

SOUTHERN UTE INDIAN TRIBE

**TRIBAL POLICY
FOR THE
PROTECTION OF
BURIAL SITES
HUMAN REMAINS
AND
FUNERARY OBJECTS**

DECEMBER 2000



RESOLUTION 00-221
DECEMBER 12, 2000

**RESOLUTION
OF THE
COUNCIL OF THE SOUTHERN UTE INDIAN TRIBE
December 12, 2000**

WHEREAS, authority is vested in the Southern Ute Indian Tribal Council by the Constitution adopted by the Southern Ute Indian Tribe and approved November 4, 1936, and amended October 1, 1975, to act for the Southern Ute Indian Tribe; and

WHEREAS, the Southern Ute Indian Tribe ("Tribe") is committed to protecting all: a) burial sites; b) culturally affiliated and unaffiliated Human Remains; and c) associated and unassociated Funerary Objects as defined under the Native American Graves Protection and Repatriation Act; and

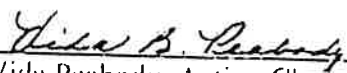
WHEREAS, based on an awareness of Southern Ute cultural beliefs and values, the Tribe's Cultural Preservation Office has proposed the *Southern Ute Indian Tribal Policy for the Protection of Burial Sites, Human Remains and Funerary Objects* ("*Burial Protection Policy*"), attached hereto as Exhibit "A," to protect these cultural resources from any ground-disturbing activity ("Project") within the exterior boundaries of the Southern Ute Indian Reservation; and

WHEREAS, the *Burial Protection Policy* incorporates the Tribe's expectation that all Human Remains and Funerary Objects will be treated with the utmost respect from the time of initial discovery until their final disposition; that because Funerary Objects were placed with the Human Remains for essential reasons, they will not be handled casually, collected, removed or separated from the Human Remains; and that Ute traditional and spiritual values shall be observed in dealing with Human Remains, Funerary Objects, burials, and the relocation or transfer of burial sites.

NOW, THEREFORE, BE IT RESOLVED that the Tribal Council of the Southern Ute Indian Tribe hereby approves and adopts the *Burial Protection Policy*.

BE IT FURTHER RESOLVED that the Chairman of the Southern Ute Indian Tribal Council is hereby authorized to sign the documents necessary in carrying out the purposes of this Resolution.

This Resolution was duly adopted on the 12th day of December, 2000.



Vida Peabody, Acting Chairman
Southern Ute Indian Tribal Council

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CERTIFICATION

This is to certify that there were (4) of the regularly elected Southern Ute Indian Tribal Council members present at the above meeting at which (3) voted for, and (0) against, it being a quorum and the above Resolution was passed.

A handwritten signature in cursive script, reading "Catherine S. McClure".

Catherine S. McClure, Recording Secretary
Southern Ute Indian Tribal Council

SOUTHERN UTE INDIAN TRIBAL POLICY FOR THE PROTECTION OF BURIAL SITES, HUMAN REMAINS AND FUNERARY OBJECTS

I. POLICY STATEMENT

Based on an awareness of the wide range of Southern Ute cultural beliefs and values, the Southern Ute Indian Tribe¹ (the "Tribe") establishes these rules and regulations for the protection of burial sites, Human Remains (as defined in 43 C.F.R. § 10(A) (10.2)(b)(1)), and Funerary Objects (as defined in 43 C.F.R. § 10(A) (10.2)(b)(2)).

It is the Tribe's policy that burial sites not be disturbed. Because activities within the Southern Ute Indian Reservation to benefit Tribal members may lead to the inadvertent disturbance of burial sites and, under extraordinary circumstances, the need for disinterment, the Tribe is promulgating this Policy.

Issues surrounding death, including burial sites, Human Remains and Funerary Objects, are treated with utmost respect in Southern Ute Indian culture and are rarely discussed. Ute teachings discourage the direct handling of Human Remains. Tribal members generally avoid burial sites and do not normally handle materials associated with a burial. The Tribe, therefore, apologizes to those who have passed on for this intrusion and to the living for any discomfort this subject may cause.

The Tribe is committed to protecting all: a) burial sites; b) culturally affiliated² and unaffiliated Human Remains; and c) associated and unassociated Funerary Objects.

II. JURISDICTION

This policy applies to any ground-disturbing activity ("Project") within the exterior boundaries of the Southern Ute Indian Reservation, recognized pursuant to P.L. 98-290 ("Reservation"). In addition, the Tribe requests that those engaged in a Project within the 1868 Ute Indian Reservation, Ute lands ceded to the United States Government by treaty, and aboriginal lands of the Ute Nation within the States of Colorado, New Mexico, Utah, Wyoming, Kansas, and panhandles of Oklahoma and Texas comply with this policy.

III. TRADITIONAL CONCERNS

The Tribe expects all Human Remains and Funerary Objects to be treated with the utmost respect from the time of initial discovery until their final disposition. Funerary Objects have been placed with the Human Remains for essential reasons and should not be handled casually.

¹ The Tribe is an Indian Tribe for the purposes of the Native American Graves Protection and Repatriation Act as defined in 43 C.F.R. § 10(A)(10.2)(2)

² Cultural affiliation is defined in 43 C.F.R. § 10(A)(10.2)(C)

collected, removed or separated from the Human Remains. Ute traditional and spiritual values shall be observed in dealing with Human Remains, Funerary Objects, burials, and the relocation or transfer of burial sites.

The concerns listed below should, therefore, be taken into consideration in dealing with burial sites, Human Remains and Funerary Objects, and Traditional Cultural Properties ("TCPs").³

A. Women who are menstruating or pregnant should not handle Human Remains and Funerary Objects. Women in such condition, children and young adults, who inadvertently encounter Human Remains and Funerary Objects, shall participate in an appropriate cleansing ceremony.

B. Before any intentional disturbance of Human Remains or TCPs occurs, the Tribe's Cultural Preservation Office must be notified so that all appropriate Tribal ceremonies may be conducted.

C. The number of individuals who view Human Remains and Funerary Objects in the field should be limited to the number required to do so. If there should be a disagreement about the number of persons allowed to view Human Remains, the Tribe's Cultural Preservation Office shall determine who may view the Human Remains.

IV. GENERAL PRINCIPLES

A. Human Remains and Funerary Objects, once having been interred within the Southern Ute Indian Reservation, regardless of the ownership of the land on which they are encountered or whether the remains are identified as Ute, should generally not be disturbed or disinterred.

B. If a Project could impact a burial site, the Project must exhaust all reasonable and prudent alternatives before requesting disinterment of the Human Remains and Funerary Objects from the Tribal Council.

C. The Tribe recognizes, however, that under certain circumstances, disinterment may need to occur. In these situations, Human Remains and Funerary Objects shall be treated in compliance with the Native American Graves Protection and Repatriation Act, Public Law 101-601 ("NAGPRA"); the Archaeological Resource Protection Act of 1979, Public Law 96-95 ("APRA"); the National Historic Preservation Act of 1996, Public Law 89-665, as amended ("NHPA"); and all other applicable acts, rules, regulations, Executive Orders and Southern Ute Indian Tribal customs and traditions. Human Remains shall be reinterred with appropriate ceremony as soon as possible at a site designated by the Tribal Council in keeping with the spirit of the original interment. To delay reburial is a violation of the prayers and ceremony of the original burial. It is the Tribe's wish that reburial take place within thirty (30) days of

³ An area or object designated as such by the Tribal Council which has cultural, religious, traditional, or historic value to the Tribe.

disinterment. While the Tribe realizes that needed consultation may require an extension of this time, all efforts should be exerted for a prompt reburial.

D. The Tribe anticipates the establishment of a Tribal Historic Preservation Office ("THPO") which, pursuant to NHPA, will be treated as the equal of the Colorado State Historic Preservation Office ("SHPO").

E. The Tribe shall pursue the development of programmatic agreements with all appropriate Federal agencies and other Tribes in the spirit of this document.

V. PRE-PROJECT ARCHEOLOGICAL WORK

The Tribe requires sponsors of a Project within the Reservation to have had an archeologist permitted under the Tribe's non-ground disturbing archeological permit policy to use good faith efforts to locate burial sites, Human Remains, and Funerary Objects within the Area of Potential Effect ("APE")⁴ prior to initiation of any Project. Such good faith efforts shall include at least a literature search and search of files maintained by the SHPO, the BIA, the lead agency for the Project and all other pertinent materials and records, including Tribal records, but only with the supervision of Tribal representatives because of the sensitive nature of Tribal records, and other archeological inventories and ethnographic interviews, including with Utes or knowledgeable individuals and traditional practitioners recommended by the Tribe.

VI. INADVERTENT ENCOUNTERING OF BURIAL SITES, HUMAN REMAINS, AND FUNERARY OBJECTS

A. When an Inadvertent Discovery⁵ of Human Remains or Funerary Objects occurs, whether inside or outside the context of an Intentional Excavation,⁶ those conducting the Project shall adhere to the following procedures as outlined in NAGPRA and 43 CFR 10.4:

1. Immediately cease all ground-disturbing activities, including trenching, hand excavation and sampling within a 50-foot (15.2-meter) radius of the discovery, and cease all photography within a 10-foot (3-meter) radius of the discovery, until a data recovery plan in writing approved by the Tribe's Cultural Preservation Office is in place.

2. Contact the Tribe's Cultural Preservation Office, and, if possible, the NAGPRA Coordinator, within one (1) business day of discovery to arrange for consultation about proper evaluation of the discovery and verbally supply the following information:

⁴ A geographic area within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist there. This area includes the actual Site of the undertaking and may also include other areas where the undertaking will cause changes in land use, cultural patterns, or other ways that could affect historic properties.

⁵ Defined at 43 CFR A19(10.2)(g)(4).

⁶ Defined at 43 CFR A19(10.2)(g)(5).

- a. Project name and sponsor;
- b. the location of the burial site, Human Remains, and/or Funerary Objects, with as much specificity as possible;
- c. the nature of the Human Remains or Funerary Objects found and the context in which they are located;
- d. a preliminary assessment of the type of burial, the complexity of the burial(s) and the likelihood of disturbance if left in place;
- e. A proposed location for reburial, if applicable; and,
- f. Other pertinent information.

B. The Project Sponsor, at the Sponsor's cost, shall:

1. provide written notification of the items identified in Paragraph VI(A)(2) above to the Tribe's NAGPRA Coordinator immediately following verbal notification.
2. protect the Human Remains and/or Funerary Objects in place until the Tribe determines appropriate treatment. When security is a problem the Project Sponsor must consult with the Tribe's Cultural Preservation Office regarding protective measures.
3. employ a cultural resource professional permitted by the Tribe and a party familiar with human remains, either the Coroner of La Plata County and/or a qualified physical anthropologist, to immediately determine the nature and extent of the burial and/or Funerary Objects, while leaving the Human Remains in place and protected.

C. Through contextual analysis, interviews, non-destructive visual inspection and other appropriate means, including, but not limited to, consultation with the Southern Ute Indian Tribal elders, the cultural resource professional shall determine, to the extent possible, the age and sex of the Human Remains, and the approximate date of the interment, and whether the Human Remains represent a person with Ute band affiliation, other Native American affiliation, a non-Native American burial, or an unidentified burial. The cultural resource professional should take traditional kinship into account in determining lineal descendants and/or Ute band affiliation.

D. Except under extraordinary circumstances, as such circumstances are defined by the Cultural Preservation Office or the Tribal Council, the analysis of Human Remains is restricted to in-field work.

1. All analysis shall take place on site
2. No soil samples shall be taken from within one (1) foot (0.3 meters) of the Human Remains, unless required to identify the cultural affiliation of the Human Remains.

3. To the greatest extent possible, visual inspection shall be performed without handling, brushing off or disarticulating the Human Remains.

4. In cases where Funerary Objects are to be reinterred and are susceptible to theft, photographs of the Funerary Objects may be permitted by the Tribe, in the Tribe's sole discretion. All such photographs and negatives shall become the property of the Tribe.

E. In the rare instance that non-Native American Human Remains or recent burials are encountered during a Project, the Project sponsor shall contact the appropriate authority.

F. If the Project will not impact the Human Remains and/or Funerary Objects, they shall be covered in place with appropriate ceremony, after such consultation with other Native American tribes as may be required under federal laws and regulations.

G. If the Project will impact the Human Remains and/or Funerary Objects, and the Tribal Council has determined that there is no alternative available to allow the Project to go forward except disinterment, treatment procedures may vary depending on necessary consultation with culturally affiliated tribes or other appropriate entities as required under federal laws and regulations.

