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Final Regulations, 43 CFR 10

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Part II

Department of the Interior

Office of the Secretary

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43 CFR Part 10

Native American Graves Protection and Repatriation Act Regulations;

Final Rule

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 10

RIN 1024-AC07

Native American Graves Protection and Repatriation Act

Regulations

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes definitions and procedures for lineal descendants, Indian tribes, Native Hawaiian organizations, museums, and Federal agencies to carry out the Native American Graves Protection and Repatriation Act of 1990. These regulations develop a systematic process for determining the rights of lineal descendants, 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.

EFFECTIVE DATE: This final rule will take effect on January 3, 1996.

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SUPPLEMENTARY INFORMATION:

Background

On November 16, 1990, President George Bush signed into law the Native American Graves Protection and Repatriation Act, hereafter referred to as the Act. The Act addresses the rights of lineal descendants, 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. Section 13 of the Act requires the Secretary of the Interior to publish regulations to carry out provisions of the Act.

Preparation of the Rulemaking

The proposed rule (43 CFR Part 10) for carrying out the Act was published in the Federal Register on May 28, 1993 (58 FR 31122). Public comment was invited for a 60-day period, ending on July 27, 1993. Copies of the proposed rule were sent to the chairs or chief executive officers of all Indian tribes, Alaska Native villages and corporations, Native Hawaiian organizations, national Indian organizations and advocacy groups, national scientific and museum organizations, and State and Federal agency Historic Preservation Officers and chief archeologists.

Eighty-two written comments were received representing 89 specific organizations and individuals. These included thirteen Indian tribes, ten Native American organizations, nine museums, seven universities,

three national scientific and museum organizations, eleven state agencies, nineteen Federal agencies, nine other organizations, and eight individuals. Several letters represent more than one organization. Comments addressed nearly all sections and appendices of the proposed rule. All comments were fully considered when revising the proposed rule for publication as a final rulemaking.

Given the volume of comments, it is impractical to respond in detail in the preamble to every question raised or suggestion offered. Some commenters pointed out errors in spelling, syntax, and minor technical matters. Those errors were corrected and are not mentioned further in the preamble. In addition, many commenters made similar suggestions or criticisms, or repeated the same suggestion for different sections of the proposed rule. In the interest of reducing the length of the text, comments that are similar in nature are grouped and discussed in the most relevant section in the preamble. Some comments pointed out vague and unclear language. Clarifying and explanatory language was added to the rule and preamble.

Changes in Response to Public Comment

Section 10.1

This section outlines the purpose and applicability of the regulations. Three commenters recommended including specific reference to the applicability of the rule to provisions of the United States Code regarding illegal trafficking. Section 4 of the Act, which deals with illegal trafficking in ``Native American Human Remains and Cultural Items,'' is incorporated directly into Chapter 53 of title 18, United States Code, and does not require implementing regulations. For

that reason, a section regarding section 4 of the Act has not been included in these regulations.

One commenter recommended including language to guarantee ``that these collections will remain intact and always be available to qualified researchers...'' Another commenter recommended amending the regulations to preclude the removal of prehistoric skeletal and cultural materials from the nation's museums. The drafters consider the proposed changes contrary to the intent of the Act as reflected in statutory language and legislative history.

One commenter recommended additional language addressing Federal trust responsibilities and tribal sovereignty. These regulations are consistent with the United States' trust responsibilities to Indian tribes.

Three commenters recommended amending the rule to apply to territories of the United States. The rule of statutory construction stipulates that Federal law applies to United States territories only when specifically indicated. No such reference is indicated in either the statute or its legislative history. It is inappropriate to use regulations to extend applicability to areas not defined in the Act.

Section 10.2

This section defines terms used throughout the regulations. One commenter recommended listing the definitions alphabetically instead of thematically under the present categories of ``participants,'' ``human remains and cultural items,'' ``cultural affiliation,'' ``location,'' and ``procedures.'' A thematic organization has been retained. However, the subsections have been retitled and reorganized. The new subsections

are (a) who must comply with these regulations?; (b) who has standing to make a claim under these regulations?; (c) who is responsible for carrying out these regulations?; (d) what objects are covered by these regulations?; (e) what is cultural affiliation?; (f) what types of lands do the excavation and discovery provisions of these regulations apply to?; and (g) what procedures are required by these regulations?

Subsection 10.2 (a) includes definitions of those persons or organizations who must comply with these regulations.

One commenter asked for clarification as to whether all Federal agencies as defined in Sec. 10.2 (a)(4) (renumbered as Sec. 10.2 (a)(1)) must comply with provisions of the Act. All Federal agencies, except the Smithsonian Institution, are responsible for completing summaries and inventories of collections in their control and with ensuring compliance regarding inadvertent discoveries and intentional excavations conducted as part of activities on Federal or tribal lands. Three commenters and the Review Committee authorized under section 8 of the Act requested clarification of the exclusion of the Smithsonian Institution as a Federal agency. Sections 2 (4) and 2 (8) of the Act specifically exclude the

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Smithsonian Institution from having to comply with the provisions of the Act. The legislative history of the Act is silent as to the reason for this exclusion. The exclusion is likely to have been based on prior passage of the National Museum of the American Indian Act in 1989 that included provisions requiring the repatriation of human remains from all of the Smithsonian Institution's constituent museums.

Seven commenters requested clarification of the definition of Federal agency official in Sec. 10.2 (a)(5) (renumbered as Sec. 10.2 (a)(2)). One commenter recommended changing the term to Federal land manager. The definition included in the proposed rule applies to both individuals with authority for the management of Federal lands and individuals with responsibility for the management of Federal collections that may contain human remains, funerary objects, sacred objects, or objects of cultural patrimony. Since responsibility for the latter task may fall to Federal agency officials who do not manage land, the recommended change has not been made. Four commenters recommended changes in the definition of Federal agency official to reflect that a Federal agency may have more than one delegated authority. The definition was rewritten to reflect this concern. One commenter recommended stipulation of a specific date by which each agency must delegate individuals to perform the duties relating to these regulations. Such a deadline is unnecessary as all Federal agencies have already named their contacts. A listing of Federal agency officials for each agency is available from the Departmental Consulting Archeologist.

Seven commenters requested clarification of the definition of museum in Sec. 10.2 (a)(6) (renumbered Sec. 10.2 (a)(3)). One commenter recommended replacing the term ``human remains or cultural items'' with ``Native American artifacts'' to reflect the expanded reporting of ``collections that may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony'' in the summaries required in Sec. 10.8. The specific focus of the Act and the rule remains limited to Native American human remains, funerary objects, sacred

objects, and objects of cultural patrimony, and not the broader category of Native American artifacts.

One commenter recommended providing a definition of the term ``possession of, or control over'' in the first sentence of the definition. One commenter recommended requiring museums take responsibility for all human remains, funerary objects, sacred objects, or objects of cultural patrimony in their possession that were originally excavated intentionally or discovered inadvertently by Federal agencies on non-Federal lands. All museums or Federal agencies with Native American collections should consider carefully whether they have possession or control of human remains, funerary objects, sacred objects, or objects of cultural patrimony as defined in Sec. 10.2 (a)(3)(i) and (a)(3)(ii).

Eleven commenters recommended changes to the definitions of possession in Sec. 10.2 (e)(5) (renumbered Sec. 10.2 (a)(3)(i)) and control in Sec. 10.2 (e)(6) (renumbered Sec. 10.2 (a)(3)(ii)). One commenter recommended giving both terms their ordinary and customary meaning in the regulations. Two commenters objected to use of ``legal interest'' in both definitions on the grounds that under common law, museums and Federal agencies do not have sufficient legal interest in human remains to do anything with them. Two commenters questioned including items on loan to a museum in a summary or inventory since the items are not the property of the museum. One commenter recommended deleting the definition of control as it would require Federal bureaucrats and museum officials to make complicated legal determinations. Examples designed to clarify the uses of possession and control have been added to these sections to address the concerns reflected in these comments. Two commenters questioned whether

``control'' applied to museum collections or to Federal lands. The term applies to human remains, funerary objects, sacred objects, or objects of cultural patrimony in museum or Federal agency collections or excavated intentionally or discovered inadvertently on Federal or tribal lands. One commenter recommended that the definition specifically address Federal agency responsibilities for collections from Federal lands being held by non-governmental repositories. Federal agencies are responsible for the appropriate treatment and care of such collections.

One commenter requested clarification of the exclusion of procurement contracts from ``Federal funds'' in Sec. 10.2 (a)(6) (renumbered Sec. 10.2 (a)(3)(iii)). Procurement contracts are not considered a form of Federal-based aid but are provided to a contractor in exchange for a specific service or product. One commenter requested deletion of the last two sentences of the definition that clarify the applicability of the rule to museums that are part of a larger entity that receives Federal funds, questioning if the legislative history supports such an interpretation. One commenter supported the present definition of institutions receiving Federal funds. Application of Federal laws to institutions that receive Federal funds is common, being used with such recent legislation as the Americans with Disabilities Act. These laws typically are interpreted to apply to organizations that are part of larger entities that receive Federal funds. Two commenters recommended specifying the applicability of the rule to museums affiliated with certified local governments and Indian tribal museums. The rule applies to museums that are part of certified local governments. A tribal museum is covered by the Act if the Indian

tribe of which it is part receives Federal funds through any grant, loan, or contract (other than a procurement contract).

Subsection 10.2(b) includes definitions of those persons or organizations that have standing to make a claim under these regulations.

Eight commenters recommended changes in the definition of lineal descendant in Sec. 10.2 (a)(14) (renumbered Sec. 10.2 (b)(1)). Two commenters identified the definition as too restrictive. The drafters realize that claims of lineal descent require a high standard but feel that this standard is consistent with the preference for repatriation to lineal descendants required by the Act. Another commenter presented a statistical argument to indicate that all members of Indian tribes might be recognized as lineal descendants of human remains over 1,000 year old. Regardless of the statistical possibilities that someone might be related to another, the definition of lineal descent requires that the human remains, funerary objects, or sacred objects under consideration be from a known individual. It is highly unlikely that the identity of an individual that lived 1,000 years ago is known, or that it is possible to trace descent directly and without interruption from that known individual to a living individual. One commenter recommended replacing the ``known Native American individual'' from which lineal descent is traced with ``known individual of a tribe.''

The term Indian tribe as used in these regulations refers only to those contemporary tribes, bands, nations, or other organized Indian groups or communities that are recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. Requiring the known individual to have been a member of the

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same Federally recognized Indian tribe as their lineal descendant would limit repatriation to only the most recent human remains, funerary objects, or sacred objects and is not supported by the statutory language or legislative history. One commenter recommended deleting reference to use of the ``traditional kinship system.'' Reference to traditional kinship systems is designed to accommodate the different systems that individual Indian tribes use to reckon kinship. One commenter recommended that the definition should also allow more conventional means of reckoning kinship. The definition has been amended to include the common law system of descendance as well as the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization. One commenter recommended defining an additional class of ``lineage members'' or ``kindred''--individuals that are not lineal descendants in the biological sense of the term but are related by the traditional kinship system--and then giving these individuals a secondary priority for making a claim after lineal descendants but before culturally affiliated Indian tribes. Determinations of priority between blood descendants and descendants by some other traditional kinship system are more properly resolved in specific situations rather than through general regulations.

One commenter recommended clarifying the definition of Indian tribe in Sec. 10.2 (a)(9) (renumbered Sec. 10.2 (b)(2)) to ensure timely notification. Seventeen commenters recommended expanding the definition to include a broader spectrum of Indian groups than those recognized by the Bureau of Indian Affairs (BIA). Several commenters identified specific groups they felt should have standing, including: various

bands or tribes in California, Washington, and Ohio; Native American organizations such as the American Indian Movement; Native American groups that ``would be eligible for recognition by the BIA if they so chose to be''; and ``bands recognized by other Federal agencies.''

Section 12 of the Act makes it clear that Congress based the Act upon the unique relationship between the United States government and Indian tribes. That section goes on to state that the Act should not be construed to establish a precedent with respect to any other individual or organization. The statutory definition of Indian tribe, which specifies that such tribes must be ``recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians,'' precludes extending applicability of the Act to Indian tribes that have been terminated, that are current applicants for recognition, or have only State or local jurisdiction legal status.

As was explained in the preamble of the proposed regulations, the definition of Indian tribe used in the Act was drawn explicitly from an earlier version of the bill (H.R. 5237, 101th Congress, 2nd Sess. sec. 2 (7), (July 10, 1990)) using a specific statutory reference. The final language of the Act is verbatim from the American Indian Self Determination and Education Act (25 U.S.C. 450b). The earlier statute has been carried out since 1976 by the BIA to apply to a specific list of eligible Indian tribes which has been published in the Federal Register.

Four commenters found this interpretation unduly narrow and recommended interpreting the statutory definition to apply to Indian tribes that are recognized as eligible for benefits for the special

programs and services provided by ``any'' agency of the United States to Indians because of their status as Indians. The Review Committee concurred with this recommendation. Based on the above recommendations, the definition of Indian tribe included in the regulations was amended by deleting all text describing the process for obtaining recognition from the BIA. In place of this text, the final regulations include a statement identifying the Secretary as responsible for creating and distributing a list of Indian tribes for the purpose of carrying out the Act. This list is currently available from the Departmental Consulting Archeologist and will be updated periodically.

One commenter recommended deleting the reference to Alaska Native corporations in the definition of Indian tribe. The American Indian Self Determination and Education Act, the source for the definition of Indian tribe in the Act, explicitly applies to Alaska Native corporations and, as such, supports their inclusion under the Act. Alaska Native corporations are generally considered to have standing under these regulations if they are recognized as eligible for a self-determination contract under 25 U.S.C. 450b.

Two commenters recommended deleting the final line of the definition of Indian tribe in which Native Hawaiian organizations are subsumed for purposes of the regulations. The Review Committee concurred with this recommendation. The final sentence has been deleted and the applicability of the regulations to Native Hawaiian organizations has been specified where appropriate throughout the text.

The term Indian tribe official defined in Sec. 10.2 (b)(4) has not been changed, though the drafters wish to stress the term's applicability to the representatives of both Indian tribes and Native Hawaiian organizations.

Two commenters recommended changes to the definition of Native Hawaiian organization in Sec. 10.2 (a)(11) (renumbered Sec. 10.2 (b)(3)). One commenter recommended specifying that such organizations should have a primary and stated purpose of the ``preservation of Hawaiian history,'' and have expertise in Native Hawaiian ``cultural'' affairs. Two commenters recommended requiring a Native Hawaiian organization verify that more than 50% of its membership is Native Hawaiian. The statutory definition of Native Hawaiian organization in section 2 (11) of the Act precludes expansion of the criteria for identifying Native Hawaiian organizations. An earlier version of the bill (S. 1980, 101st Cong. 2nd sess. section 3 (6)(c), (September 10, 1990)) that eventually became the Act included a provision requiring Native Hawaiian organization to have ``a membership of which a majority are Native Hawaiian.'' This provision was not included in the Act. The legislative history confirms that Congress considered the additional criterion and decided not to include it in the Act.

One commenter recommended rewriting the definition of Native Hawaiian in Sec. 10.2 (a)(10) (renumbered Sec. 10.2 (b)(3)) to include Pacific Islanders. The statutory definition of Native Hawaiian in section 2 (10) of the Act precludes expansion of this definition to include Pacific Islanders who are not descendants of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

Three commenters recommended changes to the definition of Indian tribe official in Sec. 10.2 (a)(12) (renumbered Sec. 10.2 (b)(4)). One commenter recommended specifying that Indian tribe official means the tribal chair or officially designated individual. One commenter

recommended allowing designation by the governing body of an Indian tribe ``or as otherwise provided by tribal code, policy, or procedure.'' One commenter recommended that the designated person need not be a member of that Indian tribe. The definition of Indian tribe official was amended to identify the principal leader or the individual officially designated or otherwise provided by tribal code, policy or established procedure. This person need not necessarily be a member of the particular Indian tribe.

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Subsection 10.2 (c) includes definitions of those persons or organizations that are responsible for carrying out these regulations.

One commenter requested clarification of the role of the Departmental Consulting Archeologist defined in Section 10.2 (a)(3) (renumbered Sec. 10.2 (c)(3)). The Departmental Consulting Archeologist was delegated by the Secretary of the Interior with responsibilities for drafting regulations, providing staff support to the Review Committee, administering grants, and providing technical aid under the Act.

Subsection 10.2 (d) includes definitions of the objects covered by these regulations.

One commenter recommended that the definition of Native American in Sec. 10.2 (a)(8) (renumbered Sec. 10.2 (d)) specifically include Native Hawaiians. The definition already includes Native Hawaiians. To clarify the applicability of the rule, the definition of Native American was rewritten to specifically include tribes, people, or cultures indigenous to the United States, ``including Alaska and Hawaii.'' The drafters point out that ``Native American'' is used in the Act and in

these rules only to refer to particular human remains, funerary objects, sacred objects, or objects of cultural patrimony and not to any living individual or group of individuals.

Thirteen commenters recommended changes to the definition of human remains in Sec. 10.2 (b)(1) (renumbered Sec. 10.2 (d)(1)). One commenter recommended expanding the definition to include all human remains, not just those of Native Americans. The Act is designed specifically to address the disposition or repatriation of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony and not to cover all human remains. Three commenters recommended excluding disarticulated and unassociated human remains, such as isolated teeth and finger bones, from repatriation. Two commenters recommended amending the definition to include only those human remains ``associated with the body at the time of death,'' to eliminate such things as extracted or lost teeth, cut finger nails, coprolites, blood residues, and tissue samples taken by coroners. One commenter recommending deleting the exemplary clause--``including but not limited to bones, teeth, hair, ashes, or mummified or otherwise soft tissue''--as being overly limiting. The Act makes no distinction between fully-articulated burials and isolated bones and teeth. Additional text has been added excluding ``naturally shed'' human remains from consideration under the Act. This exclusion does not include any human remains for which there is evidence of purposeful disposal or deposition. The exemplary clause has been deleted. One commenter requested clarification as to whether the regulations would apply to blood sold or given to a blood bank by an individual of Native American ancestry. The blood bank would not be subject to repatriation

having been freely given. One commenter supported considering human remains that had been incorporated into a sacred object or object of cultural patrimony be considered as part of that cultural item for the purpose of determining cultural affiliation. Two commenters recommended excluding human remains incorporated into cultural items from repatriation since, as one said, they were ``objectified by their original makers and owners, not the institutions that might house them now.'' One commenter requested clarification regarding the status of human remains that were not freely given but that have been incorporated into objects that are not cultural items as defined in these regulations. The legislative history is silent on this issue. Determination of the proper disposition of such human remains must necessarily be made on a case-by-case basis. One commenter recommended deleting reference to human remains that have been incorporated into a funerary object, sacred object, or object of cultural patrimony, in that any change in the character of the human remains, including the definition, would only further their dishonor. Three commenters asked for clarification in how to determine whether human remains incorporated into a funerary object, sacred object, or object of cultural patrimony were freely given. The provision regarding determination of the cultural affiliation of human remains that had been incorporated into a funerary object, sacred object, or object of cultural patrimony was recommended by the Review Committee to preclude the destruction of items that might be culturally affiliated with one Indian tribe that incorporate human remains culturally affiliated with another Indian tribe.

