

DRAFT REGULATION FOR CONSULTATION

**DRAFT 43 CFR 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.

(b) *Applicability.* These regulations pertain to Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony that, after November 16, 1990, are:

- (1) Discovered on or excavated from Federal or Tribal lands;
- (2) Under the control of any Federal agency; or
- (3) Under the control of any institution or State or local government agency within the United States that receives Federal funds after November 16, 1990.

(c) *Duty of care.* These regulations require a Federal agency to care for and manage all cultural items in its custody or under its control consistent with the regulations at 36 CFR 79. These regulations require a museum to safeguard and preserve all cultural items under its control.

(d) *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,
- (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 will be published in the *Federal Register* within 5 business days.

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

- (1) Deadlines and timelines are counted as calendar days. If a deadline falls on a Saturday, Sunday, or Federal holiday, the action is deemed timely if taken no later than the next calendar day that is not a Saturday, Sunday, or Federal holiday.
- (2) Written documents are deemed timely based on the date sent, not the date received.

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§ 10.2 Definitions for this part.

(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 act based on the date sent or date received.

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

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

(h) *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.

(i) *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; or
- (5) Another Federal document or foreign government document providing clear and convincing information.

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.

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§ 10.2 Definitions for this part.

Ahupua‘a (singular and plural) means a land division in Hawaii 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. Traditionally, the occupants of an ahupua‘a are its stewards.

Appropriate official means the authorized representative of the Federal agency, Indian Tribe, Native Hawaiian organization, or Department of Hawaiian Home Lands (DHHL) that has responsibility for cultural items discovered on or excavated from 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 Indian individuals, 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 Indian individual.

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 involving the exchange of information, open discussion, and joint deliberations with respect to potential issues, changes, or actions by all interested parties.

Control means having sufficient legal interest in an object or item to independently direct, manage, oversee, or restrict the use of the object or item and to convey that legal interest.

Cultural affiliation or *culturally affiliated* means a connection between a cultural item and a present-day Indian Tribe or Native Hawaiian organization is established by reasonably tracing a relationship of shared group identity between the present-day Indian Tribe or Native Hawaiian organization and an identifiable prehistoric or historic earlier group connected to the cultural item.

Cultural items mean Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.

Custody means having an obligation to care for the object or item but not sufficient legal interest in the object or item to constitute control. In general, custody through a loan, lease, license, bailment, or other similar arrangement is not sufficient legal interest to constitute control.

Discovered or discovery means an unauthorized, inadvertent exposure or finding of a cultural item.

Disposition means an appropriate official acknowledges a lineal descendant, Indian Tribe, or Native Hawaiian organization has control of a cultural item from Federal or Tribal lands.

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§ 10.2 Definitions for this part.

Excavated or excavation means an authorized, intentional exposure of a cultural item.

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

Federal lands mean any land 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 sufficient legal interest to permit it to apply these regulations without abrogating a person's existing legal rights. Whether the United States Government has 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 land 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 land 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 that, as part of the death rite or ceremony of a culture, is reasonably believed to have been placed intentionally, at the time of death or later, with or near individual Native American human remains. This term does not include any object returned or distributed to living individuals according to traditional custom after being displayed as part of a death rite or ceremony of a culture. Funerary objects are either associated funerary objects or unassociated funerary objects.

(1) *Associated funerary object* means the individual human remains related to the funerary object are, or were as of November 16, 1990, in the custody of any Federal agency or under the control of any museum or Federal agency. Objects made exclusively for burial purposes or to contain human remains are always associated funerary objects regardless of the location or existence of any related individual human remains.

(2) *Unassociated funerary object* means the individual human remains related to the funerary object are not, or were not as of November 16, 1990, in the custody of any Federal agency or under the control of any museum or Federal agency. An unassociated funerary object must be identified by a preponderance of the evidence as:

- (i) Related to known individual human remains whose location is unknown,
- (ii) Related to specific individuals or families, or
- (iii) Removed from a specific burial site of an individual culturally affiliated with a particular Indian Tribe.

Geographical affiliation or geographically affiliated means a connection between a cultural item and a present-day Indian Tribe or Native Hawaiian organization is established by reasonably identifying a relationship between the Indian Tribe or Native Hawaiian organization and a geographical location connected to the cultural item. The geographical location must be:

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§ 10.2 Definitions for this part.

- (1) The Tribal lands of the Indian Tribe or Native Hawaiian organization from whose Tribal lands, at the time of removal, the cultural item originated,
- (2) The acknowledged aboriginal land of the Indian Tribe, or
- (3) The adjudicated aboriginal land of the Indian Tribe.

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

- (1) Academic interest;
- (2) Accession;
- (3) Catalog;
- (4) Comparison;
- (5) Conservation;
- (6) Education;
- (7) Enjoyment;
- (8) Examination;
- (9) Exhibition;
- (10) Forensic purposes;
- (11) Interpretation;
- (12) Personal benefit;
- (13) Preservation;
- (14) Public benefit;
- (15) Research;
- (16) Scientific interest; or
- (17) Study.

Human remains mean the physical remains of the body of a Native American individual.

- (1) 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.
- (2) 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.

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§ 10.2 Definitions for this part.

(3) 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.)), that is eligible for special programs and services provided by the United States Government to Indians because of their status as Indians, as evidenced by its inclusion on the list of recognized Indian Tribes published by the Secretary under 25 U.S.C. 5131.

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

Lineal descendant means:

(1) A living individual 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 Native American individual whose human remains, funerary objects, or sacred objects are subject to this part; or

(2) A living individual 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 Native American individuals represented within an admixture of human remains and associated funerary objects (example: the human remains of two individuals have been mixed together, and a living individual 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 control of 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, cultural items must bear some relationship to a tribe, people, or culture indigenous to the United States. Genetic information may show a relationship but is not required.