1. If it is not possible for the involved professionals to identify the Human Remains as set forth in paragraph VI(D)(1)(4) above by contextual analyses and visual inspection, the professionals may take skull measurements, examine dentation and take soil samples to identify the Human Remains.

2. If the Human Remains are identified as having Ute affiliation:

a. and there are lineal descendants, such descendants may determine the treatment of the Human Remains; or

b. if there are no identified lineal descendants, the Human Remains are identified as Native American other than Ute or the known heirs are culturally unidentifiable, the Human Remains shall be disinterred only with the approval of the Tribal Council under a data recovery plan approved by the Tribe's Cultural Preservation Office and be buried with appropriate ceremony at a burial site selected by the Tribal Council in keeping with the spirit of the original interment, after consultation with other Native American tribes as required under federal laws and regulations.

VII. REPORTING

A. The Project sponsor shall thoroughly document, record on the appropriate 7.5 minute USGS topographic map, and provide to the Tribe in a confidential, separate report, the location of the Human Remains and the results of investigations at a burial site. No one other than the Project sponsor and Tribe shall retain information regarding the location of burials. Confidential appendices shall not be distributed to any other party unless authorized in writing by the Tribe. Records of Human Remains and Funerary Objects and of their location shall be maintained in secure cultural resource files of the Tribe's Cultural Preservation Office.

B. Depictions (e.g., sketches, drawings, detailed illustrations) of gravesites. Human Remains and Funerary objects shall be made but shall not appear in the body of any report. A map showing the orientation of the Human Remains and associated Funerary objects shall be provided to the Tribe's Cultural Preservation Office in the confidential appendix to a report.

C. Site maps in the main body of a report should identify all features, including burials, but should not include detailed illustrations.

VIII. HUMAN REMAINS IDENTIFIED IN THE LABORATORY

If Human Remains are discovered along with faunal remains or other samples during laboratory analysis, the Project proponent must contact the Tribe's NAGPRA Officer and rebury the Human Remains consistent with Ute traditional values after consultation with other Native American tribes as required under NAGPRA and NHPA.

IX. DISINTERMENT

A. If the Tribal Council has determined that circumstances require that Human Remains be disinterred, the excavation team must have an Archeological Resource Protection Act ("ARPA") permit from the BIA and a Southern Ute Indian Tribal ground-disturbing cultural resources permit, when the criteria for such a permit have been approved by the Tribal Council.

B. The Tribe's Cultural Preservation Office shall work with the BIA to insure ARPA permits contain appropriate Tribal conditions.

C. Excavation may occur only after a data recovery plan, prepared by the Project sponsor, has been approved by the Tribal Cultural Preservation Office. Such plan shall give due respect to Southern Ute Indian Tribal cultural values. Approval of the plan is in the Tribe's sole discretion.

D. All costs related to the excavation and data recovery are to be borne by the Project sponsor.

E. When Human Remains or Funerary Objects are encountered in the context of a tribally-approved data recovery plan, the cultural resource professional may continue the investigation outside the immediate burial area.

X. REPATRIATION

A. Pursuant to NAGPRA, Federal agencies and museums receiving federal funds have inventoried their collections to identify Human Remains and Funerary Objects of Ute or other Native American cultural affiliation and provided notice of such to all culturally affiliated Indian tribes. Upon notification, a tribe or a known lineal descendant may request the return of such Human Remains, Funerary Objects or sacred objects based upon evidence establishing the cultural affiliation of the requesting party.

B. Pursuant to the Tribe's cultural resources goals approved by the Tribal Council, the Southern Ute Indian Tribe will seek repatriation of funerary objects. Human Remains and items of cultural patrimony or agree on, in a written negotiation with lineal descendants, Federal agencies and museums, mutually acceptable alternatives to repatriation for the appropriate disposition of Funerary Objects and Human Remains.

XI. DISPUTE RESOLUTION

The Tribal Council shall handle disputes relating to the treatment of burial sites, Human Remains and Funerary Objects with other tribes, Federal agencies or other parties outside the Tribal governmental structure involved with a Project, on a case-by-case basis, in compliance with NAGPRA and all other applicable laws.

XII. AMENDMENT

For the first five years that this Policy is in effect, it shall be reviewed annually by the Tribal Council.

XIII. POLICY NON-DISCLOSURE

Disclosure of this Policy outside of the Tribe is at the sole discretion of the Tribal Council.

This content is from the eCFR and is authoritative but unofficial.

Title 43 - Public Lands: Interior

Subtitle A - Office of the Secretary of the Interior

Part 10 Native American Graves Protection and Repatriation Regulations

Subpart A Introduction

§ 10.1 Purpose, applicability, and information collection.

§ 10.2 Definitions.

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Subpart C Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony in Museums and Federal Collections

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PART 10 - NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

Authority: 16 U.S.C. 470dd; 25 U.S.C. 9, 3001 *et seq.*

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

Subpart A - Introduction

§ 10.1 Purpose, applicability, and information collection.

- (a) **Purpose.** These regulations carry out provisions of the Native American Graves Protection and Repatriation Act of 1990 (Pub.L. 101-601; 25 U.S.C. 3001-3013; 104 Stat. 3048-3058). These regulations develop a systematic process for determining the rights of lineal descendants and Indian tribes and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated.
- (b) **Applicability.**
- (1) These regulations pertain to the identification and appropriate disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are:
 - (i) In Federal possession or control; or
 - (ii) In the possession or control of any institution or State or local government receiving Federal funds; or
 - (iii) Excavated intentionally or discovered inadvertently on Federal or tribal lands.
 - (2) These regulations apply to human remains, funerary objects, sacred objects, or objects of cultural patrimony which are indigenous to Alaska, Hawaii, and the continental United States, but not to territories of the United States.
 - (3) Throughout this part are decision points which determine how this part applies in particular circumstances, e.g., a decision as to whether a museum “controls” human remains and cultural objects within the meaning of the regulations, or a decision as to whether an object is a “human remain,” “funerary object,” “sacred object,” or “object of cultural patrimony” within the meaning of the regulations. Any final determination making the Act or this part inapplicable is subject to review under section 15 of the Act. With respect to Federal agencies, the final denial of a request of a lineal descendant, Indian tribe, or Native Hawaiian organization for the repatriation or disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony brought under, and in compliance with, the Act and this part constitutes a final agency action under the Administrative Procedure Act (5 U.S.C. 704).
- (c) The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned control number 1024-0144. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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

§ 10.2 Definitions.

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

- (a) **Who must comply with these regulations?**

- (1) **Federal agency** means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution as specified in section 2 (4) of the Act.
 - (2) **Federal agency official** means any individual authorized by delegation of authority within a Federal agency to perform the duties relating to these regulations.
 - (3) **Museum** means any institution or State or local government agency (including any institution of higher learning) that has possession of, or control over, human remains, funerary objects, sacred objects, or objects of cultural patrimony and receives Federal funds.
 - (i) The term "*possession*" means having physical custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony with a sufficient legal interest to lawfully treat the objects as part of its collection for purposes of these regulations. Generally, a museum or Federal agency would not be considered to have possession of human remains, funerary objects, sacred objects, or objects of cultural patrimony on loan from another individual, museum, or Federal agency.
 - (ii) The term "*control*" means having a legal interest in human remains, funerary objects, sacred objects, or objects of cultural patrimony sufficient to lawfully permit the museum or Federal agency to treat the objects as part of its collection for purposes of these regulations whether or not the human remains, funerary objects, sacred objects or objects of cultural patrimony are in the physical custody of the museum or Federal agency. Generally, a museum or Federal agency that has loaned human remains, funerary objects, sacred objects, or objects of cultural patrimony to another individual, museum, or Federal agency is considered to retain control of those human remains, funerary objects, sacred objects, or objects of cultural patrimony for purposes of these regulations.
 - (iii) The phrase "*receives Federal funds*" means the receipt of funds by a museum after November 16, 1990, from a Federal agency through any grant, loan, contract (other than a procurement contract), or other arrangement by which a Federal agency makes or made available to a museum aid in the form of funds. Federal funds provided for any purpose that are received by a larger entity of which the museum is a part are considered Federal funds for the purposes of these regulations. For example, if a museum is a part of a State or local government or a private university and the State or local government or private university receives Federal funds for any purpose, the museum is considered to receive Federal funds for the purpose of these regulations.
 - (4) **Museum official** means the individual within a museum designated as being responsible for matters relating to these regulations.
 - (5) **Person** means an individual, partnership, corporation, trust, institution, association, or any other private entity, or, any official, employee, agent, department, or instrumentality of the United States, or of any Indian tribe or Native Hawaiian organization, or of any State or political subdivision thereof that discovers or discovered human remains, funerary objects, sacred objects or objects of cultural patrimony on Federal or tribal lands after November 16, 1990.
- (b) **Who has standing to make a claim under these regulations?**
- (1) **Lineal descendant** means an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the common law system of descentance to a known Native American individual whose remains, funerary objects, or sacred objects are being claimed under these regulations.

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- (i) **Associated funerary objects** means those funerary objects for which the human remains with which they were placed intentionally are also in the possession or control of a museum or Federal agency. Associated funerary objects also means those funerary objects that were made exclusively for burial purposes or to contain human remains.
- (ii) **Unassociated funerary objects** means those funerary objects for which the human remains with which they were placed intentionally are not in the possession or control of a museum or Federal agency. Objects that were displayed with individual human remains as part of a death rite or ceremony of a culture and subsequently returned or distributed according to traditional custom to living descendants or other individuals are not considered unassociated funerary objects.
- (3) **Sacred objects** means items that are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. While many items, from ancient pottery sherds to arrowheads, might be imbued with sacredness in the eyes of an individual, these regulations are specifically limited to objects that were devoted to a traditional Native American religious ceremony or ritual and which have religious significance or function in the continued observance or renewal of such ceremony. The term *traditional* religious leader means a person who is recognized by members of an Indian tribe or Native Hawaiian organization as:
 - (i) Being responsible for performing cultural duties relating to the ceremonial or religious traditions of that Indian tribe or Native Hawaiian organization, or
 - (ii) Exercising a leadership role in an Indian tribe or Native Hawaiian organization based on the tribe or organization's cultural, ceremonial, or religious practices.
- (4) **Objects of cultural patrimony** means items having ongoing historical, traditional, or cultural importance central to the Indian tribe or Native Hawaiian organization itself, rather than property owned by an individual tribal or organization member. These objects are of such central importance that they may not be alienated, appropriated, or conveyed by any individual tribal or organization member. Such objects must have been considered inalienable by the culturally affiliated Indian tribe or Native Hawaiian organization at the time the object was separated from the group. Objects of cultural patrimony include items such as Zuni War Gods, the Confederacy Wampum Belts of the Iroquois, and other objects of similar character and significance to the Indian tribe or Native Hawaiian organization as a whole.

(e)

- (1) What is *cultural affiliation*? Cultural affiliation means that there is a relationship of shared group identity that can be reasonably traced historically or prehistorically between members of a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. Cultural affiliation is established when the preponderance of the evidence - based on geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion - reasonably leads to such a conclusion.
- (2) What does *culturally unidentifiable* mean? Culturally unidentifiable refers to human remains and associated funerary objects in museum or Federal agency collections for which no lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization has been identified through the inventory process.

(f) **What types of lands do the excavation and discovery provisions of these regulations apply to?**

- (1) **Federal lands** means any land other than tribal lands that are controlled or owned by the United States Government, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). United States "control," as used in this definition, refers to those lands not owned by the United States but in which the United States has a legal interest sufficient to permit it to apply these regulations without abrogating the otherwise existing legal rights of a person.
- (2) **Tribal lands** means all lands which:
 - (i) Are within the exterior boundaries of any Indian reservation including, but not limited to, allotments held in trust or subject to a restriction on alienation by the United States; or
 - (ii) Comprise dependent Indian communities as recognized pursuant to 18 U.S.C. 1151; or
 - (iii) Are administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act of 1920 and section 4 of the Hawaiian Statehood Admission Act (Pub.L. 86-3; 73 Stat. 6).
 - (iv) Actions authorized or required under these regulations will not apply to tribal lands to the extent that any action would result in a taking of property without compensation within the meaning of the Fifth Amendment of the United States Constitution.
- (g) **What procedures are required by these regulations?**
 - (1) **Summary** means the written description of collections that may contain unassociated funerary objects, sacred objects, and objects of cultural patrimony required by § 10.8 of these regulations.
 - (2) **Inventory** means the item-by-item description of human remains and associated funerary objects.
 - (3) **Intentional excavation** means the planned archeological removal of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands pursuant to section 3 (c) of the Act.
 - (4) **Inadvertent discovery** means the unanticipated encounter or detection of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands pursuant to section 3 (d) of the Act.
 - (5) **Disposition** means the transfer of control over Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony by a museum or Federal agency under this part. This part establishes disposition procedures for several different situations:
 - (i) Custody of human remains, funerary objects, sacred objects, and objects of cultural patrimony excavated intentionally from, or discovered inadvertently on, Federal or tribal lands after November 16, 1990, is established under § 10.6.
 - (ii) Repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony in museum and Federal agency collections to a lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization is established under § 10.10.
 - (iii) Disposition of culturally unidentifiable human remains, with or without associated funerary objects, in museum or Federal agency collections is established under § 10.11.
 - (iv) Disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony is governed by § 10.7.

