

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

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Authority: 25 U.S.C. 3001 *et seq.* and 25 U.S.C. 9.

Subpart A—GENERAL

§ 10.1 Introduction.

(a) *Purpose.* These regulations provide a systematic process for the disposition and repatriation of Native American human remains, funerary objects, sacred objects, and objects of

cultural patrimony under the Native American Graves Protection and Repatriation Act (Act) of November 16, 1990. The Act recognized the rights of lineal descendants, Indian Tribes, and Native Hawaiian organizations in Native American human remains or cultural items subject to this part. Consistent with the Act's express language and Congress's intent in enacting the statute, these regulations require museums and Federal agencies to complete timely dispositions and repatriations through consultation and collaboration with lineal descendants, Indian Tribes, and Native Hawaiian organizations. In implementing this systematic process, museums and Federal agencies must defer to the customs, traditions, and Native American traditional knowledge of lineal descendants, Indian Tribes, and Native Hawaiian organizations.

(b) *Applicability.* These regulations pertain to Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony and require certain actions to:

(1) Protect Human Remains or Cultural Items on Federal or Tribal Lands in the event of a discovery or excavation after November 16, 1990; and

(2) Repatriate Human Remains or Cultural Items in the possession or control of:

(i) Any Federal agency, regardless of the physical location of the holding or collection; or

(ii) Any institution or State or local government agency (including any institution of higher learning) within the United States that receives Federal funds, regardless of the physical location of the holding or collection.

(c) *Accountability.* These regulations are applicable to and binding on all museums and Federal agencies for implementing the systematic process for the disposition and repatriation of human remains or cultural items under this part.

(d) *Duty of care.* Prior to disposition or repatriation, these regulations require a museum or Federal agency to care for, safeguard, and preserve all human remains or cultural items in its custody or in its possession or control. Upon request of a lineal descendant, Indian Tribe, or Native Hawaiian organization, a museum or Federal agency must, to the maximum extent possible:

(1) Consult, collaborate, and obtain consent on the appropriate treatment, care, or handling of human remains or cultural items;

(2) Incorporate and accommodate customs, traditions, and Native American traditional knowledge in practices or treatments of human remains or cultural items; and

(3) Limit access to and research on human remains or cultural items.

(e) *Delivery of written documents.* These regulations require written documents to be sent or delivered, such as requests for repatriation, claims for disposition, invitations or requests to consult, or notices for publication.

(1) The written documents must be sent by:

(i) Email, with proof of receipt,

(ii) Personal delivery with proof of delivery date,

(iii) Private delivery service with proof of date sent, or

(iv) Certified mail.

(2) Communication to the Manager, National NAGPRA Program, should be sent electronically to nagpra_info@nps.gov. If electronic submission is not possible, physical delivery may be sent to 1849 C Street NW, Mail Stop 7360, Washington, DC 20240. If either of these addresses change, a notice with the new address must be published in the *Federal Register* within 5 days of the change.

(f) *Deadlines and timelines.* These regulations require certain actions be taken by a specific date. Unless stated otherwise in these regulations:

(1) Days mean business days, i.e., Monday through Friday. For any action by an Indian Tribe, Native Hawaiian organization, Federal agency, or the Manager, National NAGPRA Program, business days do not include days during which the Federal government is closed because of a Federal holiday, lapse in appropriations, or other reasons.

(2) Written documents are deemed timely based on the date sent, not the date received.

(3) Parties sending or receiving written documents under these regulations must document the date sent or date received, as appropriate, when these regulations require those parties to act based on the date sent or date received.

(g) *Failure to make a claim or a request.* Failure to make a claim for disposition or a request for repatriation before the disposition, repatriation, transfer, or reinterment of human remains or cultural items under this part is deemed an irrevocable waiver of any right to make a claim or a request for the human remains or cultural items once the disposition, repatriation, transfer, or reinterment of the human remains or cultural items has occurred.

(h) *Judicial jurisdiction.* The United States district courts have jurisdiction over any action by any person alleging a violation of the Act or this part.

(i) *Final agency action.* For purposes of the Administrative Procedure Act (5 U.S.C. 704), any of the following actions by a Federal agency constitutes a final agency action under this part:

- (1) A final determination making the Act or this part inapplicable;
- (2) A final denial of a claim for disposition or a request for repatriation; and
- (3) A final disposition or repatriation determination.

(j) *Information collection.* The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned control number 1024-0144. A Federal agency may not conduct or sponsor, and you are not required to respond to, the collection of information under this part unless the Federal agency provides a currently valid OMB control number.

§ 10.2 Definitions for this part.

Act means the Native American Graves Protection and Repatriation Act.

Acknowledged aboriginal land means land whose occupation by an Indian Tribe has been recognized in any of the following sources:

- (1) A treaty sent by the President to the United States Senate for ratification;
- (2) An Act passed by Congress;

(3) An Executive Order;

(4) A treaty between a foreign or colonial government and an Indian Tribe signed before the establishment of the United States Government or prior to the land becoming incorporated in the United States;

(5) Another Federal document or foreign government document providing information that reasonably shows aboriginal occupation; or

(6) Intertribal treaties, diplomatic agreements, and bilateral accords between and among Indian Tribes.

Adjudicated aboriginal land means land whose occupation by an Indian Tribe has been recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims. A final judgment also includes a judgment concerning a settlement as long as that judgment or settlement either explicitly recognizes certain land as the aboriginal land of an Indian Tribe or adopts findings of fact that do so.

Affiliation means a connection between human remains or cultural items and an Indian Tribe or Native Hawaiian organization.

Ahupua'a (singular and plural) means a land division in Hawai'i usually extending from the uplands to the sea which traditionally was, and in some cases remains, self-sustaining or whose occupants were or are permitted access to or trade resources with the neighboring ahupua'a.

Appropriate official means any representative authorized by a delegation of authority within an Indian Tribe, Native Hawaiian organization, Federal agency, or Department of Hawaiian Home Lands (DHHL) that has responsibility for human remains or cultural items on Federal or Tribal lands.

ARPA means the Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa-mm) and the relevant Federal agency regulations implementing that statute.

ARPA Indian lands means lands of Indian Tribes, or individual Indians, which are either held in trust by the United States Government or subject to a restriction against alienation imposed by the United States Government, except for any subsurface interests in lands not owned or controlled by an Indian Tribe or an individual Indian.

ARPA Public lands means lands owned and administered by the United States Government as part of:

(1) The national park system,

(2) The national wildlife refuge system,

(3) The national forest system, and

(4) All other lands the fee title to which is held by the United States Government, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution.

Consultation means a process to seek consensus through the exchange of information, open discussion, and joint deliberations and by incorporating identifications, recommendations, and Native American traditional knowledge, to the maximum extent possible.

Cultural items means a funerary object, sacred object, or object of cultural patrimony according to a lineal descendant, Indian Tribe, or Native Hawaiian organization based on customs, traditions, or Native American traditional knowledge.

Custody means having an obligation to care for the object or item but not a sufficient interest in the object or item to constitute possession or control. In general, custody through a loan, lease, license, bailment, or other similar arrangement is not a sufficient interest to constitute possession or control, which resides with the loaning, leasing, licensing, bailing, or otherwise transferring museum or Federal agency.

Discovery means exposing, finding, or removing human remains or cultural items whether intentionally or inadvertently on Federal or Tribal lands without a written authorization for an excavation under §10.6 of this part.

Disposition means an appropriate official acknowledges and recognizes a lineal descendant, Indian Tribe, or Native Hawaiian organization has control or ownership of human remains or cultural items removed from Federal or Tribal lands.

Excavation means intentionally exposing, finding, or removing human remains or cultural items on Federal or Tribal lands with a written authorization under §10.6 of this part.

Federal agency means any department, agency, or instrumentality of the United States Government. This term does not include the Smithsonian Institution.

Federal lands means any lands other than Tribal lands that is controlled or owned by the United States Government. For purposes of this definition, control refers to lands not owned by the United States Government, but in which the United States Government has a sufficient legal interest to permit it to apply these regulations without abrogating a person's existing legal rights. Whether the United States Government has a sufficient legal interest to control lands it does not own is a legal determination that a Federal agency must make on a case-by-case basis. Federal lands include:

(1) Any lands selected by, but not yet conveyed to, an Alaska Native Corporation or group organized under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*);

(2) Any lands other than Tribal lands that are held by the United States Government in trust for an individual Indian or lands owned by an individual Indian and subject to a restriction on alienation by the United States Government; and

(3) Any lands subject to a statutory restriction, lease, easement, agreement, or similar arrangement containing terms that grant to the United States Government indicia of control over those lands.

Funerary object means any object reasonably believed to have been placed intentionally with or near human remains. A funerary object is any object connected, either at the time of death or later, to a death rite or ceremony of a Native American culture according to a lineal descendant, Indian Tribe, or Native Hawaiian organization based on customs, traditions, or Native American traditional knowledge. This term does not include any object returned or distributed to living persons according to traditional custom after it has been displayed as part of a death rite or ceremony of a Native American culture. Funerary objects are either associated funerary objects or unassociated funerary objects.

(1) *Associated funerary object* means the human remains related to the funerary object are, or were after November 16, 1990, in the possession or control of any museum or Federal agency or removed from Federal or Tribal lands. Any object made exclusively for burial purposes or to contain human remains is always an associated funerary object regardless of the location or existence of any related human remains.

(2) *Unassociated funerary object* means any funerary object that is not an associated funerary object and is identified by a preponderance of the evidence as one or more of the following:

(i) Related to human remains but the human remains were not removed or the location of the human remain is unknown,

(ii) Related to specific individuals or families,

(iii) Removed from a specific burial site of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization, or

(iv) Removed from a specific area where a burial site of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization is known to have existed, but the burial site is no longer extant.

Holding or collection means an accumulation of one or more objects, items, or human remains for any temporary or permanent purpose, including:

(1) Academic interest;

(2) Accession;

(3) Catalog;

(4) Comparison;

(5) Conservation;

(6) Education;

(7) Examination;

(8) Exhibition;

(9) Forensic purposes;

(10) Interpretation;

(11) Preservation;

(12) Public benefit;

(13) Research;

(14) Scientific interest; or

(15) Study.

Human remains means the physical remains of the body of a Native American individual. This term does not include human remains or portions of human remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained. When human remains are reasonably believed to be comingled with other material (such as soil or faunal remains), the entire admixture may be treated as human remains.

(1) Human remains incorporated into a funerary object, sacred object, or object of cultural patrimony are considered part of the cultural item rather than human remains.

(2) Human remains incorporated into an object or item that is not a funerary object, sacred object, or object of cultural patrimony are considered human remains.

Indian Tribe means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)), recognized as eligible for the special programs and services provided by the United States Government to Indians because of their status as Indians by its inclusion on the list of recognized Indian Tribes published by the Secretary under the Act of November 2, 1994 (25 U.S.C. 5131).

Inventory means a simple itemized list of human remains and associated funerary objects in a holding or collection that includes the results of consultation and determinations about cultural and geographical affiliation.

Lineal descendant means:

(1) A living person tracing his or her ancestry, either by means of traditional Native American kinship systems, or by the common-law system of descent, to a known individual whose human remains, funerary objects, or sacred objects are subject to this part; or

(2) A living person tracing his or her ancestry, either by means of traditional Native American kinship systems, or by the common-law system of descent, to all the known individuals represented by comingled human remains (example: the human remains of two individuals have been comingled, and a living person may trace his or her ancestry directly to both of the deceased individuals).

Manager, National NAGPRA Program, means the official of the Department of the Interior designated by the Secretary as responsible for administration of the Act and this part.

Museum means any institution or State or local government agency (including any institution of higher learning) that has possession or control of human remains or cultural items and receives Federal funds. The term does not include the Smithsonian Institution.

Native American means of, or relating to, a tribe, people, or culture that is indigenous to the United States. To be considered Native American under this part, human remains or cultural items must bear some relationship to a tribe, people, or culture indigenous to the United States.

(1) A tribe is an Indian Tribe.

(2) A people comprise the entire body of persons who constitute a community, tribe, nation, or other group by virtue of a common culture, history, religion, language, race, ethnicity, or similar feature. The Native Hawaiian Community is a “people.”

(3) A culture comprises the characteristic features of everyday existence shared by people in a place or time.

Native American traditional knowledge means knowledge, philosophies, beliefs, traditions, skills, and practices that are developed, embedded, and often safeguarded by Native Americans. Native American traditional knowledge contextualizes relationships between and among people, the places they inhabit, and the broader world around them, covering a wide variety of information, including, but not limited to, cultural, ecological, religious, scientific, societal, spiritual, and technical knowledge. Native American traditional knowledge may be, but

is not required to be, developed, sustained, and passed through time, often forming part of a cultural or spiritual identity.

Native Hawaiian organization means any organization that:

(1) Serves and represents the interests of Native Hawaiians, who are descendants of the indigenous people who, before 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawai‘i;

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

(3) Has expertise in Native Hawaiian affairs, and includes but is not limited to:

(i) The Office of Hawaiian Affairs established by the constitution of the State of Hawai‘i;

(ii) Native Hawaiian organizations (including ‘ohana) who are registered with the Secretary’s Office of Native Hawaiian Relations; and

(iii) Hawaiian Homes Commission Act (HHCA) Beneficiary Associations and Homestead Associations as defined under 43 CFR 47.10.

Object of cultural patrimony means an object that has ongoing historical, traditional, or cultural importance central to a Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to an Indian Tribe or Native Hawaiian organization based on customs, traditions, or Native American traditional knowledge. An object of cultural patrimony may have been entrusted to a caretaker, along with the authority to confer that responsibility to another caretaker. The object must be reasonably identified as being of such importance central to the group that it:

(1) Cannot or could not be alienated, appropriated, or conveyed by any person, including its caretaker, regardless of whether the person is a member of the group, and

(2) Must have been considered inalienable by the group at the time the object was separated from the group.

‘Ohana (family) means a group of people who are not lineal descendants but comprise a Native Hawaiian organization whose members have a familial or kinship relationship with each other.

Person means:

(1) An individual, partnership, corporation, trust, institution, association, or any other private entity; or

(2) Any representative, official, employee, agent, department, or instrumentality of the United States Government or of any Indian Tribe or Native Hawaiian organization, or of any State or subdivision of a State.

Possession or control means having a sufficient interest in an object or item to independently direct, manage, oversee, or restrict the use of the object or item. A museum or Federal agency may have possession or control regardless of whether the object or item is in its physical custody. In general, custody through a loan, lease, license, bailment, or other similar arrangement is not a sufficient interest to constitute possession or control, which resides with the loaning, leasing, licensing, bailing, or otherwise transferring museum or Federal agency.

