

*Appendix S.*

# NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

## PART 10

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

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***Subpart A. INTRODUCTION***

**Sec. 10.1 Purpose and Applicability.**

**(a) Purpose.**

These regulations carry out provisions of the Native American Graves Protection and Repatriation Act of 1990 (Pub.L. 101-601; 25 U.S.C. 3001-3013;104 Stat. 3048-3058). These regulations develop a systematic process for determining the rights of lineal descendants and Indian tribes and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated.

**(b) Applicability.**

(1) These regulations pertain to the identification and appropriate disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are:

- (i) In Federal possession or control; or
  - (ii) In the possession or control of any institution or State or local government receiving Federal funds; or
  - (iii) Excavated intentionally or discovered inadvertently on Federal or tribal lands.
- (2) These regulations apply to human remains, funerary objects, sacred objects, or objects of cultural patrimony which are indigenous to Alaska, Hawaii, and the continental United States, but not to territories of the United States.
- (3) Throughout these regulations are decision points which determine their applicability in particular circumstances, e.g., a decision as to whether a museum “controls” human remains and cultural objects within the meaning of the regulations, or, a decision as to whether an object is a “human remain,” “funerary object,” “sacred object,” or “object of cultural patrimony” within the meaning of the regulations. Any final determination making the Act or these regulations inapplicable is subject to review pursuant to section 15 of the Act.

## Sec. 10.2 Definitions.

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

### (a) Who must comply with these regulations?

- (1) *Federal agency* means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution as specified in section 2 (4) of the Act.
- (2) *Federal agency official* means any individual authorized by delegation of authority within a Federal agency to perform the duties relating to these regulations.
- (3) *Museum* means any institution or State or local government agency (including any institution of higher learning) that has possession of, or control over, human remains, funerary objects, sacred objects, or objects of cultural patrimony and receives Federal funds.
  - (i) The term “*possession*” means having physical custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony with a sufficient legal interest to lawfully treat the objects as part of its collection for purposes of these regulations. Generally, a museum or Federal agency would not be considered to have possession of human remains, funerary objects, sacred objects, or objects of cultural patrimony on loan from another individual, museum, or Federal agency.
  - (ii) The term “*control*” means having a legal interest in human remains, [[Page 62159]] funerary objects, sacred objects, or objects of cultural patrimony sufficient to lawfully permit the museum or Federal agency to treat the objects as part of its collection for purposes of these regulations whether or not the human remains, funerary objects, sacred objects or objects of cultural patrimony are in the physical custody of the museum or Federal agency. Generally, a museum or Federal agency that has loaned human remains, funerary objects, sacred objects, or objects of cultural patrimony to another individual, museum, or Federal agency is considered to retain control of those human remains, funerary objects, sacred objects, or objects of cultural patrimony for purposes of these regulations.
  - (iii) The phrase “*receives Federal funds*” means the receipt of funds by a museum after November 16, 1990, from a Federal agency through any grant, loan, contract (other than a procurement contract), or other arrangement by which a Federal agency makes or made available to a museum aid in the form of funds. Federal funds provided for any purpose that are received by a larger entity of which the museum is a part are considered Federal funds for the purposes of these regulations. For example, if a museum is a part of a State or local government or a private university and the State or local government or private university receives Federal funds for any purpose, the museum is considered to receive Federal funds for the purpose of these regulations.
- (4) *Museum official* means the individual within a museum designated as being responsible for matters relating to these regulations.

(5) *Person* means an individual, partnership, corporation, trust, institution, association, or any other private entity, or, any official, employee, agent, department, or instrumentality of the United States, or of any Indian tribe or Native Hawaiian organization, or of any State or political subdivision thereof that discovers human remains, funerary objects, sacred objects or objects of cultural patrimony on Federal or tribal lands after November 16, 1990.

**(b) Who has standing to make a claim under these regulations?**

(1) *Lineal descendant* means an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the common law system of descentance to a known Native American individual whose remains, funerary objects, or sacred objects are being claimed under these regulations.

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

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

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

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

(C) Has expertise in Native Hawaiian affairs.

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

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

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

(1) *Secretary* means the Secretary of the Interior.

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

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

Departmental Consulting Archeologist

National Park Service,

PO Box 37127

Washington, DC 20013-7127.

**(d) What objects are covered by these regulations?**

The Act covers four types of Native American objects. The term *Native American* means of, or relating to, a tribe, people, or culture indigenous to the United States, including Alaska and Hawaii:

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

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

(i) *Associated funerary objects* means those funerary objects for which the human remains with which they were placed intentionally are also in the possession or control of a museum or Federal agency. Associated funerary objects also means those funerary objects that were made exclusively for burial purposes or to contain human remains.

(ii) *Unassociated funerary objects* means those funerary objects for which the human remains with which they were placed intentionally are not in the possession or control of a museum or Federal agency. Objects that were displayed with individual human remains as part of a death rite or ceremony of a culture and subsequently returned or distributed according to traditional custom to living descendants or other individuals are not considered unassociated funerary objects.

