

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 21. Civil Rights (Refs & Annos)
Subchapter I. Generally

42 U.S.C.A. § 1996

§ 1996. Protection and preservation of traditional religions of Native Americans

Currentness

On and after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

CREDIT(S)

(Pub.L. 95-341, § 1, Aug. 11, 1978, 92 Stat. 469.)

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 13007

<May 24, 1996, 61 F.R. 26771>

INDIAN SACRED SITES

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. Accommodation of Sacred Sites. (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) "Federal lands" means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to [Public Law No. 103-454](#)[Nov. 2, 1994], 108 Stat. 4791 [see Short Title note set out under [section 479a of Title 25](#), Indians, and Tables for classification] and "Indian" refers to a member of such an Indian tribe; and

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(iii) "Sacred site" means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Sec. 2. Procedures. (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of [section 1](#) of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994 [59 F.R. 22951], "Government-to-Government Relations with Native American Tribal Governments [[25 U.S.C.A. § 450](#) note]."

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

Sec. 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedure Act ([5 U.S.C. 551\(13\)](#)).

Sec. 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

WILLIAM J. CLINTON

NOTES OF DECISIONS

Creation of cause of action

American Indian Religious Freedom Act is merely statement of federal policy to protect Indians' exercise of their religion; it confers no cause of action for failure to consult with Indian spiritual leaders before proceeding with federal land exchange. [Lockhart v. Kenops, C.A.8 \(S.D.\) 1991, 927 F.2d 1028](#), certiorari denied [112 S.Ct. 186, 502 U.S. 863, 116 L.Ed.2d 148](#), rehearing denied [112 S.Ct. 670, 502 U.S. 1020, 116 L.Ed.2d 761](#). [Indians](#) 🔑 144; [United States](#) 🔑 105

Navajo tribal members subject to relocation from Hopi [Indian](#) Reservation under authority of Navajo-Hopi Land Settlement Act did not have cause of action under [American Indian Religious Freedom Act](#) based on violation of their free exercise rights. [Manybeads v. U.S., D.Ariz.1989, 730 F.Supp. 1515](#), affirmed [209 F.3d 1164](#). [Indians](#) 🔑 144

Duty of federal agencies

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American Indian Religious Freedom Act requires federal agencies to evaluate their policies and procedures with aim of protecting **Indian religious freedom**, to refrain from prohibiting access, possession and use of **religious** objects and performance of **religious** ceremonies, and to consult with **Indian** organizations in regard to proposed action. *Havasupai Tribe v. U.S.*, D.Ariz.1990, 752 F.Supp. 1471, affirmed 943 F.2d 32, certiorari denied 112 S.Ct. 1559, 503 U.S. 959, 118 L.Ed.2d 207. **Indians** 🔑 144

Drug use

Preference given to **Indians** in application of regulation providing that listing of peyote as controlled substance does not apply to nondrug use thereof in bona fide **religious** ceremonies of the Native American Church is tied rationally to the Government's unique obligation toward the **Indians**, and thus did not deny substantive due process to non-**Indians** who were indicted for distribution and possession with intent to distribute peyote, even though defendants contended that they were members of the Native American Church. *U.S. v. Warner*, D.C.N.D.1984, 595 F.Supp. 595. **Constitutional Law** 🔑 3340; **Criminal Law** 🔑 37.10(2)

Exemption from drug laws granted to members of the Native American Church by Congress and State of Texas but not to others who also professed belief in peyote as a central sacrament did not violate equal protection or due process or rights of nonprofit **religious** organization under **U.S.C.A.Const. Amend. 1**, in that Congress has power and duty to preserve native American **Indians** as a cohesive culture and formal organization or community was extant so that it could be determined who was a member of culture to be preserved. *Peyote Way Church of God, Inc. v. Smith*, N.D.Tex.1983, 556 F.Supp. 632. **Constitutional Law** 🔑 3339; **Controlled Substances** 🔑 6

Eagle Protection Act

Allegation by member of Red Lake Band of Chippewa **Indians** that statutory provisions regarding **Indian** procurement of eagles and eagle parts for **religious** purposes under Eagle Protection Act were in complete disregard for **Indian religious** values failed to state cause of action under **American Indian Religious Freedom Act** where there was no evidence to indicate that Federal Government had violated terms of **AIRFA** in enacting Eagle Protection Act. *U.S. v. Thirty Eight (38) Golden Eagles or Eagle Parts*, D.Nev.1986, 649 F.Supp. 269, affirmed 829 F.2d 41.

Jury selection

Government had a compelling interest in assuring that jurors followed the law and applied the facts in an impartial way, thus, exclusion of jurors in capital murder case based on jurors' views that, based on their Navajo traditional religion and culture they would be unable to set those views aside and apply the law impartially, did not violate the **Religious Freedom** Restoration Act (RFRA) or the **American Indian Religious Freedom Act**. *U.S. v. Mitchell*, C.A.9 (Ariz.) 2007, 502 F.3d 931, certiorari denied 128 S.Ct. 2902, 553 U.S. 1094, 171 L.Ed.2d 843, post-conviction relief denied 2010 WL 3895691, motion to amend denied 2010 WL 5342960. **Civil Rights** 🔑 1058; **Indians** 🔑 144; **Indians** 🔑 300