Receives Federal funds means an institution or agency of a State or local government (including an institution of higher learning) directly or indirectly receives Federal financial assistance after November 16, 1990, including any grant; cooperative agreement; loan; contract; use of Federal facilities, property, or services; or other arrangement involving the transfer of anything of value for a public purpose authorized by a law of the United States Government. This term includes Federal financial assistance provided for any purpose that is received by a larger entity of which the institution or agency is a part. For example, if an institution or agency is a part of a State or local government or a private university, and the State or local government or private university receives Federal financial assistance for any purpose, then the institution or agency receives Federal funds for the purpose of these regulations. This term does not include procurement of property or services by and for the direct benefit or use of the United States Government or Federal payments that are compensatory.

Repatriation means a museum or Federal agency acknowledges and recognizes a lineal descendant, Indian Tribe, or Native Hawaiian organization has control or ownership of human remains or cultural items in a holding or collection.

Review Committee means the advisory committee established under the Act.

Right of possession means possession or control obtained with the voluntary consent of a person or group that had authority of alienation. Right of possession is given through the original acquisition of:

(1) An unassociated funerary object, a sacred object, or an object of cultural patrimony from an Indian Tribe or Native Hawaiian organization with the voluntary consent of a person or group with authority to alienate the object; or

(2) Human remains and associated funerary objects which were exhumed, removed, or otherwise obtained with full knowledge and consent of the next of kin or, when no next of kin is ascertainable, the official governing body of the appropriate Indian Tribe or Native Hawaiian organization.

Sacred object means an object that is a specific ceremonial object needed by a traditional religious leader for the practice of traditional Native American religion by present-day adherents, according to a lineal descendant, Indian Tribe, or Native Hawaiian organization based on customs, traditions, or Native American traditional knowledge. While many items might be imbued with sacredness in a culture, this term is specifically limited to objects needed for the observance or renewal of Native American religious ceremonies.

Secretary means the Secretary of the Interior or a designee.

Summary means a written description of a holding or collection that may contain an unassociated funerary object, sacred object, or object of cultural patrimony.

Traditional religious leader means a person who, based on cultural, ceremonial, or religious practices, is considered by an Indian Tribe or Native Hawaiian organization as being responsible for performing cultural ceremonies or exercising a leadership role.

Tribal lands means:

(1) All lands that are within the exterior boundaries of any Indian reservation;

(2) All lands that are dependent Indian communities; and

(3) All lands administered by the Department of Hawaiian Home Lands (DHHL) under the Hawaiian Homes Commission Act of 1920 (HHCA, 42 Stat. 108) and Section 4 of the Act to Provide for the Admission of the State of Hawai‘i into the Union (73 Stat. 4), including “available lands” and “Hawaiian home lands.”

Tribal lands of an NHO means Tribal lands in Hawai‘i that are under the stewardship of a Native Hawaiian organization that has been issued a lease or license under HHCA section 204(a)(2), second paragraph, second proviso, or section 207(c)(1)(B).

Unclaimed human remains or cultural items means human remains or cultural items removed from Federal lands in the United States or from Tribal lands in Hawai‘i whose disposition has not occurred under this part.

United States means the 50 States and the District of Columbia.

§ 10.3 Cultural and Geographical Affiliation

Throughout this part, affiliation ensures that disposition or repatriation of human remains or cultural items is based on a reasonable connection to an Indian Tribe or Native Hawaiian organization. Affiliation is established by identifying the cultural and geographical affiliation of the human remains or cultural items using this section.

(a) *Cultural affiliation.* Cultural affiliation is identified by reasonably tracing a relationship of shared group identity between an Indian Tribe or Native Hawaiian organization and an identifiable earlier group connected to the human remains or cultural items. Cultural affiliation is established by a simple preponderance of the evidence given the information available, including the results of consultation. Cultural affiliation does not require exhaustive studies of the human remains or cultural items or continuity through time. Cultural affiliation is not precluded solely because of reasonable gaps in the information.

(1) Information. One or more of the following equally relevant types of information may be used to identify cultural affiliation:

- (i) Anthropological;
- (ii) Archaeological;
- (iii) Biological;
- (iv) Folkloric;
- (v) Geographical;
- (vi) Historical;
- (vii) Kinship;
- (viii) Linguistic;
- (ix) Oral Traditional; or

(x) Other relevant information or expert opinion, including Native American traditional knowledge which alone may be sufficient to identify cultural affiliation.

(2) Criteria. Using the information available, each of the following criteria for cultural affiliation must be identified:

- (i) One or more earlier groups connected to the human remains or cultural items;
- (ii) One or more Indian Tribes or Native Hawaiian organizations; and
- (iii) A relationship of shared group identity between the earlier group and the Indian Tribe or Native Hawaiian organization reasonably traced through time.

(3) Multiple cultural affiliations. An identifiable earlier group may have a relationship to more than one Indian Tribe or Native Hawaiian organization. As two or more earlier groups may be connected to human remains or cultural items, a relationship may be reasonably traced to two or more Indian Tribes or Native Hawaiian organizations that do not themselves have a shared group identity.

(b) *Geographical affiliation.* Geographical affiliation is identified by reasonably tracing a relationship between an Indian Tribe or Native Hawaiian organization and a geographic area connected to the human remains or cultural items. Geographical affiliation is established by the information available, including the results of consultation.

(1) Information. Existing records, inventories, catalogues, relevant studies, or other pertinent data may be used to identify the:

- (i) Geographic origin of the human remains or cultural items and
- (ii) Basic facts surrounding the acquisition and accession of the human remains or cultural items.

(2) Criteria. Using the information available, each of the following criteria for geographical affiliation must be identified:

- (i) A geographic area connected to the human remains or cultural items;
- (ii) One or more Indian Tribes or Native Hawaiian organizations; and
- (iii) A relationship between the geographic area and the Indian Tribe or Native Hawaiian organization, based on the identification of the geographic area as:
 - (A) The Tribal lands of the Indian Tribe or Native Hawaiian organization,
 - (B) The adjudicated aboriginal land of the Indian Tribe, or
 - (C) The acknowledged aboriginal land of the Indian Tribe.

(3) Multiple geographical affiliations. A geographic area may have a relationship to more than one Indian Tribe or Native Hawaiian organization. Information used for geographical affiliation may provide information sufficient to identify cultural affiliation under paragraph (a) of this section but must not be used to limit geographical affiliation.

(c) *Multiple affiliations.* When affiliation of human remains or cultural items is established with two or more Indian Tribes or Native Hawaiian organizations, any of the Indian Tribes or Native Hawaiian organizations may submit a claim for disposition or a request for repatriation. Two or more Indian Tribes or Native Hawaiian organizations with affiliation may agree to joint disposition or joint repatriation of the human remains or cultural items.

(1) Single claims or requests. Claims or requests for joint disposition or joint repatriation of human remains or cultural items are considered a single claim or request and not competing claims or requests. Notices and statements for joint disposition or joint repatriation of human remains or cultural items required under this part must identify all joint requestors.

(2) Competing claims or requests. Under §§10.7, 10.9, and 10.10 of this part, when there are competing claims for disposition or competing requests for repatriation of human remains or cultural items, it may be necessary to determine the Indian Tribe or Native Hawaiian organization with the closest affiliation under paragraph (d) of this section.

(d) Closest affiliation.

(1) The Indian Tribe with the closest affiliation, in the following order, is:

(i) The Indian Tribe whose cultural affiliation is clearly identified.

(ii) The Indian Tribe whose cultural affiliation is not clearly identified but is reasonably identified by the information available, including the circumstances surrounding the acquisition of the human remains or cultural items.

(iii) The Indian Tribe whose geographical affiliation is based on the Tribal lands of the Indian Tribe.

(iv) The Indian Tribe whose geographical affiliation is based on the adjudicated aboriginal land of the Indian Tribe.

(v) The Indian Tribe whose geographical affiliation is based on the acknowledged aboriginal land of the Indian Tribe.

(2) The Native Hawaiian organization with the closest cultural affiliation, in the following order, is:

(i) An 'ohana that can trace an unbroken connection of named individuals to one or more of the human remains or cultural items, but not necessarily to all of the human remains or cultural items from a specific site.

(ii) An 'ohana that can trace a relationship to the ahupua'a where the human remains or cultural items were removed and a direct kinship to one or more of the human remains or cultural items, but not necessarily an unbroken connection of named individuals.

(iii) An organization with affiliation only to the earlier occupants of the ahupua'a where the human remains or cultural items were removed, and not to the earlier occupants of any other ahupua'a.

(iv) An organization with affiliation to either:

(A) The earlier occupants of the ahupua'a where the human remains or cultural items were removed, as well as to the earlier occupants of other ahupua'a on the same island, but not to the earlier occupants of all ahupua'a on that island, or to the earlier occupants of any other island of the Hawaiian archipelago, or

(B) The earlier occupants of another island who accessed the ahupua'a where the human remains or cultural items were removed for traditional or customary practices and were buried there.

(v) An organization with affiliation to the earlier occupants of all ahupua'a on the island where the human remains or cultural items were removed, but not to the earlier occupants of any other island of the Hawaiian archipelago.

(vi) An organization with affiliation to the earlier occupants of more than one island in the Hawaiian archipelago that has been in continuous existence from a date prior to 1893.

(vii) Any other Native Hawaiian organization with affiliation.

Subpart B—PROTECTION OF HUMAN REMAINS OR CULTURAL ITEMS ON FEDERAL OR TRIBAL LANDS

§ 10.4 General.

Whenever an Indian Tribe, Native Hawaiian organization, Federal agency, or the State of Hawai‘i Department of Hawaiian Home Lands (DHHL) has responsibility for human remains or cultural items on Federal or Tribal lands, it must comply with the requirements of this subpart. To ensure compliance with the Act, any permit, license, lease, right-of-way, or other authorization issued by an Indian Tribe, Native Hawaiian organization, Federal agency, or DHHL for an activity on Federal or Tribal lands must include a requirement that the person responsible for the activity comply with §10.5 of this part upon the discovery of human remains or cultural items. Prior to any excavation of human remains or cultural items on Federal or Tribal lands, an Indian Tribe, Native Hawaiian organization, Federal agency, or DHHL must comply with §10.6 of this part.

(a) *Appropriate official.* To ensure compliance with the Act, the Indian Tribe, Native Hawaiian organization, Federal agency, or DHHL that has responsibility for human remains or cultural items on Federal or Tribal lands must designate one or more appropriate officials, as shown in Table 1 of this section. The appropriate official is responsible for carrying out the requirements of this subpart.

Table 1 to §10.4: Appropriate official

For human remains or cultural items on...	the appropriate official is a representative for the...
Federal lands in the United States	Federal agency with primary management authority
Tribal lands in Alaska and the continental United States	Indian Tribe
Tribal lands in Hawai‘i	DHHL

(b) *Plan of action.* On Federal lands in the United States or on Tribal lands in Hawai‘i, a plan of action is required for any planned activity (including an excavation authorized under §10.6 of this part) that is likely to result in a discovery or excavation of human remains or cultural items. Determining the likelihood of discovery or excavation must be based upon previous studies, discoveries, or excavations in the general proximity of the planned activity. Information from and the expertise of Native American cultural practitioners, while not required, may assist in determining the likelihood of discovery or excavation. In consultation with any lineal descendants, Indian Tribes, or Native Hawaiian organizations, the appropriate official must prepare, approve, and sign a plan of action.

(1) *Step 1 – Initiate consultation.* Before the planned activity begins, the appropriate official must identify consulting parties and make a good-faith effort to invite the parties to consult.

(i) Consulting parties are any lineal descendant and any Indian Tribe or Native Hawaiian organization with potential affiliation.

(ii) An invitation to consult must be in writing and must include:

(A) A description of the planned activity and its general location;

(B) The names of all identified consulting parties; and

(C) A proposed timeline and method for consultation.

(iii) Any consulting party, regardless of whether the party has received an invitation to consult, must submit a written request to consult. A written request to consult may be submitted to the appropriate official at any time.

(2) *Step 2 – Consult with requesting parties.* No later than 10 days after receiving a written request to consult, the appropriate official must respond in writing with a proposed timeline for consultation. The proposed timeline must allow for consultation to occur before the planned activity begins.

(i) In the response to the requesting party, the appropriate official must ask a requesting party for the following information, if not already provided:

(A) Recommendations on the proposed timeline and method for consultation; and

(B) The name, phone number, email address, or mailing address for any authorized representative, traditional religious leaders, and known lineal descendant who should participate in consultation.

(ii) The consultation process must seek consensus, to the maximum extent possible, on the content of the plan of action.

(iii) The appropriate official must prepare a record of consultation that includes the effort made to seek consensus. If recommendations by requesting parties are not possible, the record of consultation must describe efforts to identify a mutually agreeable alternative. The appropriate official must record the concurrence, disagreement, or nonresponse of the requesting parties to the plan of action.

(3) *Step 3 – Approve and sign the plan of action.* Before the planned activity begins, the appropriate official must approve and sign a plan of action and must provide a copy to all consulting parties. At a minimum, the written plan of action must include:

(i) A description of the planned activity and its general location;

(ii) A list of all consulting parties identified under paragraph (b)(1) of this section;

(iii) A record of consultation under paragraph (b)(2) of this section;

(iv) The preference of requesting parties for:

(A) Stabilizing and covering human remains or cultural items in situ;

(B) Protecting and relocating human remains or cultural items, if removed; or

(C) Providing the appropriate treatment, care, or handling of human remains or cultural items; and

(v) The timeline and method for:

(A) Informing all identified consulting parties of a discovery;

(B) Evaluating the potential need for an excavation; and

(C) Completing the disposition, to include publication of a notice of intended disposition, under §10.7 of this part.

(c) *Comprehensive agreement.* To facilitate compliance with the Act, a Federal agency or DHHL may develop a written comprehensive agreement for all land managing activities on Federal or Tribal lands, or portions thereof, under its responsibility. The written comprehensive agreement must:

(1) Be developed in consultation with any Indian Tribe or Native Hawaiian organization identified under paragraph (b)(1) of this section and requesting to consult under paragraph (b)(2) of this section;

(2) Include, at minimum, a plan of action under paragraph (b)(3) of this section;

(3) Be consented to by a majority of requesting parties or lineal descendants identified under paragraph (b)(2) of this section. Evidence of consent will be by the authorized representative's signature on the agreement or by official correspondence to the Federal agency or DHHL; and

(4) Be signed by the appropriate official for the Federal agency or DHHL.

(d) *Federal agency coordination with other laws.* To manage compliance with the Act, a Federal agency may coordinate its responsibility under this subpart with its responsibilities under other relevant Federal laws. Compliance with this subpart does not relieve a Federal agency of the responsibility for compliance with the National Historic Preservation Act (54 U.S.C. 306108, commonly known as Section 106) or the Archeological and Historic Preservation Act (54 U.S.C. 312501-312508).

§ 10.5 Discovery.

When a discovery of human remains or cultural items on Federal or Tribal lands occurs, any person who knows or has reason to know of the discovery must inform the appropriate official for the responsible Indian Tribe, Native Hawaiian organization, Federal agency, or DHHL. For any planned activity on Federal lands in the United States or on Tribal lands in Hawai'i that is likely to result in a discovery of human remains or cultural items, the appropriate official must, in consultation with Indian Tribes and Native Hawaiian organizations, prepare, approve, and sign a plan of action under §10.4(b) of this part, unless the discovery is already covered by a signed comprehensive agreement under §10.4(c) of this part.