(1) A tribe includes Indian Tribes and Indian groups that are not federally recognized.

(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.

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

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 Hawaii;

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§ 10.2 Definitions for this part.

- (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 Hawaii;
 - (ii) Native Hawaiian organizations 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). Establishing importance central to the group itself requires more than just demonstrating ownership of the object by an individual group member. The object must be of such importance central to the group that it:

- (1) Cannot be alienated, appropriated, or conveyed by any individual regardless of whether the individual 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.

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.

Receives Federal funds means a museum directly or indirectly receives Federal financial assistance 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 museum is a part. For example, if a museum is a part of a State or local government or a private university, and the State or local government or private university receives Federal financial assistance for any purpose, then the museum 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.

Repatriation or repatriate means a museum or Federal agency conveys control of a cultural item in a holding or collection to a lineal descendant, Indian Tribe, or Native Hawaiian organization.

Review Committee means the advisory committee established under the Act.

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

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§ 10.2 Definitions for this part.

(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 an individual 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 culturally affiliated 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. While many items might be imbued with sacredness in the eyes of an individual, this term is specifically limited to objects to be used in the continued observance or renewal of Native American religious ceremonies.

Secretary means the Secretary of the Interior or a designee.

Set of human remains means the human remains of one individual. A set of human remains does not have to be a complete skeleton. The number of sets of human remains must be determined in a reasonable manner.

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

Traditional religious leader means a person who, based on the cultural, ceremonial, or religious practices of an Indian Tribe or Native Hawaiian organization, is recognized as being responsible for performing cultural duties or exercising a leadership role in that Indian Tribe or Native Hawaiian organization.

Tribal lands mean:

(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 Hawaii into the Union (73 Stat. 4), including “available lands” and “Hawaiian home lands.”

Tribal lands controlled by a NHO means lands licensed or leased under Sections 204 or 207(c) of the HHCA to a Native Hawaiian organization that is a HHCA Beneficiary Association or Homestead Association as defined by 43 CFR 47.10.

Tribal lands controlled by DHHL means lands controlled by DHHL that are not licensed or leased under Sections 204 or 207 (c) of the HHCA to a Native Hawaiian organization that is a HHCA Beneficiary Association or Homestead Association as defined by 43 CFR 47.10.

Unclaimed cultural item means a cultural item from Federal lands or from Tribal lands controlled by DHHL whose disposition has not occurred under this part.

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

§ 10.3 Cultural Affiliation.

Throughout this part, cultural affiliation is used to ensure a connection between a cultural item and a present-day Indian Tribe or Native Hawaiian organization. Cultural affiliation is established by reasonably tracing a relationship of shared group identity between the present-day Indian Tribe or Native Hawaiian organization and an identifiable prehistoric or historic earlier group connected to the cultural item.

(a) *Information for cultural affiliation.* Cultural affiliation may be established using any of the following equally relevant types of information:

- (1) Anthropological;
- (2) Archeological;
- (3) Biological;
- (4) Folkloric;
- (5) Geographic;
- (6) Historical;
- (7) Kinship;
- (8) Linguistic;
- (9) Oral Traditional; or
- (10) Other relevant information or expert opinion.

(b) *Criteria for cultural affiliation.* A cultural affiliation determination must be reasonably established by a simple preponderance of the evidence given the available information about the cultural item, including the results of consultation. Cultural affiliation does not require exhaustive studies of the cultural item and must not be precluded solely because of reasonable gaps in the available information. Cultural affiliation is established by identifying:

- (1) One or more earlier groups, from either the prehistoric or historic periods, connected to the cultural item. Information to identify an earlier group may include, but is not limited to, information sufficient to establish the identity or cultural characteristics of the earlier group.
- (2) One or more present-day Indian Tribes or Native Hawaiian organizations. Cultural affiliation may be established with more than one Indian Tribe or Native Hawaiian organization depending on the available information.
- (3) A relationship of shared group identity between one or more earlier groups and one or more present-day Indian Tribes or Native Hawaiian organizations. An identifiable earlier group may have a relationship to more than one Indian Tribe or Native Hawaiian organization. Two or more earlier groups may be connected to a cultural item, and, as a result, a relationship may be traced to Indian Tribes or Native Hawaiian organizations that do not themselves have a shared group identity.

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§ 10.3 Cultural Affiliation.

(c) *Multiple cultural affiliations.* When a connection is established between a cultural item and two or more present-day Indian Tribes or Native Hawaiian organizations, any of the culturally affiliated Indian Tribes or Native Hawaiian organizations may submit a claim for disposition or a request for repatriation. Two or more culturally affiliated Indian Tribes or Native Hawaiian organizations may agree to joint disposition or joint repatriation of a cultural item.

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

(2) *Competing claims or requests.* Under §§10.7, 10.9, and 10.10, when there are competing claims for disposition or competing requests for repatriation of a cultural item, it may be necessary to determine the closest culturally affiliated Indian Tribe or Native Hawaiian organization under paragraph (d) of this section.

(d) *Closest cultural affiliation.*

(1) The closest culturally affiliated Indian Tribe, in the following order, is:

(i) The Indian Tribe that is clearly identified as culturally affiliated.

(ii) The Indian Tribe that is not clearly identified as culturally affiliated, but is culturally affiliated by a reasonable determination, given the totality of the circumstances.

(2) The closest culturally affiliated Native Hawaiian organization, in the following order, is:

(i) An organization with a familial or kinship relationship to the earlier group connected to the cultural item, but not a lineal descendant.

(ii) An organization claiming a relationship of shared group identity only to the earlier occupants of the ahupua‘a where the cultural item originated, and not to the earlier occupants of any other ahupua‘a.