(3) *Sacred objects* means items that are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their [[Page 62160]] present-day adherents. While many items, from ancient pottery sherds to arrowheads, might be imbued with sacredness in the eyes of an individual, these regulations are specifically limited to objects that were devoted to a traditional Native American religious ceremony or ritual and which have religious significance or function in the continued observance or renewal of such ceremony. The term *traditional religious leader* means a person who is recognized by members of an Indian tribe or Native Hawaiian organization as:

(i) Being responsible for performing cultural duties relating to the ceremonial or religious traditions of that Indian tribe or Native Hawaiian organization, or

(ii) Exercising a leadership role in an Indian tribe or Native Hawaiian organization based on the tribe or organization's cultural, ceremonial, or religious practices.

(4) *Objects of cultural patrimony* means items having ongoing historical, traditional, or cultural importance central to the Indian tribe or Native Hawaiian organization itself, rather than property owned by an individual tribal or organization member. These objects are of such central importance that they may not be alienated, appropriated, or conveyed by any individual tribal or organization member. Such objects must have been considered inalienable by the culturally affiliated Indian tribe or Native Hawaiian organization at the time the object was separated from the group. Objects of cultural patrimony include items such as Zuni War Gods, the Confederacy Wampum Belts of the Iroquois, and other objects of similar character and significance to the Indian tribe or Native Hawaiian organization as a whole.

**(e) What is cultural affiliation?**

*Cultural affiliation* means that there is a relationship of shared group identity which can reasonably be traced historically or prehistorically between members of a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. Cultural affiliation is established when the preponderance of the evidence—based on geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion — reasonably leads to such a conclusion.

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

(1) *Federal lands* means any land other than tribal lands that are controlled or owned by the United States Government, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). United States “control,” as used in this definition, refers to those lands not owned by the United States but in which the

United States has a legal interest sufficient to permit it to apply these regulations without abrogating the otherwise existing legal rights of a person.

(2) *Tribal lands* means all lands which:

- (i) Are within the exterior boundaries of any Indian reservation including, but not limited to, allotments held in trust or subject to a restriction on alienation by the United States; or
- (ii) Comprise dependent Indian communities as recognized pursuant to 18 U.S.C. 1151; or
- (iii) Are administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act of 1920 and section 4 of the Hawaiian Statehood Admission Act (Pub.L. 86-3; 73 Stat. 6).
- (iv) Actions authorized or required under these regulations will not apply to tribal lands to the extent that any action would result in a taking of property without compensation within the meaning of the Fifth Amendment of the United States Constitution.

(g) **What procedures are required by these regulations?**

- (1) *Summary* means the written description of collections that may contain unassociated funerary objects, sacred objects, and objects of cultural patrimony required by Sec. 10.8 of these regulations.
- (2) *Inventory* means the item-by-item description of human remains and associated funerary objects.
- (3) *Intentional excavation* means the planned archeological removal of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands pursuant to section 3 (c) of the Act.
- (4) *Inadvertent discovery* means the unanticipated encounter or detection of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands pursuant to section 3 (d) of the Act.

## ***Subpart B.* HUMAN REMAINS, FUNERARY OBJECTS, SACRED OBJECTS, OR OBJECTS OF CULTURAL PATRIMONY FROM FEDERAL OR TRIBAL LANDS**

### **Sec. 10.3 Intentional archeological excavations.**

(a) **General.**

This section carries out section 3 (c) of the Act regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are excavated intentionally from Federal or tribal lands after November 16, 1990.

(b) **Specific Requirements.**

These regulations permit the intentional excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal or tribal lands only if:

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

**(c) Procedures.**

(1) The Federal agency official must take reasonable steps to determine whether a planned activity may result in the excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal lands. Prior to issuing any approvals or permits for activities, the Federal agency official must notify in writing the Indian tribes or Native Hawaiian organizations that are likely to be culturally affiliated with any human remains, funerary objects, sacred objects, or objects of cultural patrimony that may be excavated. The Federal [[Page 62161]] agency official must also notify any present-day Indian tribe which aboriginally occupied the area of the planned activity and any other Indian tribes or Native Hawaiian organizations that the Federal agency official reasonably believes are likely to have a cultural relationship to the human remains, funerary objects, sacred objects, or objects of cultural patrimony that are expected to be found. The notice must be in writing and describe the planned activity, its general location, the basis upon which it was determined that human remains, funerary objects, sacred objects, or objects of cultural patrimony may be excavated, and, the basis for determining likely custody pursuant to Sec. 10.6. The notice must also propose a time and place for meetings or consultations to further consider the activity, the Federal agency's proposed treatment of any human remains, funerary objects, sacred objects, or objects of cultural patrimony that may be excavated, and the proposed disposition of any excavated human remains, funerary objects, sacred objects, or objects of cultural patrimony. Written notification should be followed up by telephone contact if there is no response in 15 days. Consultation must be conducted pursuant to Sec. 10.5.