Table 1 to §10.5: Report a discovery on Federal or Tribal lands

Where the discovery is on...	the appropriate official is the representative for the...	and the additional point of contact is the ...
Federal lands in the United States*	Federal agency with primary management authority	Any Indian Tribe or Native Hawaiian organization with potential affiliation, if known.
Tribal lands in Alaska and the continental United States	Indian Tribe	Bureau of Indian Affairs or the Federal agency with primary management authority, if any.
Tribal lands in Hawai‘i	DHHL	Any Native Hawaiian organization with potential affiliation, if known.
* Federal lands in Alaska selected but not yet conveyed under the Alaska Native Claims Settlement Act (ANCSA, 43 U.S.C. 1601)	Bureau of Land Management or Federal agency with primary management authority	Alaska Native Corporation or group organized under ANCSA.

(a) *Report any discovery.* Any person who knows or has reason to know of a discovery of human remains or cultural items on Federal or Tribal lands must immediately report the discovery to the appropriate official and any additional point of contact shown in Table 1 of this section. The person making the discovery must make a reasonable effort to secure and protect the human remains or cultural items, including, as appropriate, stabilizing or covering the human remains or cultural items. No later than 24 hours after the discovery, the person making the discovery must send written documentation of the discovery, including the steps taken to secure and protect the human remains or cultural items, to the appropriate official and the additional point of contact shown in Table 1 of this section.

(b) *Cease any nearby activity.* To ensure compliance with the Act, any permit, license, lease, right-of-way, or other authorization issued by an Indian Tribe, Native Hawaiian organization, Federal agency, or DHHL for an activity on Federal or Tribal lands must include a requirement that the person responsible for the activity comply with this paragraph upon the discovery of human remains or cultural items. If a discovery is related to any such activity (including but not limited to construction, mining, logging, or agriculture), the person responsible for the activity must:

- (1) Immediately stop all activity around the discovery;
- (2) Immediately report the discovery to the appropriate official and any additional point of contact shown in Table 1 of this section;
- (3) Make a reasonable effort to secure and protect the human remains or cultural items, including, as appropriate, stabilizing and covering the human remains or cultural items;
- (4) No later than 24 hours after the discovery, send written documentation of the discovery to the appropriate official and any additional point of contact stating:
 - (i) The general location and contents of the discovery,

- (ii) The activity related to the discovery,
- (iii) The steps taken to secure and protect the human remains or cultural items, and
- (iv) Confirmation that all activity around the discovery has stopped and will not resume until the date in a written certification issued under paragraph (e) of this section.

(c) *Respond to a discovery.* No later than three days after receiving written documentation of a discovery, the appropriate official must respond to a discovery. The appropriate official must comply with the requirements of this section immediately upon learning of the discovery even if the discovery has not been properly reported.

- (1) The appropriate official must make a written record showing a reasonable effort to:
 - (i) Take steps to secure and protect the human remains or cultural items;
 - (ii) Verify that any activity around the discovery has stopped; and
 - (iii) Report the discovery to any additional point of contact shown in Table 1 of this section.

(2) On Tribal lands in Alaska and the continental United States, the Indian Tribe may delegate its responsibility for the discovery to the appropriate official for the Bureau of Indian Affairs or the Federal agency with primary management authority. If both the Federal agency and the Indian Tribe consent in writing, the appropriate official for the Bureau of Indian Affairs or the Federal agency with primary management authority is responsible for completing the requirements in paragraph (d) of this section.

(3) On Tribal lands of an NHO, the Native Hawaiian organization may agree in writing to be responsible for discoveries on its Tribal lands and then must respond to any discovery under this paragraph. If the Native Hawaiian organization has not agreed in writing to be responsible for discoveries, the appropriate official for DHHL is responsible for completing the requirements in paragraph (d) of this section for any discoveries on those Tribal lands of an NHO.

(d) *Approve and sign a plan of action.* On Federal lands in the United States or on Tribal lands in Hawai'i, the appropriate official, in consultation with Indian Tribes and Native Hawaiian organizations, must prepare, approve, and sign a plan of action under §10.4(b) of this part no later than 30 days after receiving written documentation of a discovery. To the maximum extent possible, the appropriate official must carry out the plan of action for any human remains or cultural items. This requirement does not apply if, before receiving written documentation of the discovery:

- (1) The appropriate official signed a plan of action under §10.4(b) of this part;
- (2) The appropriate official signed a comprehensive agreement under §10.4(c) of this part; or
- (3) A Native Hawaiian organization agreed in writing to be responsible for discoveries on its Tribal lands under paragraph (c)(3) of this section.

(e) *Certify that an activity may resume.* No later than 35 days after receiving written documentation of a discovery, the appropriate official must send a written certification to the person responsible for the activity that the activity may resume. The written certification must provide:

(1) A copy of the signed plan of action or comprehensive agreement with redaction of any confidential or sensitive information to the extent of applicable law;

(2) Instructions for protecting, stabilizing, or covering the human remains or cultural items, if appropriate;

(3) A proposed timeline and method for evaluating the potential need for and authorization of an excavation of the human remains or cultural items, if applicable; and

(4) The date (no later than 30 days after the date of the written certification) on which lawful activity may resume around the discovery.

§ 10.6 Excavation.

When an excavation of human remains or cultural items on Federal or Tribal lands is needed, the appropriate official may authorize the excavation only after complying with this section. The appropriate official must take reasonable steps to evaluate the potential need for an excavation of human remains or cultural items. A permit under Section 4 of ARPA (16 U.S.C. 470cc) is required when the excavation is on Federal or Tribal lands that are also ARPA Indian lands or ARPA Public lands, and there is no applicable permit exception or exemption under the ARPA uniform regulations at 18 CFR 1312, 32 CFR 229, 36 CFR 296, or 43 CFR 7.

(a) *On Tribal lands.* Before an excavation of human remains or cultural items may occur, the appropriate official must consent in writing by providing a written authorization for the excavation.

(1) At minimum, the written authorization must document:

(i) The reasonable steps taken to evaluate the potential need for an excavation of human remains or cultural items; and

(ii) Any permit that the Indian Tribe or Native Hawaiian organization legally requires.

(2) On Tribal lands in Alaska and the continental United States, the Indian Tribe may delegate its responsibility for authorizing the excavation to the appropriate official for the Bureau of Indian Affairs or the Federal agency with primary management authority. If both the Federal agency and the Indian Tribe consent in writing, the appropriate official for the Bureau of Indian Affairs or the Federal agency with primary management authority is responsible for completing the requirements in paragraph (b) of this section.

(3) On Tribal lands of an NHO, the Native Hawaiian organization may agree in writing to be responsible for excavations on its Tribal lands and then must provide written authorizations under this paragraph. If the Native Hawaiian organization has not agreed in writing to be responsible for excavations, the appropriate official for DHHL is responsible for completing the requirements in paragraph (b) of this section for any excavations on those Tribal lands of an NHO.

(b) *On Federal lands in the United States or on Tribal lands in Hawai'i.* Before an excavation of human remains or cultural items may occur, the appropriate official, must prepare, approve, and sign a plan of action under §10.4(b) of this part and must provide a written authorization for the excavation.

(1) Prior to authorizing an excavation, the appropriate official, in consultation with Indian Tribes and Native Hawaiian organizations, must prepare, approve, and sign a plan of action under §10.4(b) of this part. To the maximum extent possible, the appropriate official must carry out the plan of action for any human remains or cultural items. This requirement does not apply if prior to authorizing the excavation:

- (i) The appropriate official signed a plan of action under §10.4(b) of this part;
- (ii) The appropriate official signed a comprehensive agreement under §10.4(c) of this part; or
- (iii) A Native Hawaiian organization agreed in writing to be responsible for excavations on its Tribal lands under paragraph (a)(3) of this section.

(2) At minimum, the written authorization must document:

- (i) The reasonable steps taken to evaluate the potential need for an excavation of human remains or cultural items; and
- (ii) Any permit that the Federal agency or DHHL legally requires.

§ 10.7 Disposition.

When human remains or cultural items are removed from Federal or Tribal lands, as soon as possible (but no later than one year) after the discovery or excavation of the human remains or cultural items, the appropriate official must determine the lineal descendant, Indian Tribe, or Native Hawaiian organization that has priority for disposition of human remains or cultural items using this section. On Federal lands in the United States or on Tribal lands in Hawai‘i, when the appropriate official cannot reasonably determine any Indian Tribe or Native Hawaiian organization with priority for disposition of human remains or cultural items, the appropriate official must report the human remains or cultural items as unclaimed under paragraph (e) of this section.

(a) *Priority for disposition.* The disposition of human remains or cultural items removed from Federal or Tribal lands is determined in the following priority order:

- (1) The known lineal descendants, if any, for human remains and associated funerary objects;
- (2) The Indian Tribe or Native Hawaiian organization from whose Tribal lands the human remains or cultural items originated;
- (3) The Indian Tribe or Native Hawaiian organization with the closest cultural affiliation according to the priority order at §10.3(d) of this part; or
- (4) For human remains or cultural items from adjudicated aboriginal land, the Indian Tribe with the strongest relationship to the human remains or cultural items who makes a claim for disposition, which is:
 - (i) The adjudicated aboriginal land Indian Tribe who claims the human remains or cultural items, or
 - (ii) A different Indian Tribe who claims the human remains or cultural items and shows, by a preponderance of the evidence, a stronger cultural relationship to the human remains or cultural items than the adjudicated aboriginal land Indian Tribe.

(b) *To a lineal descendant.* When a lineal descendant is determined for human remains and associated funerary objects removed from Federal or Tribal lands, the appropriate official for the Indian Tribe, Native Hawaiian organization, Federal agency, or DHHL must send a written disposition statement to the lineal descendant. The disposition statement must acknowledge and recognize the lineal descendant has ownership or control of the human remains and associated funerary objects.

(1) Before sending the disposition statement, the appropriate official must consult with the lineal descendant on the care, custody, and physical transfer of the human remains and associated funerary objects.

(2) After sending the disposition statement, the appropriate official must:

(i) Document any physical transfer by recording the contents, recipient, and method of delivery; and

(ii) Protect sensitive information, as identified by the lineal descendant, from disclosure to the general public to the extent consistent with applicable law;

(3) After the disposition statement is sent, nothing in the Act or this part:

(i) Limits the authority of the Indian Tribe, Native Hawaiian organization, Federal agency, or DHHL to enter into any agreement with the lineal descendant concerning the care or custody of the human remains and associated funerary objects, or

(ii) Limits any procedural or substantive right which may otherwise be secured to the lineal descendant.

(c) *On Tribal lands.* When a lineal descendant cannot be determined for human remains and associated funerary objects, or in the case of unassociated funerary objects, sacred objects, or objects of cultural patrimony, the appropriate official for the Indian Tribe or Native Hawaiian organization from whose Tribal lands the human remains or cultural items were removed must complete a written disposition statement.

(1) The written disposition statement must acknowledge and recognize:

(i) A lineal descendant could not be ascertained and

(ii) The Indian Tribe or Native Hawaiian organization has control or ownership of the human remains or cultural items.

(2) On Tribal lands in Alaska and the continental United States, the Indian Tribe may delegate its responsibility for disposition of human remains or cultural items to the appropriate official for the Bureau of Indian Affairs or the Federal agency with primary management authority. If both the Federal agency and the Indian Tribe consent in writing, the appropriate official for the Bureau of Indian Affairs or the Federal agency with primary management authority is responsible for completing the requirements in paragraph (d) of this section.

(3) On Tribal lands of an NHO, the Native Hawaiian organization may agree in writing to be responsible for disposition of human remains or cultural items from its Tribal lands and then must provide written disposition statements under this paragraph. If the Native Hawaiian organization has not agreed in writing to be responsible for dispositions, the appropriate official for DHHL is responsible for completing the requirements in paragraph (d) of this section for any dispositions from those Tribal lands of an NHO.

(4) After the disposition statement is complete, nothing in the Act or this part:

(i) Limits the authority of a Federal agency to enter into any agreement with the Indian Tribe or Native Hawaiian organization concerning the care or custody of the human remains or cultural items,

(ii) Limits any procedural or substantive right which may otherwise be secured to the Indian Tribe or Native Hawaiian organization, or

(iii) Prevents the governing body of an Indian Tribe or Native Hawaiian organization from expressly relinquishing its control or ownership of human remains, funerary objects, or sacred objects.

(d) *On Federal lands in the United States or on Tribal lands in Hawai‘i.* When a lineal descendant cannot be determined for human remains and associated funerary objects, or in the case of unassociated funerary objects, sacred objects, or objects of cultural patrimony, the appropriate official for the Federal agency or DHHL must determine the Indian Tribe or Native Hawaiian organization with priority for disposition under paragraph (a) of this section. When the appropriate official cannot reasonably determine any Indian Tribe or Native Hawaiian organization with priority for disposition of human remains or cultural items, the Federal agency or DHHL must report the human remains or cultural items as unclaimed under paragraph (e) of this section. On Tribal lands in Hawai‘i, this requirement is waived if the Native Hawaiian organization agreed in writing to be responsible for disposition of human remains or cultural items from its Tribal lands under paragraph (c)(3) of this section.

(1) *Step 1 – Inform consulting parties.* As soon as possible but no later than six months after a discovery or excavation of human remains or cultural items, the appropriate official must send a written document informing all consulting parties identified in the plan of action under §10.4(b)(1) of this part. Consultation on the disposition of human remains or cultural items may continue until publication of a notice of intended disposition under paragraph (d)(2) of this section. The appropriate official must send a written document to the consulting parties that includes:

(i) A description of the human remains or cultural items including the general location and date of discovery or excavation;

(ii) The name of each Indian Tribe or Native Hawaiian organization identified as having priority for disposition of the human remains or cultural items and a brief abstract of the information used to make that identification; and

(iii) A request that if the Indian Tribe or Native Hawaiian organization wishes to submit a claim for disposition of the human remains or cultural items, it should do so in writing no later than 30 days after publication of a notice in the *Federal Register*.

(2) *Step 2 – Submit a notice of intended disposition.* No earlier than 30 days and no later than six months after informing consulting parties, the appropriate official must submit a notice of intended disposition to the Manager, National NAGPRA Program, for publication in the *Federal Register*. If the human remains or cultural items are evidence in an ongoing civil or criminal action under ARPA, the deadline for the notice is extended until the conclusion of the ARPA case.

