sunken military craft ” means all or any portion of— (A) any sunken warship, naval auxiliary, or other vessel that was owned or operated by a government on military noncommercial service when it sank; (B) any sunken military aircraft or military spacecraft that was owned or operated by a government when it sank; and (C) the associated contents of a craft referred to in subparagraph (A) or (B), if title thereto has not been abandoned or transferred by the government concerned.
United States contiguous zone	(4) The term “ United States contiguous zone ” means the contiguous zone of the United States under Presidential Proclamation 7219, dated September 2, 1999.
United States internal waters	(5) The term “ United States internal waters ” means all waters of the United States on the landward side of the baseline from which the breadth of the United States territorial sea is measured.
United States territorial sea	(6) The term “ United States territorial sea ” means the waters of the United States territorial sea under Presidential Proclamation 5928, dated December 27, 1988.

Sunken Military Craft Act

United States waters (7) The term “United States waters” means United States internal waters, the United States territorial sea, and the United States contiguous zone.

Appendix

SELECTED REGULATIONS FROM THE CODE OF FEDERAL REGULATIONS (CFR), SELECTED EXECUTIVE ORDERS (EO), AND SELECTED STANDARDS RELATED TO HISTORIC PRESERVATION

All regulations, executive orders, and standards are officially published in the Code of Federal Regulations, the United States Code, or the Federal Register. All three sources can be accessed via the home page for the Government Printing Office, Access GPO

<http://www.access.gpo.gov>. The site and the accompanying search engines can be challenging to use. Most of the government websites listed below are more direct and they contain the pertinent information regarding the preservation laws in question. The official government sites guarantee the official language and the most current information. Those interested in finding the most recent iterations of the documents should use Access GPO. The National Park Service posts many documents, laws, regulations, and standards at its "Links to the Past" site: **www.cr.nps.gov**.

23 CFR Part 771, Environmental Impact and Related Procedures (Department of Transportation, Federal Highway Administration)

<http://www.fhwa.dot.gov/hep/23cfr771.htm>

26 CFR Parts 1 and 602, Income Tax: Investment Tax Credit for Qualified Rehabilitation Expenditures (Internal Revenue Service)

<http://www2.cr.nps.gov/tps/tax/IRS.htm>

26 CFR Parts 1, 20, 25 and 602, Income Tax: Qualified Conservation Contributions (Internal Revenue Service)

<http://www2.cr.nps.gov/tps/tax/IRS.htm>

30 CFR Part 700 to the End, Office of Surface Mining Reclamation and Enforcement (Department of the Interior)

<http://www.osmre.gov/regindex.htm>

36 CFR Part 60, National Register of Historic Places

<http://www.cr.nps.gov/linklaws.htm#regs> [scroll down and select 36 CFR 60]

36 CFR Part 61, Procedures for State, Tribal, and Local Government Historic Preservation Programs

<http://www2.cr.nps.gov/laws/36CFR61.htm> [can also be reached through same address as 36 CFR 60]

36 CFR Part 63, Determinations of Eligibility for Inclusion in the National Register of Historic Places

<http://www.cr.nps.gov/linklaws.htm#regs> [scroll down and select 36 CFR 63]

36 CFR Part 65, National Historic Landmarks Program

<http://www2.cr.nps.gov/laws/Landmarks.htm> [can also be reached through the same address as 36 CFR 60]

36 CFR Part 67, Historic Preservation Tax Incentive Certifications

<http://www2.cr.nps.gov/tps/tax/taxregs.htm> [can also be reached through same address as 36 CFR 60]

Appendix

36 CFR Part 68, The Secretary of the Interior's Standards for the Treatment of Historic Properties

<http://www2.cr.nps.gov/tps/secstan1.htm>

36 CFR Part 73, World Heritage Convention

<http://www.access.gpo.gov>

36 CFR Part 78, Waiver of Federal Agency Responsibilities under Section 110 of the National Historic Preservation Act

<http://www.access.gpo.gov>

36 CFR Part 79, Curation of Federally Owned and Administered Archaeological Collections

<http://www.cr.nps.gov/aad/tools/36cfr79.htm> [can also be reached through same address as 36 CFR 60]

36 CFR Part 800, Protection of Historic Properties (Advisory Council on Historic Preservation)

<http://www.achp.gov/regs.html>

40 CFR Parts 1500–1517, Regulations of the Council on Environmental Quality

<http://www.epa.gov/epacfr40/chapt-V.info/chv-toc.htm>

41 CFR Part 101–17, Assignment and Utilization of Space (General Services Administration, Public Buildings Survey)

<http://www.gsa.gov> [select “Policy.” Then, select “Federal Regulation Policy.” Then, select “Code of Federal Regulations.”]

41 CFR Part 101–20, Management of Buildings and Grounds (General Services Administration, Public Buildings Service)

<http://www.gsa.gov> [select “Policy.” Then, select “Federal Regulation Policy.” Then, select “Code of Federal Regulations.”]

43 CFR Part 3, Preservation of American Antiquities

<http://www.cr.nps.gov/linklaws.htm#regs> [scroll down and select 43 CFR 3]

43 CFR Part 7, Protection of Archaeological Resources

<http://www.cr.nps.gov/local-law/43cfr7.htm> [can also be reached through the same address as 36 CFR 60]

43 CFR Part 10, Native American Graves Protection and Repatriation Act

<http://www.cr.nps.gov/linklaws.htm#regs> [scroll down and select 43 CFR 10]

Executive Order 11593, Protection and Enhancement of the Cultural Environment (1971)

<http://www.cr.nps.gov/linklaws.htm#execords> [scroll down and select E.O. 11593]

Appendix

Executive Order 13006, Locating Federal Facilities on Historic Properties in Our Nation's Central Cities (1996)

<http://www.cr.nps.gov/local-law/eo13006.htm> [can also be reached through the same address as E.O. 11593]

Executive Order 13007, Indian Sacred Sites (1996)

<http://www.cr.nps.gov/local-law/eo13007.htm> [can also be reached through the same address as E.O. 11593]

Executive Order 13287, *Preserve America* (2003)

<http://www.achp.gov/news-preserveamericaEO.html>

The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act

<http://www.cr.nps.gov/linklaws.htm#standards> [scroll down to select these standards and guidelines]

Abandoned Shipwreck Act Guidelines

<http://www.cr.nps.gov/linklaws.htm#standards> [scroll down to select these guidelines]

The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. This includes Standards and Guidelines for Preservation Planning, Identification, Evaluation, Registration, Historical Documentation, Architectural and Engineering Documentation, Archeological Documentation, Historic Preservation Projects (Treatment Standards), and Professional Qualifications.

<http://www.cr.nps.gov/linklaws.htm#standards> [scroll down to select these standards and guidelines]

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