Two commenters recommended changing the definition of cultural items in Sec. 10.2 (b)(2). One commenter recommended broadening the

definition to include any and all objects deemed to have cultural significance by an Indian tribe. Cultural items are defined in the Act to include human remains, funerary objects, sacred objects, and objects of cultural patrimony. The term was redefined in the proposed regulations to include funerary objects, sacred objects, and objects of cultural patrimony, and not human remains to address the objections some individuals had expressed over referring to human remains as ``cultural items.'' Two commenters recommended retaining the statutory definition. The term has been changed to read ``human remains, funerary object, sacred object, or object of cultural patrimony'' throughout the rule to ensure clarity. The definition of ``cultural item'' has been deleted throughout the text.

One commenter recommended combining the definitions of associated funerary object in Sec. 10.2 (b)(3) and unassociated funerary object in Sec. 10.2 (b)(4) into a single definition of funerary object. The two definitions have been combined in Sec. 10.2 (d)(2).

Ten commenters recommended changes to the definition of associated funerary object in Sec. 10.2 (b)(3) and unassociated funerary object in Sec. 10.2 (b)(4) (combined and renumbered Sec. 10.2 (d)(2)). One commenter recommended rewriting both definitions to make a distinction between objects associated with individual human remains and objects for which a funerary context is suspected, but association with individual human remains is not possible. Another commenter objected to what he considered an overly rigorous standard of proof. The statutory language makes it clear that only those objects that are associated with individual human remains are considered funerary objects. The distinction between associated and unassociated funerary objects is

based on whether the individual human remains are in the possession or control of a museum or Federal agency. One commenter recommended deleting the word ``intentionally'' in Sec. 10.2 (b)(3)(i) and Sec. 10.2 (b)(4) since the term does not occur in the statutory language. The term is included to emphasize the intentional nature of death rites or ceremonies. Items that inadvertently came into proximity or contact with human remains are not considered funerary objects. One commenter questioned whether any objects excavated intentionally or discovered inadvertently on Federal or tribal land after November 16, 1990, would fit these definitions, since it requires the objects be in the possession or control of a Federal agency, and section 3 of the Act seems to preclude Federal ownership of such objects. Possession of funerary objects excavated intentionally or discovered inadvertently on Federal or

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tribal land is sufficient to apply the provisions of the statute to such intentional excavations or inadvertent discoveries.

Two commenters recommended deletion of the clause ``or near'' from Sec. 10.2 (b)(3) (renumbered Sec. 10.2 (d)(2)), indicating that it would require museums to enter into debates about the proximity of objects to human remains. The clause was included to accommodate variations in Native American death rites or ceremonies. Some Indian tribes, particularly those from the northern plains, have ceremonies in which objects are placed near, but not with, the human remains at the time of death or later. The drafters consider these funerary objects.

One commenter recommended clarifying Sec. 10.2 (b)(3)(i) (renumbered Sec. 10.2 (d)(2)(i)) by specifying that funerary objects

are ``associated'' even when another institution has possession or control of the human remains. The drafters consider the statutory definition, which is repeated in the rule, to support this interpretation without any additional modification. One commenter recommended clarifying Sec. 10.2 (a)(3)(ii) [renumbered Sec. 10.2 (d)(2)(i)] by specifying that items made exclusively for burial purposes are considered as associated funerary objects even if there are no associated human remains. Items made exclusively for burial purposes are considered associated funerary objects even if there are no associated human remains. Four commenters recommended deleting the final sentence of the definition of unassociated funerary object in Sec. 10.2 (b)(4) [renumbered Sec. 10.2 (d)(2)], objecting to the requirement that such human remains were removed from a ``specific'' burial site. Another commenter recommended deleting reference to the ``preponderance of the evidence'' in the same sentence, because it implies an adversarial context which is inappropriate for the process of identifying unassociated funerary objects. In both of these instances, the text of the regulations reflects exactly the statutory text and has not been modified. The final sentence of this section was drawn from an explanation of the definition in House Report 101-877 (1990: page 2) and is taken to represent Congressional intent. Another commenter recommended deleting ``reasonably believed to have been'' from Sec. 10.2 (b)(2)(ii). The phrase has been deleted.

One commentor recommended clarifying the definition of unassociated funerary objects in Sec. 10.2 (b)(4) to exempt items exhibited intentionally with individual human remains but subsequently returned or distributed to living descendants or other individuals. The recommended language has been added to Sec. 10.2 (d)(2)(ii).

Ten commenters recommended changes to the definition of sacred objects in Sec. 10.2 (b)(5) (renumbered Sec. 10.2 (d)(3)). One commenter recommended broadening the definition to include any and all objects deemed to have sacred significance by Indian tribes and not just those objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Another commenter recommended broadening the definition to include specific objects or geological features identified by traditional Native American practitioners as endowed with sacredness due to the object's past role in traditional Native American religious ceremony or on the basis of similar objects having contemporaneous religious significance or function in the continued observance or renewal or a ceremony. The statutory language and legislative history indicate that this definition was written carefully and precisely. Expanding the definition to include the types of items identified above in the comments runs counter to Congressional intent.

Four commenters recommended changes in the definition of traditional religious leader in Sec. 10.2 (a)(13) (renumbered Sec. 10.2 (d)(3)). Two commenters recommended replacing the phrase allowing such leaders to be recognized ``by members of that Indian tribe'' with ``that Indian tribe.'' The drafters realize that allowing members of an Indian tribe or Native Hawaiian organization to recognize traditional religious leaders may result in conflicting claims. However, such issues are best resolved by the members of the Indian tribe or Native Hawaiian organization themselves. One commenter recommended replacing the word ``or'' at the end of Sec. 10.2(a)(13)(i) with ``and.'' The two criteria listed are intended as alternative methods for identifying

traditional religious leaders and not as cumulative criteria. Another commenter recommended specifying that an individual's leadership role must be based on ``traditional'' religious practices. The drafters consider whether or not an individual's leadership in a religion is based upon traditional practice an inappropriate concern for Federal regulations.

Two commenters recommended deleting the word ``current'' from the first line of the definition of sacred object since the term was not included in the statutory text. The term was deleted. One commenter objected to ``use'' being the measure to decide whether an object should be repatriated, suggesting instead right of possession as the relevant standard. The necessity of an object for use by present day adherents of a traditional Native American religion is critical in identifying a sacred object, while determination of right of possession is necessary to determine whether the sacred object must be repatriated to the Indian tribe or Native Hawaiian organization or may be retained by the museum or Federal agency.

One commenter recommended deleting the second sentence of the definition of sacred object which he considers to depart in major ways from the statutory definition. The second sentence of the definition was drawn from the Senate Select Committee Report (S.R. 101-473: p. 7) and helps clarify the precise, limited use of this category intended by Congress.

One commenter recommended including clarification in the definition that: 1) sacred objects can not be associated with human remains, as they would then be funerary objects, and 2) only in rare circumstances can prehistoric items be sacred objects. While this usually may be so, blanket exclusion of any funerary object from also being a sacred

object is not considered appropriate in that the categories are not mutually exclusive. Similarly, identification of sacred objects from prehistoric contexts must be made on a case-by-case basis.

One commenter agreed with the inclusion of sacred objects that have religious significance or function in the continued observance or renewal of a traditional Native American religious ceremony or ritual. Another commenter recommended deleting reference to ``renewal'' in the second sentence, stating that the issue was debated during the legislative process and final statutory language does not include reference to renewal of a traditional Native American religious ceremony. Language specifying the inclusion of objects that function in the continued observance or renewal of a traditional Native American religious ceremony as sacred objects was drawn from the Senate Select Committee Report (S.R. 101-473: p. 7) and is thought to reflect Congressional intent.

Three commenters requested clarification as to who is responsible for making the determination that a particular item fits the definition of sacred object. In all cases, the museum or Federal agency official has the initial responsibility for deciding whether an object in its possession or control fits

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the definition of sacred object. However, if an Indian tribe or Native Hawaiian organization does not agree with this decision, it has recourse to challenge directly the decision of the museum or Federal agency. The Indian tribe or Native Hawaiian organization may seek the involvement of the Review Committee if it is unsuccessful in its direct appeal to the museum or Federal agency.

Six commenters recommended changes to the definition of objects of cultural patrimony in Sec. 10.2 (b)(6) (renumbered Sec. 10.2 (d)(4)])

One commenter recommended deleting the word ``cultural'' from the term ``cultural items'' in the first sentence, in that the current phrasing is circular. The word has been deleted. One commenter cautioned that the definition does not recognize that internal disagreements may occur within an Indian tribe or Native Hawaiian organization about the importance of an object of cultural patrimony. Another commenter recommended broadening the definition to include those objects of ongoing historical, traditional, or cultural importance central to any sub-group of an Indian tribe, such as a band, clan, lineage, ceremonial society, or other subdivisions. Claims for human remains, funerary objects, sacred objects, or objects of cultural patrimony by such sub-groups must be made through an Indian tribe or Native Hawaiian organization.

One commenter requested clarification of the example of the Zuni War Gods that appear to be both objects of cultural patrimony and sacred objects. An object can fit both categories depending upon the nature of the traditional religion and the system of property rights used by a particular Indian tribe or Native Hawaiian organization. Zuni War Gods present such a case. In other cases, sacred objects may have been owned privately and, thus, are not considered objects of cultural patrimony. One commenter requested clarification as to who is responsible for making the determination that a particular item fits the definition of object of cultural patrimony. In all cases, the museum or Federal agency official has the initial responsibility for deciding whether an object in its possession or control fits the

definition of object of cultural patrimony. However, if an Indian tribe or Native Hawaiian organization does not agree with this decision, it has recourse to challenge directly the decision with the museum or Federal agency.

Section 10.2 (e) includes the definition of cultural affiliation.

One commenter recommended deleting reference to Native Hawaiian organizations as they are included under the definition of Indian tribe in Sec. 10.2 (b)(2). The text has been changed to read ``Indian tribe or Native Hawaiian organization'' throughout the regulations. One commenter requested inclusion of a short characterization of the threshold criteria applicable to determining cultural affiliation. A second sentence clarifying this threshold has been added to the definition. Three commenters requested additional clarification of the definition of cultural affiliation. Procedures for determining cultural affiliation are included in Sec. 10.14 (c).

Section 10.2 (f) includes definitions of the types of lands that the excavation and discovery provisions of these regulations apply.

Six commenters asked for clarification regarding the applicability of statutory provisions for intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony to private lands. Unlike provisions of the National Historic Preservation Act (NHPA) that are applicable to Federal undertakings regardless of who owns the land on which the project is being conducted, the intentional excavation and inadvertent discovery provisions of these regulations apply only to Federal and tribal lands.

Five commenters recommended changes to the definition of Federal lands in Sec. 10.2 (d)(1) (renumbered Sec. 10.2 (f)(1)). One commenter

recommended deleting the definition of ``control'' as it will require Federal bureaucrats to make complicated legal determinations as to what is ``a sufficient legal interest to permit it to apply these regulations without abrogating the rights of a person.'' Another commenter recognized the need for a definition of Federal ``control,'' but suggested that the present definition fails to clarify the issue. Another commenter requested clarification whether Federal control, and thus the intentional excavation and inadvertent discovery provisions of these regulations, extends to the Wetlands Reserve Program or to the Forest Legacy Program. One commenter requested clarification of the applicability of Federal control to real property instruments such as easements, rights-of-way, and rights-of-entry for performance of specific activities. One commenter requested clarification of the applicability of Federal control to private lands through issuance of a Federal permit, license, or funding. One commenter recommended including the existence of a long term lease by a Federal agency or an interest under which the land owner has authorized the United States to undertake intentional excavation or other land disturbance as under Federal control. As indicated above, the intentional excavation and inadvertent discovery provisions of the Act apply only to Federal and tribal lands. Whether Federal control of programs such as those mentioned above is sufficient to apply these regulations to the lands covered by the program depends on the circumstances of the Federal agency authority and on the nature of state and local jurisdiction. Such determinations must necessarily be made on a case-by-case basis. Generally, however, a Federal agency will only have sufficient legal interest to ``control'' lands it does not own when it has some other

form of property interest in the land such as a lease or easement. The fact that a Federal permit is required to undertake and activity on non-Federal land generally is not sufficient legal interest in and of itself to ``control'' the land within the meaning of these regulations and the Act. In situations when two or more Federal agencies share regulatory or management jurisdiction over Federal land, the Federal agency with primary management authority will generally have control for purposes of implementing the Act.

Nineteen commenters recommended changes to the definition of tribal lands in Sec. 10.2 (c)(2) (renumbered Sec. 10.2 (f)(2)). One commenter recommended broadening the exclusion of privately owned lands within the exterior boundaries of an Indian reservation to encompass state and Federal land holdings. Thirteen commenters objected to the exclusion of privately owned lands within the exterior boundaries of an Indian reservation and recommended returning to the statutory language. The proposed exclusion was intended to rectify a contradiction between the statutory definition of tribal lands in section 2 (15) of the Act and the guarantee in section 2 (13) of the Act that no taking of property without compensation within the meaning of the Fifth Amendment of the United States Constitution is intended. The drafters concur with the majority of commenters that the blanket exclusion of private lands within the exterior boundaries of an Indian reservation from the intentional excavation and inadvertent discovery provisions of the regulations is overly broad. The exclusion was deleted and a new subsection added at Sec. 10.2 (f)(2)(iv) stating that the regulations will not apply to tribal lands to the extent that any particular action

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authorized or required will result in a taking of property without just compensation within the meaning of the Fifth Amendment to the United States Constitution.

Three commenters recommended broadening the definition of tribal lands to apply to allotments held in trust for Indian tribes or individuals, regardless of whether the allotments are inside or outside the boundaries of an Indian reservation. This suggestion is inconsistent with the Act's definition of tribal lands. One commenter stated that the reference to 18 U.S.C. 1151 in Sec. 10.2 (d)(2)(ii) (renumbered Sec. 10.2 (f)(2)(ii)) does not clarify the nature of dependent Indian community. Dependent Indian communities, as defined in 18 U.S.C. 1151 (b), include those Indian communities under Federal protection that were neither ``reserved'' formally, nor designated specifically as a reservation. Cohen, in The Field of Indian Law (1982:38) concludes that ``it is apparent that Indian reservations and dependent Indian communities are not two distinct definitions of place but rather definitions which largely overlap. All Indian reservations are also dependent Indian communities unless they are uninhabited.'' In addition to Indian reservations, dependent Indian communities also include patented parcels of land and rights-of-way within residential Indian communities under Federal protection. One commenter recommend joining Sec. 10.2 (d)(2)(i), (ii), and (iii) (renumbered Sec. 10.2 (f)(2)(i), (ii), and (iii)) with ``or'' at the end of the first two lines. This change has been made.

Nine commenters recommended changes to the definition of aboriginal lands in Sec. 10.2 (c)(3). Four commenters challenged use of Indian Claims Commission judgements to determine aboriginal territories. One commenter recommended using Native American origin stories and

anthropological evidence instead. A second commenter recommended that the limits of aboriginal territory must come directly from the Indian tribe itself. A third commenter recommended expanding the definition to include all ceded lands and all lands traditionally used by an Indian tribe, regardless of whether there may have been overlapping usage by neighboring Indian tribes. The Indian Claims Commission was established in 1949 specifically to adjudicate tribal land claims against the United States. Over 200 cases were settled between 1949 and 1978 when the Commission was terminated. Since 1978, Indian land claims have been adjudicated by the United States Court of Claims. The Commission and the Court have considered a wide range of information, including oral history and anthropological evidence, in reaching their decisions.

Section 3 (a)(1)(C) of the Act specifically gives Indian tribes the right to claim human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal land that is recognized by a final judgement of the Indian Claims Commission or United States Court of Claims as part of their aboriginal land. The drafters consider the final judgements of the Indian Claims Commission a valuable tool for identifying area occupied aboriginally by a present-day Indian tribe. Other sources of information regarding aboriginal occupation should also be consulted. The definition has been deleted from the rule.

One commenter questioned whether provisions of the Act regarding intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony apply to all aboriginal lands, or just to that portion of an Indian tribe's aboriginal territory that is now in Federal ownership or

control. These regulations apply to claims for human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands. One commenter requested reference information for final judgements by the Court of Claims. One commenter stated that the map of aboriginal lands included with the final report of the Indian Claims Commission is out of print, out of date, and difficult to use as neither counties nor detailed geographic indicators are provided. The United States Geological Survey has recently republished the 1978 map. Efforts are underway to update the map to include land claims settled since 1978. One commenter inquired about the status of Indian tribes that have filed a land claim for a particular area, but for which a court judgement or ruling from the court has been made. An Indian tribe's status to make a claim under the Act based upon aboriginal occupation of an area is recognized when a favorable court judgement or ruling has been made. However, this situation will only affect the disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal land where no lineal descendants or culturally affiliated Indian tribe has made a claim.