(i) A notice of intended disposition must conform to the mandatory format of the *Federal Register* and include:

(A) A brief description of the human remains or cultural items, including the county and state where the human remains or cultural items were removed;

(B) The identity of the human remains or cultural items specifically as human remains, associated funerary objects, unassociated funerary objects, sacred objects, objects of cultural patrimony, or both sacred objects and objects of cultural patrimony, and a brief abstract of the information used to make that identification;

(C) The name of each Indian Tribe or Native Hawaiian organization with priority for disposition of the human remains or cultural items and a brief abstract of the information used to make that identification;

(D) The name, phone number, email address, and mailing address for the appropriate official who is responsible for receiving written claims for disposition of the human remains or cultural items;

(E) The date (to be calculated by the *Federal Register* 30 days from the date of publication) after which the appropriate official may send a disposition statement to a claimant; and

(F) The date (to be calculated by the *Federal Register* one year from the date of publication) on which the human remains or cultural items will become unclaimed human remains or cultural items if no written claim is received from an Indian Tribe or Native Hawaiian organization.

(ii) No later than 15 days after receiving a notice of intended disposition, the Manager, National NAGPRA Program, will:

(A) Approve for publication in the *Federal Register* a notice of intended disposition that conforms to the requirements under paragraph (d)(2)(i) of this section; or

(B) Return to the Federal agency or DHHL any submission that does not meet the requirements under paragraph (d)(2)(i) of this section.

(3) *Step 3 – Receive and consider a claim for disposition.* After publication of a notice of intended disposition in the *Federal Register*, any Indian Tribe or Native Hawaiian organization may submit to the appropriate official a written claim for disposition of human remains or cultural items.

(i) A claim for disposition of human remains or cultural items must be received by the appropriate official before the appropriate official sends a disposition statement for the human remains or cultural items to a claimant under paragraph (d)(5) of this section or the transfer or reinterment of the human remains or cultural items under paragraph (e)(4) of this section. Any claim for disposition received by the appropriate official no later than 30 days after publication of a notice must be considered. A claim for disposition received by the appropriate official before the publication of the notice of intended disposition is dated the same date the notice was published.

(ii) Claims from two or more Indian Tribes or Native Hawaiian organizations who agree to joint disposition of the human remains or cultural items are considered a single claim and not competing claims.

(iii) A claim for disposition must satisfy one of the following criteria:

(A) The claim is from an Indian Tribe or Native Hawaiian organization identified in the notice of intended disposition with priority for disposition, or

(B) The claim is not from an Indian Tribe or Native Hawaiian organization identified in the notice of intended disposition, and shows that the claimant is a lineal descendant, Indian Tribe, or Native Hawaiian organization having priority for disposition under paragraph (a) of this section.

(4) *Step 4 – Respond to a claim for disposition.* No earlier than 30 days after publication of a notice of intended disposition but no later than 30 days after receiving a claim for disposition, the appropriate official must send a written response to the claimant with a copy to any other party identified in the notice with priority for disposition.

(i) In the written response, the appropriate official must state one of the following:

(A) The claim meets the criteria under paragraph (d)(3) of this section. The appropriate official will send a disposition statement to the claimant under paragraph (d)(5) of this section, unless the appropriate official receives additional, competing claims for disposition of human remains or cultural items.

(B) The claim does not meet the criteria under paragraph (d)(3) of this section. The appropriate official must provide a detailed explanation why the claim does not meet the criteria and an opportunity for the claimant to provide additional information to meet the criteria.

(C) The appropriate official has received competing claims for disposition of the human remains or cultural items that meet the criteria and must determine the most appropriate claimant using the procedures and timelines under paragraph (d)(4)(ii) of this section.

(ii) At any time before sending a disposition statement for human remains or cultural items under paragraph (d)(5) of this section, the appropriate official may receive additional, competing claims for disposition of the human remains or cultural items that meet the criteria under paragraph (d)(3) of this section. The appropriate official must determine the most appropriate claimant using the priority for disposition under paragraph (a) of this section.

(A) No later than 10 days after receiving a competing claim, the appropriate official must send a written letter to each claimant identifying all claimants and the date each claim was received,

(B) No later than 120 days after informing the claimants of competing claims, the appropriate official must send a written determination to each claimant identifying the most appropriate claimant(s), and

(C) No earlier than 30 days but no later than 90 days after sending a determination of the most appropriate claimant(s), the appropriate official must send a disposition statement to the most appropriate claimant(s) under paragraph (d)(5) of this section.

(5) *Step 5 – Disposition of the human remains or cultural items.* No later than 90 days after responding to a claim for disposition that meets the criteria, the appropriate official must send a written disposition statement to the claimant(s) and a copy to the Manager, National NAGPRA Program. The disposition statement must acknowledge and recognize the claimant(s) has control or ownership of the human remains or cultural items. Disposition must be in a manner that, to the maximum extent possible, respects the traditions of the lineal descendant,

Indian Tribe, or Native Hawaiian organization. In the case of joint claims for disposition, the disposition statement must be sent to and must identify all claimants.

(i) Before sending the disposition statement, the appropriate official must consult with the claimant(s) on the care, custody, and physical transfer of the human remains or cultural items.

(ii) After sending the disposition statement, the appropriate official must:

(A) Document any physical transfer by recording the contents, recipient(s), and method of delivery and

(B) Protect sensitive information, as identified by the claimant(s), from disclosure to the general public to the extent consistent with applicable law.

(iii) After the disposition statement is sent, nothing in the Act or this part:

(A) Limits the authority of the Federal agency or DHHL to enter into any agreement with the Indian Tribe or Native Hawaiian organization concerning the care or custody of the human remains or cultural items,

(B) Limits any procedural or substantive right which may otherwise be secured to the Indian Tribe or Native Hawaiian organization, or

(C) Prevents the governing body of an Indian Tribe or Native Hawaiian organization from expressly relinquishing its control or ownership of human remains, funerary objects, or sacred objects.

(e) *Unclaimed human remains or cultural items removed from Federal lands in the United States or from Tribal lands in Hawai'i.* When the appropriate official cannot complete the disposition of human remains or cultural items under paragraph (d) of this section, the Federal agency or DHHL must report the human remains or cultural items as unclaimed. The appropriate official must, to the maximum extent possible, respect the traditions of the Indian Tribe or Native Hawaiian organization that may have priority for disposition under paragraph (a) of this section.

(1) *Step 1 – Submit a list of unclaimed cultural items.* No later than [395 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], the Federal agency or DHHL must submit to the Manager, National NAGPRA Program, a list of all unclaimed cultural items in its custody. The Federal agency or DHHL must submit updates to its list of unclaimed cultural items by December 31 each year.

(i) Human remains or cultural items are unclaimed when:

(A) One year after publishing a notice of intended disposition under paragraph (d)(2) of this section, no Indian Tribe or Native Hawaiian organization submits a written claim for disposition, or

(B) One year after discovery or excavation of the human remains or cultural items, the appropriate official could not reasonably identify any lineal descendant, Indian Tribe, or Native Hawaiian organization with priority for disposition under paragraph (a) of this section.

(ii) A list of unclaimed human remains or cultural items must include:

(A) A brief description of the human remains or cultural items, including the county and state where the human remains or cultural items were removed;

(B) The names of all consulting parties and an abstract of the results of consultation;

(C) If known, the identity of the human remains or cultural items specifically as human remains, associated funerary objects, unassociated funerary objects, sacred objects, objects of cultural patrimony, or both sacred objects and objects of cultural patrimony, and a brief abstract of the information used to make that identification; and

(D) If known, the name of each Indian Tribe or Native Hawaiian organization with priority for disposition under paragraph (a) of this section and a brief abstract of the information used to make that identification.

(iii) At any time before transferring or reintering human remains or cultural items under paragraph (e)(4) of this section, the appropriate official may receive a claim for disposition of the human remains or cultural items and must evaluate whether the claim meets the criteria under paragraph (d)(3) of this section. Any agreement to transfer or decision to reinter the human remains or cultural items under this paragraph is stayed until the claim for disposition is resolved under paragraph (d) of this section. No later than 10 days after receiving a claim for disposition, the appropriate official must send a written letter to each claimant or requestor identifying all claimants and requestors and the date each claim or request was received.

(A) If the claim meets the criteria under paragraph (d)(3) of this section and a notice of intended disposition was published under paragraph (d)(2) of this section, the appropriate official must respond in writing under paragraph (d)(4) and proceed with disposition under (d)(5) of this section.

(B) If the claim meets the criteria under paragraph (d)(3) of this section but no notice of intended disposition was published, the appropriate official must submit a notice of intended disposition under paragraph (d)(2), respond in writing under paragraph (d)(4), and proceed with disposition under (d)(5) of this section.

(C) No later than 90 days after responding to a claim for disposition that meets the criteria, the appropriate official must send a written letter to each claimant or requestor identifying the claimant that has control or ownership of the human remains or cultural items.

(D) If the claim does not meet the criteria under paragraph (d)(3) of this section, the appropriate official must respond in writing under paragraph (d)(4) and may proceed with transfer or reinterment under paragraph (e)(2) of this section.

(2) *Step 2 – Agree to transfer or decide to reinter human remains or cultural items.* Subject to the requirements in paragraph (e)(3) of this section, and at the discretion of the Federal agency or DHHL, a Federal agency or DHHL may:

(i) Agree in writing to transfer unclaimed cultural items to a requestor that agrees to treat the human remains or cultural items according to the requestor's laws and customs. Unclaimed cultural items must be requested in writing and may only be requested by:

(A) An Indian Tribe or Native Hawaiian organization, or

(B) An Indian group that is not federally recognized but has a relationship to unclaimed human remains or associated funerary objects.

(ii) Decide in writing to reinter unclaimed human remains or funerary objects according to applicable laws and policies.

(3) *Step 3 – Submit a notice of proposed transfer or reinterment.* No later than 30 days after agreeing to transfer or deciding to reinter the human remains or cultural items, the Federal

agency or DHHL must submit a notice of proposed transfer or reinterment to the Manager, National NAGPRA Program for publication in the *Federal Register*. The Federal agency or DHHL must send a copy of the published notice to any Indian Tribe or Native Hawaiian organization identified as having a priority for disposition under paragraph (a) of this section.

(i) A notice of proposed transfer or reinterment must conform to the mandatory format of the *Federal Register* and include:

(A) The details provided in the list of unclaimed cultural items under paragraph (e)(1) of this section;

(B) The name of each Indian Tribe, Native Hawaiian organization, or Indian group requesting the human remains or cultural items or a statement that the Federal agency or DHHL will reinter the human remains or funerary objects;

(C) The name, phone number, email address, and mailing address for the appropriate official who is responsible for receiving written claims for disposition of the human remains or cultural items; and

(D) The date (to be calculated by the *Federal Register* 30 days from the date of publication) after which the Federal agency or DHHL may proceed with the transfer or reinterment of the human remains or cultural items.

(ii) No later than 15 days after receiving a notice of proposed transfer or reinterment, the Manager, National NAGPRA Program, will:

(A) Approve for publication in the *Federal Register* a notice of proposed transfer or reinterment that conforms to the requirements under paragraph (e)(3)(i) of this section; or

(B) Return to the Federal agency or DHHL any submission that does not meet the requirements under paragraph (e)(3)(i) of this section.

(4) *Step 4 – Transfer or reinter the human remains or cultural items.* No earlier than 30 days and no later than 90 days after publication of a notice of proposed transfer or reinterment, the appropriate official must transfer or reinter the human remains or cultural items.

(i) After transferring or reinterring, the appropriate official must:

(A) Document the transfer by recording the contents, recipient, and method of delivery,

(B) Document the reinterment by recording the contents of the reinterment,

(C) Protect sensitive information about the human remains or cultural items from disclosure to the general public to the extent consistent with applicable law.

(ii) After transfer or reinterment occurs, nothing in the Act or this part:

(A) Limits the authority of the Federal agency or DHHL to enter into any agreement with the requestor concerning the care or custody of the human remains or cultural items,

(B) Limits any procedural or substantive right which may otherwise be secured to the Indian Tribe or Native Hawaiian organization, or

(C) Prevents the governing body of an Indian Tribe or Native Hawaiian organization from expressly relinquishing its control or ownership of human remains, funerary objects, or sacred objects.

Subpart C—REPATRIATION OF HUMAN REMAINS OR CULTURAL ITEMS BY MUSEUMS OR FEDERAL AGENCIES

§ 10.8 General.

Each museum and Federal agency that has possession or control of a holding or collection that may contain human remains, funerary objects, sacred objects, or objects of cultural patrimony must comply with the requirements of this subpart, regardless of the physical location of the holding or collection. Each museum and Federal agency must identify one or more authorized representatives who are responsible for carrying out the requirements of this subpart.

(a) *Museum holding or collection.* A museum must comply with this subpart for all holdings or collections under its possession or control that contain human remains or cultural items, including a new holding or collection or a previously lost or previously unknown holding or collection.

(1) A museum must determine whether it has sufficient interest in a holding or collection to constitute possession or control on a case-by-case basis given the relevant information about the holding or collection.

(i) A museum may have custody of a holding or collection but not possession or control. In general, custody through a loan, lease, license, bailment, or other similar arrangement is not sufficient interest to constitute possession or control, which resides with the loaning, leasing, licensing, bailing, or otherwise transferring museum or Federal agency.

(ii) If a museum has custody of a holding or collection, the museum may be required to report the holding or collection under paragraphs (c) or (d) of this section.

(2) Any museum that completes repatriation of human remains and cultural items or transfers or reinters human remains and associated funerary objects in good faith under this subpart shall not be liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of state law that are inconsistent with the provisions of the Act or this part.

(b) *Federal agency holding or collection.* A Federal agency must comply with this subpart for all holdings or collections in its possession or control that contain human remains and cultural items, including a previously lost or previously unknown holding or collection. A Federal agency must determine if a holding or collection:

(1) Was in its possession or control on or before November 16, 1990; or

(2) Came into its possession or control after November 16, 1990, and was removed from:

(i) An unknown location, or

(ii) Lands that are neither Federal nor Tribal lands as defined in this part.

(c) *Museums with custody of a Federal agency holding or collection.* No later than [395 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], each museum that has custody of a Federal agency holding or collection that contains Native American human remains or cultural items must submit a statement describing

that holding or collection to the authorized representatives of the Federal agency most likely to have possession or control and to the Manager, National NAGPRA Program.

(1) No later than 120 days following receipt of a museum's statement, the Federal agency must respond to the museum and the Manager, National NAGPRA program, with a written acknowledgement of one of the following:

- (i) the Federal agency has possession or control of the holding or collection;
- (ii) the Federal agency does not have possession or control of the holding or collection; or
- (iii) the Federal agency and the museum have joint possession or control of the holding or collection.

(2) Failure to issue such a determination by the deadline will constitute acknowledgement that the Federal agency has possession or control. The Federal agency is ultimately responsible for the requirements of this subpart for all holdings or collections under its possession or control, regardless of the physical location of the holdings or collection.

(d) *Museums with custody of other holdings or collections.* No later than [395 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], each museum that has custody of a holding or collection that contains Native American human remains or cultural items and for which it cannot identify any person, institution, State or local government agency, or Federal agency with possession or control of the holding or collection, must submit a statement describing that holding or collection to the Manager, National NAGPRA Program.