- (h) **Unclaimed cultural items** means Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony:
- (1) That have been excavated or discovered on, and removed from, Federal lands after November 16, 1990, and
 - (2) Whose disposition under 25 U.S.C. 3002(a) and § 10.6 of this part has not occurred because either:
 - (i) Within one year after publication of a notice under § 10.6(c) of this part, no Indian tribe or Native Hawaiian organization has sent a written claim for the cultural items to the appropriate Federal agency, or no lineal descendant has responded to a notice for human remains and associated funerary objects; or
 - (ii) Within two years after knowing or having reason to know that cultural items were excavated or discovered, and removed, the appropriate Federal agency could not reasonably identify any Indian tribe or Native Hawaiian organization or lineal descendant as a potential claimant.

[60 FR 62158, Dec. 4, 1995, as amended at 62 FR 41293, Aug. 1, 1997; 70 FR 57179, Sept. 30, 2005; 71 FR 16501, Apr. 3, 2006; 75 FR 12403, Mar. 15, 2010; 76 FR 39009, July 5, 2011; 78 FR 27082, May 9, 2013; 80 FR 68470, Nov. 5, 2015]

Subpart B - Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony From Federal or Tribal Lands

§ 10.3 Intentional archaeological excavations.

- (a) **General.** This section carries out section 3 (c) of the Act regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are excavated intentionally from Federal or tribal lands after November 16, 1990.
- (b) **Specific Requirements.** These regulations permit the intentional excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal or tribal lands only if:
 - (1) The objects are excavated or removed following the requirements of the Archaeological Resources Protection Act (ARPA) (16 U.S.C. 470aa et seq.) and its implementing regulations. Regarding private lands within the exterior boundaries of any Indian reservation, the Bureau of Indian Affairs (BIA) will serve as the issuing agency for any permits required under the Act. For BIA procedures for obtaining such permits, see 25 CFR part 262 or contact the Deputy Commissioner of Indian Affairs, Department of the Interior, Washington, DC 20240. Regarding lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Pub. L. 86-3, the Department of Hawaiian Home Lands will serve as the issuing agency for any permits required under the Act, with the Hawaii State Historic Preservation Division of the Department of Land and Natural Resources acting in an advisory capacity for such issuance. Procedures and requirements for issuing permits will be consistent with those required by the ARPA and its implementing regulations;
 - (2) The objects are excavated after consultation with or, in the case of tribal lands, consent of, the appropriate Indian tribe or Native Hawaiian organization pursuant to § 10.5;
 - (3) The disposition of the objects is consistent with their custody as described in § 10.6; and
 - (4) Proof of the consultation or consent is shown to the Federal agency official or other agency official responsible for the issuance of the required permit.
- (c) **Procedures.**

- (1) The Federal agency official must take reasonable steps to determine whether a planned activity may result in the excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal lands. Prior to issuing any approvals or permits for activities, the Federal agency official must notify in writing the Indian tribes or Native Hawaiian organizations that are likely to be culturally affiliated with any human remains, funerary objects, sacred objects, or objects of cultural patrimony that may be excavated. The Federal agency official must also notify any present-day Indian tribe which aboriginally occupied the area of the planned activity and any other Indian tribes or Native Hawaiian organizations that the Federal agency official reasonably believes are likely to have a cultural relationship to the human remains, funerary objects, sacred objects, or objects of cultural patrimony that are expected to be found. The notice must be in writing and describe the planned activity, its general location, the basis upon which it was determined that human remains, funerary objects, sacred objects, or objects of cultural patrimony may be excavated, and, the basis for determining likely custody pursuant to § 10.6. The notice must also propose a time and place for meetings or consultations to further consider the activity, the Federal agency's proposed treatment of any human remains, funerary objects, sacred objects, or objects of cultural patrimony that may be excavated, and the proposed disposition of any excavated human remains, funerary objects, sacred objects, or objects of cultural patrimony. Written notification should be followed up by telephone contact if there is no response in 15 days. Consultation must be conducted pursuant to § 10.5.
- (2) Following consultation, the Federal agency official must complete a written plan of action (described in § 10.5(e)) and execute the actions called for in it.
- (3) If the planned activity is also subject to review under section 106 of the National Historic Preservation Act (16 U.S.C. 470 et seq.), the Federal agency official should coordinate consultation and any subsequent agreement for compliance conducted under that Act with the requirements of § 10.3 (c)(2) and § 10.5. Compliance with these regulations does not relieve Federal agency officials of requirements to comply with section 106 of the National Historic Preservation Act (16 U.S.C. 470 et seq.).
- (4) If an Indian tribe or Native Hawaiian organization receives notice of a planned activity or otherwise becomes aware of a planned activity that may result in the excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony on tribal lands, the Indian tribe or Native Hawaiian organization may take appropriate steps to:
 - (i) Ensure that the human remains, funerary objects, sacred objects, or objects of cultural patrimony are excavated or removed following § 10.3 (b), and
 - (ii) Make certain that the disposition of any human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently as a result of the planned activity are carried out following § 10.6.

§ 10.4 Inadvertent discoveries.

- (a) **General.** This section carries out section 3 (d) of the Act regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are discovered inadvertently on Federal or tribal lands after November 16, 1990.
- (b) **Discovery.** Any person who knows or has reason to know that he or she has discovered inadvertently human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal or tribal lands after November 16, 1990, must provide immediate telephone notification of the inadvertent discovery, with written confirmation, to the responsible Federal agency official with respect to Federal lands, and, with respect to tribal lands, to the responsible Indian tribe official. The requirements of these

regulations regarding inadvertent discoveries apply whether or not an inadvertent discovery is duly reported. If written confirmation is provided by certified mail, the return receipt constitutes evidence of the receipt of the written notification by the Federal agency official or Indian tribe official.

- (c) **Ceasing activity.** If the inadvertent discovery occurred in connection with an on-going activity on Federal or tribal lands, the person, in addition to providing the notice described above, must stop the activity in the area of the inadvertent discovery and make a reasonable effort to protect the human remains, funerary objects, sacred objects, or objects of cultural patrimony discovered inadvertently.

(d) **Federal lands.**

- (1) As soon as possible, but no later than three (3) working days after receipt of the written confirmation of notification with respect to Federal lands described in § 10.4 (b), the responsible Federal agency official must:

- (i) Certify receipt of the notification;
- (ii) Take immediate steps, if necessary, to further secure and protect inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony, including, as appropriate, stabilization or covering;
- (iii) Notify any known lineal descendants of a deceased Native American individual whose human remains and associated funerary objects were discovered of such discovery, and, with respect to a discovery of human remains, associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony, notify the Indian tribes or Native Hawaiian organizations likely to be culturally affiliated with the cultural items, the Indian tribe or Native Hawaiian organization that aboriginally occupied the area, and any other Indian tribe or Native Hawaiian organization known to have a cultural relationship to the cultural items. This notification must be by telephone with written confirmation and must include information about the kinds of human remains, associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony, their condition, and the circumstances of their discovery;
- (iv) Initiate consultation on the inadvertent discovery pursuant to § 10.5;
- (v) If the human remains, funerary objects, sacred objects, or objects of cultural patrimony must be excavated or removed, follow the requirements and procedures in § 10.3 (b) of these regulations; and
- (vi) Ensure that disposition of all inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony is carried out following § 10.6.

- (2) **Resumption of activity.** The activity that resulted in the inadvertent discovery may resume thirty (30) days after certification by the notified Federal agency of receipt of the written confirmation of notification of inadvertent discovery if the resumption of the activity is otherwise lawful. The activity may also resume, if otherwise lawful, at any time that a written, binding agreement is executed between the Federal agency and the affiliated Indian tribes or Native Hawaiian organizations that adopt a recovery plan for the excavation or removal of the human remains, funerary objects, sacred objects, or objects of cultural patrimony following § 10.3 (b)(1) of these regulations. The disposition of all human remains, funerary objects, sacred objects, or objects of cultural patrimony must be carried out following § 10.6.

(e) **Tribal lands.**

- (1) As soon as possible, but no later than three (3) working days after receipt of the written confirmation of notification with respect to Tribal lands described in § 10.4 (b), the responsible Indian tribe official may:
 - (i) Certify receipt of the notification;
 - (ii) Take immediate steps, if necessary, to further secure and protect inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony, including, as appropriate, stabilization or covering;
 - (iii) If the human remains, funerary objects, sacred objects, or objects of cultural patrimony must be excavated or removed, follow the requirements and procedures in § 10.3 (b) of these regulations; and
 - (iv) Ensure that disposition of all inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony is carried out following § 10.6.
- (2) Resumption of Activity. The activity that resulted in the inadvertent discovery may resume if otherwise lawful after thirty (30) days of the certification of the receipt of notification by the Indian tribe or Native Hawaiian organization.
- (f) **Federal agency officials.** Federal agency officials should coordinate their responsibilities under this section with their emergency discovery responsibilities under section 106 of the National Historical Preservation Act (16 U.S.C. 470 (f) et seq.), 36 CFR 800.11 or section 3 (a) of the Archeological and Historic Preservation Act (16 U.S.C. 469 (a-c)). Compliance with these regulations does not relieve Federal agency officials of the requirement to comply with section 106 of the National Historical Preservation Act (16 U.S.C. 470 (f) et seq.), 36 CFR 800.11 or section 3 (a) of the Archeological and Historic Preservation Act (16 U.S.C. 469 (a-c)).
- (g) **Notification requirement in authorizations.** All Federal authorizations to carry out land use activities on Federal lands or tribal lands, including all leases and permits, must include a requirement for the holder of the authorization to notify the appropriate Federal or tribal official immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony pursuant to § 10.4 (b) of these regulations.

[60 FR 62158, Dec. 4, 1995, as amended at 62 FR 41293, Aug. 1, 1997; 78 FR 27082, May 9, 2013]

§ 10.5 Consultation.

Consultation as part of the intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal lands must be conducted in accordance with the following requirements.

- (a) **Consulting parties.** Federal agency officials must consult with known lineal descendants and Indian tribe officials:
 - (1) From Indian tribes on whose aboriginal lands the planned activity will occur or where the inadvertent discovery has been made; and
 - (2) From Indian tribes and Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony; and

- (3) From Indian tribes and Native Hawaiian organizations that have a demonstrated cultural relationship with the human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(b) **Initiation of consultation.**

- (1) Upon receiving notice of, or otherwise becoming aware of, an inadvertent discovery or planned activity that has resulted or may result in the intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal lands, the responsible Federal agency official must, as part of the procedures described in §§ 10.3 and 10.4, take appropriate steps to identify the lineal descendant, Indian tribe, or Native Hawaiian organization entitled to custody of the human remains, funerary objects, sacred objects, or objects of cultural patrimony pursuant to § 10.6 and § 10.14. The Federal agency official shall notify in writing:
 - (i) Any known lineal descendants of the deceased Native American individual whose human remains and associated funerary objects have been or are likely to be excavated intentionally or discovered inadvertently; and
 - (ii) The Indian tribes or Native Hawaiian organizations that are likely to be culturally affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony that have been or are likely to be excavated intentionally or discovered inadvertently; and
 - (iii) The Indian tribes which aboriginally occupied the area in which the human remains, funerary objects, sacred objects, or objects of cultural patrimony have been or are likely to be excavated intentionally or discovered inadvertently; and
 - (iv) The Indian tribes or Native Hawaiian organizations that have a demonstrated cultural relationship with the human remains, funerary objects, sacred objects, or objects of cultural patrimony that have been or are likely to be excavated intentionally or discovered inadvertently.
- (2) The notice must propose a time and place for meetings or consultation to further consider the intentional excavation or inadvertent discovery, the Federal agency's proposed treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony that may be excavated, and the proposed disposition of any intentionally excavated or inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony.
- (3) The consultation must seek to identify traditional religious leaders who should also be consulted and seek to identify, where applicable, lineal descendants and Indian tribes or Native Hawaiian organizations affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(c) **Provision of information.** During the consultation process, as appropriate, the Federal agency official must provide the following information in writing to the lineal descendants and the officials of Indian tribes or Native Hawaiian organizations that are or are likely to be affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands:

- (1) A list of all lineal descendants and Indian tribes or Native Hawaiian organizations that are being, or have been, consulted regarding the particular human remains, funerary objects, sacred objects, or objects of cultural patrimony;
- (2) An indication that additional documentation used to identify affiliation will be supplied upon request.