Subsection 10.2 (g) includes definitions of procedures required to carry out these regulations. Two commenters asked for clarification of the difference between the items included on the summary in Sec. 10.2 (e)(1) (renumbered Sec. 10.2 (g)(1)) and the items on the inventory in Sec. 10.2 (e)(2) (renumbered Sec. 10.2 (g)(2)). Summaries are written general descriptions of collections or portions of collections that may contain unassociated funerary objects, sacred objects, and objects of cultural patrimony. Inventories are item-by-item descriptions of human

remains and associated funerary objects. The distinction between the documents reflects not only their subject matter, but also their detail (brief overview vs. item-by-item list), and place within the process. Summaries represent an initial exchange of information prior to consultation while inventories are documents completed in consultation with Indian tribe officials and representing a decision by the museum official or Federal agency official about the cultural affiliation of human remains and associated funerary objects.

One commenter recommended including a definition of ``repatriation'' in the regulations. The rules of statutory construction require interpreting undefined terms according to their common meaning. Repatriation means the return of someone or something to its nation of origin.

One commenter recommended inclusion of a definition for ``appropriate care and treatment'' of human remains, funerary objects, sacred objects, or objects of cultural patrimony. The appropriateness of particular types of care and treatment will necessarily depend on the nature of the particular human remains, funerary objects, sacred objects, or objects of cultural patrimony under consideration and the concerns of any lineal descendants or affiliated Indian tribes or Native Hawaiian organizations.

Three commenters recommended changes to the definition of intentional excavation in 10.2 (e)(3) (renumbered Sec. 10.2 (g)(3)). One commenter recommended deleting the word ``planned'' from the definition to embrace all kinds of archeological removal, whether planned or occasioned by an encounter with human remains, funerary objects, sacred objects, or objects of cultural patrimony during

construction or land use. One commenter recommended expanding the definition to include intentional excavations on private lands. One commenter recommended replacing the definition with ``means intentional removal for the purposes of discovery, study, or removal of such items'' from section 3 (c) of the statute. These

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changes are unnecessary or inappropriate and were not made.

Two commenters recommended changes to the definition of inadvertent discovery in 10.2 (e)(4) (renumbered Sec. 10.2 (g)(4)). One commenter recommended replacing ``inadvertent'' with ``accidental, unintended, unpredictable, or unexpected in spite of all precaution,'' to avoid any presumption that such discoveries were made without forethought or through negligence. Another commenter recommended expanding the definition to include inadvertent discoveries on private lands. These changes are unnecessary or not appropriate and were not made.

Section 10.3

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. One commenter recommended stating explicitly that the section applies only to Native American human remains and not to non-Native American human remains such as mountain men or early settler burials. The language has not been changed as all provisions of these regulations apply only to Native American human remains, funerary objects, sacred objects or objects of cultural patrimony. One commenter requested reviewing use of the term

``intentional excavation'' throughout the section to ensure consistency with the statutory language. Section 3 (c) of the Act applies to the ``intentional removal from or excavation of Native American [human remains and] cultural items from Federal or tribal lands for the purposes of discovery, study, or removal.'' This definition includes scientific archeological excavations for independent research, public interpretation, or as part of planned removal of human remains during land-disturbing activities such as construction projects.

One commenter recommended the regulations focus on ``more protection of archeological sites ... for research by the scientific community.'' The Act certainly has as one goal improved protection of in situ archeological sites. However, this protection is afforded not simply to allow for more scientific study. Rather, the intent is to preserve and protect Native American graves, allowing for their scientific examination only as necessary and appropriate.

Two commenters requested clarification of the clause ``if otherwise required'' regarding the necessity for obtaining a permit issued pursuant to the Archeological Resources Protection Act (ARPA) in Sec. 10.3 (b)(1). The clause has been deleted. The Review Committee recommended additional clarification in Sec. 10.3 (b)(1) regarding issuance of ARPA permits on private holdings within the exterior boundaries of Indian reservations and on lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act. Language regarding issuance of permits on these lands has been included.

One commenter recommended requiring the consent of culturally affiliated Indian tribes and Native Hawaiian organizations for intentional excavations on both Federal and tribal lands. Another

commenter recommended requiring the consent of traditional religious leaders for intentional excavations on both Federal and tribal lands. These changes have not been made. Section 3 (c)(2) of the Act authorizes excavation or removal of human remains, funerary objects, sacred objects, or objects of cultural patrimony only after consultation with or, in the case of tribal lands, consent of the appropriate Indian tribe or Native Hawaiian organization. One commenter recommended that Sec. 10.3 (b)(4) not be ``the only requisite for intentional excavation.'' The requirements of Sec. 10.3 (b)(1) through (4) must all be met before conducting an intentional excavation.

One commenter recommended changing the title of Sec. 10.3 (c) from ``Procedures'' to ``Disturbances during authorized land use.'' The procedures outlined in this subsection apply to intentional removal or excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal or tribal land and not disturbance during authorized land use, which is dealt with under Sec. 10.4 regarding inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal or tribal lands. One commenter suggested that Sec. 10.3 (c)(1) confuses the issue of who -- ``any person'' or the Federal official -- is responsible for complying with the provisions of the regulations regarding intentional excavations, and recommended deleting the section. Two commenters requested clarification of an ``activity'' as referred to in the first sentence of Sec. 10.3 (c)(1). The subsection has been deleted and subsequent subsections renumbered.

One commenter requested clearly defining ``responsible Federal agency.'' The Federal agency with the responsibility for issuing

approvals or permits on actions within their designated Federal lands is the responsible Federal agency under the Act. In situations when two or more Federal agencies share regulatory or management jurisdiction of Federal land, the Federal agency with primary management authority will have control for purposes of carrying out these regulations unless otherwise agreed.

One commenter recommended requiring any person who proposes to undertake an activity on Federal or tribal lands that may result in the intentional excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony to notify all affected parties, including culturally affiliated Indian tribes and Native Hawaiian organizations. The Federal agency official -- and not a person proposing to undertake an activity on Federal lands -- is responsible for the management of lands under his or her control and is the appropriate person to notify Indian tribes and Native Hawaiian organizations of intentional excavations. The Federal agency official, once notified by a person of such an activity, is required to take reasonable steps to determine whether the planned activity may result in the intentional excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony. Prior to issuing any approvals or permits, the Federal agency official must notify in writing the Indian tribe or Native Hawaiian organizations that are likely to be affiliated with any excavated items. A person proposing to undertake an activity on tribal lands should contact the appropriate tribal official directly.

One commenter recommended requiring the Federal official identified in the first sentence of Sec. 10.3 (c)(2) (renumbered Sec. 10.3 (c)(1)) to meet the Secretary's standards for persons conducting ethnohistoric

research. There currently are no Secretary's standards for ethnohistoric research. Each agency is responsible for ensuring that their employees are qualified to conduct the work required of them. One commenter recommended clarifying the ``reasonable steps'' required of Federal officials to explicitly include completion of Stage I surveys for of all planned ground-disturbing activities as required under section 106 of the NHPA. The type of steps taken by a Federal agency official are expected of vary from case-to-case and have not been specified in these regulations.

One commenter recommended requiring Federal officials to take reasonable steps regarding planned activities ``or Federal actions.'' The recommended language has not been

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added as it might be interpreted to refer to Federal actions on non-Federal lands. Provisions of the Act regarding intentional excavations and inadvertent discoveries apply only to activities occurring on Federal and tribal lands.

One commenter questioned whether the responsible Federal agency official need be notified regarding planned activities for which there is no indication that disturbance of human remains, funerary objects, sacred objects, or objects of cultural patrimony is likely. These regulations do not require notification of the responsible Federal agency official regarding planned activities for which intentional excavation or removal of human remains, funerary objects, sacred objects, or objects of cultural patrimony is not anticipated. Human remains, funerary objects, sacred objects, or objects of cultural patrimony discovered inadvertently during such an activity would

require cessation of activity for thirty (30) days while the Federal official consults with affiliated Indian tribes and Native Hawaiian organizations.

One commenter questioned whether the phrase ``otherwise required by law'' in the second sentence of Sec. 10.3 (c)(2) (renumbered Sec. 10.3 (c)(1)) referred to ``approvals or permits'' or to ``activities.'' The sentence has been rewritten as ``required approvals or permits for activities.'' One commenter recommended including language requiring Federal agency officials to notify both Indian tribe officials and traditional religious leaders and obtaining that written approval from the traditional leaders prior to issuance of required approvals or permits. The Act requires Federal agency officials to consult with Indian tribes and Native Hawaiian organizations regarding the disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal or tribal lands. Consultation with traditional religious leaders is required regarding the identification of cultural items in museum or Federal agency collections. The consent of traditional religious leaders prior to the issuance of approvals or permits is not required by the Act. One commenter recommended inclusion of provisions requiring a minimum of at least ten days advance warning of any proposed meeting in the Federal agency official's notification to culturally affiliated Indian tribes or Native Hawaiian organizations. The recommended requirement could needlessly delay consultation between Federal and tribal officials. Federal officials should include adequate advance notice of upcoming meetings, but the necessary time will vary according to the situation and existing

relationship between the Federal agency and the Indian tribes or Native Hawaiian organizations. The text has not been changed.

One commenter questioned the necessity of distinguishing in the third sentence of Sec. 10.3 (c)(2) (renumbered Sec. 10.3 (c)(1)) between culturally affiliated Indian tribes and those Indian tribes that aboriginally occupied an area. The priority order for evaluating claims of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal or tribal lands, provided in Section 3 of Act, includes Indian tribes that are recognized as aboriginally occupying the area in which the objects were identified. The regulatory language ensures that those Indian tribes that aboriginally occupied an area are notified of planned activities that may result in the intentional excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony. Another commenter recommended including state-recognized intertribal councils in the notification process.

Section 12 of the Act makes clear the special relationship between the Federal government and Indian tribes. Federal officials are thus directed to consult directly with Indian tribes. Indian tribes may however, delegate their consultation responsibilities to other organizations, including state inter-tribal councils. One commenter recommended following written notification by telephone contact if there is no response in 15 days. Language to that effect has been inserted as the second to last line of the section. One commenter recommended that, after consultation, Federal officials are required to complete a written plan of action as described in Sec. 10.5 (e) and to execute the actions called for in the plan of action. The recommended text has been inserted as Sec. 10.3 (c)(2) and all subsequent

subsections renumbered.

Two commenters objected to Sec. 10.3 (c)(3) on the grounds that by exhorting Federal agencies to coordinate activities required by these regulations with the compliance procedures for section 106 of the NHPA, the regulations give the impression that human remains, funerary objects, sacred objects, or objects of cultural patrimony would be eligible for the National Register of Historic Places. Four other commenters recommended the subsection either be left as is, or edited to require such coordination to ensure consistency between and among Federal agencies. One commenter recommended excluding such ``secondary agencies as the State Historic Preservation Officers'' from the consultation process. The subsection is intended to remind Federal agencies of similarities between the two consultation processes while providing the necessary latitude for designing effective and situation-specific procedures. The text has not been changed.

Two commenters objected to identification in Sec. 10.3 (c)(4) of the Indian tribe as being responsible for compliance with provisions of the Act regarding intentional excavations on their lands. Section 3 (a)(2)(A) of the Act makes it clear that Indian tribes have preference regarding custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on their tribal lands second only to lineal descendants. The regulatory text is consistent with Federal recognition of an Indian tribe's sovereignty regarding administration of their lands and has not been changed. Another commenter requested clarification of whether the intentional excavation provisions apply to lands exchanged by Indian tribes. In general, the provisions regarding intentional excavations

and inadvertent discoveries apply to Federal lands and those lands currently held in trust by the United States for an Indian tribe. Lands outside the exterior boundary of an Indian reservation that are held in trust by the United States for an Indian tribe do not meet the statutory definition of tribal lands. These lands are under Federal control, and the provisions for intentional excavation and inadvertent discovery on Federal lands apply. The provisions of these regulations do not apply to lands owned by an Indian tribe that have not been accepted into trust by the United States. Another commenter requested clarification regarding which Federal agency would have primary responsibility for compliance with the intentional excavation and inadvertent discovery provisions of these regulations for proposed or existing coal mining operations on tribal lands. Any person who proposes to undertake an activity on tribal lands that may result in the intentional excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony must immediately notify in writing the responsible Indian tribe official. The tribal official then decides what, if any, steps to take. One commenter recommended including a deadline for Indian tribe response to notification of

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an activity planned for tribal lands. A deadline for Indian tribal response regarding proposed intentional excavations on tribal land is not considered appropriate as section 3 (c)(2) of the Act makes it clear that any intentional excavation or removal of human remains, funerary objects, sacred objects, or objects of cultural patrimony on tribal land requires the consent of the appropriate Indian tribe or Native Hawaiian organization. Another commenter recommended clarifying

that the Indian tribe should take appropriate steps to make certain that the ``treatment and disposition'' of human remains, funerary objects, sacred objects, or objects of cultural patrimony be carried out. The recommended language has been included.

Section 10.4

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. One commenter requested replacement of the word ``inadvertent'' in the section title with ``unintended.'' Section 3 (d) of the Act addresses the inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony as part of approved work projects as well as other, unintentional discoveries on Federal or tribal lands. The statutory term covers both meanings adequately and has been retained in the title and throughout the text.

One commenter felt the entire section needed to be more specific.

One commenter recommended editing the general statement in Sec. 10.4 (a) to state explicitly that the provisions apply only to ``Native American'' human remains, funerary objects, sacred objects, or objects of cultural patrimony. The definition of human remains, funerary objects, sacred objects, or objects of cultural patrimony in Sec. 10.2 (d) make it clear that these regulations only apply to Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony.

One commenter requested clarification in the regulations regarding treatment of disarticulated and unassociated human remains. Section

10.4 of the Act covers the treatment and disposition of such human remains under ``Inadvertent Discoveries.''

Two commenters recommended revising the first sentence of Sec. 10.4 (b) to require the person making an inadvertent discovery, and not just anyone that knows of an inadvertent discovery, to notify the responsible Federal official. The phrase has been revised to more closely reflect the statutory language. Another commenter recommended that the notification of the responsible Federal official be immediate, via telephone or fax, to ensure that the activity is ceased as soon as possible. The text has been modified to require immediate telephone notification of the inadvertent discovery with written confirmation following. One commenter recommended inclusion of language in this subsection restating that determination of lineal descent or cultural affiliation usually require physical anthropological study, laboratory analysis, radiocarbon dating, and other study to make a legally defendable statement. The criteria for determining lineal descent and cultural affiliation, which may include these kinds of examinations, are contained in Sec. 10.14, and apply throughout these regulations; they have not been repeated in this section. Another commenter recommended requiring professional investigation sufficient to complete an accurate identification of the nature of the inadvertent discovery prior to notifying the responsible Federal agency official or Indian tribe official to ensure that the procedures are not carried out unnecessarily. The drafters consider requiring the complete professional identification of inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony prior to notification of the responsible Federal or Indian tribe

officials inconsistent with the statutory language and the legislative history. One commenter requested clarification of the responsibilities of the person making an inadvertent discovery for notifying other agencies, such as the local police, coroner, and the State Historic Preservation Officer. Requirements for notification of local or state officials vary by jurisdiction and have not been addressed in this rule. Subsection 10.4 (f) of these regulations suggests Federal land managers coordinate their responsibilities under this section with their emergency discovery responsibilities under section 106 of the NHPA which includes notification of the State Historic Preservation Officer. One commenter recommended modifying the text to require Federal agency employees working on tribal lands to immediately notify their supervisor, who in turn will notify the Indian tribe official.

Section 3 (d)(1) of the Act requires notification of Indian tribe officials regarding inadvertent discoveries on tribal lands. Federal agency officials conducting activities on tribal lands should ensure that their employees are familiar with the notification procedures of these regulations. One commenter recommended expanding this subsection to include provisions to ensure that a Federal agency documents and acts on reported inadvertent discoveries. Federal agency officials are required to comply with the provisions of these regulations.

One commenter recommended applying the cessation of activity following inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal or tribal lands in Sec. 10.4 (c) only to burials in areas that will not be disturbed and in emergency discovery situations. This suggestion runs counter to the statutory requirements and the regulatory language has not been changed. Two commenters requested clarification of the phrases

``in the area of the discovery'' and a ``reasonable effort'' regarding protection of human remains, funerary objects, sacred objects, or objects of cultural patrimony following inadvertent discovery. The terms have not been precisely defined in recognition of the variability of site locations and types. In general, the terms are interpreted in a fashion that adequately protects the human remains, funerary objects, sacred objects, or objects of cultural patrimony from additional damage.

One commenter recommended editing and renumbering Sec. 10.4 (a), (e), and (f) to more accurately reflect the distinctions between procedures on Federal lands and those for tribal lands. The text of Sec. 10.4 (d) has been renumbered Sec. 10.4 (d)(1) and Sec. 10.4 (e) has been renumbered as Sec. 10.4 (d)(2).

Two commenters recommended including additional text in Sec. 10.4 (d)(1) (renumbered section 10.4 (d)(1)(i)) directing Federal agencies to establish a process for certifying the receipt of inadvertent discovery notifications and training personnel responsible for such certifications by a specific date. Certification procedures for the receipt of notifications -- such as those resulting from inadvertent discoveries -- are already in place with all land management Federal agencies and need only be modified to the specifics of these regulations. One commenter recommended including additional examples of steps to secure and protect inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony -- such as fencing, 24-hour surveillance in populated areas -- in Sec. 10.4 (d)(2) (renumbered section 10.4 (d)(1)(i)). Specific steps to secure and protect inadvertently discovered human

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remains, funerary objects, sacred objects, or objects of cultural patrimony will vary from site-to-site and have not been specified in this rule.