(e) *Contesting actions on repatriation.* An affected party under §10.12(c)(1) of this part who wishes to contest actions made by museums or Federal agencies under this subpart is encouraged to do so through informal negotiations to achieve a fair resolution of the matter. Informal negotiations may include requesting the assistance of the Manager, National NAGPRA Program, or the Review Committee under §10.12 of this part.

§ 10.9 Repatriation of unassociated funerary objects, sacred objects, and objects of cultural patrimony.

Each museum and Federal agency that has possession or control of a holding or collection that may contain an unassociated funerary object, sacred object, or object of cultural patrimony must follow the steps in this section. The purpose of this section is to provide general information about a holding or collection to lineal descendants, Indian Tribes, and Native Hawaiian organizations to facilitate repatriation.

(a) *Step 1 – Complete a summary of a holding or collection.* Based on the information available, a museum or Federal agency must submit to the Manager, National NAGPRA Program, a summary describing its holding or collection that may contain unassociated funerary objects, sacred objects, and objects of cultural patrimony. Depending on the scope of the holding or collection, a museum or Federal agency may organize its summary into sections based on geographic area, accession or catalog name or number, or other defining attributes. A museum or Federal agency must ensure the summary is comprehensive and covers all holdings or collections relevant to this section.

- (1) A summary must include:

(i) The estimated number and a general description of the holding or collection, including any potential unassociated funerary objects, sacred objects, and objects of cultural patrimony;

(ii) The county and state where the potential unassociated funerary objects, sacred objects, and objects of cultural patrimony were removed;

(iii) The acquisition history (provenance) of the potential unassociated funerary objects, sacred objects, and objects of cultural patrimony;

(iv) Other information relevant for identifying:

(A) A lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation;

(B) Any object or item as an unassociated funerary object, sacred object, or object of cultural patrimony; and

(v) The presence of any potentially hazardous substances used to treat any of the unassociated funerary objects, sacred objects, or objects of cultural patrimony, if known.

(2) After [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], a museum or Federal agency must submit a summary to the Manager, National NAGPRA Program, by the deadline in Table 1 of this section.

Table 1 to §10.9: Deadlines for completing a summary

If a museum or Federal agency...	...a summary must be submitted...
acquires possession or control of unassociated funerary objects, sacred objects, or objects of cultural patrimony	6 months after acquiring possession or control of the unassociated funerary objects, sacred objects, or objects of cultural patrimony.
locates previously lost or unknown unassociated funerary objects, sacred objects, or objects of cultural patrimony	6 months after locating the unassociated funerary objects, sacred objects, or objects of cultural patrimony.
receives Federal funds for the first time after [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], and has possession or control of unassociated funerary objects, sacred objects, or objects of cultural patrimony	3 years after receiving Federal funds for the first time after [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

(3) Prior to [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], a museum or Federal agency must have submitted a summary to the Manager, National NAGPRA Program:

(i) By November 16, 1993, for unassociated funerary objects, sacred objects, and objects of cultural patrimony subject to the Act;

(ii) By October 20, 2007, for unassociated funerary objects, sacred objects, and objects of cultural patrimony acquired or located after November 16, 1993;

(iii) By April 20, 2010, for unassociated funerary objects, sacred objects, and objects of cultural patrimony in the possession or control of a museum that received Federal funds for the first time after November 16, 1993;

(iv) Within six months of acquiring or locating unassociated funerary objects, sacred objects, and objects of cultural patrimony after October 20, 2007; or

(v) Within three years of receiving Federal funds for the first time after April 20, 2010.

(4) After [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], when a holding or collection previously included in a summary is transferred to a museum or Federal agency, The museum or Federal agency acquiring possession or control of the holding or collection may rely on the previously completed summary. The museum or Federal agency must submit the previously completed summary to the Manager, National NAGPRA Program, no later than 30 days after acquiring the holding or collection. The museum or Federal agency must submit a summary to the Manager, National NAGPRA Program, no later than the deadline in Table 1 of this section and must initiate consultation under paragraph (b) of this section.

(b) *Step 2 – Initiate consultation.* No later than 30 days after completing a summary, a museum or Federal agency must identify consulting parties based on information available and make a good-faith effort to invite the parties to consult.

(1) Consulting parties are any lineal descendant and any Indian Tribe or Native Hawaiian organization with potential affiliation.

(2) An invitation to consult must be in writing and must include:

(i) The summary described in paragraph (a)(1) of this section;

(ii) The names of all identified consulting parties; and

(iii) A proposed timeline and method for consultation.

(3) Any consulting party, regardless of whether the party has received an invitation to consult, must submit a written request to consult. A written request to consult may be submitted at any time before the publication of a notice of intended repatriation under paragraph (f) of this section.

(4) When a museum or Federal agency identifies a new consulting party under paragraph (b)(1) of this section, the museum or Federal agency must make a good-faith effort to invite the party to consult and must send an invitation to consult under paragraph (b)(2) of this section. An invitation to consult must be sent to new consulting parties:

(i) No later than 10 days after identifying a new consulting party based on new information; or

(ii) No later than six months after the addition of a Tribal entity to the list of federally recognized Indian Tribes published in the *Federal Register* pursuant to the Act of November 2, 1994 (25 U.S.C. 5131).

(c) *Step 3 – Consult with requesting parties.* No later than 10 days after receiving a written request to consult, a museum or Federal agency must respond in writing with a proposed timeline for consultation. Consultation on an unassociated funerary object, sacred object, or

object of cultural patrimony may continue until the museum or Federal agency sends a repatriation statement for that object to a requestor under paragraph (g) of this section.

(1) In the response to the requesting party, a museum or Federal agency must ask a requesting party for the following information, if not already provided:

(i) Recommendations on the proposed timeline and method for consultation; and
(ii) The name, phone number, email address, or mailing address for any authorized representative, traditional religious leader, and known lineal descendant who should participate in consultation.

(2) The consultation process must seek consensus, to the maximum extent possible, on determining:

(i) Lineal descendants;
(ii) Indian Tribes or Native Hawaiian organizations with cultural affiliation;
(iii) The types of objects that might be unassociated funerary objects, sacred objects, or objects of cultural patrimony; and
(iv) The appropriate treatment, care, and handling of unassociated funerary objects, sacred objects, or objects of cultural patrimony.

(3) The museum or Federal agency must prepare a record of consultation that includes the effort made to seek consensus. If recommendations by requesting parties are not possible, the record of consultation must describe efforts to identify a mutually agreeable alternative. For any determination considered during the consultation process, the museum or Federal agency must record the concurrence, disagreement, or nonresponse of the requesting parties.

(4) At any time before a museum or Federal agency sends a repatriation statement for an unassociated funerary object, sacred object, or object of cultural patrimony to a requestor under paragraph (g) of this section, the museum or Federal agency may receive a request from a consulting party for access to records, catalogues, relevant studies, or other pertinent data related to the holding or collection. A museum or Federal agency must provide access to the additional information in a reasonable manner and for the limited purpose of determining affiliation and acquisition history of the unassociated funerary object, sacred object, or object of cultural patrimony.

(d) *Step 4 – Receive and consider a request for repatriation.* After a summary is complete, any lineal descendant, Indian Tribe, or Native Hawaiian organization may submit to the museum or Federal agency a written request for repatriation of an unassociated funerary object, sacred object, or object of cultural patrimony.

(1) A request for repatriation of an unassociated funerary object, sacred object, or object of cultural patrimony must be received by the museum or Federal agency before the museum or Federal agency sends a repatriation statement for that unassociated funerary object, sacred object, or object of cultural patrimony to a requestor under paragraph (g) of this section. A request for repatriation received by the museum or Federal agency before the deadline for completing a summary is dated the same date as the deadline for completing the summary.

(2) Requests from two or more lineal descendants, Indian Tribes, or Native Hawaiian organizations who agree to joint repatriation of the unassociated funerary object, sacred object, or object of cultural patrimony are considered a single request and not competing requests.

(3) A request for repatriation must satisfy all the following criteria:

(i) Each unassociated funerary object, sacred object, or object of cultural patrimony being requested meets the definition of an unassociated funerary object, a sacred object, or an object of cultural patrimony;

(ii) The request is from a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation; and

(iii) The request includes information to support a finding that the museum or Federal agency does not have right of possession to the unassociated funerary object, sacred object, or object of cultural patrimony.

(e) *Step 5 – Respond to a request for repatriation.* No later than 60 days after receiving a request for repatriation, a museum or Federal agency must send a written response to the requestor. Using all information available, including relevant records, catalogs, existing studies, and the results of consultation, a museum or Federal agency must determine if the request for repatriation satisfies the criteria under paragraph (d) of this section. In the written response, the museum or Federal agency must state one of the following:

(1) The request meets the criteria under paragraph (d) of this section. The museum or Federal agency will submit a notice of intended repatriation under paragraph (f) of this section.

(2) The request does not meet the criteria under paragraph (d) of this section. The museum or Federal agency must provide a detailed explanation why the request does not meet the criteria and an opportunity for the requestor to provide additional information to meet the criteria.

(3) The request meets the criteria under paragraph (d)(3)(i) and (ii) of this section, but the museum or Federal agency asserts a right of possession to the unassociated funerary object, sacred object, or object of cultural patrimony and refuses to complete repatriation of the requested object to the requestor. The museum or Federal agency must provide information to prove that the museum or Federal agency has a right of possession to the unassociated funerary object, sacred object, or object of cultural patrimony.

(4) The museum or Federal agency has received competing requests for repatriation of the unassociated funerary object, sacred object, or object of cultural patrimony that meet the criteria and must determine the most appropriate requestor using the procedures and timelines under paragraph (h) of this section.

(f) *Step 6 – Submit a notice of intended repatriation.* No later than 30 days after responding to a request for repatriation that meets the criteria, a museum or Federal agency must submit a notice of intended repatriation to the Manager, National NAGPRA Program, for publication in the *Federal Register*. The museum or Federal agency may include in a single notice all unassociated funerary objects, sacred objects, or objects of cultural patrimony with the same requestor.

(1) A notice of intended repatriation must conform to the mandatory format of the *Federal Register* and include:

(i) The number of unassociated funerary object, sacred object, or object of cultural patrimony and a brief description of each object (counted separately or by lot);

(ii) The county and state where the unassociated funerary object, sacred object, or object of cultural patrimony were removed;

(iii) The acquisition history (provenance) of the unassociated funerary object, sacred object, or object of cultural patrimony, including the circumstances surrounding its acquisition;

(iv) The identity of each unassociated funerary object, sacred object, or object of cultural patrimony specifically as an unassociated funerary object, a sacred object, an object of cultural patrimony, or both a sacred object and an object of cultural patrimony, and a brief abstract of the information used to make that identification;

(v) The lineal descendant, Indian Tribe, or Native Hawaiian organization requesting repatriation of the unassociated funerary object, sacred object, or object of cultural patrimony and a brief abstract of the information showing the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation;

(vi) Information about the presence of any potentially hazardous substances used to treat the unassociated funerary object, sacred object, or object of cultural patrimony, if known;

(vii) The name, phone number, email address, and mailing address for the authorized representative of the museum or Federal agency who is responsible for receiving requests for repatriation; and

(viii) The date (to be calculated by the *Federal Register* 30 days from the date of publication) after which the museum or Federal agency may send a repatriation statement to the requestor.

(2) No later than 15 days after receiving a notice of intended repatriation, the Manager, National NAGPRA Program, will:

(i) Approve for publication in the *Federal Register* a notice of intended repatriation that conforms to the requirements under paragraph (f)(1) of this section; or

(ii) Return to the museum or Federal agency any submission that does not meet the requirements under paragraph (f)(1) of this section.

(3) If the number or identity of unassociated funerary objects, sacred objects, or objects of cultural patrimony stated in a published notice of intended repatriation changes before the museum or Federal agency sends a repatriation statement under paragraph (g) of this section, the museum or Federal agency must submit a correction notice to the Manager, National NAGPRA Program. A museum or Federal agency is not required to submit a correction notice if there are additional pieces belonging to an unassociated funerary object, sacred object, or object of cultural patrimony previously identified in a notice and repatriation is to the same requestor. No later than 10 days after determining the new number or new identity of the unassociated funerary object, sacred object, or object of cultural patrimony, the museum or Federal agency must submit a correction notice containing, as applicable:

(i) The corrected number of unassociated funerary object, sacred object, or object of cultural patrimony and corrected brief description of each object;

(ii) The corrected identity of the unassociated funerary objects, sacred objects, or objects of cultural patrimony specifically as an unassociated funerary object, a sacred object, an object of cultural patrimony, or both a sacred object and an object of cultural patrimony, and corrected brief abstract of the information used to make that identification;

(iii) The name, phone number, email address, and mailing address for the authorized representative of the museum or Federal agency who is responsible for receiving requests for repatriation; and

(iv) The date (to be calculated by the *Federal Register* 30 days from the date of publication) after which the museum or Federal agency may send a repatriation statement to the requestor.

(4) At any time before sending a repatriation statement for an unassociated funerary object, sacred object, or object of cultural patrimony under paragraph (g) of this section, the museum or Federal agency may receive additional, competing requests for repatriation of that object that meet the criteria under paragraph (d) of this section. The museum or Federal agency must determine the most appropriate requestor the procedures and timelines under paragraph (h) of this section.

(g) *Step 7 – Repatriation of the unassociated funerary object, sacred object, or object of cultural patrimony.* No earlier than 30 days and no later than 90 days after publication of a notice of intended repatriation, a museum or Federal agency must send a written repatriation statement to the requestor and a copy to the Manager, National NAGPRA Program. The repatriation statement must acknowledge and recognize the requestor has control or ownership of the requested unassociated funerary object, sacred object, or object of cultural patrimony. In the case of joint requests for repatriation, the repatriation statement must be sent to and must identify all requestors.

(1) Before sending the repatriation statement, the museum or Federal agency must consult with the requestor on the care, custody, and physical transfer of the unassociated funerary object, sacred object, or object of cultural patrimony,

(2) After sending the repatriation statement, the museum or Federal agency must:

(i) Document any physical transfer of the unassociated funerary object, sacred object, or object of cultural patrimony by recording the contents, recipient, and method of delivery, and

(ii) Protect sensitive information, as identified by the requestor, from disclosure to the general public to the extent consistent with applicable law.

(3) After the repatriation statement is sent, nothing in the Act or this part limits the authority of the museum or Federal agency to enter into any agreement with the requestor concerning the care or custody of the unassociated funerary object, sacred object, or object of cultural patrimony.

(h) *Evaluating competing requests for repatriation.* At any time before sending a repatriation statement for an unassociated funerary object, sacred object, or object of cultural patrimony under paragraph (g) of this section, a museum or Federal agency may receive additional, competing requests for repatriation of that object that meet the criteria under paragraph (d) of this section. The museum or Federal agency must determine the most appropriate requestor using this paragraph.

(1) For an unassociated funerary object or sacred object, in the following priority order, the most appropriate requestor is:

(i) The lineal descendant, if any, or

(ii) The Indian Tribe or Native Hawaiian organization with the closest cultural affiliation according to the priority order at §10.3(d) of this part.