(iii) An organization claiming a relationship of shared group identity to the earlier occupants of the ahupua‘a where the cultural item originated, as well as a relationship of shared group identity to the earlier occupants of other ahupua‘a on the same island, but not a relationship of shared group identity to all the earlier occupants of that island, or to the earlier occupants of any other island of the Hawaiian archipelago.

(iv) An organization claiming a relationship of shared group identity to all the earlier occupants of the island where the cultural item originated, but not a relationship of shared group identity to the earlier occupants of any other island of the Hawaiian archipelago.

(v) An organization that has been in continuous existence from a date prior to 1893 and claims a relationship of shared group identity with the earlier occupants of more than one island in the Hawaiian archipelago.

(vi) Any other culturally affiliated Native Hawaiian organization.

Subpart B—FEDERAL OR TRIBAL LANDS AFTER NOVEMBER 16, 1990

§ 10.4 General.

Whenever a Federal agency, Indian Tribe, Native Hawaiian organization, or the Department of Hawaiian Home Lands (DHHL) has responsibility for cultural items discovered on or excavated from Federal or Tribal lands, it must comply with the requirements of this subpart. On Tribal lands, actions authorized or required under these regulations do not apply if the action would result in a taking of property without compensation within the meaning of the Fifth Amendment of the United States Constitution.

(a) *Authorization of any ground-disturbing activity.* To ensure compliance with the Act, any permit, license, lease, right-of-way, or other authorization issued by a Federal agency or DHHL for a ground-disturbing activity (other than an excavation under §10.6) must include a requirement that the person responsible for the activity comply with §10.5 upon the discovery of any cultural item.

(b) *Comprehensive agreement.* To facilitate compliance with the Act, a Federal agency or DHHL, in consultation with the appropriate Indian Tribe or Native Hawaiian organization, may develop a written comprehensive agreement for land managing activities that are likely to result in the discovery or excavation of cultural items.

(1) The written comprehensive agreement must:

- (i) Include applicable information described under §10.6(b)(3),
- (ii) Be signed by an official for the Federal agency or DHHL, and
- (iii) On Tribal lands, include written consent to any excavation that may occur from an official for the Indian Tribe or Native Hawaiian organization, if any.

(2) After completing the comprehensive agreement, the Federal agency or DHHL must:

- (i) Provide a copy of the signed comprehensive agreement to all consulting parties; and
- (ii) When cultural items are discovered or excavated under the comprehensive agreement:
 - (A) Inform all consulting parties of the discovery or excavation, and
 - (B) Determine the disposition of the cultural items by following §10.7.

(c) *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 laws. Compliance with this subpart does not relieve a Federal agency of the responsibility for compliance with 54 U.S.C. 306108 (commonly known as Section 106 of the National Historic Preservation Act) or 54 U.S.C. 312501-312508 (commonly known as the Archeological and Historic Preservation Act).

(d) *Appropriate official.* To carry out compliance with the Act, the Federal agency, Indian Tribe, Native Hawaiian organization, or DHHL that has responsibility for cultural items from Federal or Tribal lands must designate an appropriate official, as shown in Table 1 of this section.

Table 1 to §10.4: Appropriate official

For cultural items from...	the appropriate official is a representative for the...
Federal lands	Federal agency with primary management authority
Tribal lands in Alaska and the continental United States	Indian Tribe
Tribal lands controlled by a NHO	Native Hawaiian organization
Tribal lands controlled by DHHL	DHHL

§ 10.5 Discovery.

When a cultural item is discovered on Federal or Tribal lands, any person who is aware of the discovery must make a reasonable effort to protect the cultural items and must inform the appropriate official for the responsible Federal agency, Indian Tribe, Native Hawaiian organization, or DHHL.

(a) *Report any discovery.* Any person who knows or has reason to know that he or she has discovered a cultural item 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. No later than three business days after the discovery, written documentation of the discovery must be sent to the appropriate official and the additional point of contact.

(b) *Cease any ground-disturbing activity and send written documentation.* If the discovery is related to a ground-disturbing activity (including but not limited to construction, mining, logging, or agriculture), the person responsible for the activity must:

- (1) Immediately stop all ground-disturbing activity in the area of 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 cultural items, including, as appropriate, stabilizing and covering the cultural items if they are in situ; and
- (4) No later than three business days after the discovery, send written documentation of the discovery to the appropriate official and additional point of contact stating:
 - (i) The general location and contents of the discovery,
 - (ii) The ground-disturbing activity related to the discovery,
 - (iii) The steps taken to secure and protect the cultural items, and

(iv) Confirmation that all ground-disturbing activity in the area of discovery has stopped and will not resume until the date in a written certification issued under paragraph (e) of this section.

Table 1 to §10.5: Report a discovery of cultural items 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, except lands in Alaska selected but not yet conveyed to Alaska Native Corporations or groups	Federal agency with primary management authority	no one else.
Federal lands in Alaska selected but not yet conveyed to Alaska Native Corporations or groups	Bureau of Land Management	Alaska Native Corporation or group.
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 controlled by a NHO in Hawaii	Native Hawaiian organization	DHHL
Tribal lands controlled by DHHL in Hawaii	DHHL	no one else.

(c) *Respond to a discovery.* No later than 5 business days after receiving written documentation of a discovery, the appropriate official must ensure that a reasonable effort has been made to secure and protect the cultural items and that any ground-disturbing activity in the area of the discovery has stopped. 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) Steps to secure and protect the cultural items include, as appropriate, stabilizing or covering the cultural items if they are in situ.

(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.

(3) On Tribal lands controlled by a NHO, the Native Hawaiian organization must consent in writing to be responsible for discoveries on its Tribal lands. If the Native Hawaiian organization does not consent, the appropriate official for DHHL is responsible for discoveries on those Tribal lands.

Subpart B—FEDERAL OR TRIBAL LANDS AFTER NOVEMBER 16, 1990
§ 10.6 Excavation.