Seven commenters recommended extending the one (1) day deadline for notification of affiliated Indian tribes by Federal agency officials in Sec. 10.4 (d)(3), with suggestions ranging anywhere from three to ten days. The one (1) day deadline was designed to ensure that Federal agency officials and Indian tribe officials maximize the amount of time available for consultation regarding the treatment and disposition of inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony. The Act requires that the thirty (30)-day cessation of the activity begins with the Federal agency official certifying receipt of notification from the inadvertent discoverer of the human remains, funerary objects, sacred objects, or objects of cultural patrimony. As a result, any additional time provided the Federal agency official to contact the appropriate Indian tribe official is time taken away from the consultation process. In recognition of the inherent notification difficulties, the drafters have modified the initial notification requirements to require the person making the inadvertent discovery to provide immediate telephone notification with written confirmation to the Federal official. Certification of the notification by the Federal official and the required notification of the Indian tribe official occurs upon receipt of the written confirmation, thus providing the Federal agency official with some additional time between the telephone call and receipt of the written notice to identify the appropriate Indian tribe officials. The

one (1) day notification deadline has been extended to three (3) working days. One commenter requested clarification for the phrase ``Indian tribe or tribes known or likely to be affiliated.'' It should be noted that this initial contact is designed to notify those Indian tribes or Native Hawaiian organizations that are ``likely'' to be affiliated with the inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony. Federal agencies are encouraged to compile a listing of the appropriate Indian tribes or Native Hawaiian organizations and their officials as soon as possible to facilitate rapid notification when an inadvertent discovery is made. Determination of the specific affiliation of the inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony can be made during the thirty (30) day cessation of activity. Two commenters requested clarification of the phrase ``if known'' in Sec. 10.4 (d)(3) (renumbered Sec. 10.4 (d)(1)(iii)) regarding the required notification of Indian tribes which aboriginally occupied the area in which human remains, funerary objects, sacred objects, or objects of cultural patrimony have been discovered inadvertently. Information regarding the aboriginal lands of Indian tribes is readily available to Federal agency officials from the results of Indian Land Claims Commission and Court of Claims decisions. ``If known'' has been deleted.

One commenter recommended suspending the initiation of consultation required in Sec. 10.4 (d)(4) (renumbered Sec. 10.4(d)(1)(ii)) for up to thirty (30) days in cases of illegal excavation or violation of Federal law, specifically in cases where confidential criminal investigation are being conducted. As the likely custodians of illegally excavated human remains, funerary objects, sacred objects, or objects of cultural

patrimony pursuant to section 3 of the Act, the appropriate Indian tribe or Native Hawaiian organization should be notified of the inadvertently discovery and consulted as part of any ongoing investigation. The responsibility to pursue ARPA investigations does not devolve from the land manager's law enforcement agency merely because consultation is required under this Act. If an ARPA investigation is under way, the law enforcement agents involved should immediately notify their superiors and other Federal agency officials involved in NAGPRA consultation if any aspect of NAGPRA consultation is likely to interfere with the investigation.

Six commenters recommended changing the length of the required cessation of activities in Sec. 10.4 (e) (renumbered Sec. 10.4 (d)(2)). Four commenters recommended reducing the period -- to fifteen (15) days, seven (7) days, or deleted entirely -- while two commenters recommended extending the period until the affiliated Indian tribe or Native Hawaiian organization consents to continuation of the project. The thirty (30) day period for cessation of activities in the area of an inadvertent discovery is stipulated in section 5 (d) of the Act and has not been changed. Three commenters requested clarification of the stipulation that activity may resume after thirty (30) days, ``if the resumption of the activity is otherwise lawful.'' The phrase is used to acknowledge that provisions of other statutes, such as section 106 of the NHPA, may also apply to a particular inadvertent discovery and the resumption of activities in the area of the inadvertent discovery must comply with other legal requirements as well as those of these regulations.

Four commenters requested clarification of the procedures following

the thirty (30)-day cessation of activity. After consulting with the affiliated Indian tribe or Native Hawaiian organization during the thirty day (30) cessation of activity, the Federal agency official must make a decision regarding the treatment, excavation, and disposition of any inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony. The options may include preservation in situ or excavation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony. This decision must be informed by the consultation process, but obviously will take into account other considerations as well. One commenter requested clarification regarding the responsibility for costs incurred during the required work cessation. Responsibility for costs incurred during the required work cessation will depend upon the nature of the contract drawn between the Federal agency and the appropriate contractor. One commenter recommended additional language indicating that resumption of an activity in the area of inadvertent discovery can occur only after the human remains, funerary objects, sacred objects, or objects of cultural patrimony have been removed or treated. Determining the disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony discovered inadvertently on Federal and tribe land can only occur after consultation with affiliated Indian tribes and Native Hawaiian organizations. The drafters consider it premature to stipulate the outcomes.

One commenter recommended accompanying the written, binding agreement between the Federal agency and the affiliated Indian tribes or Native Hawaiian organizations in the second sentence of Sec. 10.4 (e) (renumbered 10.4 (d)(2)) by a letter from the appropriate Indian tribe official expressing agreement with a proposed course of action.

The nature of agreements between Federal agencies and Indian tribes and Native Hawaiian organizations will depend upon the specific situation and have not been defined precisely in these regulations. Four commenters recommended clarifying the phrase ``necessary parties.'' The phrase has been replaced with ``Federal agency and the affiliated Indian tribes or Native Hawaiian

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organizations.'' One commenter inquired whether a memorandum of agreement signed and executed under the NHPA prior to any inadvertent discovery would take priority standing. Such an agreement might apply if the agreement specifies the plan for the removal, treatment, and disposition of the human remains, funerary objects, sacred objects, or objects of cultural patrimony; the agreement is considered binding by both the Federal agency and the affiliated Indian tribes or Native Hawaiian organizations; and, the agreement is consistent with the requirements of the Act and these regulations.

One commenter identified Sec. 10.4 (f) (renumbered section 10.4 (e)) as an ``absurd attempt to fob off the Federal agency's responsibilities onto the tribes.'' Requiring a Federal agency to act as intermediary between the person inadvertently discovering human remains, funerary objects, sacred objects, or objects of cultural patrimony and the Indian tribe on whose land the human remains, funerary objects, sacred objects, or objects of cultural patrimony have been discovered inadvertently is counter to the goal of the statute, as expressed in the legislative history, of facilitating direct dialogue.

One commenter recommended inclusion in this subsection of a listing of those actions required of Indian tribe officials under the Act. The

subsection has been amended to include the recommended text. One commenter recommended inclusion of a specified deadline for an Indian tribe to respond following notification of the inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony. The drafters consider it inappropriate to impose a deadline for Indian tribe response following notification. One commenter recommended inclusion of a section regarding the resumption of activity on tribal lands. The recommended section has been included as Sec. 10.4 (e)(2).

One commenter identified Sec. 10.4 (g) (renumbered Sec. 10.4 (f)) as serving only to confuse requirements and procedures stemming from distinct laws with distinct purposes and recommended deleting the subsection. Other commenters identified Sec. 10.4 (g) as being most welcome, but recommended omitting the specific regulatory citations in light of current efforts to amend regulations for the NHPA. The citations have been retained to facilitate cross-referencing. One commenter recommended clarifying the subsection to indicate that the inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony does not necessarily require an agreement under section 106 of the NHPA. Not all human remains, funerary objects, sacred objects, or objects of cultural patrimony are deemed eligible for the National Register of Historic Places and thus do not fall within the purview of the NHPA. Their inadvertent discovery would thus not require such an agreement. Two commenters recommended including specific language to outline the relationship between provisions of the Act and those of ARPA, NHPA, and the American Indian Religious Freedom Act (AIRFA). The details of how Federal agencies

coordinate their responsibilities under the various statutes will depend on their procedures and specific situations; the text has not been modified. However, section 110 (a)(2)(E)(iii) of the NHPA requires Federal agencies to provide for the disposition of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony in a manner consistent with the Act. Further, section 112 (b)(3) and (b)(4) require the Secretary of the Interior to publish guidelines to encourage private owners as well as Federal, state, and tribal governments to protect Native American human remains, funerary objects, sacred objects, and object of cultural patrimony. One commenter recommended including language at Sec. 10.4 (g) requiring all authorizations to carry out land use activities on Federal lands or tribal lands, including all leases and permits, to 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. The language is included in the text.

Section 10.5

This section establishes requirements for 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. One commenter objected to the implication in the first sentence of the section that consultation is necessarily ``part of'' the intentional excavation or inadvertent discovery process. The Act requires consultation as part of intentional excavation and inadvertent discovery situations. The language has been retained. One commenter recommended replacing the phrase ``Federal lands'' with ``land in the

United States, its territories, or possessions.'' Provisions of section 3 of the Act are clearly limited to Federal and tribal lands. The language has been retained. One commenter recommended that ``a minimum set of standards be identified for the scientific study of human remains and associated grave goods.'' Section 5 (a)(2) of the Act precludes using the Act as an authorization for the initiation of new scientific studies of human remains and associated funerary objects. The recommended language has not been included.

Two commenters recommended revising the first sentence of Sec. 10.5 (a) to coordinate contact with traditional religious leaders through the appropriate Indian tribe. The most appropriate method for contacting traditional religious leaders will vary between Indian tribes. The language has been retained to provide this necessary flexibility. Another commenter recommended clarifying that consultation must be conducted without regard to state boundaries. The widespread relocation of Indian tribes during the eighteenth and nineteenth centuries means that consultation may often require contact with Indian tribes that are no long resident in the area of the intentional excavation or inadvertent discovery. Lineal descendants and affiliated Indian tribes and Native Hawaiian organizations must be contacted and consulted with regardless of where they are living presently.

One commenter recommended inserting ``the'' before ``human remains'' in Sec. 10.5 (a)(1) to make it clear that the consulting parties may vary from case-to-case. The text has been changed. One commenter recommended changing the ``and'' between Sec. 10.5 (a)(1) and (a)(2) to ``or.'' The original text has been retained to emphasize the necessity of consulting with Indian tribes that are or are likely to be

culturally affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony as well as the Indian tribe on whose aboriginal lands the human remains, funerary objects, sacred objects, or objects of cultural patrimony have been located or are expected to be found and the Indian tribe or Native Hawaiian organization have a demonstrated cultural relationship with the human remains, funerary objects, sacred objects, or objects of cultural patrimony. One commenter recommended deleting Sec. 10.5 (a)(2) in that it assumes a relationship between prehistoric archeological sites and historic use of an area. Section 3 of the Act makes it clear that Indian tribes on whose aboriginal lands human remains, funerary objects, sacred objects, or objects of cultural

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patrimony have been or are likely to be located need not be culturally affiliated with those human remains, funerary objects, sacred objects, or objects of cultural patrimony to be considered their legitimate custodian. One commenter recommended substituting ``excavation'' for ``activity'' in Sec. 10.5 (a)(2). The term ``activity'' in this sentence refers to ``an activity on Federal or tribal lands that may result in the excavation of human remains or cultural items'' as defined in Sec. 10.3 (c). The text has been modified to incorporate this clarification.

One commenter recommended deleting ``likely'' cultural affiliation in the first sentence of Sec. 10.5 (b) since the term is not defined in either the Act or these regulations. The term has been deleted. One commenter recommended replacing the term ``objects'' in the same sentence with ``human remains, funerary objects, sacred objects, or

objects of cultural patrimony." The term has been replaced. One commenter recommended deleting the phrase ``other Indian tribes that may have a relationship..." in the second sentence. The existing phrase is drawn from section 3 (a)(2)(C)(2) of the Act and has been retained. One commenter recommended provisions that require the notice include information regarding the proposed time and place for meetings and the Federal agency's proposed treatment and disposition of the intentionally excavated or inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony. The suggested language has been included in the text. One commenter recommended revising the last sentence of Sec. 10.5 (b) to require traditional religious leaders be consulted and their recommendations followed. The requested revision runs counter to the requirements of the Act and has not been included in the text.

Two commenters requested further clarification of the type of activities that constitute consultation. Additional text has been added throughout Sec. 10.5 to clarify the consultation process.

One commenter recommended inclusion of additional language in Sec. 10.5 (c) requiring Federal agencies to provide in writing information regarding the nature and general location of any inadvertent discovery or proposed activity. The recommended text has been added. One commenter recommended rewriting Sec. 10.5 (c)(2) to indicate that additional documentation will be supplied if it has been used to identify the cultural affiliation of human remains, funerary objects, sacred objects, or objects of cultural patrimony. The proposed language has been included in the text.

One commenter recommended amending Sec. 10.5 (d) to indicate that failure to respond to the Federal agency's request for information

could be taken to signify an Indian tribe's voluntary withdrawal from standing under these sections. Indian tribes or Native Hawaiian organizations that have been duly notified of an intentional excavation or inadvertent discovery are not required to respond to the Federal agency's request for information. One commenter recommended including language to insure that information provided to Federal agency officials will, at the request of the Indian tribe or Native Hawaiian organization, be held in confidence. The Act provides no specific exemptions from provisions for the Freedom of Information Act for culturally sensitive information. However, Federal agency officials may, at the request of an Indian tribe or Native Hawaiian organization official, 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. One commenter recommended changing ``collections'' in Sec. 10.5 (d)(3) to ``human remains, funerary objects, sacred objects, or objects of cultural patrimony.'' The recommended change has been made. Two commenters identified Sec. 10.5 (d)(5) as being too broad and unlikely to give useful guidance and recommended deleting the subsection. Although not determinant, information about the kinds of cultural items that the Indian tribe or Native Hawaiian organization considers as funerary objects, sacred objects, or objects of cultural patrimony is important and useful for Federal agency officials to make decisions required of them under these regulations. The subsection has been retained.

One commenter recommended tying the requirements in Sec. 10.5 (e) explicitly to the coordinated preparation of individual environmental

and cultural resource management plans for projects, facilities, and land units. Integration of the requirements of these regulations with those of other statutes and policies has been left to the discretion of each affected Federal agency. One commenter considered Sec. 10.5 (e) fine as it stands. One commenter recommended requiring the completion of a written plan of action as a result of consultation. The text has been rewritten to make it clear that completion of a written plan of action, approved and signed by the Federal agency official, is required. One commenter recommended requiring the approval and signature of the written plan of action by the affiliated Indian tribe officials. While the approval and signature of Indian tribe officials and other parties is desirable, the concurrence of these officials to the written plan of action is not required. One commenter recommended the written plan of action include in situ preservation to offset what the commenter perceived as a bias toward ``excavation, analysis and recordation of imbedded materials,'' and too narrow a definition of custodial interest in imbedded materials. One commenter requested clarification of the term ``treatment'' as used in Sec. 10.5 (e)(3) and (e)(7). The term is used throughout these regulations according to its common meaning, that is, a specific manner of dealing with human remains, funerary objects, sacred objects, or objects of cultural patrimony. The specifics of treatment must be considered as part of the consultation process. Two commenters recommended including in situ preservation specifically as a treatment option in Sec. 10.5 (e)(3). Preservation of human remains, funerary objects, sacred objects, or objects of cultural patrimony in place should be considered whenever possible. Because case-by-case examples have not been provided, the option has not been added to the regulatory text. Three commenters

recommended including language under Sec. 10.5 (e)(4) to indicate that archeological recording must comply with certain standards. Any archeological activity conducted on Federal or tribal lands, including the intentional excavation or removal of human remains, funerary objects, sacred objects, or objects of cultural patrimony, must meet the standards provided by ARPA. One commenter recommended requiring radiocarbon dating as part of the archeological reporting. Determining the necessity of radiocarbon or other types of analysis must be on a case-by-case basis. One commenter recommended deleting Sec. 10.5 (e)(5) since analysis should only be permitted in the rare circumstance where the cultural affiliation of human remains, funerary objects, sacred objects, or objects of cultural patrimony is not clear. The subsection has been retained to ensure that analysis is discussed thoroughly during the consultation process. One commenter recommended specifying the steps to be followed to contact traditional religious leaders should under Sec. 10.5 (e)(6). The Act does not require consultation between Federal agency officials and traditional religious leaders regarding the

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intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony. Identification of traditional religious leaders and the recommended steps in contacting them is left to the discretion of Indian tribe officials. Three commenters recommended specification of a deadline for completion of the written plan of action. Written plans of action should generally be completed during the thirty (30) day consultation period following an inadvertent discovery or prior to issuance of an

ARPA permit for intentional excavations.

Three commenters recommended changing the title of Sec. 10.5 (f) from ``Programmatic agreements'' to ``Comprehensive agreements'' to avoid confusion between agreements developed regarding the treatment and disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands and programmatic agreements developed pursuant to provisions of the NHPA. The term ``programmatic agreements'' has been changed in the title and throughout the subsection to ``comprehensive agreements.'' Two commenters identified such agreements as ``an awkward means of accomplishing the intent of the law,'' and recommended deleting the subsection. Comprehensive agreements are intended to provide Federal agency officials and Indian tribe officials with an efficient means of ensuring intentionally excavated and inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony receive the appropriate treatment and disposition. The subsection has been retained. One commenter objected to the reference to ``specific'' human remains, funerary objects, sacred objects, or objects of cultural patrimony referenced in the first section of Sec. 10.5 (f) on the grounds that such agreements should define proactively the procedures and criteria for the treatment and disposition of any human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently. The term has been deleted from the text. One commenter recommended that comprehensive agreements address not only Federal agency land management activities, but Federal agency regulatory responsibilities as well. These

regulations address Federal agency responsibilities under the Act. While Federal agency responsibilities under other statutory, regulatory, and policy mandates need to be considered in preparation of such documents, the inclusion of such requirements in these rules is not appropriate. One commenter recommended including language requiring the consent of traditional religious leaders to any comprehensive agreements in the text. The Act does not require consultation between Federal agency officials and traditional religious leaders regarding the treatment or disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands. One commenter recommended modifying the last sentence of the subsection to indicate that the ``signed'' comprehensive agreement should be considered proof of consultation. The text has been edited as recommended.

One commenter recommended requiring Indian tribe officials to consult with and make recommendations following the advice of traditional religious leaders. The Act does not require consultation between Indian tribe officials and traditional religious leaders regarding the intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony. Consultation with traditional religious leaders is left to the discretion of Indian tribe officials.