(2) For an object of cultural patrimony, the most appropriate requestor is the Indian Tribe or Native Hawaiian organization with the closest cultural affiliation according to the priority order at §10.3(d) of this part.

(3) No later than 10 days after receiving a competing request, a museum or Federal agency must send a written letter to each requestor identifying all requestors and the date each request was received.

(4) No later than 120 days after informing the requestors of competing requests, a museum or Federal agency must send a written determination to each requestor and the Manager, National NAGPRA Program. The determination must be one of the following:

(i) The most appropriate requestor has been determined and the competing requests were received before the publication of a notice of intended repatriation. The museum or Federal agency must:

(A) Identify the most appropriate requestor and explain how the determination was made,

(B) Submit a notice of intended repatriation in accordance with paragraph (f) of this section no later than 30 days after sending the determination, and

(C) No earlier than 30 days and no later than 90 days after publication of the notice of intended repatriation, the museum or Federal agency must send a repatriation statement to the most appropriate requestor under paragraph (g) of this section.

(ii) The most appropriate requestor has been determined and a notice of intended repatriation was previously published. The museum or Federal agency must:

(A) Identify the most appropriate requestor and explain how the determination was made,

(B) No earlier than 30 days and no later than 90 days after sending a determination of the most appropriate requestor, the museum or Federal agency must send a repatriation statement to the most appropriate requestor under paragraph (g) of this section.

(iii) The most appropriate requestor cannot be determined, and the repatriation is stayed under paragraph (i) of this section. The museum or Federal agency must explain why the most appropriate requestor could not be determined.

(i) *Stay of repatriation.* Repatriation under paragraph (g) of this section is stayed if:

(1) A court of competent jurisdiction has enjoined the repatriation. When there is a final resolution of the legal case or controversy in favor of a requestor, the museum or Federal agency must:

(i) No later than 10 days after a resolution, send a written statement of the resolution to each requestor and the Manager, National NAGPRA Program,

(ii) No earlier than 30 days and no later than 90 days after sending the written statement, the museum or Federal agency must send a repatriation statement to the requestor under paragraph (g) of this section, unless a court of competent jurisdiction directs otherwise.

(2) The museum or Federal agency has received competing requests for repatriation and, after complying with paragraph (h) of this section, cannot determine the most appropriate requestor. When a most appropriate requestor is determined by an agreement between the

parties, binding arbitration, or means of resolution other than through a court of competent jurisdiction, the museum or Federal agency must:

(i) No later than 10 days after a resolution, send a written determination to each requestor and the Manager, National NAGPRA Program,

(ii) No earlier than 30 days and no later than 90 days after sending the determination, the museum or Federal agency must send a repatriation statement to the requestor under paragraph (g) of this section.

(3) Before the publication of a notice of intended repatriation under paragraph (f) of this section, the museum or Federal agency has both requested and received the Secretary's written concurrence that the unassociated funerary object, sacred object, or object of cultural patrimony is indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the people of the United States.

(i) To request the Secretary's concurrence, the museum or Federal agency must send to the Manager, National NAGPRA Program, a written request of no more than 10 double-spaced pages. The written request must:

(A) Be on the letterhead of the requesting museum or Federal agency and be signed by an authorized representative;

(B) Describe the specific scientific study, the date on which the study commenced, and how the study would be of major benefit to the people of the United States;

(C) Explain why retention of the unassociated funerary object, sacred object, or object of cultural patrimony is indispensable for completion of the study;

(D) Describe the steps required to complete the study, including any destructive analysis, and provide a completion schedule and completion date;

(E) Provide the position titles of the persons responsible for each step in the schedule; and

(F) Affirm that the study has in place the requisite funding.

(ii) If the Secretary concurs with the request, the Secretary will send a written concurrence and specify the date by which the scientific study must be completed.

(iii) No later than 30 days after the completion date in the Secretary's concurrence, the museum or Federal agency must submit a notice of intended repatriation in accordance with paragraph (f) of this section.

(iv) No earlier than 30 days and no later than 90 days after publication of the notice of intended repatriation, the museum or Federal agency must send a repatriation statement to the requestor under paragraph (g) of this section.

§ 10.10 Repatriation of human remains and associated funerary objects.

Each museum and Federal agency that has possession or control of a holding or collection that contains human remains or associated funerary objects must follow the steps in this section. The purpose of this section is to provide determinations, following consultation, about human remains and associated funerary objects to lineal descendants, Indian Tribes, and Native Hawaiian organizations to facilitate repatriation.

(a) *Step 1 – Compile an itemized list of human remains and associated funerary objects.* Based on information available, a museum or Federal agency must compile a simple itemized list of the human remains and associated funerary objects in its holding or collection. Depending on the scope of the holding or collection, a museum or Federal agency may organize its inventory into sections based on geographic area, accession or catalog name or number, or other defining attributes. A museum or Federal agency must ensure the itemized list is comprehensive and covers all holdings or collections relevant to this section. The itemized list must include:

(1) The number of individuals determined in a reasonable manner based on the information available. No additional study or analysis is required to determine the number of individuals. If human remains are in a holding or collection, the number of individuals is at least one;

(2) The number of associated funerary objects and types of objects (counted separately or by lot);

(3) The county and state where the human remains and associated funerary objects were removed;

(4) The acquisition history (provenance) of the human remains and associated funerary objects;

(5) Other information relevant for identifying a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural or geographical affiliation; and

(6) The presence of any potentially hazardous substances used to treat any of the human remains or associated funerary objects, if known.

(b) *Step 2 – Initiate consultation.* Based on information available, a museum or Federal agency must identify consulting parties and make a good-faith effort to invite the parties to consult.

(1) Consulting parties are any lineal descendant and any Indian Tribe or Native Hawaiian organization with potential affiliation.

(2) An invitation to consult must be in writing and must include:

(i) The simple itemized list described in paragraph (a) of this section;

(ii) The names of all identified consulting parties; and

(iii) A proposed timeline and method for consultation.

(3) Any consulting party, regardless of whether the party has received an invitation to consult, must submit a written request to consult. A written request to consult may be submitted at any time before the publication of a notice of inventory completion under paragraph (e) of this section.

(4) When a museum or Federal agency identifies a new consulting party under paragraph (b)(1) of this section, the museum or Federal agency must make a good-faith effort to invite the party to consult and must send an invitation to consult under paragraph (b)(2) of this section. An invitation to consult must be sent to new consulting parties:

(i) No later than 10 days after identifying a new consulting party based on new information; or

(ii) No later than two years after the addition of a Tribal entity to the list of federally recognized Indian Tribes published in the *Federal Register* pursuant to the Act of November 2, 1994 (25 U.S.C. 5131).

(c) *Step 3 – Consult with requesting parties.* No later than 10 days after receiving a written request to consult, a museum or Federal agency must respond in writing with a proposed timeline for consultation. Consultation on human remains and associated funerary objects may continue until the museum or Federal agency sends a repatriation statement for those human remains and associated funerary objects to a requestor under paragraph (h) of this section.

(1) In the response to the requesting party, a museum or Federal agency must ask a requesting party for the following information, if not already provided:

(i) Recommendations on the proposed timeline and method for consultation; and

(ii) The name, phone number, email address, or mailing address for any authorized representative, traditional religious leaders, and known lineal descendant who should participate in consultation.

(2) The consultation process must seek consensus, to the maximum extent possible, on determining:

(i) Lineal descendants;

(ii) Indian Tribes or Native Hawaiian organizations with cultural or geographical affiliation;

(iii) The types of objects that might be associated funerary objects, including any objects that were made exclusively for burial purposes or to contain human remains; and

(iv) The appropriate treatment, care, and handling of human remains and associated funerary objects.

(3) The museum or Federal agency must prepare a record of consultation that includes the effort made to seek consensus. If recommendations by requesting parties are not possible, the record of consultation must describe efforts to identify a mutually agreeable alternative. For any determination considered during the consultation process, the museum or Federal agency must record the concurrence, disagreement, or nonresponse of the requesting parties.

(4) At any time before the museum or Federal agency sends a repatriation statement for human remains and associated funerary objects to a requestor under paragraph (h) of this section, a museum or Federal agency may receive a request from a consulting party for access to records, catalogues, relevant studies, or other pertinent data related to those human remains and associated funerary objects. A museum or Federal agency must provide access to the additional information in a reasonable manner and for the limited purpose of determining affiliation and acquisition history of the human remains and associated funerary objects.

(d) *Step 4 – Complete an inventory of human remains and associated funerary objects.* Based on information available and the results of consultation, a museum or Federal agency must submit to all consulting parties and the Manager, National NAGPRA Program, an inventory of all human remains and associated funerary objects in its holding or collection.

(1) An inventory must include:

(i) The names of all consulting parties and an abstract of the results of consultation;

(ii) The information from the simple itemized list compiled under paragraph (a) of this section;

(iii) For each entry in the itemized list, a determination of one or more of the following:

(A) There is a known lineal descendant,

(B) There is a connection between the human remains and associated funerary objects and an Indian Tribe or Native Hawaiian organization through cultural affiliation,

(C) There is a connection between the human remains and associated funerary objects and an Indian Tribe or Native Hawaiian organization through geographical affiliation, or

(D) There is no connection between the human remains and associated funerary objects and any Indian Tribe or Native Hawaiian organization; and

(iv) An abstract of the information supporting that determination including:

(A) The lineal descendant or the Indian Tribe or Native Hawaiian organization with cultural or geographical affiliation, or

(B) An explanation why no Indian Tribes or Native Hawaiian organizations with cultural or geographical affiliation could be reasonably identified.

(2) After [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], a museum or Federal agency must submit an inventory to all consulting parties and the Manager, National NAGPRA Program, by the deadline in Table 1 of this section.

Table 1 to §10.10: Deadlines for completing an inventory

If a museum or Federal agency...	an inventory must be submitted...
acquires possession or control of human remains or associated funerary objects	2 years after acquiring possession or control of human remains or associated funerary objects.
locates previously lost or unknown human remains or associated funerary objects	2 years after locating the human remains or associated funerary objects.
receives Federal funds for the first time after [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], and has possession or control of human remains or associated funerary objects	5 years after receiving Federal funds for the first time after [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

(3) Prior to [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], a museum or Federal agency must have submitted an inventory to all consulting parties and the Manager, National NAGPRA Program:

(i) By November 16, 1995, for human remains or associated funerary objects subject to the Act;

(ii) By April 20, 2009, for human remains or associated funerary objects acquired or located after November 16, 1995;

(iii) By April 20, 2012, for human remains or associated funerary objects in the possession or control of a museum that received Federal funds for the first time after November 16, 1995;

(iv) Within two years of acquiring or locating the human remains or associated funerary objects after April 20, 2009; or

(v) Within five years of receiving Federal funds for the first time after April 20, 2012.

(4) No later than [760 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], for any human remains or associated funerary objects listed in an inventory but not published in a notice of inventory completion prior to [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], a museum or Federal agency must:

(i) Initiate consultation as described under paragraph (b) of this section;

(ii) Consult with requesting parties as described under paragraph (c) of this section;

(iii) Update its inventory to include the requirements described under paragraph (d)(1) of this section and ensure the inventory is comprehensive and covers all holdings or collections relevant to this section; and

(iv) Submit an updated inventory to all consulting parties and the Manager, National NAGPRA Program.

(5) Any museum may request an extension to complete or update its inventory if it has made a good faith effort but will be unable to do so by the appropriate deadline. A request for an extension must be submitted to the Manager, National NAGPRA Program, before the appropriate deadline. The Manager, National NAGPRA Program will publish in the *Federal Register* a list of all museums who request an extension and the Secretary's determination on the request. A request for an extension must include:

(i) Information showing the initiation of consultation and any requests to consult;

(ii) The names of all consulting parties and an abstract of the results of consultation;

(iii) The estimated number of the human remains and associated funerary objects in the holding or collection; and

(iv) A written plan for completing or updating the inventory, which includes, at minimum:

(A) The specific steps required to complete or update the inventory;

(B) A schedule for completing each step and estimated inventory completion or update date;

(C) Position titles of the persons responsible for each step in the schedule; and

(D) A proposal to obtain any requisite funding needed to complete or update the inventory.

(6) After [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], when a holding or collection previously included in an inventory

is transferred to a museum or Federal Agency, subject to the limitations in 18 U.S.C. 1170 (a), the museum or Federal agency acquiring possession or control of the holding or collection may rely on the previously completed or updated inventory. The museum or Federal agency must submit the previously completed or updated inventory to the Manager, National NAGPRA Program no later than 30 days after acquiring the holding or collection and must initiate consultation under paragraph (b) of this section. The museum or Federal agency must submit an inventory to all consulting parties and the Manager, National NAGPRA Program, no later than the deadline in Table 1 of this section.

(e) *Step 5 – Submit a notice of inventory completion.* No later than six months after completing or updating an inventory under paragraph (d) of this section, a museum or Federal agency must submit a notice of inventory completion for human remains and associated funerary objects with a known lineal descendant or a connection to an Indian Tribe or Native Hawaiian organization with cultural or geographical affiliation. The museum or Federal agency may include in a single notice all human remains and associated funerary objects having the same lineal descendant or the same Indian Tribes or Native Hawaiian organizations with cultural or geographical affiliation.

(1) The notice of inventory completion must be sent to the:

(i) Lineal descendants and Indian Tribes or Native Hawaiian organizations identified in the inventory, and

(ii) Manager, National NAGPRA Program, for publication in the *Federal Register*.

(2) A notice of inventory completion must conform to the mandatory format of the *Federal Register* and include:

(i) The number of individuals determined in a reasonable manner based on the information available. No additional study or analysis is required to determine the number of individuals. If human remains are in a holding or collection, the number of individuals is at least one.

(ii) The number of associated funerary objects and types of objects (counted separately or by lot);

(iii) The county and state where the human remains and associated funerary objects were removed;

(iv) The acquisition history (provenance) of the human remains and associated funerary objects, including the circumstances surrounding their acquisition;

(v) The lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural or geographical affiliation and a brief abstract of the information used to make that identification;

(vi) When cultural affiliation has been determined, a statement whether cultural affiliation was clearly identified or was based on the totality of the circumstances surrounding acquisition history of the human remains and associated funerary objects;

(vii) Information about the presence of any potentially hazardous substances used to treat the human remains or associated funerary objects, if known;

(viii) The name, phone number, email address, and mailing address for the authorized representative of the museum or Federal agency who is responsible for receiving requests for repatriation; and

(ix) The date (to be calculated by the *Federal Register* 30 days from the date of publication) after which the museum or Federal agency may send a repatriation statement to a requestor.

(3) No later than 15 days after receiving a notice of inventory completion, the Manager, National NAGPRA Program, will:

(i) Approve for publication in the *Federal Register* a notice of inventory completion that conforms to the requirements under paragraph (e)(2) of this section; or

(ii) Return to the museum or Federal agency any submission that does not meet the requirements under paragraph (e)(2) of this section.