(d) *Evaluate the potential need for an excavation.* the appropriate official must take reasonable steps to evaluate the potential need for an excavation of the cultural items. If the appropriate official evaluates that an excavation may be needed, the appropriate official may authorize the excavation only after complying with §10.6 or a comprehensive agreement under §10.4(b).

(e) *Certify that an activity may resume.* the appropriate official must send a written certification to the person responsible for the ground-disturbing activity. The written certification must provide:

- (1) Affirmation that a reasonable effort has been made to secure and protect the cultural items and that all ground-disturbing activity in the area of the discovery has stopped;
- (2) Instructions for further securing, protecting, or stabilizing the cultural items, if appropriate;
- (3) A proposed timeline and method for excavation of the cultural items, if applicable; and
- (4) The date (no later than 30 business days after the date of the written certification) on which lawful ground-disturbing activity may resume in the area of the discovery.

§ 10.6 Excavation.

When an excavation of cultural items from Federal or Tribal lands may be needed, the appropriate official may authorize the excavation only after complying with this section or a comprehensive agreement under §10.4(b). 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 permit 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 cultural items from Tribal lands may occur, the Indian Tribe or Native Hawaiian organization must consent to the excavation and provide a written authorization for the excavation. A written authorization is deemed to constitute written consent to the excavation. When the Indian Tribe or Native Hawaiian organization consents to an excavation:

(1) The appropriate official for the Indian Tribe or Native Hawaiian organization must provide a written authorization showing:

- (i) Any permit that the Indian Tribe or Native Hawaiian organization legally requires;
- (ii) The planned timeline and method for excavation, including any terms or conditions; and
- (iii) The planned treatment of any cultural items, including the appropriate care or handling, traditional treatment, archeological recording, data analysis, or reports to be conducted.

(2) On Tribal lands in Alaska and the continental United States, with the written agreement of both the Federal agency and the Indian Tribe, 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.

(3) On all Tribal lands in Hawaii, the appropriate official for DHHL is responsible for authorizing the excavation and must complete paragraph (b) of this section unless, on Tribal lands controlled

by a NHO, the Native Hawaiian organization agrees in writing to be responsible for the excavation and provides the written authorization under paragraph (a)(1) of this section.

(b) *On Federal lands and on Tribal lands in Hawaii.* A Federal agency or DHHL may authorize an excavation of cultural items only after consulting with the appropriate Indian Tribes and Native Hawaiian organizations, if any, and providing a written authorization.

(1) *Step 1: Initiate consultation.* Based on available information, the appropriate official for the Federal agency or DHHL must identify consulting parties and make a good-faith effort to invite the parties to consult.

(i) Consulting parties are:

(A) Any known lineal descendant;

(B) Any likely culturally affiliated Indian Tribe or Native Hawaiian organization;

(C) Any Indian Tribe on whose adjudicated aboriginal land the excavation will occur; and

(D) Any other Indian Tribe that is likely to have a cultural relationship to cultural items from the adjudicated aboriginal land of a different Indian Tribe.

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

(A) A description of the excavation and its general location;

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

(C) A proposed timeline and method for consultation.

(iii) A consulting party, regardless of whether or not 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 appropriate official sends a disposition statement for the cultural items under §10.7(d)(5).

(2) *Step 2: Consult with requesting parties.* The appropriate official for the Federal agency or DHHL must respond to a request to consult in writing with a proposed timeline for consultation. Consultation on the excavation may continue until the appropriate official sends a disposition statement for the cultural items under §10.7(d)(5).

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

(A) Recommendations on the timeline and method for consultation, and

(B) The name, phone number, email address, or mailing address for any representative authorized to consult and any known lineal descendant.

(ii) The consultation process must seek to identify:

- (A) A proposed timeline and method for the excavation, including any terms or conditions;
- (B) Lineal descendants;
- (C) Indian Tribes and Native Hawaiian organizations with priority for disposition under §10.7(a);
- (D) The types of objects that might be cultural items including any objects made exclusively for burial purposes or to contain human remains; and
- (E) The proposed treatment of any cultural items, including appropriate care or handling, traditional treatment, archeological recording, data analysis, or reports to be conducted, and
- (F) The proposed disposition of any cultural items.

(3) *Step 3: Authorize the excavation.* The appropriate official for the Federal agency or DHHL may authorize an excavation of cultural items from Federal or Tribal lands by providing a written authorization showing:

- (i) A good-faith effort to initiate consultation with all identified consulting parties;
- (ii) A summary of consultation, including the dates and attendees;
- (iii) The planned timeline and method for the excavation, including any terms or conditions;
- (iv) The planned treatment of any cultural items, including appropriate care or handling, traditional treatment, archeological recording, data analysis, or reports to be conducted; and
- (v) The planned disposition of any cultural items.

§ 10.7 Disposition.

When a cultural item is removed from Federal or Tribal lands, as soon as possible (but no later than two years) after the discovery or excavation of the cultural item, the appropriate official must determine, to the extent possible, the lineal descendant, Indian Tribe, or Native Hawaiian organization that has priority for disposition of the cultural item using this section. On Federal lands or on Tribal lands controlled by DHHL, when the appropriate official cannot reasonably determine an Indian Tribe or Native Hawaiian organization with priority for disposition of a cultural item, the Federal agency or DHHL must report the cultural item as unclaimed under paragraph (e) of this section.

(a) *Priority for disposition.* Consultation on cultural items may be required to determine the disposition of a cultural item and may continue until the appropriate official sends a disposition statement for the cultural items under paragraph (d) of this section. Disposition must be in a manner that, to the maximum extent feasible, respects the traditions of the lineal descendant, Indian Tribe, or Native Hawaiian organization. The disposition of cultural items 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 cultural items originated;
- (3) The closest culturally affiliated Indian Tribe or Native Hawaiian organization according to the priority order at §10.3(d) who claims the cultural items; or
- (4) For cultural items from adjudicated aboriginal land, the Indian Tribe with the strongest relationship to the cultural items who makes a claim for disposition, which is:
 - (i) The adjudicated aboriginal land Indian Tribe who claims the cultural items, or
 - (ii) A different Indian Tribe who claims the cultural items and shows, by a preponderance of the evidence, a stronger cultural relationship to the cultural items than the adjudicated aboriginal land Indian Tribe.