Section 10.6

This section carries out section 3 (a) of the Act, subject to the limitations in Sec. 10.15, regarding custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal or tribal lands

after November 16, 1990. One commentor objected to the terms ``legal interest in'' and ``ownership'' as applied to human remains, funerary objects, and objects of cultural patrimony; and recommended replacing the terms with ``custodial responsibility.'' The terms have been changed to ``custody'' throughout the text. This change, however, is only editorial and does not alter the requirements of the Act. One commenter recommended deleting reference to the limitations in Sec. 10.15 from this section. Limitations on the custodial criteria presented in section 3 (a) of the Act are drawn from section 7 (b), (c), and (e) of the Act. Both Sec. 10.15 and the cross-reference in this section have been retained. One commenter recommended setting limits in this section on just how temporally and culturally far afield claims of custody can be extended reasonably. Applicability of the custody criteria in this section is dependant on the facts of each case and will vary. The type of limits recommended by the commenter are considered inappropriate to such a case-by-case evaluation process. One commenter recommended including language in this section to identify the party responsible for substantiating claims. Lineal descendants or Indian tribes or Native Hawaiian organizations must provide information to substantiate their claims as outlined in Sec. 10.10 (a) and (b). One commenter recommended concluding the search for the custodian of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal or tribal lands with the first legitimate claimant identified under Sec. 10.6 (a) that declines to make and substantiate a claim. One commenter recommended limiting custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony

found on tribal lands to those human remains, funerary objects, sacred objects, or objects of cultural patrimony dating after establishment of the reservation. Two commenters recommended reversing the order of the custody criteria in Sec. 10.6 (a)(2)(i) and (a)(2)(ii) so that culturally affiliated Indian tribes or Native Hawaiian organizations are given preference over tribal land owners. Another commenter recommended giving culturally affiliated Indian tribes preference over tribal land owners in claims for sacred objects or objects of cultural patrimony found on tribal lands. One commenter recommended deleting the custody criteria in Sec. 10.6 (a)(2)(ii) and (a)(2)(iii) and instead have human remains, funerary objects, sacred objects, or objects of cultural patrimony found on Federal lands revert to the United States. One commenter recommended including language under Sec. 10.6 (a)(2)(iii)(A) that would restrict any Indian tribe making a claim based upon its aboriginal occupation of Federal land from any action that would irreparably damage the interests of another Indian tribe who might have a superior claim. The custody criteria in Sec. 10.6 (a) are taken virtually verbatim from section 3 (a) of the Act. All of the above recommendations run counter to those ownership criteria established by the Act and have not been included in the text.

Three commenters requested clarification in Sec. 10.6 (b) of how the custody criteria effect Federal responsibilities under NHPA and ARPA. To the extent that any conflicts among those laws may exist, it is a general rule

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of statutory construction that newer and more specific legislation takes precedence over older or more general laws. The custody of human

remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal or tribal lands is as specified in Sec. 10.6 (a).

One commenter stated that the obvious purpose of Sec. 10.6 (c) is to create disputes between Indian tribes or between Native Hawaiian organizations regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands, and recommended deleting the subsection. One commenter recommended inclusion of language in this subsection indicating that an identified individual, Indian tribe, or Native Hawaiian organization custodian has decision-making authority regarding the treatment and disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands. Individual, Indian tribe, or Native Hawaiian custodians of human remains, funerary objects, sacred objects, or objects of cultural patrimony gain complete decision-making authority regarding the treatment and disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony upon the transfer of those human remains, funerary objects, sacred objects, or objects of cultural patrimony from the Federal agency. One commenter recommended deleting the word ``traditional'' from the second sentence of Sec. 10.6 (c). Another commenter recommended adding the phrase ``of the specific Indian tribe in each instance'' at the end of the same sentence for clarification. The recommended language has been added to the text. Two commenters requested clarification of the purpose and nature of the public notices required in the third sentence of Sec. 10.6 (c). Three commenters recommended the publication of notices regarding the

disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands in the tribal or local newspapers of those Indian tribes that have standing to make a claim under Sec. 10.6 (a), as well as 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. Another commenter recommended requiring publication of the notices within seven (7) days of determination of which Indian tribe or Native Hawaiian organization has custodial rights. Another commenter objected to the public notice requirement in that it might offend the sensibilities of those Indian tribes or Native Hawaiian organizations involved. This subsection outlines procedures to ensure due process in the transfer of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands to their proper individual, Indian tribe, or Native Hawaiian organization custodian. Notices need only provide information adequate to allow potentially interested lineal descendants, Indian tribes, or Native Hawaiian organizations to determine their interest in claiming custody under these regulations. The requirements regarding publication of public notices have been rewritten for clarity and include provisions for publication in local and tribal newspapers of general circulation in the areas in which culturally affiliated Indian tribes or Native Hawaiian organizations now reside.

Section 10.7

This section has been reserved for procedures for the disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands or tribal lands after November 16, 1990. One commenter recommended developing this section with input from Indian tribes and Native Hawaiian organizations. Section 3 (b) of the Act requires that regulations regarding the disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal or tribe lands be published by the Secretary in consultation with the Review Committee, and representatives of Indian tribes, Native Hawaiian organizations, museums and the scientific community.

Section 10.8

This section carries out Section 6 of the Act related to conducting summaries of collections in the possession or control of museums that receive Federal funding or Federal agencies which may contain unassociated funerary objects, sacred objects, and objects of cultural patrimony. Four commenters objected to use of the phrase ``collections that may include...'' in Sec. 10.8 (a) and throughout the section as overstepping the statutory authorization and giving the mistaken impression that these regulations apply to entire collections and not to specific unassociated funerary objects, sacred objects, and objects of cultural patrimony. The statutory language is unclear whether summaries should include only those unassociated funerary objects, sacred objects, or objects of culturally affiliated with a particular Indian tribe or Native Hawaiian organization, or the entire collection which may include these cultural items. The legislative history and

statutory language does make it clear that the summary is intended as an initial step in bringing an Indian tribe and Native Hawaiian organization into consultation with a museum or Federal agency. Consultation between a museum or Federal agency and an Indian tribe or Native Hawaiian organization is not required until after completion of the summary. Identification of specific sacred objects or objects of cultural patrimony must be done in consultation with Indian tribe representatives and traditional religious leaders since few, if any, museums or Federal agencies have the necessary personnel to make such identifications. Further, identification of specific unassociated funerary objects, sacred objects, and objects of cultural patrimony would require a museum or Federal agency to complete an item-by-item listing first. The drafters opted for the more general approach to completing summaries of collections that may include unassociated funerary objects, sacred objects, or objects of cultural patrimony rather than the itemized list required for the inventories in hopes of enhancing the dialogue between museums, Federal agencies, Indian tribes, and Native Hawaiian organizations required under the Act. One commenter requested clarification of the deadlines and funding responsibility of this section. Section 10.8 (c) of these regulations clearly states that summaries under this section are to be sent to affiliated or likely affiliated tribes by November 16, 1993. Funding responsibilities lie with the museums and Federal agencies maintaining such collections. Grants to aid museums, Indian tribes, and Native Hawaiian organizations in carrying out the Act are authorized in section 10 of the Act.

Three commenters questioned use of the term ``undertakings'' in the

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sentence of Sec. 10.8 (a). One commenter (67-3) recommended defining the term as used in section 106 of NHPA. Two commenters recommended changing the term to ``activities'' or ``actions'' to make it clear that provisions of the Act do not necessarily apply to Federal ``undertakings'' conducted on private land. The term has been changed to ``actions'' to clarify that Federal agencies may not be responsible for ensuring that requirements of this section are met for all collections obtained as part of section 106 ``undertakings'' on non-Federal land.

One commenter recommended including language in Sec. 10.8 (a) to require Federal agencies to consult with non-Federal institutions prior to initiating consultation with Indian tribes or Native Hawaiian organizations that are culturally affiliated with human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal lands but currently in the possession of the non-Federal institution. Another commenter recommended including specific language to stress that non-Federal institutions do not have authorization to unilaterally dispose of human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal lands.

Requirements regarding the relationship between Federal agencies and non-Federal institutions are not specified in the Act. ARPA and NHPA assign responsibility for long term care and curation of collections from Federal land and actions to the Federal agency that manages the land or undertakes the action.

One commenter recommended including language in Sec. 10.8 (b)

specifying that summaries should include information readily available from museum records as to whether an object is an unassociated funerary object, sacred object, or object of cultural patrimony, as well as an assessment of the general reliability of the records. Information regarding individual unassociated funerary objects, sacred objects, and objects of cultural patrimony is more appropriately shared during the consultation process. The regulatory text has not been changed.

Three commenters recommended including some provision for extension of the November 16, 1993 deadline for completion of the summaries in Sec. 10.8 (c). While provisions for extensions to the November 16, 1995 deadline for completion of inventories of human remains and associated funerary objects are included in section 5 (c) of the Act, no such provisions for extension of the summary deadlines are included in either the statutory language or in the legislative history. Provisions for extensions to the summary deadlines have not been included in these regulations.

Six commenters recommended changes regarding the identification of consulting parties in Sec. 10.8 (d)(1). Two commenters recommended deleting Sec. 10.8 (d)(1)(i) requiring consultation with lineal descendants, since section 7 (a)(3) of the Act only requires consultation with lineal descendants to determine the place and manner of delivery of human remains, funerary objects, sacred objects, or objects of cultural patrimony being repatriated. The subsection requiring consultation with lineal descendants has been deleted. Two commenters recommended that identification of traditional religious leaders in Sec. 10.8 (d)(1)(ii) be made by ``members of'' Indian tribes and Native Hawaiian organizations to be consistent with the definition of that term. The phrase has been edited to conform with the definition

of in Sec. 10.2 (a)(13). One commenter recommended deleting Sec. 10.8 (d)(1)(ii)(A) and (a)(ii)(B) requiring consultation with Indian tribes from whose tribal or aboriginal lands unassociated funerary objects, sacred objects, and objects of cultural patrimony were recovered since section 7 (a)(2) of the Act specifies that only lineal descendants and culturally affiliated Indian tribes and Native Hawaiian organizations have standing to make a claim. Another commenter recommended including language in the rule indicating a presumption that the Indian tribe from whose tribal lands unassociated funerary objects, sacred objects, and objects of cultural patrimony were recovered is the custodian. The requirements in Sec. 10.8 (d)(1)(ii)(A) and (d)(1)(ii)(B) are included to ensure that all Indian tribes and Native Hawaiian organizations that are potentially culturally affiliated with particular unassociated funerary objects, sacred objects, and objects of cultural patrimony are included in the consultation process. Whether an Indian tribe from whose tribal or aboriginal lands a particular unassociated funerary object, sacred object, or objects of cultural patrimony originated is culturally affiliated with that object must be determined on an item-by-item basis. Two commenters recommended deleting the phrase ``or likely to be'' in Sec. 10.8 (d)(1)(iii). This subsection defines the class of consulting parties from which the culturally affiliated Indian tribe or Native Hawaiian organization will be identified. The phrase is used to indicate that the identification of consulting parties should be inclusive to ensure all Indian tribes and Native Hawaiian organizations that are, or are likely to be culturally affiliated with the unassociated funerary objects, sacred objects, or objects of cultural patrimony are included in the consultation process.

One commenter recommended revising the requirement to initiate consultation no later than the completion of the summary process in Sec. 10.8 (d)(2) to indicate consultation must follow completion of the summary. Another commenter recommended revising the subsection to require the initiation of consultation as early as possible. Another commenter recommended requiring museums and Federal agencies to provide Indian tribes and Native Hawaiian organizations with a ``notice of summary'' indicating that their collections were under review. The Review Committee recommended revising the subsection to indicate that consultation should result in telephone or face-to-face dialogue. The drafters intend the summary to serve as an initial invitation from the museum or Federal agency to the Indian tribe or Native Hawaiian organization to engage in consultation regarding the identification of unassociated funerary objects, sacred objects, and objects of cultural patrimony in their collection. All museums and Federal agencies are required to complete their summaries by November 16, 1993. Language has been added to the subsection indicating that 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.

The Review Committee recommended requiring museums and Federal agencies to provide copies of their summaries to the Departmental Consulting Archeologist in Sec. 10.8 (d)(3). The Departmental Consulting Archeologist provides staff support to the Review Committee, which in turn is required, under section 8 (c)(2) of the Act, to monitor the summary and inventory processes to ensure a fair, objective consideration and assessment of all available relevant information and evidence. The recommended language has been included. One commenter requested clarification regarding the requirement in the second

sentence of Sec. 10.8 (d)(3) that museums and Federal agencies, upon request, provide Indian tribes and Native Hawaiian organizations with access to records, catalogues, relevant studies, or other pertinent data. The regulatory language is drawn from section 6 (b)(2) of the Act.

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Museums or Federal agencies may not limit Indian tribal access to information needed to determine the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of object covered by the summary. Museums or Federal agencies are under no obligation to pay the travel or other expenses of visiting Indian tribe representatives or traditional religious leaders.

One commenter recommended inclusion of time limits for Indian tribe and Native Hawaiian organization responses to museum and Federal agency requests for information outlined in Sec. 10.8 (d)(4). No time limits for Indian tribe and Native Hawaiian organization response are included in the statutory language or the legislative history and none have been included in this subsection. Indian tribes and Native Hawaiian organizations are under no requirement to respond to museum or Federal agency requests for information. One commenter recommended revising the request for information under Sec. 10.8 (d)(4)(i) to include the name and address of one or more traditional religious leaders. Requirements to request the name and address of traditional religious leaders have already been included under Sec. 10.8 (d)(4)(iii). One commenter objected to the implication in Sec. 10.8 (d)(4)(ii) that, prior to consultation, a museum or Federal agency official could identify a sacred object in their collection to request the name and address of

the lineal descendants of its previous custodian. Documentation may be sufficient to indicate that a particular item in a museum of Federal agency's collection might fit the definition of sacred object. The museum or Federal agency should use this information to advance the consultation process by requesting the name and address of any lineal descendants of its previous custodian. One commenter recommended that the requests for information also include a description of the Indian tribe's traditional kinship system under Sec. 10.8 (d)(4)(ii)(A). Information regarding an Indian tribe's traditional kinship system is only necessary when an individual is claiming an unassociated funerary object or sacred object, and is more appropriately requested at that time. One commenter recommended amending Sec. 10.8 (d)(4)(iii) to require consultation and agreement with the recommendations of traditional religious leaders. The recommended requirement is not appropriate since the statutory language does not require Indian tribes or Native Hawaiian organizations to provide information regarding traditional religious leaders. One commenter recommended limiting the request for information to recommendations on how the consultation process should be conducted and that Sec. 10.8 (d)(4)(i), (4)(ii), (4)(iii), and (4)(v) be deleted. The drafters recognize that the identification of lineal descendants, funerary objects, sacred objects, and objects of cultural patrimony may require Indian tribes and Native Hawaiian organizations to divulge sensitive information. Requesting the information at the beginning of consultation, however, may lead to a more open and effective consultation process. Indian tribe officials are under no obligation to respond to these inquires.

One commenter, fearing widespread misapplication of these

regulations, recommended requiring museums and Federal agency officials to document certain information and use that information to identify unassociated funerary objects, sacred objects, objects of cultural patrimony, lineal descendants, and culturally affiliated Indian tribes and Native Hawaiian organizations. The recommended text has been included as Sec. 10.8 (a) and the subsequent section renumbered. Submission of this information to the Departmental Consulting Archeologist is not required by these regulations. The Review Committee, pursuant to section 8 (f), may request access to this information.

Two commenters requested clarification for requiring notification prior to repatriation of unassociated funerary objects, sacred objects, and objects of cultural patrimony in Sec. 10.8 (e) (renumbered as Sec. 10.8 (f)). The notification required in section 5 (d) of the Act ensures due process regarding the repatriation of human remains and associated funerary objects. Provisions of this subsection extend the notification procedures to ensure due process in the repatriation of unassociated funerary objects, sacred objects, and objects of cultural patrimony. The Review Committee recommended reducing the specificity of the requirement of an object-by-object listing of unassociated funerary objects, sacred objects, and objects of cultural patrimony to be repatriated. The regulatory text has been revised to require a description of any unassociated funerary objects, sacred objects, and objects of cultural patrimony to be repatriated in sufficient detail so as to allow others to determine if they are interested in the claim.

Section 10.8 (e) of these regulations requires that museums and Federal agencies consider the same types of information as are required in Sec. 10.9 (c) in evaluating requests for repatriation. Two commenters

recommended including text establishing a deadline for responses to the required notification. A minimum waiting period of thirty (30) days following publication of the notice of intent to repatriate in the Federal Register is established in Sec. 10.10 (a)(3). Any claim received by a museum or Federal agency prior to actual repatriation, however, should be given full consideration. One commenter recommended requiring museum officials to consult with the appropriate Federal agency officials prior to issuance of notices by the museum regarding unassociated funerary objects, sacred objects, or objects of cultural patrimony that were excavated intentionally or discovered inadvertently on Federal lands. Notices regarding the repatriation of unassociated funerary objects, sacred objects, or objects of cultural patrimony that were excavated from Federal lands can only be issued by the appropriate Federal agency or by an institution specifically authorized to issue such notices by the appropriate Federal agency. One commenter recommended including language in this subsection informing Indian tribes and Native Hawaiian organizations of their right by law to request access to museum or Federal agency records as they relate to the review of their claim. The recommended language is included in Sec. 10.8 (d)(3). The Review Committee recommended inclusion of text in this subsection to reiterate the requirement in Sec. 10.10 (a)(3) that repatriation not occur until at least thirty (30) days after publication of a notice of intent to repatriate in the Federal Register. The proposed language has been included.

Section 10.9

This section presents procedures for carrying out section 5 of the

Act related to conducting inventories of human remains and associated funerary objects in the collections of Federal agencies or museums receiving Federal funds. Fifteen commenters recommended changes to the inventory procedures in Sec. 10.9. One commenter requested clarification of the deadlines and funding responsibility of this section. Section 10.9 (f) states that inventories under this section are to be completed not later than November 16, 1995. Funding responsibilities lie with the museums and Federal agencies maintaining such collections. Three commenters requested funding aid to comply with the Act. Although section 10 of the Act authorizes funding in

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terms of grants to aid museums, Indian tribes, and Native Hawaiian organizations in carrying out the Act, funds were first appropriated during FY 1994.

One commenter requested clarification regarding the term ``geographical affiliation'' in the first sentence of Sec. 10.9 (a). The term has been changed to ``geographical origin'' to reflect usage in section 5 (b)(2) of the Act. Two commenters recommended deleting the term ``undertakings'' from the last sentence of Sec. 10.9 (a) because of its long history as a legal term of art under section 106 of the NHPA. The term has been changed to ``actions'' to avoid any confusion.