(4) If the number of individuals or the number of associated funerary objects stated in a published notice of inventory completion changes before the museum or Federal agency sends a repatriation statement under paragraph (h) of this section, the museum or Federal agency must submit a correction notice to the Manager, National NAGPRA Program. A museum or Federal agency is not required to publish a correction notice if there are additional pieces belonging to human remains or associated funerary objects previously identified in a notice and repatriation is to the same requestor. No later than 10 days after determining the new number of individuals or associated funerary objects, the museum or Federal agency must submit a correction notice containing, as applicable:

(i) The corrected number of individuals;

(ii) The corrected number of associated funerary objects and types of objects,

(iii) The name, phone number, email address, and mailing address for the authorized representative of the museum or Federal agency who is responsible for receiving requests for repatriation, and

(iv) The date (to be calculated by the *Federal Register* 30 days from the date of publication) after which the museum or Federal agency may send a repatriation statement to the requestor.

(f) *Step 6 – Receive and consider a request for repatriation.* After publication of a notice of inventory completion in the *Federal Register*, any lineal descendant, Indian Tribe, or Native Hawaiian organization may submit to the museum or Federal agency a written request for repatriation of human remains and associated funerary objects.

(1) A request for repatriation of human remains and associated funerary objects must be received by the museum or Federal agency before the museum or Federal agency sends a repatriation statement for those human remains and associated funerary objects under paragraph (h) of this section. Any request for repatriation received by the museum or Federal agency no later than 30 days after publication of a notice must be considered. A request for repatriation received by the museum or Federal agency before the publication of the notice of inventory completion is dated the same date the notice was published.

(2) Requests from two or more lineal descendants, Indian Tribes, or Native Hawaiian organizations who agree to joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests.

(3) A request for repatriation must satisfy one of the following criteria:

(i) The request is from a lineal descendant, Indian Tribe, or Native Hawaiian organization identified in the notice of inventory completion, or

(ii) The request is not from a lineal descendant, Indian Tribe, or Native Hawaiian organization identified in the notice of inventory completion, and shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural or geographical affiliation.

(g) *Step 7 – Respond to a request for repatriation.* No earlier than 30 days after publication of a notice of inventory completion but no later than 30 days after receiving a request for repatriation, a museum or Federal agency must send a written response to the requestor with a copy to any other party identified in the notice of inventory completion. Using all information available, including relevant records, catalogs, existing studies, and the results of consultation, a museum or Federal agency must determine if the request satisfies the criteria under paragraph (f) of this section.

(1) In the written response, the museum or Federal agency must state one of the following:

(i) The request meets the criteria under paragraph (f) of this section. The museum or Federal agency will send a repatriation statement to the requestor under paragraph (h) of this section, unless the museum or Federal agency receives additional, competing requests for repatriation.

(ii) The request does not meet the criteria under paragraph (f) of this section. The museum or Federal agency must provide a detailed explanation why the request does not meet the criteria, and an opportunity for the requestor to provide additional information to meet the criteria.

(iii) The museum or Federal agency has received competing requests for repatriation that meet the criteria and must determine the most appropriate requestor using the procedures and timelines under paragraph (i) of this section.

(2) At any time before sending a repatriation statement for human remains and associated funerary objects under paragraph (h) of this section, the museum or Federal agency may receive additional, competing requests for repatriation of those human remains and associated funerary objects that meet the criteria under paragraph (f) of this section. The museum or Federal agency must determine the most appropriate requestor the procedures and timelines under paragraph (i) of this section.

(h) *Step 8 – Repatriation of the human remains and associated funerary objects.* No later than 90 days after responding to a request for repatriation that meets the criteria, a museum or Federal agency must send a written repatriation statement to the requestor and a copy to the Manager, National NAGPRA Program. The repatriation statement must acknowledge and recognize the requestor has control or ownership of the requested human remains and associated funerary objects. In the case of joint requests for repatriation, the repatriation statement must be sent to and must identify all requestors.

(1) Before sending the repatriation statement, the museum or Federal agency must consult with the requestor on the care, custody, and physical transfer of the human remains and associated funerary objects.

(2) After sending the repatriation statement, the museum or Federal agency must:

(i) Document any physical transfer of the human remains and associated funerary objects by recording the contents, recipient, and method of delivery, and

(ii) Protect sensitive information, as identified by the requestor, from disclosure to the general public to the extent consistent with applicable law.

(3) After the repatriation statement is sent, nothing in the Act or this part limits the authority of the museum or Federal agency to enter into any agreement with the requestor concerning the care or custody of the human remains and associated funerary objects.

(i) *Evaluating competing requests for repatriation.* At any time before sending a repatriation statement for human remains and associated funerary objects under paragraph (h) of this section, a museum or Federal agency may receive additional, competing requests for repatriation of those human remains and associated funerary objects that meets the criteria under paragraph (f) of this section. The museum or Federal agency must determine the most appropriate requestor using this paragraph.

(1) In the following priority order, the most appropriate requestor is:

(i) The known lineal descendant, if any; or

(ii) The Indian Tribe or Native Hawaiian organization with the closest affiliation according to the priority order at §10.3(d) of this part.

(2) No later than 10 days after receiving a competing request, a museum or Federal agency must send a written letter to each requestor identifying all requestors and the date each request for repatriation was received.

(3) No later than 120 days after informing the requestors of competing requests, a museum or Federal agency must send a written determination to each requestor and the Manager, National NAGPRA Program. The determination must be one of the following:

(i) The most appropriate requestor has been determined. The museum or Federal agency must:

(A) Identify the most appropriate requestor and explain how the determination was made,

(B) No earlier than 30 days and no later than 90 days after sending a determination of the most appropriate requestor, the museum or Federal agency must send a repatriation statement to the most appropriate requestor under paragraph (h) of this section.

(ii) The most appropriate requestor cannot be determined, and the repatriation is stayed under paragraph (j) of this section. The museum or Federal agency must explain why the most appropriate requestor could not be determined.

(j) *Stay of repatriation.* Repatriation under paragraph (h) of this section is stayed if:

(1) A court of competent jurisdiction has enjoined the repatriation. When there is a final resolution of the legal case or controversy in favor of a requestor, the museum or Federal agency must:

(i) No later than 10 days after a resolution, send a written statement of the resolution to each requestor and the Manager, National NAGPRA Program,

(ii) No earlier than 30 days and no later than 90 days after sending the written statement, the museum or Federal agency must send a repatriation statement to the requestor under paragraph (h) of this section, unless a court of competent jurisdiction directs otherwise.

(2) The museum or Federal agency has received competing requests for repatriation and, after complying with paragraph (i) of this section, cannot determine the most appropriate requestor. When a most appropriate requestor is determined by an agreement between the parties, binding arbitration, or means of resolution other than through a court of competent jurisdiction, the museum or Federal agency must:

(i) No later than 10 days after a resolution, send a written determination to each requestor and the Manager, National NAGPRA Program,

(ii) No earlier than 30 days and no later than 90 days after sending the determination, the museum or Federal agency must send a repatriation statement to the requestor under paragraph (h) of this section.

(3) Before the publication of a notice of inventory completion under paragraph (e) of this section, the museum or Federal agency has both requested and received the Secretary's written concurrence that the human remains and associated funerary objects are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the people of the United States.

(i) To request the Secretary's concurrence, the museum or Federal agency must send to the Manager, National NAGPRA Program, a written request of no more than 10 double-spaced pages. The written request must:

(A) Be on the letterhead of the requesting museum or Federal agency and be signed by an authorized representative;

(B) Describe the specific scientific study, the date on which the study commenced, and how the study would be of major benefit to the people of the United States;

(C) Explain why retention of the human remains and associated funerary objects is indispensable for completion of the study;

(D) Describe the steps required to complete the study, including any destructive analysis, and provide a completion schedule and completion date;

(E) Provide the position titles of the persons responsible for each step in the schedule; and

(F) Affirm that the study has in place the requisite funding.

(ii) If the Secretary concurs with the request, the Secretary will send a written concurrence and specify the date by which the scientific study must be completed.

(iii) No later than 30 days after the completion date in the Secretary's concurrence, the museum or Federal agency must submit a notice of intended repatriation in accordance with paragraph (e) of this section.

(iv) No earlier than 30 days after publication of the notice of inventory completion and no later than 90 days after responding to a request for repatriation, the museum or Federal agency must send a repatriation statement to the requestor under paragraph (h) of this section.

(k) *Transfer or reinter human remains and associated funerary objects.* For human remains and associated funerary objects with no connection to an Indian Tribe or Native Hawaiian organization determined in the inventory, a museum or Federal agency, at its discretion, may agree to transfer or decide to reinter the human remains and associated funerary objects. The museum or Federal agency must ensure it has initiated consultation under paragraph (b) of this section, if any.

(1) *Step 1 – Agree to transfer or decide to reinter.* Subject to the requirements in paragraph (k)(2) of this section, a museum or Federal agency may:

(i) Agree in writing to transfer the human remains and associated funerary objects to a requestor that agrees to treat the human remains and associated funerary objects according to the requestor's laws and customs. Human remains and associated funerary objects must be requested in writing and may only be requested by:

(A) An Indian Tribe or Native Hawaiian organization, or

(B) An Indian group that is not federally recognized but has a relationship to the human remains and associated funerary objects.

(ii) Decide in writing to reinter the human remains and associated funerary objects according to applicable laws and policies.

(2) *Step 2 – Submit a notice of proposed transfer or reinterment.* No later than 30 days after agreeing to transfer or deciding to reinter the human remains and associated funerary objects, the museum or Federal agency must submit a notice of proposed transfer or reinterment to the Manager, National NAGPRA Program, for publication in the *Federal Register*.

(i) A notice of proposed transfer or reinterment must conform to the mandatory format of the *Federal Register* and include:

(A) The number of individuals determined in a reasonable manner based on the information available. No additional study or analysis is required to determine the number of individuals. If human remains are in a holding or collection, the number of individuals is at least one.;

(B) The number of associated funerary objects and type of objects (counted separately or by lot);

(C) The county and state where the human remains and associated funerary objects were removed, if known;

(D) The acquisition history (provenance) of the human remains and associated funerary objects, including the circumstances surround their acquisition;

(E) The names of all consulting parties and an abstract of the results of consultation;

(F) A brief abstract of the information that explains why no Indian Tribes or Native Hawaiian organizations with cultural or geographical affiliation could be reasonably identified;

(G) Information about the presence of any potentially hazardous substances used to treat the human remains and associated funerary objects, if known;

(H) The Indian Tribe, Native Hawaiian organization, or Indian group requesting the human remains and associated funerary objects or a statement that the museum or Federal agency will reinter the human remains and associated funerary objects;

(I) The name, phone number, email address, and mailing address for the authorized representative of the museum or Federal agency who is responsible for receiving requests for repatriation; and

(J) The date (to be calculated by the *Federal Register* 30 days from the date of publication) after which the museum or Federal agency may proceed with the transfer or reinterment of the human remains and associated funerary objects.

(ii) No later than 15 days after receiving a notice of proposed transfer or reinterment, the Manager, National NAGPRA Program, will:

(A) Approve for publication in the *Federal Register* a notice of proposed transfer or reinterment that conforms to the requirements under paragraph (k)(2)(i) of this section; or

(B) Return to the museum or Federal agency any submission that does not meet the requirements under paragraph (k)(2)(i) of this section.

(iii) After publication of a notice, if the museum or Federal agency receives a request for repatriation of the human remains and associated funerary objects before transfer or reinterment, the museum or Federal agency must evaluate whether the request meets the criteria under paragraph (f) of this section.

(A) If the request for repatriation meets the criteria under paragraph (f) of this section, the museum or Federal agency must respond in writing under paragraph (g) of this section and proceed with repatriation under paragraph (h) of this section.

(B) If the request does not meet the criteria under paragraph (f) of this section, the museum or Federal agency must respond in writing under paragraph (g) of this section and proceed with transfer or reinterment under paragraph (k)(3) of this section.

(3) *Step 3 – Transfer or reinter the human remains and associated funerary objects.* No earlier than 30 days and no later than 90 days after publication of a notice of proposed transfer or reinterment, the museum or Federal agency must transfer or reinter the human remains and associated funerary objects. After transferring or reinterring, the museum or Federal agency must:

(i) Document the transfer of the human remains and associated funerary objects by recording the contents, recipient, and method of delivery,

(ii) Document the reinterment by recording the contents of the reinterment,

(iii) Protect sensitive information from disclosure to the general public to the extent consistent with applicable law.

(4) After transfer or reinterment occurs, nothing in the Act or this part limits the authority of the museum or Federal agency to enter into any agreement with the requestor concerning the care or custody of the human remains and associated funerary objects.

§ 10.11 Civil penalties.

Any museum that fails to comply with the requirements of the Act or this subpart may be assessed a civil penalty by the Secretary. This section does not apply to Federal agencies, but a Federal agency's failure to comply with the requirements of the Act or this part may be subject to other remedies under Federal law. Each instance of failure to comply will constitute a separate violation. The Secretary must serve the museum with a written notice of failure to comply under paragraph (d) of this section or a notice of assessment under paragraph (g) of this section by personal delivery with proof of delivery date, certified mail with return receipt, or private delivery service with proof of delivery date.

(a) *File an allegation.* Any person may file an allegation of failure to comply by sending a written allegation to the Manager, National NAGPRA Program. Each allegation:

(1) Must include the full name, mailing address, telephone number, and (if available) email address of the person alleging the failure to comply;

(2) Must identify the specific provision or provisions of the Act or this subpart that the museum is alleged to have violated;

(3) Must enumerate the separate violations alleged, including facts to support the number of separate violations. The number of separate violations is determined by establishing relevant factors such as:

(i) The number of lineal descendants, Indian Tribes, or Native Hawaiian organizations named in the allegation and determined to be aggrieved by the failure to comply; or

(ii) The number of individuals or the number of funerary objects, sacred objects, or objects of cultural patrimony involved in the failure to comply;

(4) Should include information showing that the museum has possession or control of the Native American cultural items involved in the alleged failure to comply; and

(5) Should include information showing that the museum receives Federal funds.

(b) *Respond to an allegation.* Within 90 days of receiving an allegation, the Secretary must review the allegation and determine if the allegation meets the requirements of paragraph (a) of this section. After review, the Secretary may investigate the facts in an allegation to ensure all relevant information is available.

(1) The Secretary may request any additional relevant information from the person making the allegation, the museum, or other parties. The Secretary may conduct any investigation that is necessary to determine whether an alleged failure to comply is substantiated. The Secretary may also investigate appropriate factors for justifying an increase or reduction to any penalty amount that may be calculated.

(2) The Secretary, after reviewing all relevant information, must determine one of the following for each alleged failure to comply:

(i) The alleged failure to comply is substantiated, the number of separate violations is identified, and a civil penalty is an appropriate remedy. The Secretary will calculate the proposed penalty amount under paragraph (c) of this section and notify the museum under paragraph (d) of this section;

(ii) The alleged failure to comply is substantiated, the number of separate violations is identified, but a civil penalty is not an appropriate remedy. The Secretary will notify the museum under paragraph (d) of this section; or

(iii) The alleged failure to comply is unsubstantiated. The Secretary will send a written determination to the person making the allegation and to the museum.