Land development

Forest Service did not burden **religious** practices of Navajo and Hopi **Indians** in any manner prohibited by this section in permitting private interests to expand and develop government-owned ski area on San Francisco Peaks in the Coconino National Forest, which the **Indians** claimed to be sacred, where the decision would not deny **Indians** access to the Peaks nor prevent them from collecting **religious** objects and where Forest Service held meetings with **Indian religious** practitioners and conducted

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public hearings on reservations and gave due consideration to the views expressed. [Wilson v. Block](#), C.A.D.C.1983, 708 F.2d 735, 228 U.S.App.D.C. 166, certiorari denied 104 S.Ct. 371, 464 U.S. 956, 78 L.Ed.2d 330, certiorari denied 104 S.Ct. 739, 464 U.S. 1056, 79 L.Ed.2d 197. **Indians** 🔑 144

Mines and mining

Forest Service took appropriate action under National Environmental Policy Act (NEPA) and policy of **American Indian Religious Freedom Act** to investigate and consider **religious** concerns of **Indian** tribe in deciding whether to approve modified plan of operations for uranium mine located on national forest land; although tribe was provided with regular opportunity to participate in NEPA process and raise any issues of concern, tribe was not forthcoming on subject of religion during scoping process or comment period leading up to publication of final environmental impact statement, and did not identify specific sites of **religious** significance. [Havasupai Tribe v. U.S.](#), D.Ariz.1990, 752 F.Supp. 1471, affirmed 943 F.2d 32, certiorari denied 112 S.Ct. 1559, 503 U.S. 959, 118 L.Ed.2d 207. *Environmental Law* 🔑 604(5); **Indians** 🔑 144

Power plants

Determination by United States Forest Service (USFS) that amendment of forest standard to accommodate geothermal power plant development on ancestral tribal site within national forest did not constitute significant change to Forest Plan was not arbitrary and capricious, and thus was proper under National Forest Management Act (NFMA); old and new standards had similar language, and both standards referenced **American Indian Religious Freedom Act (AIRFA)** criteria for protecting traditional **Indian** land uses. [Pit River Tribe v. Bureau of Land Management](#), E.D.Cal.2004, 306 F.Supp.2d 929, reversed 469 F.3d 768, on remand 2008 WL 5381779. *Woods And Forests* 🔑 8

Prison regulations

American Indian Religious Freedom Act does not create procedural obligations on part of government officials to consult with members of Native American community before implementing rules of general application, and thus prison regulation banning all headgear in dining hall was not invalid solely on ground it was promulgated without explicit consideration of Native American views. [Standing Deer v. Carlson](#), C.A.9 (Cal.) 1987, 831 F.2d 1525. *Prisons* 🔑 153

Railroad construction

Under **American Indian Religious Freedom Act**, Interstate Commerce Commission, in making determination of whether to allow railroad to be constructed near Navajo village and **religious** sites, was not required to consult with tribal **religious** leaders, where Commission had previously consulted with tribal secular leaders, required neutral archeologist to oversee construction to avoid interference with **religious** sites, and where no sites along construction route were so important to be deemed of tribal significance. [New Mexico Navajo Ranchers Ass'n v. I.C.C.](#), C.A.D.C.1988, 850 F.2d 729, 271 U.S.App.D.C. 36. **Indians** 🔑 144

Roads and highway construction

Proposed completion of paved road did not violate **Indians'** rights under this section where Secretary of Department of Agriculture commissioned studies on **Indian religious** beliefs and practices and on basis of those studies, selected route for section of road which would minimize adverse visual and audible impact on site which some **Indians** considered a **religious**

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site and used for **religious** practices. *Northwest Indian Cemetery Protective Ass'n v. Peterson*, N.D.Cal.1982, 552 F.Supp. 951. **Indians** 🔑 144

Waterways

In relicensing hydroelectric project, failure of the Federal Energy Regulatory Commission (FERC) to require minimum stream flows did not violate the **American Indian Religious Freedom Act** on theory that increased flows would provide members of **Indian** nation with canoe access to **religious** sites, where FERC found that, even with proposed minimum flows, canoe navigation of the channel would not be possible, and also noted that there was a nearby canoe route that permitted canoe passage to the same sites. *Conservation Law Foundation v. F.E.R.C.*, C.A.D.C.2000, 216 F.3d 41, 342 U.S.App.D.C. 150. **Indians** 🔑 144

Tribal recognition actions

Allegedly penalizing plaintiffs for untimely submission of affidavit concerning selection of governing body for **Indian** tribe because affiant had to attend to personal and **religious** obligations resulting from a death in her immediate family did not violate affiant's free exercise of **religious** rights guaranteed by either **U.S.C.A.Const.Amend. 1** or this section, in that affiant's **religious freedom** was not unduly burdened such that she was forced to either choose between her **religious** beliefs and receipt of a governmental benefit to which she was entitled or choose between violating her **religious** beliefs and violating state or federal law. *Oneida Indian Nation of New York v. Clark*, N.D.N.Y.1984, 593 F.Supp. 257. **Constitutional Law** 🔑 1311

Persons entitled to maintain action

American Indian Religious Freedom Act did not create cause of action or judicially enforceable rights in favor of individual **Indians**. *Attakai v. U.S.*, D.Ariz.1990, 746 F.Supp. 1395. **Indians** 🔑 144; **Indians** 🔑 233

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Current through P.L. 113-163 (excluding P.L. 113-128) approved 8-8-14