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

- (1) The written disposition statement must acknowledge:

- (i) A lineal descendant could not be ascertained and
 - (ii) The Indian Tribe or Native Hawaiian organization has control of the cultural item.
- (2) After the disposition statement is sent, nothing in the Act or this part:
- (i) Prevents the governing body of an Indian Tribe or Native Hawaiian organization from expressly relinquishing its control of human remains, funerary objects, or sacred objects,
 - (ii) Limits the authority of a Federal agency or DHHL to enter into any agreement with the Indian Tribe or Native Hawaiian organization concerning the care or custody of the cultural item, or
 - (iii) Limits any procedural or substantive right which may otherwise be secured to the Indian Tribe or Native Hawaiian organization.

(d) *Disposition of cultural items from Federal lands or from Tribal lands controlled by DHHL.* 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)(3) or (a)(4) of this section. When the appropriate official cannot reasonably determine an Indian Tribe or Native Hawaiian organization with priority for disposition of a cultural item, the Federal agency or DHHL must report the cultural item as unclaimed under paragraph (e) of this section. The appropriate official for the Federal agency or DHHL must complete the disposition by carrying out the following steps.

(1) *Step 1 – Identify and inform the Indian Tribe or Native Hawaiian organization.* As soon as possible (but no later than one year) after the discovery or excavation of the cultural item, the appropriate official for the Federal agency or DHHL must seek to identify an Indian Tribe or Native Hawaiian organization with priority for disposition of the cultural item. No later than 30 days after identifying an Indian Tribe or Native Hawaiian organization with priority for disposition of a cultural item, the appropriate official must send a written document to the Indian Tribe or Native Hawaiian organization that includes:

- (i) A description of the cultural item including the general location and date of its discovery or excavation;
- (ii) The name of each Indian Tribe or Native Hawaiian organization identified as having priority for disposition of the cultural item and a brief summary 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 cultural item, 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 later than 30 days after informing an Indian Tribe or Native Hawaiian organization with priority for disposition, the appropriate official must submit a notice of intended disposition to the Manager, National NAGPRA Program, for publication in the *Federal Register*.

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

(A) A brief description of the cultural item, including the county and state where the cultural item originated;

(B) The identity of each cultural item 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 cultural item 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 cultural item;

(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 cultural item will become an unclaimed cultural item if no written claim is received from an Indian Tribe or Native Hawaiian organization.

(ii) The Manager, National NAGPRA Program, will:

(A) Approve for publication in the *Federal Register* a notice of intended disposition that conforms to the information 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 a cultural item.

(i) A claim for disposition of a cultural item must be received by the appropriate official before the appropriate official sends a disposition statement for that cultural item to a claimant under paragraph (d)(5) of this section or the transfer or reinterment of the cultural item 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 will 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 cultural item 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)(3) or (a)(4) 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 a cultural item.

(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 cultural item 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 a cultural item under paragraph (d)(5) of this section, the appropriate official may receive additional, competing claims for disposition of that cultural item 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)(3) and (a)(4) of this section.

(A) No later than 7 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 30 days after informing the claimants of competing claims, the appropriate official must send a written determination to each claimant identifying the most appropriate claimant, and

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

(5) *Step 5 – Disposition of the 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 and a copy to the Manager, National NAGPRA Program. The disposition statement must acknowledge the claimant has control of the cultural item. 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 on the care, custody, and physical transfer of the cultural item.

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

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

(B) Protect sensitive information, as identified by the claimant, 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 cultural item,

(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 of human remains, funerary objects, or sacred objects.

(e) *Unclaimed cultural items from Federal lands or from Tribal lands controlled by DHHL.* When the appropriate official for a Federal agency or DHHL cannot complete the disposition of a cultural item under paragraph (d) of this section, the Federal agency or DHHL must report the cultural item as unclaimed. The appropriate official must, to the maximum extent feasible, 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) A cultural item is 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) Two years after discovery or excavation of the cultural item, 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 cultural items must include:

(A) A brief description of each cultural item, including the county and state where the cultural item originated;

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

(C) If known, the identity of each cultural item 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 summary 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 summary of the information used to make that identification.

(2) *Step 2 – Agree to transfer or decide to reinter a cultural item.* 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 an unclaimed cultural item to a requestor that agrees to treat the cultural item 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 a 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 cultural item, 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 cultural item 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 cultural item; 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 cultural item.

(ii) 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 information 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.

(iii) After publication of a notice, if the appropriate official receives a claim for disposition of the cultural items before transferring or reinterring the cultural item, the appropriate official must evaluate if the claim meets the criteria under paragraph (d)(3) of this section and, if so, proceed with disposition under paragraph (d)(4) and (d)(5) of this section.

(4) *Step 4 – Transfer or reinter the cultural item.* 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 cultural item.

(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 cultural item 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 cultural item,

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

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

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§ 10.8 General.

Each museum and Federal agency that has control of a holding or collection that contains human remains, associated funerary objects, unassociated 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.

(a) *Museum holding or collection.* A museum must comply with this subpart for all holdings or collections under its control that contain human remains and other 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 legal interest in a holding or collection to constitute control on a case-by-case basis given the relevant information about the holding or collection.

(2) A museum is not required to comply with this subpart for holdings or collections merely in its custody. In general, custody through a loan, lease, license, bailment, or other similar arrangement is not sufficient legal interest to constitute control.