- (d) **Requests for information.** During the consultation process, Federal agency officials must request, as appropriate, the following information from Indian tribes or Native Hawaiian organizations that are, or are likely to be, affiliated pursuant to § 10.6 (a) with intentionally excavated or inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony:
- (1) Name and address of the Indian tribe official to act as representative in consultations related to particular human remains, funerary objects, sacred objects, or objects of cultural patrimony;
 - (2) Names and appropriate methods to contact lineal descendants who should be contacted to participate in the consultation process;
 - (3) Recommendations on how the consultation process should be conducted; and
 - (4) Kinds of cultural items that the Indian tribe or Native Hawaiian organization considers likely to be unassociated funerary objects, sacred objects, or objects of cultural patrimony.
- (e) **Written plan of action.** Following consultation, the Federal agency official must prepare, approve, and sign a written plan of action. A copy of this plan of action must be provided to the lineal descendants, Indian tribes and Native Hawaiian organizations involved. Lineal descendants and Indian tribe official(s) may sign the written plan of action as appropriate. At a minimum, the plan of action must comply with § 10.3 (b)(1) and document the following:
- (1) The kinds of objects to be considered as cultural items as defined in § 10.2 (b);
 - (2) The specific information used to determine custody pursuant to § 10.6;
 - (3) The planned treatment, care, and handling of human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered;
 - (4) The planned archeological recording of the human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered;
 - (5) The kinds of analysis planned for each kind of object;
 - (6) Any steps to be followed to contact Indian tribe officials at the time of intentional excavation or inadvertent discovery of specific human remains, funerary objects, sacred objects, or objects of cultural patrimony;
 - (7) The kind of traditional treatment, if any, to be afforded the human remains, funerary objects, sacred objects, or objects of cultural patrimony by members of the Indian tribe or Native Hawaiian organization;
 - (8) The nature of reports to be prepared; and
 - (9) The planned disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony following § 10.6.
- (f) **Comprehensive agreements.** Whenever possible, Federal Agencies should enter into comprehensive agreements with Indian tribes or Native Hawaiian organizations that are affiliated with human remains, funerary objects, sacred objects, or objects of cultural patrimony and have claimed, or are likely to claim, those human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands. These agreements should address all Federal agency land management activities that could result in the intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony. Consultation should lead to the establishment of a process for effectively carrying out the requirements of these regulations

regarding standard consultation procedures, the determination of custody consistent with procedures in this section and § 10.6, and the treatment and disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony. The signed agreements, or the correspondence related to the effort to reach agreements, must constitute proof of consultation as required by these regulations.

- (g) **Traditional religious leaders.** The Federal agency official must be cognizant that Indian tribe officials may need to confer with traditional religious leaders prior to making recommendations. Indian tribe officials are under no obligation to reveal the identity of traditional religious leaders.

[60 FR 62158, Dec. 4, 1995, as amended at 62 FR 41293, Aug. 1, 1997; 78 FR 27083, May 9, 2013]

§ 10.6 Custody.

- (a) **Priority of custody.** This section carries out section 3 (a) of the Act, subject to the limitations of § 10.15, regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently in Federal or tribal lands after November 16, 1990. For the purposes of this section, custody means ownership or control of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently in Federal or tribal lands after November 16, 1990. Custody of these human remains, funerary objects, sacred objects, or objects of cultural patrimony is, with priority given in the order listed:
- (1) In the case of human remains and associated funerary objects, in the lineal descendant of the deceased individual as determined pursuant to § 10.14 (b);
 - (2) When a lineal descendant of a deceased Native American individual cannot be ascertained with respect to the human remains and associated funerary objects, and with respect to unassociated funerary objects, sacred objects, and objects of cultural patrimony:
 - (i) In the Indian tribe on whose tribal land the human remains, funerary objects, sacred objects, or objects of cultural patrimony were excavated intentionally or discovered inadvertently;
 - (ii) In the Indian tribe or Native Hawaiian organization that has the closest cultural affiliation with the human remains, funerary objects, sacred objects, or objects of cultural patrimony as determined pursuant to § 10.14 (c); or
 - (iii) In circumstances in which the cultural affiliation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony cannot be ascertained and the objects were excavated intentionally or discovered inadvertently 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 an Indian tribe:
 - (A) In the Indian tribe aboriginally occupying the Federal land on which the human remains, funerary objects, sacred objects, or objects of cultural patrimony were excavated intentionally or discovered inadvertently, or
 - (B) If a preponderance of the evidence shows that a different Indian tribe or Native Hawaiian organization has a stronger cultural relationship with the human remains, associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony, in the Indian tribe or Native Hawaiian organization that has the strongest demonstrated relationship with the cultural items.

- (b) Custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony and other provisions of the Act apply to all intentional excavations and inadvertent discoveries made after November 16, 1990, including those made before the effective date of these regulations.
- (c) ***Final notice, claims and disposition with respect to Federal lands.*** Upon determination of the lineal descendant, Indian tribe, or Native Hawaiian organization that under these regulations appears to be entitled to custody of particular human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands, the responsible Federal agency official must, subject to the notice required herein and the limitations of § 10.15, transfer custody of the objects to the lineal descendant, Indian tribe, or Native Hawaiian organization following appropriate procedures, which must respect traditional customs and practices of the affiliated Indian tribes or Native Hawaiian organizations in each instance. Prior to any such disposition by a Federal agency official, the Federal agency official must publish general notices of the proposed disposition in a newspaper of general circulation in the area in which the human remains, funerary objects, sacred objects, or objects of cultural patrimony were excavated intentionally or discovered inadvertently and, if applicable, in a newspaper of general circulation in the area(s) in which affiliated Indian tribes or Native Hawaiian organizations members now reside. The notice must provide information as to the nature and affiliation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony and solicit further claims to custody. The notice must be published at least two (2) times at least a week apart, and the transfer must not take place until at least thirty (30) days after the publication of the second notice to allow time for any additional claimants to come forward. If additional claimants do come forward and the Federal agency official cannot clearly determine which claimant is entitled to custody, the Federal agency must not transfer custody of the objects until such time as the proper recipient is determined pursuant to these regulations. The Federal agency official must send a copy of the notice and information on when and in what newspaper(s) the notice was published to the Manager, National NAGPRA Program.

[60 FR 62158, Dec. 4, 1995, as amended at 62 FR 41293, Aug. 1, 1997; 71 FR 16501, Apr. 3, 2006; 78 FR 27083, May 9, 2013]

§ 10.7 Disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony.

- (a) This section carries out section 3(b) of the Act (25 U.S.C. 3002(b)) regarding unclaimed cultural items.
- (b) A Federal agency that has unclaimed cultural items (human remains, funerary objects, sacred objects, or objects of cultural patrimony) must:
 - (1) Submit a list of the items to the Manager, National NAGPRA Program that describes the general place of discovery or excavation, and removal; the nature of the unclaimed cultural items; and a summary of consultation efforts under § 10.5 of this part. This list must be received by December 5, 2016, or within 1 year after the cultural items have become unclaimed under § 10.2(h), whichever is later;
 - (2) Care for and manage unclaimed cultural items consistent with the regulations at 36 CFR part 79; and
 - (3) To the maximum extent feasible, consider and respect the traditions of any potential claimants listed in a notice under § 10.6(c) concerning the unclaimed cultural items, including, but not limited to, traditions regarding housing, maintenance, and preservation.
- (c) Subject to paragraph (e) of this section, a Federal agency that has unclaimed cultural items may, upon request, transfer them to an Indian tribe or Native Hawaiian organization that is not a potential claimant and agrees:

- (1) To accept transfer; and
- (2) To treat them according to the laws and customs of the transferee.
- (d) Subject to paragraph (e) of this section, a Federal agency that has unclaimed human remains or funerary objects may reinter them according to applicable interment laws.
- (e) Before a Federal agency makes a transfer or reinterment under paragraphs (c) or (d) of this section, it must:
 - (1) Submit the list required under paragraph (b)(1) of this section to the Manager, National NAGPRA Program; and
 - (2) Publish a notice of the proposed transfer or reinterment in a newspaper of general circulation in the area in which the unclaimed cultural items were excavated or discovered, and removed, and, if applicable, in a newspaper of general circulation in the area in which each potential claimant now resides.
 - (i) The notice must explain the nature of the unclaimed cultural items, summarize consultation efforts under § 10.5, and solicit claims under the priority of ownership or control in section 3(a) of the Act (25 U.S.C. 3002(a)) and § 10.6.
 - (ii) The notice must be published at least two times at least a week apart.
 - (iii) The transfer or reinterment may not take place until at least 30 days after publication of the second notice to allow time for any claimants under the priority of ownership or control in section 3(a) of the Act and § 10.6 to come forward.
 - (3) Send to the Manager, National NAGPRA Program a copy of the notice published under paragraph (d)(2) of this section and information on when and in what newspaper(s) the notice was published. The National NAGPRA Program will post information from published notices on its Web site.

[80 FR 68471, Nov. 5, 2015]

Subpart C - Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony in Museums and Federal Collections

§ 10.8 Summaries.

- (a) **General.** This section carries out section 6 of the Act. Under section 6 of the Act, each museum or Federal agency that has possession or control over collections which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony must complete a summary of these collections based upon available information held by the museum or Federal agency. The purpose of the summary is to provide information about the collections to lineal descendants and culturally affiliated Indian tribes or Native Hawaiian organizations that may wish to request repatriation of such objects. The summary serves in lieu of an object-by-object inventory of these collections, although, if an inventory is available, it may be substituted. Federal agencies are responsible for ensuring that these requirements are met for all collections from their lands or generated by their actions whether the collections are held by the Federal agency or by a non-Federal institution.

- (b) **Contents of summaries.** For each collection or portion of a collection, the summary must include: an estimate of the number of objects in the collection or portion of the collection; a description of the kinds of objects included; reference to the means, date(s), and location(s) in which the collection or portion of the collection was acquired, where readily ascertainable; and information relevant to identifying lineal descendants, if available, and cultural affiliation.
- (c) **Completion.** Summaries must be completed not later than November 16, 1993.
- (d) **Consultation.**
 - (1) Consulting parties. Museum and Federal agency officials must consult with Indian tribe officials and traditional religious leaders:
 - (i) From whose tribal lands unassociated funerary objects, sacred objects, or objects of cultural patrimony originated;
 - (ii) That are, or are likely to be, culturally affiliated with unassociated funerary objects, sacred objects, or objects of cultural patrimony; and
 - (iii) From whose aboriginal lands unassociated funerary objects, sacred objects, or objects of cultural patrimony originated.
 - (2) Initiation of consultation. Museum and Federal agency officials must begin summary consultation no later than the completion of the summary process. Consultation may be initiated with a letter, but should be followed up by telephone or face-to-face dialogue with the appropriate Indian tribe official.
 - (3) Provision of information. During summary consultation, museum and Federal agency officials must provide copies of the summary to lineal descendants, when known, and to officials and traditional religious leaders representing Indian tribes or Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the cultural items. A copy of the summary must also be provided to the Manager, National NAGPRA Program. Upon request by lineal descendants or Indian tribe officials, museum and Federal agency officials must provide lineal descendants, Indian tribe officials and traditional religious leaders with 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 objects covered by the summary. Access to this information may be requested at any time and must be provided in a reasonable manner to be agreed upon by all parties. The Review committee also must be provided access to such materials.
 - (4) Requests for information. During the summary consultation, museum and Federal agency officials must request, as appropriate, the following information from Indian tribes and Native Hawaiian organizations that are, or are likely to be, culturally affiliated with their collections:
 - (i) Name and address of the Indian tribe official to act as representative in consultations related to particular objects;
 - (ii) Recommendations on how the consultation process should be conducted, including:
 - (A) Names and appropriate methods to contact any lineal descendants, if known, of individuals whose unassociated funerary objects or sacred objects are included in the summary;
 - (B) Names and appropriate methods to contact any traditional religious leaders that the Indian tribe or Native Hawaiian organization thinks should be consulted regarding the collections; and