One commenter recommended inclusion of language in Sec. 10.9 (b) stressing that Federal agency officials are responsible for carrying out consultation regarding human remains and associated funerary objects that were excavated or removed from Federal lands and that are currently in a non-Federal repository. One commenter suggested inclusion of language allowing shared responsibility between a Federal

agency and curating institution. Federal agency officials are responsible for carrying out the Act regarding all human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands, regardless of the type of institution that currently is in possession of those human remains, funerary objects, sacred objects, or objects of cultural patrimony. Section 10.9 (a) emphasizes this responsibility of Federal agencies. Two commenters recommended including a stipulation in Sec. 10.9 (b) allowing a museum or Federal agency to declare that, due to unresponsiveness, no further contact with an Indian tribe or Native Hawaiian organization will be pursued. The drafters consider the recommended language counterproductive to achieving the type of effective consultation envisioned by the Act. Museums and Federal agencies are required to complete inventories of human remains and associated funerary objects in their collections by November 16, 1995. If no response is forthcoming after repeated attempts to contact Indian tribe officials by telephone, fax, and mail, the museum or Federal agency official may be required to complete the inventory without consultation to meet the statutory deadline. The drafters suggest museum and Federal agency officials document attempts to contact Indian tribe officials to demonstrate good faith compliance with these regulations and the Act.

One commenter recommended rewriting the requirements regarding consultation with lineal descendants in Sec. 10.9 (b)(1)(i) to coordinate these activities through designated Indian tribe officials. The statute gives lineal descendants priority over culturally affiliated Indian tribes or Native Hawaiian organizations for the repatriation of human remains, funerary objects, sacred objects, or

objects of cultural patrimony. Establishing a system in which contact with lineal descendants is coordinated through Indian tribes or Native Hawaiian organizations would be detrimental to the rights of lineal descendants, particularly those that are not members of an Indian tribe or Native Hawaiian organization. One commenter recommended amending Sec. 10.9 (b)(1)(i) to make it clear that museum and Federal agency officials must consult with lineal descendants of individuals whose remains and associated funerary objects are, in the opinion of the responsible Federal agency official or museum official, likely to be subject to the inventory provisions of these regulations. The drafters consider the current language to describe adequately the responsibilities of Federal agency officials or museum officials regarding consultation with lineal descendants.

One commenter recommended rewording the first sentence of Sec. 10.9 (b)(1)(ii) to make it clear that consultation must be with Indian tribe officials. This change has been made. Two commenters recommended changing the second part of the sentence to indicate that traditional religious leaders must be recognized by members of the Indian tribe. The text has been changed to conform with the definition of in Sec. 10.2 (a)(13). One commenter recommended inserting the word ``the'' prior to each usage of ``human remains'' throughout Sec. 10.9 (b)(1)(ii)(A), (B), and (C) to make it clear that the procedures refer to specific human remains and not human remains in general. The recommended change has been made.

Three commenters recommended restructuring the consultation process in Sec. 10.9 (b)(2) to allow museums and Federal agencies to make a tentative determination of cultural affiliation and then allow comment

on the determination by interested groups. Section 5 (b)(1)(A) of the Act requires that inventories be completed in consultation with Indian tribe and Native Hawaiian organization officials and traditional religious leaders. The notification procedures in Sec. 10.9 (e) are designed to ensure that all interested parties have the opportunity to participate in the consultation process. Another commenter recommended requiring consultation at the earliest possible moment in the inventory process. Language reflecting the latter recommendation has been included in the text.

One commenter recommended revising Sec. 10.9 (b)(3)(iv) to state that if any additional documentation was used to identify cultural affiliation, this documentation must be made available on request. Language ensuring Indian tribes and Native Hawaiian organization access to relevant documentation is included in Sec. 10.9 (e).

One commenter recommended deleting the word ``reasonably'' from Sec. 10.9 (b)(4)(v) on the grounds that it is unreasonable for the United States to request an Indian tribe or Native Hawaiian organization to be reasonable in its beliefs regarding objects used for burial purposes. Reasonableness in this context refers to an accepted legal standard and has been retained in the regulatory text.

One commenter objected to the information requirements in Sec. 10.9 (c) as exceeding requirements of the Act. Another commenter recommended amending the requirements to ensure that completion of the inventory would not be delayed. The information requirements in Sec. 10.9 (c) were drawn from section 5 (a)(2) of the Act. One commenter recommended including text in Sec. 10.9 (c) specifying the types of information that can not be requested. The Act does not identify any types of information that can not be requested. The drafters consider inclusion

of such a requirement to be detrimental to the development of productive dialogues between museums, Federal agencies, Indian tribes, and Native Hawaiian organizations. One commenter recommended reorganizing the information requirements for clarity. Sections 10.9 (c)(1) through (c)(8) have been reorganized and renumbered. One commenter recommended changing Sec. 10.9 (c)(7) to require either a description or photographic documentation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony, and not both. The drafters consider description of the human remains, funerary objects, sacred objects, or objects of cultural patrimony to be necessary in all cases, with photographic documentation considered appropriate in some circumstances. The types of information required in Sec. 10.9 (c) have not been changed. The drafters feel that careful, detailed consideration of all human remains and associated funerary objects is critical to carry out the statutory requirements. Basic descriptive

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information is necessary to ensure accountability and that the human remains and associated funerary objects conform to the statutory definitions. Detailed information from Federal agency or museum records and other sources are essential in reaching determinations of lineal descent or cultural affiliation as part of the inventory procedures.
One commenter recommended consolidating the two listings described in Sec. 10.9 (d)(1) and (d)(2) into one list. Separation of the two lists reflects the different purposes intended in the Sec. 10.9 (e) inventory process. The listing of culturally affiliated human remains and associated funerary objects is sent directly to Indian tribes and

Native Hawaiian organizations, with a copy to the Departmental Consulting Archeologist. The listing of culturally unidentifiable human remains and associated funerary objects is sent only to the Departmental Consulting Archeologist. One commenter objected to use of the term ``clearly'' regarding the determination of cultural affiliation in Sec. 10.9 (d)(1) as being contrary to Congressional intent and recommended deleting it from the regulatory text. The term was drawn from section 5 (d)(1)(B) of the Act and reflects Congressional intent. Another commenter recommended keeping the list of those human remains and associated funerary objects that are clearly identifiable as to tribal origin separate from those human remains and associated funerary objects are determined by reasonable belief to be cultural affiliated with the same Indian tribe or Native Hawaiian organization. Since both categories of human remains and associated funerary objects are considered to be culturally affiliated with the Indian tribe or Native Hawaiian organization, and are thus available for repatriation by that Indian tribe or Native Hawaiian organization, there is no practical reason to separate the lists.

One commenter recommended clarifying throughout this subsection that museum or Federal agency officials may need to send the same inventory to multiple Indian tribes or Native Hawaiian organizations. The text has been modified to reflect this concern.

Four commenters recommended replacing the word ``shall'' in the second sentence of Sec. 10.9 (e)(4) with ``should.'' The Secretary has delegated authority to carry out some provisions of the Act to the Departmental Consulting Archeologist. These responsibilities include providing staff support to the Review Committee. The Review Committee

is required under section 8 (c)(2) of the Act to monitor the inventory and identification process. Submission of inventories in electronic format is intended to facilitate the monitoring process. However, in recognition that some museums may have difficulty meeting the electronic format requirement, the drafters have changed the word ``shall'' in the second sentence to ``should.'' One commenter recommended also allowing Federal agencies to use alternative methods for submission of notices to the Departmental Consulting Archeologist. The phrase ``and Federal agencies'' has been inserted after ``museums'' in the text. The Review Committee recommended inclusion of language in this subsection requiring museums and Federal agencies to retain possession of culturally unidentifiable human remains pending promulgation of Sec. 10.11 of these regulations. The recommended language has been included.

One commenter recommended requiring listings of culturally unidentifiable human remains described in Sec. 10.9 (e)(6) be sent to all Indian tribes and Native Hawaiian organizations as well as to the Departmental Consulting Archeologist. Section 8 (c)(5) of the Act gives the Review Committee responsibility for recommending specific action for developing a process for disposition of culturally unidentifiable human remains. Section 10.11 of these regulations has been reserved for that purpose. The drafters consider it premature at this time to establish such procedures.

Two commenters requested extending the November 16, 1995 deadline for completion of inventories in Sec. 10.9 (f). The deadline for completion of inventories is specified in section 5 (b)(1)(B) of the Act and would require Congressional action to change. One commenter recommended including language in this subsection to indicate that the

requirement to repatriate may be suspended during the preparation of the inventories. The drafters consider such a suspension of the requirement to repatriate counter to statutory language and legislative history. Two commenters recommended including language in this subsection to allow Federal agencies to apply for extensions of time to complete their inventories. Section 5 (c) of the Act specified that any museum which has made a good faith effort but which has been unable to complete an inventory may appeal to the Secretary for an extension of the time requirements. No provisions are provided in the Act for Federal agencies to apply for extension. One commenter recommended including language in this subsection limiting the number and length of extensions granted to a museum to complete its inventories. The Secretary will determine the number and length of extensions on a case-by-case basis. One commenter recommended requiring museums to apply for an extension in the second sentence of Sec. 10.9 (f). While a museum may chose not to apply for an extension, it is likely that failure to do so would be taken into account by the Secretary in determining if the museum had failed to comply with the requirements of the Act. One commenter requested clarification regarding a situation in which a museum fails to complete an inventory of human remains and associated funerary objects from Federal lands. Federal agencies are responsible for completion of summaries and inventories of all human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal lands regardless of the type of institution in which they are currently curated. One commenter recommended incorporation of personnel qualifications in this subsection for individuals involved in the completion of the inventory plan. Museums are expected in make sure

that all of their personnel are qualified to undertake the tasks expected of them.

Section 10.10

Thirty-three commenters recommended changes to the section on repatriation. One commenter recommended rewriting Sec. 10.10 (a)(1) and Sec. 10.10 (b)(1) to emphasis that all of the criteria for repatriation must be met. The initial sentence of each section has been rewritten to state ``If all the following criteria are met...'' In addition, the word ``and'' has been added at the end of all but the final roman numeralled subsections in these two sections. Another commenter requested clarification of the term ``expeditiously'' which is used in both sections. The rule of statutory construction generally holds that undefined terms are interpreted in their common meaning.
One commenter recommended inclusion of language in Sec. 10.10 (a)(1)(ii) and (b)(1)(ii) allowing several Indian tribes or Native Hawaiian organizations to make joint claims for human remains, funerary objects, sacred objects, or objects of cultural patrimony. The drafters feel the current language allows for joint claims. Another commenter recommended amending Sec. 10.10 (a)(1)(ii) and Sec. 10.10 (b)(1)(ii) to clarify that the cultural affiliation of human remains, funerary objects, sacred objects, or objects of cultural patrimony can be established independently of the

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summary and inventory processes by presentation of a preponderance of the evidence by a requesting Indian tribe or Native Hawaiian organization. Additional text has been inserted under Sec. 10.10

(a)(1)(ii)(B) and Sec. 10.10 (b)(1)(ii)(B) to clarify this issue.

Another commenter requested inserting the phrase ``culturally affiliated'' before ``Indian tribe'' in Sec. 10.10 (a)(1)(iii), The recommended text has been included.

One commenter recommended deleting the phrase ``which, if standing alone before the introduction of evidence to the contrary'' from Sec. 10.10 (a)(1)(iii). This phrase is taken directly from section 7 (c) of the Act regarding the standard of repatriation for unassociated funerary objects, sacred objects, and objects of cultural patrimony; and has been retained in the regulations.

One commenter recommended rewriting Sec. 10.10 (a)(1)(iv) to make clear that a Federal agency or museum must present evidence to overcome the inference of tribal custody and prove its right of possession to unassociated funerary objects, sacred objects, or objects of cultural patrimony. The existing text is drawn from section 7 (c) of the Act and is interpreted to provide Federal agencies with some discretion as to whether information regarding right of possession must be used to challenge a request for repatriation.

One commenter recommended deleting Sec. 10.10 (a)(1)(v) and Sec. 10.10 (b)(1)(iii), referring to specific repatriation exemptions, to avoid confusion and havoc with Indian tribes. The specific exemptions to repatriation referred to in these subsections come from section 7 (b) and (e) of the Act.

Two commenters recommended changes to Sec. 10.10 (a)(2) regarding right of possession. One commenter requested clarification of how right of possession might be demonstrated for prehistoric human remains, funerary objects, sacred objects, or objects of cultural patrimony. The right of possession basis for retaining cultural items in an existing

collection does not apply to human remains or associated funerary objects, only to unassociated funerary objects, sacred objects, and objects of cultural patrimony. A right of possession for prehistoric cultural items fitting these categories might be written authorization from a competent authority to excavate, remove, and curate such items from a particular area or site. Another commenter recommended locating the definition of right of possession would more appropriately with the other definitions in Sec. 10.2. The concept of right of possession has limited applicability in these regulations to unassociated funerary objects, sacred objects, and objects of cultural patrimony. The explanation of right of possession is retained at this place in the regulations because it is only used for this specific aspect of the Act.

Three commenters recommended changes to Sec. 10.10 (a)(3) and Sec. 10.10 (b)(2) regarding notification. Two commenters requested clarification of whether the ninety (90) days during which repatriation must take place begins from the day a request for repatriation is received or from the day the responsible museum of Federal agency official makes a positive determination that the criteria for repatriation apply. The first sentence of this section has been redrafted to clarify that the ninety (90) day period begins with the receipt of a written request for repatriation from a culturally affiliated Indian tribe or Native Hawaiian organization. Another commenter stated that ninety (90) days may not be sufficient to determine to validity of each request. Section 7 of the Act requires that repatriation must be done ``expeditiously'' and implies in section 7 (b) a ninety (90) day time frame for such actions. Text has been

added to provide for a longer period if mutually agreed upon. It is noted that determination of the validity of a claim should not be difficult since this period only applies to requests from Indian tribes and Native Hawaiian organizations that have been determined to be culturally affiliated with specific human remains, funerary objects, sacred objects, or objects of cultural patrimony.

Five commenters recommended changes to Sec. 10.10 (b) regarding the repatriation of human remains and associated funerary objects. One commenter identified the criteria for repatriating human remains and associated funerary objects as being very confusing and recommended rewriting them for comprehension by lay people. One commenter recommended reiterating the applicability of ``right of possession'' to human remains and associated funerary objects recognized in the last sentence of section 2 (13) of the Act in this section of the regulations. American law generally recognizes that human remains can not be ``owned.'' This interpretation is consistent with the second sentence of section 2 (13) of the Act that specifically refers to unassociated funerary objects, sacred objects, and objects of cultural patrimony, and with section 7 (a)(1) and (a)(2) of the Act in which no right of possession to human remains or associated funerary objects is inferred. One commenter strongly objected to the requirement in Sec. 10.10 (b)(2) that repatriation not occur until at least thirty days after publication of a notice of inventory completion in the Federal Register, referring to section 11 (1)(A) of the Act that states that nothing in the Act shall be construed to limit the authority of any museum or Federal agency to return or repatriate. Publication of the notice in the Federal Register was recognized in section 5 (d)(3) of the Act as necessary to ensure Constitutional due process

requirements. Delaying a repatriation for thirty (30) days following publication of the notice provides any other legitimate claimant with an opportunity to come forward with a claim. This requirement in no way limits any organization's authority to repatriate. Section 11 (2) of the Act states that nothing in the Act shall be construed to delay action on repatriation requests ``that are pending on the date of enactment of this Act,'' and makes it clear that Congress anticipated there might be some subsequent delays of repatriation initiated after November 16, 1990, due to the statutory provisions. One commenter asked whether a second Federal Register notice is required to document a claim following publication of a Notice of Inventory Completion. Requests for repatriation made after completion of the inventory and publication of the Notice of Inventory Completion in the Federal Register do not require publication of a second notice, unless it is determined as a result of a competing claim or otherwise that a different Indian tribe or Native Hawaiian organization than the one identified in the original notice is the proper recipient. In such instances, a second Federal Register notice is required prior to repatriation. In situations where more than one Indian tribe or Native Hawaiian organization was listed in the original notice, the museum or Federal agency official should consult with each of the listed Indian tribes or Native Hawaiian organizations prior to repatriating to any one of them.

Three commenters recommended deleting Sec. 10.10 (c)(1) regarding the exception to the repatriation requirements for studies of human remains, funerary objects, sacred objects, or objects of cultural patrimony of major benefit to the United States. This exemption is

drawn from section 7 of the Act. One commenter identified the phrase ``commenced prior to receipt of a request'' in this subsection as not being included in the statutory language and recommended deleting it. The phrase has been deleted. Six

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commenters recommended clarifying the concept of ``major benefit'' in the exemption for completion of a specific scientific study in Sec. 10.10 (c)(1). Such determinations necessarily will have to be made on a case-by-case basis. One commenter recommended that the deadline after completion of a study by which human remains, funerary objects, sacred objects, or objects of cultural patrimony must be repatriated be left to the discretion of the parties involved. The requirement that human remains, funerary objects, sacred objects, or objects of cultural patrimony be repatriated no later than ninety days (90) after completion of the study is drawn from the statutory language.

One commenter recommended replacing the phrase ``proper recipient'' in the first sentence of Sec. 10.10 (c)(2) with ``most appropriate recipient.'' The recommended change has been made. One commenter recommended including language in this subsection requiring museums and Federal agencies to comply with multiple party claims. The language in these regulations does not preclude claims for repatriation made by groups of lineal descendants or groups of Indian tribes or Native Hawaiian organizations. Museum and Federal agency officials are responsible for assessing the merits of each claim received.