(3) Any museum that repatriates human remains and other 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 under its control that contain human remains and other cultural items and that:

(1) Were under its control on or before November 16, 1990; or

(2) Came under its control after November 16, 1990, and originated from:

(i) An unknown location, or

(ii) Land that is neither Tribal lands nor Federal lands as defined in this part.

(c) *Museums with 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 other cultural items must submit a statement describing that holding or collection to the controlling Federal agency and to the Manager, National NAGPRA Program. The Federal agency is responsible for the requirements of this subpart for all holdings or collections under its control, regardless of the physical location of the holdings or collection.

(d) *Informal conflict resolution.* An affected party under §10.12(c)(1) who wishes to contest actions made by museums or Federal agencies under this subpart is encouraged to do so through informal negotiations

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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.

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

Each museum and Federal agency that has control of a holding or collection that contains an unassociated funerary object, sacred object, or object of cultural patrimony must complete a summary. The purpose of a summary is to provide general information about a holding or collection to lineal descendants, Indian Tribes, and Native Hawaiian organizations. Depending on the scope of the holding or collection, a museum or Federal agency may organize its summary into sections based on geographical location, accession or catalog name or number, or other defining attributes.

(a) *Step 1 – Complete a summary of unassociated funerary objects, sacred objects, and objects of cultural patrimony.* Based on available information, a museum or Federal agency must submit to the Manager, National NAGPRA Program, a summary describing its holding or collection of unassociated funerary objects, sacred objects, and objects of cultural patrimony.

(1) A summary must include:

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

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

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

(iv) Other information relevant for identifying:

(A) Lineal descendants, culturally affiliated Indian Tribes or Native Hawaiian organizations, or geographically affiliated Indian Tribes or Native Hawaiian organizations;

(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 summary must be submitted 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

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If a museum or Federal agency...	...a summary must be submitted...
acquires control of unassociated funerary objects, sacred objects, or objects of cultural patrimony	6 months after acquiring 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 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 after November 16, 1993, or six months after acquiring control of unassociated funerary objects, sacred objects, and objects of cultural patrimony, whichever date is later, or

(iii) By October 20, 2007, for previously lost or unknown unassociated funerary objects, sacred objects, and objects of cultural patrimony located after November 16, 1993, or six months after locating previously lost or unknown unassociated funerary objects, sacred objects, and objects of cultural patrimony, whichever date is later, or

(iv) By April 20, 2010, for unassociated funerary objects, sacred objects, and objects of cultural patrimony under the control of a museum that received Federal funds for the first time after November 16, 1993, or three years after receiving Federal funds, whichever date is later.

(4) After [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], when a museum or Federal Agency acquires control of a holding or collection that contains unassociated funerary objects, sacred objects, or objects of cultural patrimony previously included in a summary from another museum or Federal agency that is also subject to the Act, the museum or Federal agency acquiring control of the holding or collection must submit the previously completed summary to the Manager, National NAGPRA Program no later than 30 days after acquiring the holding or collection, and initiate consultation under paragraph (b) of this section. The museum or Federal agency acquiring control of the holding or collection may rely on the previously completed summary for purposes of compliance with this section.

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

(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 available information and make a good-faith effort to invite the parties to consult.

(1) Consulting parties are:

(i) Any known lineal descendant;

(ii) Any likely culturally affiliated Indian Tribe or Native Hawaiian organization, given the totality of the circumstances surrounding the acquisition history of the unassociated funerary objects, sacred objects, and objects of cultural patrimony; and

(iii) Any geographically affiliated Indian Tribe or Native Hawaiian organization.

(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 method for consultation.

(3) A consulting party, regardless of whether or not 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 intent to repatriate 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 14 days after identifying a new consulting party based on new information or a written request to consult from a new consulting party; or

(ii) No later than six months after identification of a Tribal entity on 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 14 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 for the following information, if not already provided:

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

(ii) The name, phone number, email address, or mailing address for any representative authorized to consult and any known lineal descendant.

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

(2) The consultation process must seek to identify:

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

(3) 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 that object. A museum or Federal agency must provide access to the additional information in a reasonable manner and for the limited purpose of determining the geographical origin, cultural 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 consultation, 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.

(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 culturally affiliated Indian Tribe or Native Hawaiian organization; 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 of the available information 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

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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 intent to repatriate 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 repatriate 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 intent to repatriate.* 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 intent to repatriate 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 intent to repatriate 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;
 - (ii) The county and state where the unassociated funerary object, sacred object, or object of cultural patrimony originated;
 - (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 name of each 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 a culturally affiliated Indian Tribe or Native Hawaiian organization;

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(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 a 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) The Manager, National NAGPRA Program, will:

(i) Approve for publication in the *Federal Register* a notice of intent to repatriate that conforms to the information 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 intent to repatriate changes before the museum or Federal agency sends a repatriation statement for the object to a requestor 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 repatriated under this section and the repatriation is to the same requestor. No later than 14 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 a 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

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determine the most appropriate requestor the procedures and timelines under paragraph (h) of this section.

(g) *Step 7 – Repatriate 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 intent to repatriate, 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 convey control of the requested unassociated funerary object, sacred object, or object of cultural patrimony to the requestor. 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 known lineal descendant, if any, or

(ii) The closest culturally affiliated Indian Tribe or Native Hawaiian organization according to the priority order at §10.3(d).

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

(3) No later than 7 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.