- (iii) Kinds of cultural items that the Indian tribe or Native Hawaiian organization considers to be funerary objects, sacred objects, or objects of cultural patrimony.
- (e) **Using summaries to determine affiliation.** Museum and Federal agency officials must document in the summary the following information. They must use this information in determining, as appropriate, the lineal descendants of a deceased Native American individual with whom unassociated funerary objects and sacred objects are affiliated, and the Indian tribes and Native Hawaiian organizations with which unassociated funerary objects, sacred objects, or objects of cultural patrimony are affiliated:
 - (1) Accession and catalogue entries;
 - (2) Information related to the acquisition of unassociated funerary object, sacred object, or object of cultural patrimony, including:
 - (i) The name of the person or organization from whom the object was obtained, if known;
 - (ii) The date of acquisition;
 - (iii) The place each object was acquired, i.e., name or number of site, county, State, and Federal agency administrative unit, if applicable; and
 - (iv) The means of acquisition, i.e., gift, purchase, or excavation;
 - (3) A description of each unassociated funerary object, sacred object, or object of cultural patrimony, including dimensions, materials, and photographic documentation, if appropriate, and the antiquity of such objects, if known;
 - (4) A summary of the evidence used to determine the cultural affiliation of the unassociated funerary objects, sacred objects, or objects of cultural patrimony pursuant to § 10.14 of these regulations.
- (f) **Notification.** Repatriation of unassociated funerary objects, sacred objects, or objects of cultural patrimony to lineal descendants, culturally affiliated Indian tribes, or Native Hawaiian organizations as determined pursuant to § 10.10 (a), must not proceed prior to submission of a notice of intent to repatriate to the Manager, National NAGPRA Program, and publication of the notice of intent to repatriate in the FEDERAL REGISTER. The notice of intent to repatriate must describe the unassociated funerary objects, sacred objects, or objects of cultural patrimony being claimed in sufficient detail so as to enable other individuals, Indian tribes or Native Hawaiian organizations to determine their interest in the claimed objects. It must include information that identifies each claimed unassociated funerary object, sacred object, or object of cultural patrimony and the circumstances surrounding its acquisition, and describes the objects that are clearly identifiable as to cultural affiliation. It must also describe the objects that are not clearly identifiable as being culturally affiliated with a particular Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the objects, are likely to be culturally affiliated with a particular Indian tribe or Native Hawaiian organization. The Manager, National NAGPRA Program must publish the notice of intent to repatriate in the FEDERAL REGISTER. Repatriation may not occur until at least thirty (30) days after publication of the notice of intent to repatriate in the FEDERAL REGISTER.

[60 FR 62158, Dec. 4, 1995, as amended at 62 FR 41293, Aug. 1, 1997; 71 FR 16501, Apr. 3, 2006; 78 FR 27083, May 9, 2013]

§ 10.9 Inventories.

- (a) **General.** This section carries out section 5 of the Act. Under section 5 of the Act, each museum or Federal agency that has possession or control over holdings or collections of human remains and associated funerary objects must compile an inventory of such objects, and, to the fullest extent possible based on information possessed by the museum or Federal agency, must identify the geographical and cultural affiliation of each item. The purpose of the inventory is to facilitate repatriation by providing clear descriptions of human remains and associated funerary objects and establishing the cultural affiliation between these objects and present-day Indian tribes and Native Hawaiian organizations. Museums and Federal agencies are encouraged to produce inventories first on those portions of their collections for which information is readily available or about which Indian tribes or Native Hawaiian organizations have expressed special interest. Early focus on these parts of collections will result in determinations that may serve as models for other inventories. Federal agencies must ensure that these requirements are met for all collections from their lands or generated by their actions whether the collections are held by the Federal agency or by a non-Federal institution.
- (b) **Consultation -**
 - (1) **Consulting parties.** Museum and Federal agency officials must consult with:
 - (i) Lineal descendants of individuals whose remains and associated funerary objects are likely to be subject to the inventory provisions of these regulations; and
 - (ii) Indian tribe officials and traditional religious leaders:
 - (A) From whose tribal lands the human remains and associated funerary objects originated;
 - (B) That are, or are likely to be, culturally affiliated with human remains and associated funerary objects; and
 - (C) From whose aboriginal lands the human remains and associated funerary objects originated.
 - (2) **Initiation of consultation.** Museum and Federal agency officials must begin inventory consultation as early as possible, no later in the inventory process than the time at which investigation into the cultural affiliation of human remains and associated funerary objects is being conducted. Consultation may be initiated with a letter, but should be followed up by telephone or face-to-face dialogue.
 - (3) **Provision of information.** During inventory consultation, museums and Federal agency officials must provide the following information in writing to lineal descendants, when known, and to officials and traditional religious leaders representing Indian tribes or Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the human remains and associated funerary objects.
 - (i) A list of all Indian tribes and Native Hawaiian organizations that are, or have been, consulted regarding the particular human remains and associated funerary objects;
 - (ii) A general description of the conduct of the inventory;
 - (iii) The projected time frame for conducting the inventory; and
 - (iv) An indication that additional documentation used to identify cultural affiliation will be supplied upon request.

- (4) **Requests for information.** During the inventory consultation, museum and Federal agency officials must request, as appropriate, the following information from Indian tribes and Native Hawaiian organizations that are, or are likely to be, culturally affiliated with their collections:
- (i) Name and address of the Indian tribe official to act as representative in consultations related to particular human remains and associated funerary objects;
 - (ii) Recommendations on how the consultation process should be conducted, including:
 - (A) Names and appropriate methods to contact any lineal descendants of individuals whose remains and associated funerary objects are or are likely to be included in the inventory; and
 - (B) Names and appropriate methods to contact traditional religious leaders who should be consulted regarding the human remains and associated funerary objects.
 - (iii) Kinds of objects that the Indian tribe or Native Hawaiian organization reasonably believes to have been made exclusively for burial purposes or to contain human remains of their ancestors.
- (c) **Required information.** The following documentation must be included, if available, for all inventories completed by museum or Federal agency officials:
- (1) Accession and catalogue entries, including the accession/catalogue entries of human remains with which funerary objects were associated;
 - (2) Information related to the acquisition of each object, including:
 - (i) The name of the person or organization from whom the object was obtained, if known;
 - (ii) The date of acquisition,
 - (iii) The place each object was acquired, i.e., name or number of site, county, State, and Federal agency administrative unit, if applicable; and
 - (iv) The means of acquisition, i.e., gift, purchase, or excavation;
 - (3) A description of each set of human remains or associated funerary object, including dimensions, materials, and, if appropriate, photographic documentation, and the antiquity of such human remains or associated funerary objects, if known;
 - (4) A summary of the evidence, including the results of consultation, used to determine the cultural affiliation of the human remains and associated funerary objects pursuant to § 10.14 of these regulations.
- (d) **Documents.** Two separate documents comprise the inventory:
- (1) A listing of all human remains and associated funerary objects that are identified as being culturally affiliated with one or more present-day Indian tribes or Native Hawaiian organizations. The list must indicate for each item or set of items whether cultural affiliation is clearly determined or likely based upon the preponderance of the evidence; and
 - (2) A listing of all culturally unidentifiable human remains and associated funerary objects for which no culturally affiliated present-day Indian tribe or Native Hawaiian organization can be determined.
- (e) **Notification.**

- (1) If the inventory results in the identification or likely identification of the cultural affiliation of any particular human remains or associated funerary objects with one or more Indian tribes or Native Hawaiian organizations, the museum or Federal agency, not later than six (6) months after completion of the inventory, must send such Indian tribes or Native Hawaiian organizations the inventory of culturally affiliated human remains and associated funerary objects, including all information required under § 10.9 (c), and a notice of inventory completion that summarizes the results of the inventory.
- (2) The notice of inventory completion must:
 - (i) Summarize the contents of the inventory in sufficient detail so as to enable the recipients to determine their interest in claiming the inventoried items;
 - (ii) Identify each particular set of human remains or each associated funerary object and the circumstances surrounding its acquisition;
 - (iii) Describe the human remains or associated funerary objects that are clearly culturally affiliated with an Indian tribe or Native Hawaiian organization and identify the Indian tribe or Native Hawaiian organization;
 - (iv) Describe the human remains or associated funerary objects that are not clearly identifiable as culturally affiliated with an Indian tribe or Native Hawaiian organization, but that are likely to be culturally affiliated with a particular Indian tribe or Native Hawaiian organization given the totality of circumstances surrounding acquisition of the human remains or associated objects; and
 - (v) Describe those human remains, with or without associated funerary objects, that are culturally unidentifiable but that are subject to disposition under § 10.11.
- (3) If the inventory results in a determination that the human remains are of an identifiable individual, the museum or Federal agency official must convey this information to the lineal descendant of the deceased individual, if known, and to the Indian tribe or Native Hawaiian organization of which the deceased individual was culturally affiliated.
- (4) The notice of inventory completion and a copy of the inventory must also be sent to the Manager, National NAGPRA Program. These submissions should be sent in both printed hard copy and electronic formats. Information on the proper format for electronic submission and suggested alternatives for museums and Federal agencies unable to meet these requirements are available from the Manager, National NAGPRA Program.
- (5) Upon request by an Indian tribe or Native Hawaiian organization that has received or should have received a notice and inventory under paragraphs (e)(1) and (e)(2) of this section, a museum or Federal agency must supply additional available documentation.
 - (i) For purposes of this paragraph, "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 geographic origin, cultural affiliation, and basic facts surrounding the acquisition and accession of human remains and associated funerary objects.

- (B) By presentation of a preponderance of the evidence by a requesting Indian tribe or Native Hawaiian organization under section 7(a)(4) of the Act; and
 - (iii) The known lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the museum or Federal agency does not have a right of possession to the objects as defined in § 10.10 (a)(2); and
 - (iv) The agency or museum is unable to present evidence to the contrary proving that it does have a right of possession as defined below; and
 - (v) None of the specific exceptions listed in § 10.10 (c) apply.
- (2) **Right of possession.** For purposes of this section, "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 to that object.
- (3) **Notification.** Repatriation must take place within ninety (90) days of receipt of a written request for repatriation that satisfies the requirements of paragraph (a)(1) of this section from a lineal descendent or culturally affiliated Indian tribe or Native Hawaiian organization, provided that the repatriation may not occur until at least thirty (30) days after publication of the notice of intent to repatriate in the FEDERAL REGISTER as described in § 10.8.
- (b) **Human remains and associated funerary objects -**
- (1) **Criteria.** Upon the request of a lineal descendant, Indian tribe, or Native Hawaiian organization, a museum and Federal agency must expeditiously repatriate human remains and associated funerary objects if all of the following criteria are met:
 - (i) The human remains or associated funerary object meets the definitions established in § 10.2 (d)(1) or (d)(2)(i); and
 - (ii) The affiliation of the deceased individual to known lineal descendant, present day Indian tribe, or Native Hawaiian organization:
 - (A) Has been reasonably traced through the procedures outlined in § 10.9 and § 10.14 of these regulations; or
 - (B) Has been shown by a preponderance of the evidence presented by a requesting Indian tribe or Native Hawaiian organization under section 7(a)(4) of the Act; and
 - (iii) None of the specific exceptions listed in § 10.10 (c) apply.
 - (2) **Notification.** Repatriation must take place within ninety (90) days of receipt of a written request for repatriation that satisfies the requirements of § 10.10 (b)(1) from the culturally affiliated Indian tribe or Native Hawaiian organization, provided that the repatriation may not occur until at least thirty (30) days after publication of the notice of inventory completion in the FEDERAL REGISTER as described in § 10.9.
- (c) **Exceptions.** These requirements for repatriation do not apply to:

- (ii) Documentation supplied under this paragraph by a Federal agency or to a Federal agency is considered a public record except as exempted under relevant laws, such as the Freedom of Information Act (5 U.S.C. 552), Privacy Act (5 U.S.C. 552a), Archaeological Resources Protection Act (16 U.S.C. 470hh), National Historic Preservation Act (16 U.S.C. 470w-3), and any other legal authority exempting the information from public disclosure.
- (iii) Neither a request for documentation nor any other provisions of this part may be construed as authorizing either:
 - (A) The initiation of new scientific studies of the human remains and associated funerary objects; or
 - (B) Other means of acquiring or preserving additional scientific information from the remains and objects.
- (6) This paragraph applies when a the museum or Federal agency official determines that it has possession of or control over human remains or associated funerary objects that cannot be identified as affiliated with a lineal descendent, Indian tribe, or Native Hawaiian organization. The museum or Federal agency must provide the Manager, National NAGPRA Program notice of its determination and a list of the culturally unidentifiable human remains and any associated funerary objects. The Manager, National NAGPRA Program must make this information available to members of the Review Committee. Culturally unidentifiable human remains, with or without associated funerary objects, are subject to disposition under § 10.11.
- (7) The Manager, National NAGPRA Program must publish notices of inventory completion received from museums and Federal agencies in the FEDERAL REGISTER.
- (f) **Completion.** Inventories must be completed not later than November 16, 1995. Any museum that has made a good faith effort to complete its inventory, but which will be unable to complete the process by this deadline, may request an extension of the time requirements from the Secretary. An indication of good faith efforts must include, but not necessarily be limited to, the initiation of active consultation and documentation regarding the collections and the development of a written plan to carry out the inventory process. Minimum components of an inventory plan are: a definition of the steps required; the position titles of the persons responsible for each step; a schedule for carrying out the plan; and a proposal to obtain the requisite funding.