One commenter recommended deleting the ``takings exemption'' in Sec. 10.10 (c)(3) since it requires complex legal analysis that would unduly burden museum and Federal agency officials and is contrary to

the provisions of the Act regarding the determination of custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony. The language in this subsection was drawn from section 2 (13) of the Act. Six commenters requested additional clarification of the subsection. Additional language has been included in the text. One commenter objected to the ``globalization'' of the constitutional test of a Fifth Amendment taking in this subsection to include human remains and associated funerary objects, stating that such an interpretation is not supported by the statutory language and recommending that the drafters refrain from attempting to redress in regulation what the commenter considers a facially unconstitutional element of the Act. The regulation has not been changed in response to this comment. The Act does not indicate an express intention to effectuate a legislative or regulatory taking. It is possible, though not likely, that human remains may be subject to Fifth Amendment concerns, e.g., where the human remains have been incorporated into another object. The same commenter recommended including text to exempt museums from the threat of civil penalties in situations where the museum invokes its authority to refuse to repatriate human remains and associated funerary objects based on ``otherwise applicable property law.'' A determination that repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony constitutes a taking of property without just compensation within the meaning of the Fifth Amendment of the United States Constitution must be made by a court of competent jurisdiction and can not be ``invoked'' by a museum or Federal agency. Assessment of civil penalties by the Secretary will necessarily be made on a case-by-case basis and, as such, the recommended exemption is not considered appropriate. However, the drafters consider it unlikely that

the Secretary would assess civil penalties while a takings issue is being considered by a court of competent jurisdiction.

One commenter recommended deleting the reference in Sec. 10.10 (c)(4) to other repatriation limitations in Sec. 10.15. Section 10.15 includes limitation and remedies applying to both the disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal land or tribal lands and to the repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony in the possession or control of museums or Federal agencies.

Two commenters requested clarification regarding procedures related to the transfer of custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony to lineal descendants or Indian tribes in Sec. 10.10 (d). Museum and Federal agency officials are responsible for making decisions regarding place and manner of repatriation. However, prior to making such decisions, they must first consult with the requesting lineal descendants or culturally affiliated Indian tribes.

One commenter recommended including additional text requiring museum and Federal agency officials to inform recipients of repatriations of any known treatments, such as application of pesticides, preservatives, or other substances, that might represent a potential hazard to the human remains, funerary objects, sacred objects, or objects of cultural patrimony or the persons handling them. The recommended text has been included as Sec. 10.10 (e) and subsequent subsections renumbered.

Two commenters recommended including language in Sec. 10.10 (e)

(renumbered as Sec. 10.10 (f)) advising museum and Federal agency officials that, upon the request of Indian tribe officials, they take steps to ensure that information of a particularly sensitive nature is not made available to the general public. The recommended text has been included in the rule. Documentation of some cultural items, particularly sacred objects and objects of cultural patrimony, is expected to require Indian tribe officials and traditional religious leaders to divulge some information considered sensitive to the Indian tribe or Native Hawaiian organization. There is currently no exemption available to protect such sensitive information from disclosure under the Freedom of Information Act. Museum or Federal officials may wish to ensure that sensitive information does not become part of the public record by not writing such information down in the first place.

Two commenters identified ``unidentified human remains,'' referred to in Sec. 10.10 (f) (renumbered as Sec. 10.10 (g)) as a category not supported by the statutory language, and recommended deleting the term. Section 8 (c)(5) of the Act required the Review Committee to compile an inventory and make recommendations regarding specific actions for developing a process for disposition of ``culturally unidentifiable human remains.'' Section 10.10 (g) has been amended to reflect that statutory language.

One commenter requested that Sec. 10.10 reference the requirements of the Migratory Bird Treaty Act, the Bald and Golden Eagle Act, the Endangered Species Act and the Marine Mammal Act. While it is not appropriate to include the requirements of these acts in the regulations, museums, Federal agencies, and Indian tribes should be aware that additional statutes and regulations may affect the transport and possession of repatriated objects. For additional information,

contact, the U.S. Fish and Wildlife Service, Division of Law Enforcement, PO Box 3247, Arlington VA 22203-3247.

Section 10.11

This section has been reserved for procedures related to the disposition of culturally unidentifiable human remains in museum or Federal agency collections. One commenter questioned the authority under which the Federal government can determine the final disposition of human remains for which no cultural affiliation can reasonably be established. Another commenter recommended changing the title of this

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section to read ``culturally and geographically unidentifiable'' to ensure that a ``simple-minded or hostile reading of the rules'' would not result in assignment of many human remains to the catch-all category. One commenter requested clarification for procedures concerning ``affected remains of . . . biologically extinct peoples''. Section 8 (c)(5) and (c)(7) of the Act gives the Review Committee the responsibilities of recommending specific actions for developing a process for disposition of ``culturally unidentifiable human remains'' and consulting with the Secretary in the development of regulations to carry out the statute. Section 13 of the Act charges the Secretary with promulgating regulations to carry out the statute. One commenter recommended interring all culturally unidentifiable human remains in a tribal or intertribal cemetery. One commenter recommended sending inventories of all culturally unidentifiable human remains to all Indian tribes and Native Hawaiian organizations. One commenter requested that this section be published promptly. Another commenter

recommended seeking Indian tribal input in developing this section to ensure that ``the dominant society [not dictate] the proposed language to protect their own interests.'' A draft of this section is being developed currently and will submitted to the Review Committee for discussion and recommendations prior to publication as proposed regulation for public comment in the Federal Register.

Section 10.12

This section has been reserved for procedures related to the assessment of civil penalties by the Secretary against any museum that fails to comply with the requirements of the statute. One commenter requested prompt publication of this section. A draft of this section is currently being developed and will submitted to the Review Committee for discussion prior to publication for public comment in the Federal Register.

Section 10.13

This section has been reserved for procedures related to the future applicability of the statute. One commenter recommended that the section should include continuing responsibilities for museums and Federal agencies to update summaries and inventories of human remains, funerary objects, sacred objects, or objects of cultural patrimony to reflect new accessions, first time receipt of Federal funds, and the recognition of new Indian tribes and Native Hawaiian organizations. One commenter requested clarification on the subject of future accessions. One commenter stressed that tribal input, comment and recommendations are imperative in formulating this section. A draft of this section is

currently being developed and will be submitted to the Review Committee for discussion prior to publication for public comment in the Federal Register. One commenter proposed inclusion of a ten year time limit during which Indian tribes must make claims for repatriation. Time limits for claims were discussed by Congress when the bill was being considered but were not included in the Act. Inclusion of such time limits in the regulations would contradict Congressional intent.

Section 10.14

Eighteen commenters recommended changes to the section on lineal descent and cultural affiliation. Two commenters recommended further identification in Sec. 10.14 (a) of the parties responsible for completing the required activities. On Federal lands, Federal agency officials are responsible for determining which modern Indian tribes and Native Hawaiian organizations may have valid claims upon human remains, funerary objects, sacred objects, or objects of cultural patrimony that are excavated intentionally or discovered inadvertently on lands they manage. For existing collections, the museum or Federal agency official is responsible for assembling, describing, evaluating human remains, funerary objects, sacred objects, or objects of cultural patrimony and making determinations regarding their cultural affiliation and disposition. It is the responsibility of lineal descendants, Indian tribes or Native Hawaiian organizations that disagree with determinations of cultural affiliation made by a Federal agency or museum official to develop and present information to challenge that determination.

Another commenter recommended changing all references to Indian tribe in this section to ``Indian tribe or tribes'' to reflect the fact

that Indian tribes may bring joint claims for certain items. The drafters consider the current language to support the possibility of joint claims.

One commenter identified the criteria for determining lineal descendants in Sec. 10.14 (b) as being overly restrictive and recommended broadening them to allow for both individual and Indian tribe and Native Hawaiian organization claims. One commenter requested including a procedure ``for independent verification of claimed descent.'' Criteria for determining lineal descent have been narrowly defined to reflect the priority given these claims under section 3 and section 7 of the Act. One commenter requested that the section include procedures for independent verification of any claims of lineal descent based upon traditional kinship systems. Museum or Federal agency officials are responsible for evaluating claims of lineal descent.

Three commenters identified criteria for determining cultural affiliation under Sec. 10.14 (c)(1), (2) and (3) as placing an undue and unrealistic burden of proof on Indian tribes and Native Hawaiian organizations, and recommended fewer requirements. The three criteria -- existence of an identifiable present-day Indian tribe or Native Hawaiian organization, evidence of the existence of an identifiable earlier group, and evidence of a shared group identity that can be reasonably traced between the present-day Indian tribe or Native Hawaiian organization and the earlier group--are the components of the statutory definition of cultural affiliation at section 2 (2) of the Act. They have been retained in the regulations.

Three commenters recommended rewording Sec. 10.14 (c)(2) for clarification. The second sentence of Sec. 10.14 (c)(2) has been

rewritten to read: ``Evidence to support this requirement may include, but is not necessarily limited to: . . .'' One commenter recommended rewording Sec. 10.14 (c)(2)(ii) to emphasize the desirability of demonstrating linkages between claimants and archeological remains. One commenter questioned whether it is possible to make biological distinctions between earlier groups as suggested in Sec. 10.14 (c)(2)(iii). Cultural affiliation between particular human remains, funerary objects, sacred objects, or objects of cultural patrimony and particular Indian tribes and Native Hawaiian organizations must be determined on a case-by-case basis.

One commenter recommended regarding human remains or cultural objects found within the traditional (aboriginal) territory of an Indian tribe as being culturally affiliated with that Indian tribe, regardless of the antiquity of the human remains, funerary objects, sacred objects, or objects of cultural patrimony. The statutory provisions related to intentional excavation and inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal or tribal lands (section 3 of the Act) includes provisions for the disposition of human remains, funerary objects, sacred objects, or objects of

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cultural patrimony to the Indian tribe that is recognized as aboriginally occupying the area in which the human remains or objects were recovered, if upon notice, such tribe states a claim for such human remains or items. No such criteria are included in the statutory sections regarding repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony in museum or Federal

agency collections.

One commenter recommended inclusion of language from House Report 101-877 (page 5) clarifying that determinations of cultural affiliation should be based on an overall evaluation of the totality of the circumstances and evidence and should not be precluded solely because of some gaps in the record. Language from the House Report has been included as Sec. 10.14 (d), and the subsequent sections relettered.

One commenter noted that the types of evidence listed in Sec. 10.14 (e) were originally derived from section 7 (a)(4) of the Act--which deals exclusively with the determination of cultural affiliation -- and recommends that lineal descent should be established through normally accepted methods of evidence. Section 7 (a) of the Act, of which section 7 (a)(4) is a subpart, deals with both determinations of lineal descent and cultural affiliation. It is the opinion of the drafters that each of the types of evidence listed could potentially be used to support a claim of lineal descent and should be available for use by potential claimants.

One commenter objected to oral tradition and folklore being allowed as evidence in Sec. 10.14 (d), particularly for those areas, such as central, southwestern, southern, and coastal Texas, ``where the aboriginal inhabitants have no biological descendants.'' One commenter recommended including a statement that physical anthropological/ biological, archeological, and other ``hard'' scientific evidence will have the greatest bearing in determining the cultural affiliation of prehistoric materials, scaled with weight increasing as distance in time increases. One commenter recommended inclusion of a statement regarding ``standards of evidence.'' The applicability and strength of particular types of evidence must be determined on a case-by-case

basis. It would be inappropriate to place stipulations on the applicability of various types of evidence in regulation.

Two commenters recommended changing the last sentence of Sec. 10.14 (e) to require that cultural affiliation be established with scientific certainty to avoid any misuse of the Act. A standard of scientific certainty is not consistent with Congressional intent. The statement of evidence in this subsection is drawn from section 7 (a)(4) of the Act.

Two other commenters questioned whether this subsection might give the impression that scientific research is of no value in determining cultural affiliation. Section 7 (a)(4) identifies scientific information related to numerous fields as having relevance to the determination of cultural affiliation. One commenter recommended stipulating that no repatriation will occur until the analysis is completed. Section 5 (a) specifies that the geographic and cultural affiliation of human remains and associated funerary objects be determined ``to the extent possible based on information possessed by the museum of Federal agency.'' No new scientific research is required. Delaying repatriation until new scientific research is completed contradicts the intent of Congress unless that scientific research is considered to be of major benefit to the United States.

Section 10.15

Eleven commenters recommended changes to the section on repatriation limitations and remedies. One commenter stated the section was not consistent with the statute and recommended deleting it in its entirety. Two commenters identified Sec. 10.15 (a)(1) as being unduly harsh to Indian tribes and Native Hawaiian organizations, and

recommended deleting it. Section 10.15 (a)(1) ensures that any claim received prior to the disposition or repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony must be considered by the museum or Federal agency. Claims made after disposition or repatriation have occurred are properly the responsibility of the receiving lineal descendant, Indian tribe, or Native Hawaiian organization. The subsection has been retained as it is important for the protection of museums and Federal agencies that comply with the Act and regulations. One commenter recommended adding another subsection under the title ``Multiple Claimants'' to address such situations. Three commenters recommended specifying that a time period for competing parties to reach agreement on the appropriate disposition or repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony. No time period has been established because it appears to be contrary to Congressional intent.

One commenter recommended inclusion of a statement specifying who decides the disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony that cannot be shown to be culturally affiliated to a present-day Indian tribe or Native Hawaiian organization. Section 10.11 of the regulations has been reserved for procedures related to the disposition of culturally unidentifiable human remains.

One commenter recommended completing Sec. 10.15 (b), reserved for ``Failure to claim where no repatriation or disposition has occurred,'' as quickly as possible. Another commenter questioned whether the statutory language supports the inclusion of unclaimed cultural items as well as human remains. Section 3 (b) of the Act addresses the disposition of ``unclaimed human remains and objects'' and requires the

Secretary to publish regulations to carry out their disposition in consultation with the Review Committee, Native American groups, and representatives of museums and the scientific community.

One commenter asked for clarification regarding whether the denial of a request for repatriation implied in Sec. 10.15 (c) would have the effect of stopping the ``90-day clock'' for expedient repatriation. Museum and Federal agency officials are required to make a decision regarding claims for the disposition or repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony within ninety (90) days of receipt of that claim. Once that decision is made, the museum or Federal agency official has carried out their responsibility. Another commenter recommended that this subsection state specifically that museums and Federal agencies must repatriate within ninety (90)-days of receipt of a written request. Section 10.10 (a)(3) and (b)(2) specify that museums and Federal agencies must repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony in their collections within ninety (90) days of receipt of a written request for repatriation that satisfies the requirements of Sec. 10.10 (a)(1) and (b)(1), respectively, provided that the repatriation may not occur until at least thirty (30) days after publication of the appropriate notice in the Federal Register.

Section 10.16

Two commenters recommended changes to the section on the Review Committee. One commenter recommended deletion of the term ``culturally unidentifiable human remains'' on the grounds that there is no such category recognized under the Act.

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Section 8 (b)(5) of the Act requires the Review Committee to compile an inventory of culturally unidentifiable human remains and recommend specific actions for developing a process for disposition of such human remains. Another commenter recommended specifying the criteria to be used by the Review Committee in resolving disputes. One commenter requested clarification as to the ``arbitrator'' for disputes arising from the Act. The Review Committee has established its own guidelines for facilitating the resolution of disputes that include both procedures and criteria. Copies of these procedures are available from the Department of the Interior through the Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service.

Section 10.17

Three commenters recommended changes to the section on dispute resolution. One commenter recommended strengthening the section to provide a realistic and definitive forum for resolving problems. Another commenter recommended including criteria to be used by the Review Committee in resolving disputes. A third commenter recommended that appropriate time frames should be established for Review Committee comments concerning disputes. The Review Committee has established its own guidelines for facilitating the resolution of disputes that include both procedures and criteria. Copies of these procedures are available from the Department of the Interior through the Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service.

Appendix A

Four commenters recommended changes to the sample summary. Two commenters recommended narrowing the focus of the summary from collections held by a museum which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony to a summary of those specific objects. This proposed text was not changed for reasons previously presented in the discussion of section 10.8.

One commenter objected to the enumeration of sites and objects in the seventh paragraph of the sample summary as being both impractical and impossible. The enumeration of sites and objects in the sample summary are identified clearly as approximations. Further, provision of this type of information to Indian tribes and Native Hawaiian organizations is consistent with the requirements of section 6 of the Act as clarified in section 10.8 of these regulations.

One commenter objected to the apparently broad access to museum records given Indian tribes in the final paragraph. The sentence in question closely paraphrases section 6 (b)(2) of the Act and has not been changed.

Appendix B

This appendix was reserved for a sample inventory of human remains and associated funerary objects. One commenter stressed the importance of developing this section as quickly as possible. A sample inventory of human remains and associated funerary objects currently has been developed in consultation with the Review Committee and distributed to Indian tribes, Native Hawaiian organizations, museums, and Federal agencies. This reserved appendix has been deleted from the rule.

Appendix C

The notice of inventory completion in this appendix has been updated with a more recent version and retitled as Appendix B.

Appendix D

The Review Committee recommended deleting this section that had been reserved for a sample memorandum of understanding dealing with repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony in Federal collections from the regulations. Guidance regarding such memoranda of understanding will be developed and distributed by the Department of the Interior.

Appendix E

The Review Committee recommended deleting this section that had been reserved for a sample memorandum of understanding dealing with intentional excavation on Federal or tribal lands from the regulations. Guidance regarding such memoranda of understanding will be developed and distributed by the Department of the Interior.

Authorship These proposed regulations were prepared by Dr. Francis P. McManamon (Departmental Consulting Archeologist, National Park Service), Dr. C. Timothy McKeown (NAGPRA Program Leader, National Park Service), and Mr. Lars Hanslin (Senior Attorney, Office of the Solicitor), in consultation with the Native American Graves Protection and Repatriation Review Committee as directed by section 8 (c)(7) of the Act.

Compliance with the Paperwork Reduction Act

The collections of information contained in this rule have been

approved by the Office of Management and Budget as required by 44 U.S.C. 3501 et seq (OMB control number 1024-0144). Public reporting burden for this collection of information is expected to average 100 hours for the exchange of summary/inventory information between a museum or Federal agency and an Indian tribe or Native Hawaiian organization and six hours per response for the notification to the Secretary, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collected information. Two commenters questioned use of an average amount of time to characterize the expected burden. While the amount of time required to complete the reporting requirements of these regulations will vary between institutions depending on the size and nature of their collections and the comprehensiveness of their documentation, review of summaries, inventories, and notices received by the Departmental Consulting Archeologist confirms the accuracy of the previous estimates. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, National Park Service, Box 37127, Washington D.C. 20013 and to the Office of Management and Budget, Paperwork Reduction Project, Washington DC 20503.