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(4) No later than 90 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 intent to repatriate. The museum or Federal agency must:

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

(B) Submit a notice of intent to repatriate 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 intent to repatriate, 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 intent to repatriate 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 resolution of the legal case or controversy in favor of a requestor, the museum or Federal agency must:

(i) No later than 7 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:

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- (i) No later than 7 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) The museum or Federal agency has requested and received the Secretary's 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. The museum or Federal agency must send a repatriation statement to the requestor under paragraph (g) of this section no later than 90 days after the agreed-to date on which the scientific study is to be completed. 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 request must:
- (i) Be on the letterhead of the requesting museum or Federal agency and be signed by an authorized representative;
 - (ii) 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;
 - (iii) Explain why retention of the unassociated funerary object, sacred object, or object of cultural patrimony is indispensable for completion of the study;
 - (iv) Describe the steps required to complete the study and provide a completion schedule and completion date;
 - (v) Provide the position titles of the persons responsible for each step in the schedule; and
 - (vi) Affirm that the study has in place the requisite funding.

§ 10.10 Inventory of human remains and associated funerary objects.

Each museum and Federal agency that has control of a holding or collection that contains human remains or associated funerary objects must complete an inventory. The purpose of an inventory is to provide determinations, following consultation, about human remains and associated funerary objects to lineal descendants, Indian Tribes, and Native Hawaiian organizations. Depending on the scope of the holding or collection, a museum or Federal agency may organize its inventory into sections based on geographical location, accession or catalog name or number, or other defining attributes.

(a) *Step 1 – Compile an itemized list of human remains and associated funerary objects.* Based on available information, a museum or Federal agency must compile a simple itemized list of the sets of human remains and associated funerary objects in its holding or collection. The itemized list must include:

- (1) The number of sets of human remains and the estimated age of the human remains;
- (2) The number of associated funerary objects and a general description of the types of objects (counted individually or by lot);

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- (3) The county and state where the human remains and associated funerary objects originated and information about the tribes, peoples, or cultures that occupied that general area;
- (4) The acquisition history (provenance) of the human remains and associated funerary objects;
- (5) Other information relevant for identifying lineal descendants, culturally affiliated or geographically affiliated Indian Tribes or Native Hawaiian organizations; 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 available information, 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:

- (i) Any known lineal descendant;
- (ii) Any likely culturally affiliated Indian Tribe or Native Hawaiian organization, given the totality of the circumstances surrounding the acquisition history of the human remains and associated funerary objects; and
- (iii) Any geographically affiliated Indian Tribe or Native Hawaiian organization.

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

- (i) The 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) A consulting party, regardless of whether or not 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 14 days after identifying a new consulting party based on new information or a written request to consult from a new consulting party; or
- (ii) No later than two years after identification of a Tribal entity on 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 14 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

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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 for the following information, if not already provided:

- (i) Recommendations on the timeline and method for consultation; and
- (ii) The name, phone number, email address, or mailing address for any representative authorized to consult and any known lineal descendant.

(2) The consultation process must seek to identify:

- (i) Lineal descendants;
- (ii) Culturally affiliated Indian Tribes or Native Hawaiian organizations;
- (iii) Geographically affiliated Indian Tribes or Native Hawaiian organizations;
- (iv) 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
- (v) The appropriate care and handling, including traditional treatment, of human remains and associated funerary objects.

(3) 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 the geographical origin, cultural 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 available information 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 any consulting parties and an abstract of the results of consultation;
- (ii) The information from the itemized list compiled under paragraph (a) of this section;
- (iii) For each set of human remains and associated funerary objects, 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 a culturally affiliated Indian Tribe or Native Hawaiian organization,

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(C) There is a connection between the human remains and associated funerary objects and a geographically affiliated Indian Tribe or Native Hawaiian organization, or

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

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

(A) The name of each lineal descendant, culturally affiliated Indian Tribe or Native Hawaiian organization, and geographically affiliated Indian Tribe or Native Hawaiian organization, or

(B) An explanation why no culturally affiliated or geographically affiliated Indian Tribe or Native Hawaiian organization could be reasonably identified.

(2) After [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], an inventory must be submitted 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 control of human remains or associated funerary objects	2 years after acquiring 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 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 after November 16, 1995, or two years after acquiring control of the human remains or associated funerary objects, whichever date is later, or

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(iii) By April 20, 2009, for previously lost or unknown human remains or associated funerary objects located after November 16, 1995, or two years after locating previously lost or unknown human remains or associated funerary objects, whichever date is later, or

(iv) By April 20, 2012, for human remains or associated funerary objects under the control of a museum that received Federal funds for the first time after November 16, 1995, or five years after receiving Federal funds, whichever date is later.

(4) No later than [760 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], for any set of 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 required information described under paragraph (d)(1) of 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 and must include:

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

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

(iii) The estimated number and a general description 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 museum or Federal Agency acquires control of human remains, subject to the limitations in 18 U.S.C. 1170 (a), or associated funerary objects previously included

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in an inventory from another museum or Federal agency that is also subject to the Act, the museum or Federal agency acquiring control of the human remains and associated funerary objects must submit the previously completed inventory to the Manager, National NAGPRA Program no later than 30 days after acquiring the human remains and associated funerary objects, and initiate consultation under paragraph (b) of this section. The museum or Federal agency acquiring control of the human remains or associated funerary objects may rely on the previously completed or updated inventory for purposes of compliance with 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 each set of human remains and associated funerary objects with a known lineal descendant or a connection to a culturally affiliated or geographically affiliated Indian Tribe or Native Hawaiian organization. The museum or Federal agency may include in a single notice all human remains and associated funerary objects having the same lineal descendant, the same culturally affiliated Indian Tribes or Native Hawaiian organizations, or the same geographically affiliated Indian Tribes or Native Hawaiian organizations.