[60 FR 62158, Dec. 4, 1995, as amended at 62 FR 41293, Aug. 1, 1997; 71 FR 16501, Apr. 3, 2006; 75 FR 12403, Mar. 15, 2010]

§ 10.10 Repatriation.

- (a) **Unassociated funerary objects, sacred objects, and objects of cultural patrimony -**
 - (1) **Criteria.** Upon the request of a lineal descendant, Indian tribe, or Native Hawaiian organization, a museum or Federal agency must expeditiously repatriate unassociated funerary objects, sacred objects, or objects of cultural patrimony if all the following criteria are met:
 - (i) The object meets the definitions established in § 10.2 (d)(2)(ii), (d)(3), or (d)(4); and
 - (ii) The cultural affiliation of the object is established:
 - (A) Through the summary, consultation, and notification procedures in § 10.14 of these regulations; or

- (i) Compile an inventory of culturally unidentifiable human remains in the possession or control of each museum and Federal agency; and
- (ii) Recommend to the Secretary specific actions for disposition of any human remains not already addressed in § 10.11.

[60 FR 62158, Dec. 4, 1995, as amended at 62 FR 41294, Aug. 1, 1997; 71 FR 16501, Apr. 3, 2006; 78 FR 27083, May 9, 2013]

§ 10.11 Disposition of culturally unidentifiable human remains.

- (a) **General.** This section implements section 8(c)(5) of the Act and applies to human remains previously determined to be Native American under § 10.9, but for which no lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization has been identified.
- (b) **Consultation.**
 - (1) The museum or Federal agency official must initiate consultation regarding the disposition of culturally unidentifiable human remains and associated funerary objects:
 - (i) Within 90 days of receiving a request from an Indian tribe or Native Hawaiian organization to transfer control of culturally unidentifiable human remains and associated funerary objects; or
 - (ii) If no request is received, before any offer to transfer control of culturally unidentifiable human remains and associated funerary objects.
 - (2) The museum or Federal agency official must initiate consultation with officials and traditional religious leaders of all Indian tribes and Native Hawaiian organizations:
 - (i) From whose tribal lands, at the time of the removal, the human remains and associated funerary objects were removed; and
 - (ii) From whose aboriginal lands the human remains and associated funerary objects were removed. Aboriginal occupation for purposes of this section may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or by a treaty, Act of Congress, or Executive Order.
 - (3) The museum or Federal agency official must provide the following information in writing to all Indian tribes and Native Hawaiian organizations with which the museum or Federal agency consults:
 - (i) A list of all Indian tribes and Native Hawaiian organizations that are being, or have been, consulted regarding the particular human remains and associated funerary objects;
 - (ii) A list of any Indian groups that are not federally-recognized and are known to have a relationship of shared group identity with the particular human remains and associated funerary objects; and
 - (iii) An offer to provide a copy of the original inventory and additional documentation regarding the particular human remains and associated funerary objects.
 - (4) During consultation, museum and Federal agency officials must request, as appropriate, the following information from Indian tribes and Native Hawaiian organizations:
 - (i) The name and address of the Indian tribal official to act as representative in consultations related to particular human remains and associated funerary objects;

- (1) Circumstances where human remains, funerary objects, sacred objects, or objects of cultural patrimony are indispensable to the completion of a specific scientific study, the outcome of which is of major benefit to the United States. Human remains, funerary objects, sacred objects, or objects of cultural patrimony in such circumstances must be returned no later than ninety (90) days after completion of the study; or
 - (2) Circumstances where there are multiple requests for repatriation of human remains, associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony and the museum or Federal agency, after complying with this part, cannot determine by a preponderance of the evidence which competing requesting party is the most appropriate claimant. In these circumstances, the museum or Federal agency may retain the cultural items in question until the competing requesting parties agree upon the appropriate recipient or the dispute is otherwise resolved pursuant to these regulations or by a court of competent jurisdiction; or
 - (3) Circumstances where a court of competent jurisdiction has determined that the repatriation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony in the possession or control of a museum would result in a taking of property without just compensation within the meaning of the Fifth Amendment of the United States Constitution, in which event the custody of the objects must be as provided under otherwise applicable law. Nothing in these regulations must prevent a museum or Federal agency, where otherwise so authorized, or a lineal descendant, Indian tribe, or Native Hawaiian organization, from expressly relinquishing title to, right of possession of, or control over any human remains, funerary objects, sacred objects, or objects of cultural patrimony.
 - (4) Circumstances where the repatriation is not consistent with other repatriation limitations identified in § 10.15 of these regulations.
- (d) **Place and manner of repatriation.** The repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony must be accomplished by the museum or Federal agency in consultation with the requesting lineal descendants, or culturally affiliated Indian tribe or Native Hawaiian organization, as appropriate, to determine the place and manner of the repatriation.
- (e) The museum official or Federal agency official must inform the recipients of repatriations of any presently known treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony with pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects.
- (f) **Record of repatriation.**
- (1) Museums and Federal agencies must adopt internal procedures adequate to permanently document the content and recipients of all repatriations.
 - (2) The museum official or Federal agency official, at the request of the Indian tribe official, may take such steps as are considered necessary pursuant to otherwise applicable law, to ensure that information of a particularly sensitive nature is not made available to the general public.
- (g) **Culturally unidentifiable human remains.** If the cultural affiliation of human remains cannot be established under this part, the human remains must be considered culturally unidentifiable.
- (1) Museum and Federal agency officials must report the inventory information regarding these human remains in their holdings to the Manager, National NAGPRA Program, who will send this information to the Review Committee.
 - (2) The Review Committee will:

- (ii) The names and appropriate methods to contact any traditional religious leaders who should be consulted regarding the human remains and associated funerary objects;
 - (iii) Temporal and geographic criteria that the museum or Federal agency should use to identify groups of human remains and associated funerary objects for consultation;
 - (iv) The names and addresses of other Indian tribes, Native Hawaiian organizations, or Indian groups that are not federally-recognized who should be included in the consultations; and
 - (v) A schedule and process for consultation.
- (5) During consultation, the museum or Federal agency official should seek to develop a proposed disposition for culturally unidentifiable human remains and associated funerary objects that is mutually agreeable to the parties specified in paragraph (b)(2) of this section. The agreement must be consistent with this part.
- (6) If consultation results in a determination that human remains and associated funerary objects previously determined to be culturally unidentifiable are actually related to a lineal descendant or culturally affiliated with an Indian tribe or Native Hawaiian organization, the notification and repatriation of the human remains and associated funerary objects must be completed as required by § 10.9(e) and § 10.10(b).

(c) *Disposition of culturally unidentifiable human remains and associated funerary objects.*

- (1) A museum or Federal agency that is unable to prove that it has right of possession, as defined at § 10.10(a)(2), to culturally unidentifiable human remains must offer to transfer control of the human remains to Indian tribes and Native Hawaiian organizations in the following priority order:
- (i) The Indian tribe or Native Hawaiian organization from whose tribal land, at the time of the excavation or removal, the human remains were removed; or
 - (ii) The Indian tribe or tribes that are recognized as aboriginal to the area from which the human remains were removed. Aboriginal occupation may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or a treaty, Act of Congress, or Executive Order.
- (2) If none of the Indian tribes or Native Hawaiian organizations identified in paragraph (c)(1) of this section agrees to accept control, a museum or Federal agency may:
- (i) Transfer control of culturally unidentifiable human remains to other Indian tribes or Native Hawaiian organizations; or
 - (ii) Upon receiving a recommendation from the Secretary or authorized representative:
 - (A) Transfer control of culturally unidentifiable human remains to an Indian group that is not federally-recognized; or
 - (B) Reinter culturally unidentifiable human remains according to State or other law.
- (3) The Secretary may make a recommendation under paragraph (c)(2)(ii) of this section only with proof from the museum or Federal agency that it has consulted with all Indian tribes and Native Hawaiian organizations listed in paragraph (c)(1) of this section and that none of them has objected to the proposed transfer of control.

- (4) A museum or Federal agency may also transfer control of funerary objects that are associated with culturally unidentifiable human remains. The Secretary recommends that museums and Federal agencies transfer control if Federal or State law does not preclude it.
 - (5) The exceptions listed at § 10.10(c) apply to the requirements in paragraph (c)(1) of this section.
 - (6) Any disposition of human remains excavated or removed from Indian lands as defined by the Archaeological Resources Protection Act (16 U.S.C. 470bb (4)) must also comply with the provisions of that statute and its implementing regulations.
- (d) **Notification.**
- (1) Disposition of culturally unidentifiable human remains and associated funerary objects under paragraph (c) of this section may not occur until at least 30 days after publication of a notice of inventory completion in the FEDERAL REGISTER as described in § 10.9.
 - (2) Within 30 days of publishing the notice of inventory completion, the National NAGPRA Program manager must:
 - (i) Revise the Review Committee inventory of culturally unidentifiable human remains and associated funerary objects to indicate the notice's publication; and
 - (ii) Make the revised Review Committee inventory accessible to Indian tribes, Native Hawaiian organizations, Indian groups that are not federally-recognized, museums, and Federal agencies.
- (e) **Disputes.** Any person who wishes to contest actions taken by museums or Federal agencies regarding the disposition of culturally unidentifiable human remains and associated funerary objects should do so through informal negotiations to achieve a fair resolution. The Review Committee may facilitate informal resolution of any disputes that are not resolved by good faith negotiation under § 10.17. In addition, the United States District Courts have jurisdiction over any action brought that alleges a violation of the Act.

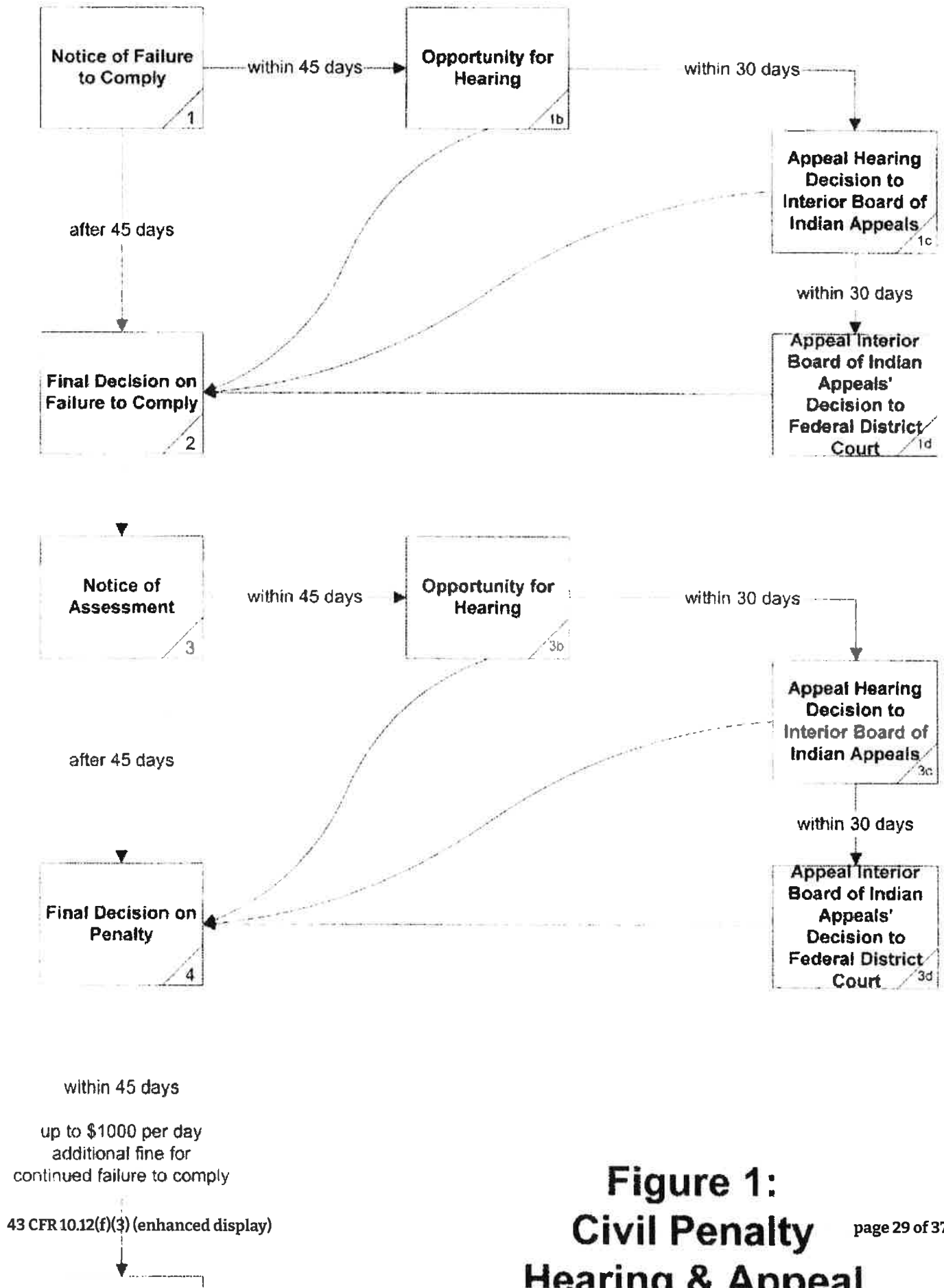
[75 FR 12403, Mar. 15, 2010, as amended at 78 FR 27083, May 9, 2013]

§ 10.12 Civil penalties.