Compliance with Other Laws

This rule has been reviewed under Executive Order 12866. The final rule implements provisions of the Native American Graves Protection and Repatriation Act of 1990 and addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to Native American human remains, funerary objects, sacred objects, and objects

of cultural patrimony. The final rule requires that any museum receiving Federal funds prepare summaries and conduct inventories. These requirements are within professionally accepted standards for museum record keeping consistent with the purposes of such institutions or organizations. Grants have been awarded during FY 1994 and FY 1995 to assist museums in these tasks. Federal agencies will incur costs in two ways: (1) Preparing the summaries and conducting the

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inventories; and (2) conducting consultation prior to planned excavations and following inadvertent discoveries on Federal or tribal lands. The Congressional Budget Office estimated costs for summary and inventory activities at between $5 and $30 million over a five year period. Many of the actions required of Federal agencies under item (2) are recommended or required by previous legislation--such as the National Historic Preservation Act and the Archaeological Resources Protection Act--and costs for these activities are not expected to increase appreciably, particularly if the Federal agencies are able to coordinate their consultation and review activities as encouraged by these regulations and other guidance documents.

The Department of the Interior certifies that this document does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The Department of the Interior has determined that these final regulations meet the applicable standards provided in sections 2(a) and 2(b) of Executive Order 12778.

The Department of the Interior has determined that these final regulations will not have a significant effect on the quality of the

human environment under the National Environmental Policy Act (42 U.S.C. 4321-4347). In addition, the Department of the Interior has determined that these final regulations are categorically excluded from the procedural requirements of the National Environmental Policy Act by Departmental regulations in 516 DM 2. As such, neither an Environmental Assessment nor an Environmental Impact statement has been prepared.

List of Subjects in 43 CFR Part 10

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

For the reasons set out in the preamble, 43 CFR Subtitle A is amended by adding Part 10 to read as follows:

PART 10--NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

Subpart A--Introduction

Sec.

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

Subpart A--Introduction

Sec. 10.1 Purpose and applicability.

(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 these regulations are decision points which determine their applicability in particularly 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 these regulations inapplicable is subject to review pursuant to section 15 of the Act.

Sec. 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,

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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 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 descendance to a known Native American individual whose remains, funerary objects, or sacred objects are being claimed under these regulations.

(2) Indian tribe means any tribe, band, nation, or other organized Indian group or community of Indians, including any Alaska Native village or corporation as defined in or established by the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The Secretary will distribute a list of Indian tribes for the purposes of carrying out this statute through the Departmental Consulting Archeologist.

(3)(i) Native Hawaiian organization means any organization that:

(A) Serves and represents the interests of Native Hawaiians;

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

(C) Has expertise in Native Hawaiian affairs.

(ii)The term Native Hawaiian means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii. Such organizations must include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna 'O Hawai'i Nei.

(4) Indian tribe official means the principal leader of an Indian tribe or Native Hawaiian organization or the individual officially designated by the governing body of an Indian tribe or Native Hawaiian organization or as otherwise provided by tribal code, policy, or established procedure as responsible for matters relating to these regulations.

(c) Who is responsible for carrying out these regulations?

(1) Secretary means the Secretary of the Interior.

(2) Review Committee means the advisory committee established pursuant to section 8 of the Act.

(3) Departmental Consulting Archeologist means the official of the Department of the Interior designated by the Secretary as responsible for the administration of matters relating to these regulations. Communications to the Departmental Consulting Archeologist should be addressed to:

Departmental Consulting Archeologist

National Park Service,

PO Box 37127

Washington, DC 20013-7127.

(d) What objects are covered by these regulations? The Act covers four types of Native American objects. The term Native American means of, or relating to, a tribe, people, or culture indigenous to the United States, including Alaska and Hawaii:

(1) Human remains means the physical remains of a human body of a person of Native American ancestry. The term does not include remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets. For the purposes of determining cultural affiliation, human remains incorporated into a funerary object, sacred object, or object of cultural patrimony, as defined below, must be considered as part of that item.

(2) Funerary objects means items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains. Funerary objects must be identified by a preponderance of the evidence as having been removed from a specific burial site of an individual affiliated with a particular Indian tribe or Native Hawaiian organization or as being related to specific individuals or families or to known human remains. The term burial site means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as part of the death rite or ceremony of a culture, individual human remains were deposited, and includes rock cairns or pyres which do not fall within the ordinary definition of grave site. For purposes of completing the summary requirements in Sec. 10.8 and the inventory requirements of Sec. 10.9:

(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

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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) What is cultural affiliation? Cultural affiliation means that there is a relationship of shared group identity which can reasonably be 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, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion -- reasonably leads to such a conclusion.

(f) What types of lands to 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 Sec. 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.

Subpart B--Human Remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal or Tribal Lands

Sec. 10.3 Intentional archeological 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 Sec. 10.5;

(3) The disposition of the objects is consistent with their custody as described in Sec. 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

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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 Sec. 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 Sec. 10.5.

(2) Following consultation, the Federal agency official must complete a written plan of action (described in Sec. 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 Sec. 10.3 (c)(2) and Sec. 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 Sec. 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 Sec. 10.6.

Sec. 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 Sec. 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 by telephone, with written confirmation, the Indian tribes or Native Hawaiian organizations likely to be culturally affiliated with the inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony, the Indian tribe or Native Hawaiian organization which aboriginally occupied the area, and any other Indian tribe or Native Hawaiian organization that is reasonably known to have a cultural relationship to the human

remains, funerary objects, sacred objects, or objects of cultural patrimony. This notification must include pertinent information as to kinds of human remains, funerary objects, sacred objects, or objects of cultural patrimony discovered inadvertently, their condition, and the circumstances of their inadvertent discovery;

(iv) Initiate consultation on the inadvertent discovery pursuant to Sec. 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 Sec. 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 Sec. 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 Sec. 10.3 (b)(1) of these regulations. The disposition of all human remains, funerary objects, sacred objects, or objects of cultural patrimony must be following Sec. 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 Sec. 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

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cultural patrimony must be excavated or removed, follow the requirements and procedures in Sec. 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 Sec. 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 Sec. 10.4 (b) of these regulations.

Sec. 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 Sec. 10.3 and Sec. 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 Sec. 10.6 and Sec. 10.14. The Federal agency official shall notify in writing:

(i) any known lineal descendants of the individual whose remains, funerary objects, sacred objects, or objects of cultural patrimony 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 Sec. 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 Sec. 10.3 (b)(1) and document the following:

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(1) The kinds of objects to be considered as cultural items as defined in Sec. 10.2 (b);

(2) The specific information used to determine custody pursuant to Sec. 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 disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony following Sec. 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 specific 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 Sec. 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.

Sec. 10.6 Custody.

(a) Priority of custody. This section carries out section 3 (a) of the Act, subject to the limitations of Sec. 10.15, regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on 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 Sec. 10.14 (b);

(2) In cases where a lineal descendant cannot be ascertained or no claim is made, 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 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 Sec. 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 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 discovered inadvertently, or

(B) If it can be shown by a preponderance of the evidence that a different Indian tribe or Native Hawaiian organization has a stronger cultural relationship with the human remains, 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 objects.

(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 Sec. 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

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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 Departmental Consulting Archeologist.

Sec. 10.7 Disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony. [Reserved]

Subpart C--Human remains, funerary objects, sacred objects, or objects of cultural patrimony in museums and Federal collections

Sec. 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:

(A) From whose tribal lands unassociated funerary objects, sacred objects, or objects of cultural patrimony originated;

(B) That are, or are likely to be, culturally affiliated with unassociated funerary objects, sacred objects, or objects of cultural patrimony; and

(C) 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 Departmental Consulting Archeologist. 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 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 sacred objects or objects of cultural patrimony.

(e) Museum and Federal agency officials must document the following information regarding unassociated funerary objects, sacred objects, and objects of cultural patrimony in their collections and must use this documentation in determining the individuals, Indian tribes, and Native Hawaiian organizations with which they 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 Sec. 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 Sec. 10.10 (a), must not proceed prior to submission of a notice of intent to repatriate to the Departmental Consulting Archeologist, 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

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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 Departmental Consulting Archeologist 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.

Sec. 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 cultural 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 Sec. 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, including all information required

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under Sec. 10.9 (c), and a notice of inventory completion that summarizes the results of the inventory.

(2) The notice of inventory completion must summarize the contents of the inventory in sufficient detail so as to enable the recipients to determine their interest in claiming the inventoried items. It must identify each particular set of human remains or each associated funerary object and the circumstances surrounding its acquisition, describe the human remains or associated funerary objects that are clearly identifiable as to cultural affiliation, and describe the human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with an Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the human remains or associated objects, are identified as likely to be culturally affiliated with a particular Indian tribe or Native Hawaiian organization.

(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 Departmental Consulting Archeologist. 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 Departmental Consulting Archeologist.

(5) Upon request by an Indian tribe or Native Hawaiian organization that has received or should have received a notice of inventory completion and a copy of the inventory as described above, a museum or Federal agency must supply additional available documentation to supplement the information provided with the notice. For these purposes, the term documentation means a summary of existing museum or Federal agency records including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding the acquisition and accession of human remains and associated funerary objects.

(6) If the museum or Federal agency official determines that the museum or Federal agency has possession of or control over human remains that cannot be identified as affiliated with a particular individual, Indian tribes or Native Hawaiian organizations, the museum or Federal agency must provide the Department Consulting Archeologist notice of this result and a copy of the list of culturally unidentifiable human remains and associated funerary objects. The

Departmental Consulting Archeologist must make this information available to members of the Review Committee. Section 10.11 of these regulations will set forth procedures for disposition of culturally unidentifiable human remains of Native American origin. Museums or Federal agencies must retain possession of such human remains pending promulgation of Sec. 10.11 unless legally required to do otherwise, or recommended to do otherwise by the Secretary. Recommendations regarding the disposition of culturally unidentifiable human remains may be requested prior to final promulgation of Sec. 10.11.

(7) The Departmental Consulting Archeologist 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.

Sec. 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 Sec. 10.2 (b) (4), (5) or (6); and

(ii) The cultural affiliation of the object is established:

(A) through the summary, consultation, and notification procedures in Sec. 10.14 of these regulations; or

(B) by presentation of a preponderance of the evidence by a requesting Indian tribe or Native Hawaiian organization pursuant to section 7(c) 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 Sec. 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 Sec. 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 Sec. 10.10 (a)(1) from a 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 Sec. 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 Sec. 10.2 (b)(1) or (b)(3); and

(ii) The affiliation of the deceased individual to known lineal descendant, present day Indian tribe, or Native Hawaiian organization:

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(A) has been reasonably traced through the procedures outlined in Sec. 10.9 and Sec. 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 pursuant to section 7(c) of the Act; and

(iii) None of the specific exceptions listed in Sec. 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 Sec. 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 Sec. 10.9.

(c) Exceptions. These requirements for repatriation do not apply to:

(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, funerary objects, sacred objects, or objects of cultural patrimony and the museum or Federal agency, after complying with these regulations, cannot determine by a preponderance of the evidence which requesting party is the most appropriate claimant. In such circumstances, the museum or Federal agency may retain the human remains, funerary objects, sacred objects, or objects of cultural patrimony until such time as the requesting parties mutually agree upon the appropriate recipient or the dispute is otherwise resolved pursuant to these regulations or as ordered 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 Sec. 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 pursuant to these regulations, the human remains must be considered culturally unidentifiable. Museum and Federal agency officials must report the inventory information regarding such human remains in their holdings to the Departmental Consulting Archeologist who will transmit this information to the Review Committee. The Review Committee is responsible for compiling an inventory of culturally unidentifiable human remains in the possession or control of each museum and Federal agency, and, for recommending to the Secretary specific actions for disposition of such human remains.

Sec. 10.11 Disposition of culturally unidentifiable human remains. [Reserved]

Sec. 10.12 Civil penalties. [Reserved]

Sec. 10.13 Future applicability. [Reserved]

Subpart D--General

Sec. 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 descendence 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

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(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.

Sec. 10.15 Repatriation 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 transfer 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 having custody thereof pending resolution of the claim. Any person who has 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 custody 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. No person is considered to have exhausted his or her administrative remedies with respect to the repatriation or disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony subject to subpart B of these regulations, or, with respect to Federal lands, subpart C of these regulations, until such time as the person has filed a written claim for repatriation or disposition of the objects with the responsible museum or Federal agency and the claim has been duly denied following these regulations.

(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.

Sec. 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 Sec. 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.

Sec. 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.

Appendix A to Part 10--Sample Summary

The following is a generic sample and should be used as a guideline for preparation of summaries tailoring the information to the specific circumstances of each case.

Before November 17, 1993

Chairman or Other Authorized Official

Indian tribe or Native Hawaiian organization

Street

State

Dear Sir/Madame Chair:

I write to inform you of collections held by our museum which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony that are, or are likely to be, culturally affiliated with your Indian tribe or Native Hawaiian organization. This notification is required by section 6 of

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the Native American Graves Protection and Repatriation Act.

Our ethnographic collection includes approximately 200 items specifically identified as being manufactured or used by members of your Indian tribe or Native Hawaiian organization. These items represent various categories of material culture, including sea and land hunting, fishing, tools, household equipment, clothing, travel and transportation, personal adornment, smoking, toys, and figurines. The collection includes thirteen objects identified in our records as ``medicine bags.''

Approximately half of these items were collected by John Doe during his expedition to your reservation in 1903 and accessioned by the museum that same year (see Major Museum Publication, no. 65 (1965).

Another 50 of these items were collected by Jane Roe during her expeditions to your reservation between 1950-1960 and accessioned by the museum in 1970 (see Major Museum: no. 75 (1975). Accession information indicates that several of these items were collected from members of the Able and Baker families.

For the remaining approximately 50 items, which were obtained from various collectors between 1930 and 1980, additional collection information is not readily available.

In addition to the above mentioned items, the museum has approximately 50 ethnographic items obtained from the estate of a private collector and identified as being collected from the ``northwest portion of the State.''

Our archeological collection includes approximately 1,500 items recovered from ten archeological sites on your reservation and another 5,000 items from fifteen sites within the area recognized by the Indian Claims Commission as being part of your Indian tribe's

aboriginal territory.

Please feel free to contact Fred Poe at (012) 345-6789 regarding the identification and potential repatriation of unassociated funerary objects, sacred objects, or objects of cultural patrimony in this collection that are, or are likely to be, culturally affiliated with your Indian tribe or Native Hawaiian organization. You are invited to review our records, catalogues, relevant studies or other pertinent data for the purpose of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of these items. We look forward to working together with you.

Sincerely,

Museum Official

Major Museum

Appendix B to Part 10--Sample Notice of Inventory Completion

The following is an example of a Notice of Inventory Completion published in the Federal Register.

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Hancock County, ME, in the Control of the National Park Service.

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given following provisions of the Native

American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of completion of the inventory of human remains and associated funerary objects from a site in Hancock County, ME, that are presently in the control of the National Park Service.

A detailed inventory and assessment of these human remains has been made by National Park Service curatorial staff, contracted specialists in physical anthropology and prehistoric archeology, and representatives of the Penobscot Nation, Aroostook Band of Micmac, Houlton Band of Maliseet, and the Passamaquoddy Nation, identified collectively hereafter as the Wabanaki Tribes of Maine.

The partial remains of at least seven individuals (including five adults, one subadult, and one child) were recovered in 1977 from a single grave at the Fernald Point Site (ME Site 43-24), a prehistoric shell midden on Mount Desert Island, within the boundary of Acadia National Park. A bone harpoon head, a modified beaver tooth, and several animal and fish bone fragments were found associated with the eight individuals. Radiocarbon assays indicate the burial site dates between 1035-1155 AD. The human remains and associated funerary objects have been catalogued as ACAD-5747, 5749, 5750, 5751, 5752, 5783, 5784. The partial remains of an eighth individual (an elderly male) was also recovered in 1977 from a second grave at the Fernald Point Site. No associated funerary objects were recovered with this individual. Radiocarbon assays indicate the second burial site dates between 480-680 AD. The human remains have been catalogued as ACAD-5748. The human remains and associated funerary objects of all nine individuals are currently in the possession of the University of Maine, Orono, ME.

Inventory of the human remains and associated funerary objects

and review of the accompanying documentation indicates that no known individuals were identifiable. A representative of the Wabanaki Tribes of Maine has identified the Acadia National Park area as a historic gathering place for his people and stated his belief that there exists a relationship of shared group identity between these individuals and the Wabanaki Tribes of Maine. The Prehistoric Subcommittee of the Maine State Historic Preservation Office's Archaeological Advisory Committee has found it reasonable to trace a shared group identity from the Late Prehistoric Period (1000-1500 AD) inhabitants of Maine as an undivided whole to the four modern Indian tribes known collectively as the Wabanaki Tribes of Maine on the basis of geographic proximity; survivals of stone, ceramic and perishable material culture skills; and probable linguistic continuity across the Late Prehistoric/Contact Period boundary. In a 1979 article, Dr. David Sanger, the archeologist who conducted the 1977 excavations at the Fernald Point Site and uncovered the abovementioned burials, recognizes a relationship between Maine sites dating to the Ceramic Period (2,000 B.P.-1600 A.D.) and present-day Algonkian speakers generally known as Abenakis, including the Micmac, Maliseet, Passamaquoddy, Penboscot, Kennebec, and Pennacook groups.

Based on the above mentioned information, officials of the National Park Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and associated funerary objects and the Wabanaki Tribes of Maine.

This notice has been sent to officials of the Wabanaki Tribes of

Maine. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Len Bobinchock, Acting Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609, telephone: (207) 288-0374, before August 31, 1994. Repatriation of these human remains and associated funerary objects to the Wabanaki Tribes of Maine may begin after that date if no additional claimants come forward.

Dated: July 21, 1994

Francis P. McManamon,

Departmental Consulting Archeologist,

Chief, Archeological Assistance Division.

[Published: August 1, 1994]

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

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