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

(i) Lineal descendants, culturally affiliated Indian Tribes and Native Hawaiian organizations, and geographically affiliated Indian Tribes and 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 the sets of human remains and a brief description of the human remains;

(ii) The number of associated funerary objects and general description of the types of objects (counted individually or by lot);

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

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

(v) The name of each lineal descendant, culturally affiliated Indian Tribe or Native Hawaiian organization, and geographically affiliated Indian Tribe or Native Hawaiian organization 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 identifiable 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;

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(viii) The name, phone number, email address, and mailing address for a 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) The Manager, National NAGPRA Program, will:

(i) Approve for publication in the *Federal Register* a notice of inventory completion that conforms to the information 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 sets of human remains 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 for the human remains and associated funerary objects 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 repatriated under this section and the repatriation is to the same requestor. No later than 14 days after determining the new number of human remains or associated funerary objects, the museum or Federal agency must submit a correction notice containing, as applicable:

(i) The corrected number of sets of human remains and corrected brief description of the human remains;

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

(iii) The name, phone number, email address, and mailing address for a 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 will be considered. A request for repatriation received by the

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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, culturally affiliated Indian Tribe or Native Hawaiian organization, or geographically affiliated Indian Tribe or Native Hawaiian organization.

(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 available information, 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 – Repatriate 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.

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The repatriation statement must convey control of the human remains and associated funerary objects to the requestor. 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;
 - (ii) The closest culturally affiliated Indian Tribe or Native Hawaiian organization according to the priority order at §10.3(d); or
 - (iii) The closest geographically affiliated Indian Tribe or Native Hawaiian organization which is, in the following priority order:
 - (A) The Indian Tribe or Native Hawaiian organization from whose Tribal lands, at the time of removal, the human remains and associated funerary objects originated,
 - (B) The Indian Tribe from whose adjudicated aboriginal land the human remains and associated funerary objects originated, or
 - (C) The Indian Tribe from whose acknowledged aboriginal land the human remains and associated funerary objects originated.
- (2) No later than 7 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.

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(3) No later than 90 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 resolution of the legal case or controversy in favor of a requestor, the museum or Federal agency must:

(i) No later than 7 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 7 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) The museum or Federal agency has requested and received the Secretary's 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. The museum or Federal agency must send a repatriation statement to the requestor under paragraph (h) of this section no later than 90 days after the agreed-to date on which the scientific study is to be completed. To request the Secretary's concurrence, the museum or Federal agency

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must send to the Manager, National NAGPRA Program, a written request of no more than 10 double-spaced pages. The request must:

- (i) Be on the letterhead of the requesting museum or Federal agency and signed by an authorized representative;
- (ii) 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;
- (iii) Explain why retention of the human remains and associated funerary objects is indispensable for completion of the study;
- (iv) Describe the steps required to complete the study and provide a completion schedule and completion date;
- (v) Provide the position titles of the persons responsible for each step in the schedule; and
- (vi) Affirm that the study has in place the requisite funding.

(k) *Transfer or reinter human remains and associated funerary objects.* For human remains and associated funerary objects with no connection to a present-day 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 consulted with the consulting parties identified 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 – Publish a notice of proposed transfer or reinterment.* No later than 90 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 human remains and a brief description of the human remains;

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- (B) The number of associated funerary objects and a general description of the type of objects (counted individually or by lot);
- (C) The county and state where the human remains and associated funerary objects originated, 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 any consulting parties and an abstract of the results of consultation;
- (F) A brief abstract of the information that explains why no culturally affiliated or geographically affiliated Indian Tribe or Native Hawaiian organization 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 name of each 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 a 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) 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 information 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 if the request meets the criteria under paragraph (f) of this section and, if so, proceed with repatriation under paragraph (g) and (h).

(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 reintering, the museum or Federal agency must:

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- (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.

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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. 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 sets of human remains 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 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.* The Manager, National NAGPRA Program, must designate an official of the Department of the Interior to review and, if appropriate, investigate all allegations meeting the requirements of paragraph (a) of this section.

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- (1) The official may request any additional relevant information from the person making the allegation, the museum, or other parties. The official may conduct any investigation that is necessary to determine whether an alleged failure to comply is substantiated.
- (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 \$7,037, 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 taking into account:
 - (i) The archeological, historical, or commercial value of the cultural items involved;
 - (ii) 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;
 - (iii) The number of prior violations by the museum that have occurred; or
 - (iv) 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

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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 but not limited to, 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 makes a determination 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 Manager, National NAGPRA Program. 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

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(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 shall not exceed \$1,408 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

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(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 Manager, National NAGPRA Program. 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, U.S. Department of the Interior, at the 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 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:

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- (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, Office of Hearings and Appeals, U.S. Department of the Interior, at the mailing 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) Office of Hearings and Appeals decisions in proceedings instituted under this section are posted on the Office of Hearings and Appeals 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*

Subpart D—REVIEW COMMITTEE
§ 10.12 Review Committee.

(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 \$1,408 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 take into account 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.

(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 the Indian Tribe's cultural, ceremonial, or religious practices, is recognized as being responsible for performing cultural duties or exercising a leadership role in that Indian Tribe.

(2) Three members are appointed from nominations submitted by national museum or 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 geographical scope;

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

Subpart D—REVIEW COMMITTEE
§ 10.12 Review Committee.

(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) *Informal conflict resolution.* The Review Committee may assist with informal resolution of questions or conflicts related to the inventory, summary, or repatriation provisions of the Act (25 U.S.C. 3003-3005). One or more of the affected parties may request the assistance of the Review Committee or the Secretary may direct the Review Committee to perform informal conflict resolution functions. Requests for assistance must be made before repatriation of the cultural items has occurred.

(1) An affected party is either a:

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

(ii) Lineal descendant, Indian Tribe, or Native Hawaiian organization that is culturally affiliated, likely to be culturally affiliated, or geographically affiliated with the cultural items.

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

(i) The identity of an object as a cultural item,

(ii) The cultural affiliation of a cultural item, or

(iii) The repatriation of a cultural item.

(3) The Review Committee may make an advisory recommendation to resolve disputes. To facilitate the resolution of disputes, the Review Committee may:

(i) Consider disputes between an affected party identified in paragraph (d)(1)(i) of this section and an affected party identified in paragraph (d)(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.