- (a) **The Secretary's authority to assess civil penalties.** The Secretary is authorized by section 9 of the Act to assess civil penalties on any museum that fails to comply with the requirements of the Act. The Assistant Secretary for Fish and Wildlife and Parks may act on behalf of the Secretary.
- (b) **Definition of "failure to comply."**
 - (1) Your museum has failed to comply with the requirements of the Act if it:
 - (i) After November 16, 1990, sells or otherwise transfers human remains, funerary objects, sacred objects, or objects of cultural patrimony contrary to provisions of the Act, including, but not limited to, an unlawful sale or transfer to any individual or institution that is not required to comply with the Act; or
 - (ii) After November 16, 1993, or a date specified under § 10.13, whichever deadline is applicable, has not completed summaries as required by the Act; or
 - (iii) After November 16, 1995, or a date specified under § 10.13, or the date specified in an extension issued by the Secretary, whichever deadline is applicable, has not completed inventories as required by the Act; or

- (iv) After May 16, 1996, or 6 months after completion of an inventory under an extension issued by the Secretary, or 6 months after the date specified for completion of an inventory under § 10.13, whichever deadline is applicable, has not notified culturally affiliated Indian tribes and Native Hawaiian organizations; or
 - (v) Refuses, absent any of the exemptions specified in § 10.10(c) of this part, to repatriate human remains, funerary object, sacred object, or object of cultural patrimony to a lineal descendant or culturally affiliated Indian tribe or Native Hawaiian; or
 - (vi) Repatriates a human remains, funerary object, sacred object, or object of cultural patrimony before publishing the required notice in the FEDERAL REGISTER;
 - (vii) Does not consult with lineal descendants, Indian tribe officials, and traditional religious leaders as required; or
 - (viii) Does not inform the recipients of repatriations of any presently known treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony with pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects.
 - (ix) Upon receipt of a claim consistent with § 10.11(c)(1), refuses to offer to transfer control of culturally unidentifiable human remains for which it cannot prove right of possession.
- (2) Each instance of failure to comply will constitute a separate violation.
- (c) ***How to notify the Secretary of a failure to comply.*** Any person may file an allegation of failure to comply. Allegations are to be sent to the NAGPRA Civil Penalties Coordinator, National NAGPRA Program, at the mailing address listed on the National NAGPRA Contact Information Web site, <http://www.nps.gov/nagpra/CONTACTS/INDEX.HTM>. The allegation must be in writing, and should:
- (1) Identify each provision of the Act with which there has been a failure to comply by a museum;
 - (2) Include facts supporting the allegation;
 - (3) Include evidence that the museum has possession or control of Native American cultural items; and
 - (4) Include evidence that the museum receives Federal funds.
- (d) ***Steps the Secretary may take upon receiving such an allegation.***
- (1) The Secretary must acknowledge receipt of the allegation in writing.
 - (2) The Secretary also may:
 - (i) Compile and review information relevant to the alleged failure to comply. The Secretary may request additional information, such as declarations and relevant papers, books, and documents, from the person making the allegation, the museum, and other parties;
 - (ii) Identify the specific provisions of the Act with which you have allegedly failed to comply; and
 - (iii) Determine if the institution of a civil penalty action is an appropriate remedy.
 - (3) The Secretary must provide written notification to the person making the allegation and the museum if the review of the evidence does not show a failure comply.
- (e) ***How the Secretary notifies you of a failure to comply.***

- (1) If the allegations are verified, the Secretary must serve you with a written notice of failure to comply either by personal delivery or by registered or certified mail (return receipt requested). The notice of failure to comply must include:
 - (i) A concise statement of the facts believed to show a failure to comply;
 - (ii) A specific reference to the provisions of the Act and/or these regulations with which you allegedly have not complied; and
 - (iii) Notification of the right to request an informal discussion with the Secretary or a designee, to request a hearing, as provided below, or to await the Secretary's notice of assessment. The notice of failure to comply also must inform you of your right to seek judicial review of any final administrative decision assessing a civil penalty.
 - (2) With your consent, the Secretary may combine the notice of failure to comply with the notice of assessment described in paragraph (h) of this section.
 - (3) The Secretary also must send a copy of the notice of failure to comply to:
 - (i) Any lineal descendant of a known Native American individual whose human remains, funerary objects, or sacred objects are in question; and
 - (ii) Any Indian tribes or Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony in question.
- (f) ***Actions you may take upon receipt of a notice of failure to comply.*** If you are served with a notice of failure to comply, you may:
- (1) Seek informal discussions with the Secretary;
 - (2) Request a hearing. Figure 1 outlines the civil penalty hearing and appeal process. Where the Secretary has issued a combined notice of failure to comply and notice of assessment, the hearing and appeal processes will also be combined.
 - (3) Take no action and await the Secretary's notice of assessment.



**Figure 1:
Civil Penalty
Hearing & Appeal**

(g) ***How the Secretary determines the penalty amount.***

- (1) The penalty amount must be determined on the record;
- (2) The penalty amount must be .25 percent of your museum's annual budget, or \$7,475, whichever is less, and such additional sum as the Secretary may determine is appropriate after taking into account:
 - (i) The archeological, historical, or commercial value of the human remains, funerary object, sacred object, or object of cultural patrimony involved; and
 - (ii) The damages suffered, both economic and non-economic, by the aggrieved party or parties including, but not limited to, expenditures by the aggrieved party to compel the museum to comply with the Act; and
 - (iii) The number of violations that have occurred at your museum.
- (3) An additional penalty of up to \$1,496 per day after the date that the final administrative decision takes effect may be assessed if your museum continues to violate the Act.
- (4) The Secretary may reduce the penalty amount if there is:
 - (i) A determination that you did not willfully fail to comply; or
 - (ii) An agreement by you to mitigate the violation, including, but not limited to, payment of restitution to the aggrieved party or parties; or
 - (iii) A determination that you are unable to pay, provided that this factor may not apply if you have been previously found to have failed to comply with these regulations; or,
 - (iv) A determination that the penalty constitutes excessive punishment under the circumstances.

(h) ***How the Secretary assesses the penalty.***

- (1) The Secretary considers all available information, including information provided during the process of assessing civil penalties or furnished upon further request by the Secretary.
 - (2) The Secretary may assess the civil penalty upon completing informal discussions or when the period for requesting a hearing expires, whichever is later.
 - (3) The Secretary notifies you in writing of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The notice of assessment includes:
 - (i) The basis for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and
 - (ii) Notification of the right to request a hearing, including the procedures to follow, and to seek judicial review of any final administrative decision that assesses a civil penalty.
- (i) ***Actions that you may take upon receipt of a notice of assessment.*** If you are served with a notice of assessment, you may do one of the following:
- (1) Accept in writing or by payment of the proposed penalty, or any mitigation or remission offered in the notice of assessment. If you accept the proposed penalty, mitigation, or remission, you waive the right to request a hearing.
 - (2) Seek informal discussions with the Secretary.

- (3) **File a petition for relief.** You may file a petition for relief within 45 calendar days of receiving the notice of assessment. A petition for relief is to be sent to the NAGPRA Civil Penalties Coordinator, National NAGPRA Program, at the mailing address listed on the National NAGPRA Contact Information Web site, <http://www.nps.gov/nagpra/CONTACTS/INDEX.HTM>. Your petition may ask the Secretary not to assess a penalty or to reduce the penalty amount. Your petition must:
- (i) Be in writing and signed by an official authorized to sign such documents; and
 - (ii) Fully explain the legal or factual basis for the requested relief.
- (4) Request a hearing. Figure 1 outlines the civil penalty hearing and appeal process.
- (i) In addition to the documentation required in paragraph (g) of this section, your request must include a copy of the notice of assessment and must identify the basis for challenging the assessment.
 - (ii) In this hearing, the amount of the civil penalty assessed must be determined in accordance with paragraph (h) of this section, and will not be limited to the amount assessed by the Secretary or any offer of mitigation or remission made by the Secretary.
- (j) **How you request a hearing.** You may file a written, dated request for a hearing on a notice of failure to comply or notice of assessment with the Departmental Cases Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 405 South Main Street, Suite 400, Salt Lake City, UT 84111. You must also serve a copy of the request on the Solicitor of the Department of the Interior personally or by registered or certified mail (return receipt requested) at the address specified in the notice.
- (1) Your request for a hearing must:
 - (i) Include a copy of the notice of failure to comply or the notice of assessment;
 - (ii) State the relief sought;
 - (iii) State the basis for challenging the facts used as the basis for determining the failure to comply or fixing the assessment; and
 - (iv) State your preferred place and date for a hearing.
 - (2) Your failure to file a written request for a hearing within 45 days of the date of service of a notice of failure to comply or notice of assessment waives your right to a hearing.
 - (3) Upon receiving a request for a hearing, the Hearings Division assigns an administrative law judge to the case, gives notice of assignment promptly to the parties, and files all pleadings, papers, and other documents in the proceeding directly with the administrative law judge, with copies served on the opposing party.
 - (4) Subject to the provisions of 43 CFR 1.3, you may appear by representative or by counsel, and may participate fully in the proceedings. If you fail to appear and the administrative law judge determines that this failure is without good cause, the administrative law judge may, in his/her discretion, determine that this failure waives your right to a hearing and consent to the making of a decision on the record.
 - (5) Departmental counsel, designated by the Solicitor of the Department of the Interior, represents the Secretary in the proceedings. Upon notice to the Secretary of the assignment of an administrative law judge to the case, this counsel must enter his/her appearance on behalf of the Secretary and

must file all petitions and correspondence exchanges by the Secretary and the respondent that become part of the hearing record. Thereafter, you must serve all documents for the Secretary on his/her counsel.

(6) **Hearing Administration.** Hearings must take place following the procedures in 43 CFR Part 4, Subparts A and B.

- (i) The administrative law judge has all powers accorded by law and necessary to preside over the parties and the proceedings and to make decisions under 5 U.S.C. 554-557.
- (ii) The transcript of testimony; the exhibits; and all papers, documents, and requests filed in the proceedings constitute the record for decision. The administrative law judge renders a written decision upon the record, which sets forth his/her findings of fact and conclusions of law, and the reasons and basis for them.
- (iii) Unless you file a notice of appeal described in these regulations, the administrative law judge's decision constitutes the final administrative determination of the Secretary in the matter and takes effect 30 calendar days from this decision.

(k) **How you appeal a decision.**

- (1) Either you or the Secretary may appeal the decision of an administrative law judge by filing a Notice of Appeal. Send your Notice of Appeal to the Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 800 North Quincy Street, Suite 300, Arlington, VA 22203, within 30 calendar days of the date of the administrative law judge's decision. The notice must be accompanied by proof of service on the administrative law judge and the opposing party.
- (2) To the extent they are not inconsistent with these regulations, the provisions of the Department of the Interior Hearings and Appeals Procedures in 43 CFR part 4, subpart D, apply to such appeal proceedings. The appeal board's decision on the appeal must be in writing and takes effect as the final administrative determination of the Secretary on the date that the decision is rendered, unless otherwise specified in the decision.
- (3) You may obtain copies of decisions in civil penalty proceedings instituted under the Act by sending a request to the Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 800 North Quincy Street, Suite 300, Arlington, VA 22203. Fees for this service are established by the director of that office.