(c) *Calculate the penalty amount.* If the Secretary determines under paragraph (b)(2)(i) of this section that a civil penalty is an appropriate remedy for a substantiated failure to comply, the Secretary will calculate the amount of the penalty in accordance with this paragraph. The penalty for each separate violation will be calculated as follows:

(1) The base penalty amount is \$7,475, subject to annual adjustments based on inflation under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114-74).

(2) The base penalty amount may be increased after considering:

(i) The ceremonial or cultural value of the human remains or cultural items involved, as identified by any aggrieved lineal descendant, Indian Tribe, or Native Hawaiian organization;

(ii) The archaeological, historical, or commercial value of the human remains or cultural items involved;

(iii) The economic and non-economic damages suffered by any aggrieved lineal descendant, Indian Tribe, or Native Hawaiian organization, including expenditures by the aggrieved party to compel the museum to comply with the Act or this subpart;

(iv) The number of prior violations by the museum that have occurred; or

(v) Any other appropriate factor justifying an increase.

(3) The base penalty amount may be reduced if:

(i) The museum comes into compliance;

(ii) The museum agrees to mitigate the violation in the form of an actual or an in-kind payment to an aggrieved lineal descendant, Indian Tribe, or Native Hawaiian organization;

(iii) The penalty constitutes excessive punishment under the circumstances;

(iv) The museum is unable to pay the full penalty and the museum has not previously been found to have failed to comply with the Act or this subpart. The museum has the burden of proving it is unable to pay by providing verifiable, complete, and accurate financial information to the Secretary. The Secretary may request that the museum provide such financial information that is adequate and relevant to evaluate the museum's financial condition, including the value of the museum's cash and liquid assets; ability to borrow; net worth; liabilities; income tax returns; past, present, and future income; prior and anticipated profits; expected cash flow; and the museum's ability to pay in installments over time. If the museum does not submit the requested financial information, the museum will be presumed to have the ability to pay the civil penalty; or

(v) Any other appropriate factor justifies a reduction.

(d) *Notify a museum of a failure to comply.* If the Secretary determines under paragraph (b)(2)(i) or (b)(2)(ii) of this section that an alleged failure to comply is substantiated, the Secretary must serve the museum with a written notice of failure to comply and send a copy of the notice to each person alleging the failure to comply and any lineal descendant, Indian Tribe, or Native Hawaiian organization named in the notice of failure to comply. The notice of failure to comply must:

- (1) Provide a concise statement of the facts believed to show a failure to comply;
- (2) Specifically reference the provisions of the Act and this subpart with which the museum has failed to comply;
- (3) Include the proposed penalty amount calculated under paragraph (c) of this section;
- (4) Include, where appropriate, any initial proposal to reduce or increase the penalty amount or an explanation for why the Secretary has determined that a penalty is not an appropriate remedy;
- (5) Identify the options for responding to the notice of failure to comply under paragraph (e) of this section; and
- (6) Inform the museum that the Secretary may assess a daily penalty amount under paragraph (m)(1) of this section if the failure to comply continues after the date the final administrative decision of the Secretary takes effect.

(e) *Respond to a notice of failure to comply.* Within 45 days of receiving a notice of failure to comply, a museum may take no action and await service of a notice of assessment under paragraph (g) of this section, or a museum may file a written response to the notice of failure to comply. A response which is not timely filed will not be considered. Any written response must be signed by an authorized representative of the museum and must be sent to the Secretary. In the written response, a museum may:

- (1) Seek an informal discussion of the failure to comply;
- (2) Request either or both of the following forms of relief, with a full explanation of the legal or factual basis for the requested relief:
 - (i) That the Secretary reconsider the determination of a failure to comply, or
 - (ii) That the Secretary reduce the proposed penalty amount; or
- (3) Accept the determination of a failure to comply and agree in writing that the museum will do the following, which will constitute an agreement between the Secretary and the museum:
 - (i) Pay the proposed penalty amount, if any,
 - (ii) Complete the mitigation required to reduce the penalty, if offered in the notice, and
 - (iii) Waive any right to receive notice of assessment under paragraph (g) of this section and to request a hearing under paragraph (i) of this section.

(f) *Assess the civil penalty.* After serving a notice of failure to comply, the Secretary may assess a civil penalty and must consider all available, relevant information related to the failure to comply, including information timely provided by the museum during any informal discussion or request for relief, furnished by another party, or produced upon the Secretary's request.

- (1) The assessment of a civil penalty is made after the latter of:
 - (i) The 45-day period for a response has expired and the museum has taken no action;
 - (ii) Conclusion of informal discussion, if any;
 - (iii) Review and consideration of a petition for relief, if any; or

(iv) Failure to meet the terms of an agreement established under paragraph (e)(3) of this section.

(2) If a petition for relief or informal discussion warrants a conclusion that no failure to comply has occurred, the Secretary must send written notification to the museum revoking the notice of failure to comply. No penalty is assessed.

(g) *Notify the museum of an assessment.* If the Secretary determines to assess a civil penalty, the Secretary will serve the museum with a notice of assessment. Unless the museum seeks further administrative remedies under this section, the notice of assessment is the final administrative decision of the Secretary. The notice of assessment must:

(1) Specifically reference the provisions of the Act or this subpart with which the museum has not complied;

(2) Include the final amount of any penalty calculated under paragraph (c) of this section and the basis for determining the penalty amount;

(3) Include, where appropriate, any increase or reduction to the penalty amount or an explanation for why the Secretary has determined that a penalty is not an appropriate remedy;

(4) Include the daily penalty amount that the Secretary may assess under paragraph (m)(1) of this section if the failure to comply continues after the date the final administrative decision of the Secretary takes effect. The daily penalty amount for each continuing violation shall not exceed \$1,496 per day, subject to annual adjustments based on inflation under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114-74);

(5) Identify the options for responding to the notice of assessment under paragraph (h) of this section; and

(6) Notify the museum that it has the right to seek judicial review of the final administrative decision of the Secretary only if it has exhausted all administrative remedies under this section, as set forth in paragraph (l) of this section.

(h) *Respond to an assessment.* Within 45 days of receiving a notice of assessment, a museum must do one of the following:

(1) Accept the assessment and pay the penalty amount by means of a certified check made payable to the U.S. Treasurer, Washington, DC, sent to the Secretary. By paying the penalty amount, the museum waives the right to request a hearing under paragraph (i) of this section.

(2) File a written request for a hearing under paragraph (i) of this section to contest the failure to comply, the penalty assessment, or both. If the museum does not file a written request for a hearing within 45 days, the museum waives the right to request a hearing under paragraph (i) of this section.

(i) *Request a hearing.* The museum may file a written request for a hearing with the Departmental Cases Hearings Division (DCHD), Office of Hearings and Appeals (OHA), U.S. Department of the Interior, at the mailing address specified in the notice of assessment, or by electronic means in accordance with an OHA Standing Order which is available on OHA's website at the web address specified in the notice of assessment. A copy of the request must be served on the Solicitor of the Department of the Interior at the address specified in the notice of assessment. The request for hearing and any document filed thereafter with the DCHD under

paragraphs (i) or (j) of this section are subject to the rules that govern the method and effective date of filing under 43 CFR 4.22 and 4.422(a). The request for a hearing must:

- (1) Include a copy of the notice of failure to comply and the notice of assessment;
- (2) State the relief sought by the museum; and
- (3) Include the basis for challenging the facts used to determine the failure to comply or the penalty assessment.

(j) *Hearings.* Upon receiving a request for a hearing, DCHD will assign an administrative law judge to the case and promptly give notice of the assignment to the parties. Thereafter, each filing must be addressed to the administrative law judge and a copy served on each opposing party or its counsel.

(1) To the extent they are not inconsistent with this section, the general rules in 43 CFR part 4, subparts A and B apply to the hearing process.

(2) Subject to the provisions of 43 CFR 1.3, a museum may appear by authorized representative or by counsel and may participate fully in the proceedings. If the museum does not appear and the administrative law judge determines that this absence is without good cause, the administrative law judge may, at his or her discretion, determine that the museum has waived the right to a hearing and consents to the making of a decision on the record.

(3) The Department of the Interior counsel, designated by the Solicitor of the Department of the Interior, represents the Secretary in the proceedings. Within 20 days of receipt of its copy of the written request for hearing, Departmental counsel must file with the DCHD an entry of appearance on behalf of the Secretary and the following:

- (i) Any written communications between the Secretary and the museum during any informal discussions under paragraph (e)(1) of this section;
- (ii) Any petition for relief submitted under paragraph (e)(2); and
- (iii) Any other information considered by the Secretary in reaching the decision being challenged. Thereafter, the museum must serve each document filed with the administrative law judge on Departmental counsel.

(4) In a hearing on the penalty assessment, the amount of the penalty assessment must be determined in accordance with paragraph (c)(2) of this section and will not be limited to the amount originally assessed or by any previous reduction, increase, or offer of mitigation.

(5) The administrative law judge has all powers necessary to conduct a fair, orderly, expeditious, and impartial hearing process, and to render a decision under 5 U.S.C. 554-557.

(6) The administrative law judge will render a written decision based upon the hearing record. The decision must set forth the findings of fact and conclusions of law, and the reasons and basis for them.

(7) The administrative law judge's decision takes effect as the final administrative decision of the Secretary 31 days from the date of the decision unless the museum files a notice of appeal as described in paragraph (k) of this section.

(k) *Appealing the administrative law judge's decision.* Any party who is adversely affected by the decision of the administrative law judge may appeal the decision by filing a written notice of appeal within 30 days of the date of the decision. The notice of appeal must be

filed with the Interior Board of Indian Appeals (IBIA), Office of Hearings and Appeals, U.S. Department of the Interior, at the mailing address specified in the administrative law judge's decision, or by electronic means in accordance with an OHA Standing Order which is available on OHA's website at the web address specified in the administrative law judge's decision. The notice of appeal must be accompanied by proof of service on the administrative law judge and the opposing party. The notice of appeal and any document filed thereafter with the IBIA is subject to the rules that govern the method and effective date of filing in 43 CFR 4.310.

(1) To the extent they are not inconsistent with this section, the provisions of 43 CFR part 4, subpart D, apply to the appeal process. The appeal board's decision must be in writing and takes effect as the final penalty assessment and the final administrative decision of the Secretary on the date that the appeal board's decision is rendered, unless otherwise specified in the appeal board's decision.

(2) OHA decisions in proceedings instituted under this section are posted on OHA's website.

(l) *Exhaustion of administrative remedies.* A museum has the right to seek judicial review, under 5 U.S.C. 704, of the final administrative decision of the Secretary only if it has exhausted all administrative remedies under this section. No decision, which at the time of its rendition is subject to appeal under this section, shall be considered final so as to constitute agency action subject to judicial review. The decision being appealed shall not be effective during the pendency of the appeal.

(m) *Failure to pay penalty or continuing failure to comply.*

(1) If the failure to comply continues after the date the final administrative decision of the Secretary takes effect, as described in paragraphs (g), (j)(6), or (k)(1) of this section, or after a date identified in an agreement under paragraph (e)(3) of this section, the Secretary may assess an additional daily penalty amount for each continuing violation not to exceed \$1,496 per day, subject to annual adjustments based on inflation under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114-74). In determining the daily penalty amount, the Secretary will consider the factors in paragraph (c)(2) of this section. This penalty will start to accrue on the day after the effective date of the final administrative decision of the Secretary or on the date identified in an agreement under paragraph (e)(3) of this section.

(2) If the museum fails to pay the penalty, the Attorney General of the United States may institute a civil action to collect the penalty in an appropriate U.S. District Court. In such action, the validity and amount of the penalty are not subject to review by the court.

(n) *Additional remedies.* The assessment of a penalty under this section is not deemed a waiver by the Department of the Interior of the right to pursue other available legal or administrative remedies.

Subpart D—REVIEW COMMITTEE

§ 10.12 Review Committee.

The Review Committee advises the Secretary and Congress on matters relating to sections 5, 6, and 7 of the Act and other matters as specified in section 8 of the Act. The Review Committee is subject to the Federal Advisory Committee Act (FACA, 5 U.S.C. App.)

(a) *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. Findings and recommendations made by the Review Committee will be published in the *Federal Register* within 90 days of making the finding or recommendation.

(b) *Nominations.* The Review Committee consists of seven members appointed by the Secretary of the Interior.

(1) Three members are appointed from nominations submitted by Indian Tribes, Native Hawaiian organizations, and traditional religious leaders. At least two of these members must be traditional Indian religious leaders. A traditional Indian religious leader is a person who, based on cultural, ceremonial, or religious practices, is recognized by an Indian Tribe as being responsible for performing cultural ceremonies or exercising a leadership role.

(2) Three members are appointed from nominations submitted by national museum organizations or national scientific organizations. An organization that is created by, is a part of, and is governed in any way by a parent national museum or scientific organization must submit a nomination through the parent organization. National museum organizations and national scientific organizations are organizations that:

(i) Focus on the interests of museums and science disciplines throughout the United States, as opposed to a lesser geographic scope;

(ii) Offer membership throughout the United States, although such membership need not be exclusive to the United States; and

(iii) Are organized under the laws of the United States Government.

(3) One member is appointed from a list of more than one person developed and consented to by all other appointed members specified in paragraphs (b)(1) and (b)(2) of this section.

(c) *Findings of fact or disputes on repatriation.* The Review Committee may assist any affected party through consideration of findings of fact or disputes related to the inventory, summary, or repatriation provisions of the Act. One or more of the affected parties may request the assistance of the Review Committee or the Secretary may direct the Review Committee to consider a finding of fact or dispute. Requests for assistance must be made before repatriation of the human remains or cultural items has occurred.

(1) An affected party is either a:

(i) Museum or Federal agency that has possession or control of the human remains or cultural items, or

(ii) Lineal descendant, or an Indian Tribe or Native Hawaiian organization with potential affiliation to the human remains or cultural items.

(2) The Review Committee may make an advisory finding of fact on questions related to:

- (i) The identity of an object as human remains or cultural items,
- (ii) The cultural or geographical affiliation of human remains or cultural items, or
- (iii) The repatriation of human remains or cultural items.

(3) The Review Committee may make an advisory recommendation on disputes between affected parties. To facilitate the resolution of disputes, the Review Committee may:

- (i) Consider disputes between an affected party identified in paragraph (c)(1)(i) of this section and an affected party identified in paragraph (c)(1)(ii) of this section;
- (ii) Not consider disputes among lineal descendants, Indian Tribes and Native Hawaiian organizations;
- (iii) Not consider disputes among museums and Federal agencies;
- (iv) Request information or presentations from any affected party; and
- (v) Make advisory recommendations directly to the affected parties or to the Secretary.