(l) **The final administrative decision.**

- (1) When you have been served with a notice of assessment and have accepted the penalty as provided in these regulations, the notice constitutes the final administrative decision.
- (2) When you have been served with a notice of assessment and have not filed a timely request for a hearing as provided in these regulations, the notice of assessment constitutes the final administrative decision.
- (3) When you have been served with a notice of assessment and have filed a timely request for a hearing as provided in these regulations, the decision resulting from the hearing or any applicable administrative appeal from it constitutes the final administrative decision.

(m) **How you pay the penalty.**

- (1) If you are assessed a civil penalty, you have 45 calendar days from the date of issuance of the final administrative decision to make full payment of the penalty assessed to the Secretary, unless you have filed a timely request for appeal with a court of competent jurisdiction.
- (2) If you fail to pay the penalty, the Secretary may request the Attorney General of the United States to collect the penalty by instituting a civil action in the U.S. District Court for the district in which your museum is located. In these actions, the validity and amount of the penalty is not subject to review by the court.
- (3) Assessing a penalty under this section is not a waiver by the Secretary of the right to pursue other available legal or administrative remedies.

[68 FR 16360, Apr. 3, 2003, as amended at 70 FR 57179, Sept. 30, 2005; 75 FR 12404, Mar. 15, 2010; 75 FR 64670, Oct. 20, 2010; 78 FR 27083, May 9, 2013; 81 FR 41859, June 28, 2016; 81 FR 64356, Sept. 20, 2016; 82 FR 10866, Feb. 16, 2017; 83 FR 4152, Jan. 30, 2018; 84 FR 6977, Mar. 1, 2019; 85 FR 8190, Feb. 13, 2020; 86 FR 7655, Feb. 1, 2021; 87 FR 4817, Jan. 31, 2022]

§ 10.13 Future applicability.

- (a) General. This section sets forth the applicability of the Act to museums and Federal agencies after expiration of the statutory deadlines for completion of summaries and inventories.
- (b) New holdings or collections.
 - (1) Any museum or Federal agency that, after completion of the summaries and inventories as required by §§ 10.8 and 10.9, receives a new holding or collection or locates a previously unreported current holding or collection that may include human remains, funerary objects, sacred objects or objects of cultural patrimony, must:
 - (i) Within 6 months of receiving a new holding or collection or locating a previously unreported current holding or collection, or within 6 months of the effective date of this rule, whichever is later, provide a summary of the holding or collection as required by § 10.8 to any Indian tribe or Native Hawaiian organization that is, or is likely to be, affiliated with the collection; and
 - (ii) Within 2 years of receiving a new holding or collection or locating a previously unreported current holding or collection, or within 2 years of the effective date of this rule, whichever is later, prepare, in consultation with any affiliated Indian tribe or Native Hawaiian organization, an inventory as required by § 10.9 of these regulations. Any museum that has made a good faith effort to complete its inventory, but which will be unable to complete the process by this deadline, may request an extension of the time requirements under § 10.9(f).
 - (2) Additional pieces or fragments of previously repatriated human remains, funerary objects, sacred objects and objects of cultural patrimony may be returned to the appropriate Indian tribe or Native Hawaiian organization without publication of a notice in the FEDERAL REGISTER, as otherwise required under §§ 10.8(f) and 10.9(e), if they do not change the number or cultural affiliation of the cultural items listed in the previous notice.
 - (3) A museum or Federal agency that receives a new holding or collection for which a summary or inventory was previously prepared, as required by §§ 10.8 or 10.9, may rely upon the previously prepared documents. The receiving museum or Federal agency must provide a copy of the previously prepared summary or inventory to all affiliated Indian tribes or Native Hawaiian organizations, along with notification that the receiving museum or Federal agency has assumed possession and control of the holding or collection.

- (c) New Indian tribes.
 - (1) Any museum or Federal agency that has possession or control of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are, or are likely to be, culturally affiliated with a newly Federally recognized Native American tribe, must:
 - (i) Within 6 months of the publication in the FEDERAL REGISTER of the Native American group's placement on the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, or within 6 months of the effective date of this rule, whichever is later, provide a summary of the collection as required by § 10.8 to that Indian tribe; and
 - (ii) Within 2 years of the publication in the FEDERAL REGISTER of the Native American group's placement on the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, or within 2 years of the effective date of this rule, whichever is later, prepare, in consultation with the newly recognized culturally affiliated Indian tribe an inventory as required by § 10.9. Any museum that has made a good faith effort to complete its inventory, but which will be unable to complete the process by this deadline, may request an extension of the time requirements under § 10.9(f).
 - (2) The list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs is published in the FEDERAL REGISTER as required by section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1 (2006)).
- (d) New Federal funds. Any museum that has possession or control of human remains, funerary objects, sacred objects, or objects of cultural patrimony and receives Federal funds for the first time after expiration of the statutory deadlines for completion of summaries and inventories must:
 - (1) Within 3 years of the date of receipt of Federal funds, or within 3 years of the effective date of this rule, whichever is later, provide a summary of the collection as required by § 10.8 to any Indian tribe or Native Hawaiian organization that is, or is likely to be, culturally affiliated with the collections; and
 - (2) Within 5 years of the date of receipt of Federal funds, or within 5 years of the effective date of this rule, whichever is later, prepare, in consultation with any affiliated Indian tribe or Native Hawaiian organization, an inventory as required by § 10.9.
- (e) Amendment of previous decision.
 - (1) Any museum or Federal agency that has previously published a notice in the FEDERAL REGISTER regarding the intent to repatriate unassociated funerary objects, sacred objects, and objects of cultural patrimony under § 10.8(f), or the completion of an inventory of Native American human remains and associated funerary objects as required by § 10.9(e), must publish an amendment to that notice if, based on subsequent information, the museum or Federal agency revises its decision in a way that changes the number or cultural affiliation of the cultural items listed.
 - (2) Repatriation may not occur until at least 30 days after publication of the amended notice in the FEDERAL REGISTER.
- (f) All actions taken as required by this section must also comply with all other relevant sections of 43 CFR 10.

[72 FR 13189, Mar. 21, 2007, as amended at 78 FR 27084, May 9, 2013]

Subpart D - General

§ 10.14 Lineal descent and cultural affiliation.

- (a) **General.** This section identifies procedures for determining lineal descent and cultural affiliation between present-day individuals and Indian tribes or Native Hawaiian organizations and human remains, funerary objects, sacred objects, or objects of cultural patrimony in museum or Federal agency collections or excavated intentionally or discovered inadvertently from Federal lands. They may also be used by Indian tribes and Native Hawaiian organizations with respect to tribal lands.
- (b) **Criteria for determining lineal descent.** A lineal descendant is an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the common law system of descent to a known Native American individual whose remains, funerary objects, or sacred objects are being requested under these regulations. This standard requires that the earlier person be identified as an individual whose descendants can be traced.
- (c) **Criteria for determining cultural affiliation.** Cultural affiliation means a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. All of the following requirements must be met to determine cultural affiliation between a present-day Indian tribe or Native Hawaiian organization and the human remains, funerary objects, sacred objects, or objects of cultural patrimony of an earlier group:
 - (1) Existence of an identifiable present-day Indian tribe or Native Hawaiian organization with standing under these regulations and the Act; and
 - (2) Evidence of the existence of an identifiable earlier group. Support for this requirement may include, but is not necessarily limited to evidence sufficient to:
 - (i) Establish the identity and cultural characteristics of the earlier group,
 - (ii) Document distinct patterns of material culture manufacture and distribution methods for the earlier group, or
 - (iii) Establish the existence of the earlier group as a biologically distinct population; and
 - (3) Evidence of the existence of a shared group identity that can be reasonably traced between the present-day Indian tribe or Native Hawaiian organization and the earlier group. Evidence to support this requirement must establish that a present-day Indian tribe or Native Hawaiian organization has been identified from prehistoric or historic times to the present as descending from the earlier group.
- (d) A finding of cultural affiliation should be based upon an overall evaluation of the totality of the circumstances and evidence pertaining to the connection between the claimant and the material being claimed and should not be precluded solely because of some gaps in the record.
- (e) **Evidence.** Evidence of a kin or cultural affiliation between a present-day individual, Indian tribe, or Native Hawaiian organization and human remains, funerary objects, sacred objects, or objects of cultural patrimony must be established by using the following types of evidence: Geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant information or expert opinion.

- (f) **Standard of proof.** Lineal descent of a present-day individual from an earlier individual and cultural affiliation of a present-day Indian tribe or Native Hawaiian organization to human remains, funerary objects, sacred objects, or objects of cultural patrimony must be established by a preponderance of the evidence. Claimants do not have to establish cultural affiliation with scientific certainty.

§ 10.15 Limitations and remedies.

- (a) **Failure to claim prior to repatriation.**

- (1) Any person who fails to make a timely claim prior to the repatriation or disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony is deemed to have irrevocably waived any right to claim such items pursuant to these regulations or the Act. For these purposes, a “timely claim” means the filing of a written claim with a responsible museum or Federal agency official prior to the time the particular human remains, funerary objects, sacred objects, or objects of cultural patrimony at issue are duly repatriated or disposed of to a claimant by a museum or Federal agency pursuant to these regulations.
- (2) If there is more than one (1) claimant, the human remains, funerary object, sacred object, or objects of cultural patrimony may be held by the responsible museum or Federal agency or person in possession thereof pending resolution of the claim. Any person who is in custody of such human remains, funerary objects, sacred objects, or objects of cultural patrimony and does not claim entitlement to them must place the objects in the possession of the responsible museum or Federal agency for retention until the question of custody is resolved.

- (b) **Failure to claim where no repatriation or disposition has occurred.** [Reserved]

- (c) **Exhaustion of remedies.**

- (1) A person's administrative remedies are exhausted only when the person has filed a written claim with the responsible Federal agency and the claim has been duly denied under this part. This paragraph applies to both:
 - (i) Human remains, associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony subject to Subpart B of this part; and
 - (ii) Federal collections subject to Subpart C of this part.
- (2) A Federal agency's final denial of a repatriation request constitutes a final agency action under the Administrative Procedure Act (5 U.S.C. 704). As used in this paragraph, “repatriation request” means the request of a lineal descendant, Indian tribe, or Native Hawaiian organization for repatriation or disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony brought under the Act and this part.

- (d) **Savings provisions.** Nothing in these regulations can be construed to:

- (1) Limit the authority of any museum or Federal agency to:
 - (i) Return or repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony to Indian tribes, Native Hawaiian organizations, or individuals; and
 - (ii) Enter into any other agreement with the consent of the culturally affiliated Indian tribe or Native Hawaiian organization as to the disposition of, or control over, human remains, funerary objects, sacred objects, or objects of cultural patrimony.
- (2) Delay actions on repatriation requests that were pending on November 16, 1990;

- (3) Deny or otherwise affect access to court;
- (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 of stolen property.

[60 FR 62158, Dec. 4, 1995, as amended at 62 FR 41294, Aug. 1, 1997; 75 FR 12405, Mar. 15, 2010; 78 FR 27084, May 9, 2013]

§ 10.16 Review committee.

- (a) **General.** The Review Committee will advise Congress and the Secretary on matters relating to these regulations and the Act, including, but not limited to, monitoring the performance of museums and Federal agencies in carrying out their responsibilities, facilitating and making recommendations on the resolution of disputes as described further in § 10.17, and compiling a record of culturally unidentifiable human remains that are in the possession or control of museums and Federal agencies and recommending actions for their disposition.
- (b) **Recommendations.** Any recommendation, finding, report, or other action of the Review Committee is advisory only and not binding on any person. Any records and findings made by the Review Committee may be admissible as evidence in actions brought by persons alleging a violation of the Act.

§ 10.17 Dispute resolution.

- (a) **Formal and informal resolutions.** Any person who wishes to contest actions taken by museums, Federal agencies, Indian tribes, or Native Hawaiian organizations with respect to the repatriation and disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony is encouraged to do so through informal negotiations to achieve a fair resolution of the matter. The Review Committee may aid in this regard as described below. In addition, the United States District Courts have jurisdiction over any action brought that alleges a violation of the Act.
- (b) **Review Committee Role.** The Review Committee may facilitate the informal resolution of disputes relating to these regulations among interested parties that are not resolved by good faith negotiations. Review Committee actions may include convening meetings between parties to disputes, making advisory findings as to contested facts, and making recommendations to the disputing parties or to the Secretary as to the proper resolution of disputes consistent with these regulations and the Act.