(2) Following consultation, the Federal agency official must complete a written plan of action (described in Sec. 10.5(e)) and execute the actions called for in it.

(3) If the planned activity is also subject to review under section 106 of the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), the Federal agency official should coordinate consultation and any subsequent agreement for compliance conducted under that Act with the requirements of Sec. 10.3 (c)(2) and Sec. 10.5. Compliance with these regulations does not relieve Federal agency officials of requirements to comply with section 106 of the National Historic Preservation Act (16 U.S.C. 470 *et seq.*).

(4) If an Indian tribe or Native Hawaiian organization receives notice of a planned activity or otherwise becomes aware of a planned activity that may result in the excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony on tribal lands, the Indian tribe or Native Hawaiian organization may take appropriate steps to:

- (i) Ensure that the human remains, funerary objects, sacred objects, or objects of cultural patrimony are excavated or removed following Sec. 10.3 (b), and
- (ii) make certain that the disposition of any human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently as a result of the planned activity are carried out following Sec. 10.6.

**Sec. 10.4 Inadvertent discoveries.**

**(a) General.**

This section carries out section 3 (d) of the Act regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are discovered inadvertently on Federal or tribal lands after November 16, 1990.

**(b) Discovery.**

Any person who knows or has reason to know that he or she has discovered inadvertently human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal or tribal lands after November 16, 1990, must provide immediate telephone notification of the inadvertent discovery, with written confirmation, to the responsible Federal agency official with respect to Federal lands, and, with respect to tribal lands, to the responsible Indian tribe official. The requirements of these regulations regarding inadvertent discoveries apply whether or not an inadvertent discovery is duly reported. If written confirmation is provided by certified mail, the return receipt constitutes evidence of the receipt of the written notification by the Federal agency official or Indian tribe official.

**(c) Ceasing activity.**

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

**(d) Federal lands.**

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

(i) Certify receipt of the notification;

(ii) Take immediate steps, if necessary, to further secure and protect inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony, including, as appropriate, stabilization or covering;

(iii) Notify by telephone, with written confirmation, the Indian tribes or Native Hawaiian organizations likely to be culturally affiliated with the inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony, the Indian tribe or Native Hawaiian organization which aboriginally occupied the area, and any other Indian tribe or Native Hawaiian organization that is reasonably known to have a cultural relationship to the human remains, funerary objects, sacred objects, or objects of cultural patrimony. This notification must include pertinent information as to kinds of human remains, funerary objects, sacred objects, or objects of cultural patrimony discovered inadvertently, their condition, and the circumstances of their inadvertent discovery;

(iv) Initiate consultation on the inadvertent discovery pursuant to Sec. 10.5;

(v) If the human remains, funerary objects, sacred objects, or objects of cultural patrimony must be excavated or removed, follow the requirements and procedures in Sec. 10.3 (b) of these regulations; and

(vi) Ensure that disposition of all inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony is carried out following Sec. 10.6.

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

**(e) Tribal lands.**

(1) As soon as possible, but no later than three (3) working days after receipt of the written confirmation of notification with respect to Tribal lands described in Sec. 10.4 (b), the responsible Indian tribe official may:

(i) Certify receipt of the notification;

(ii) Take immediate steps, if necessary, to further secure and protect inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony, including, as appropriate, stabilization or covering;

(iii) If the human remains, funerary objects, sacred objects, or objects of [[Page 62162]] cultural patrimony must be excavated or removed, follow the requirements and procedures in Sec. 10.3 (b) of these regulations; and

(iv) Ensure that disposition of all inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony is carried out following Sec. 10.6.

(2) *Resumption of Activity.* The activity that resulted in the inadvertent discovery may resume if otherwise lawful after thirty (30) days of the certification of the receipt of notification by the Indian tribe or Native Hawaiian organization.

**(f) Federal agency officials.**

Federal agency officials should coordinate their responsibilities under this section with their emergency discovery responsibilities under section 106 of the National Historical Preservation Act (16 U.S.C. 470 (f) *et seq.*), 36 CFR 800.11 or section 3 (a) of the Archeological and Historic Preservation Act (16 U.S.C. 469 (a-c)). Compliance with these regulations does not relieve Federal agency officials of the requirement to comply with section 106 of the National Historical Preservation Act (16 U.S.C. 470 (f) *et seq.*), 36 CFR 800.11 or section 3 (a) of the Archeological and Historic Preservation Act (16 U.S.C. 469 (a-c)).

**(g) Notification requirement in authorizations.**

All Federal authorizations to carry out land use activities on Federal lands or tribal lands, including all leases and permits, must include a requirement for the holder of the authorization to notify the appropriate Federal or tribal official immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony pursuant to Sec. 10.4 (b) of these regulations.

**Sec. 10.5 Consultation.**

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

**(a) Consulting parties.**

Federal agency officials must consult with known lineal descendants and Indian tribe officials:

- (1) from Indian tribes on whose aboriginal lands the planned activity will occur or where the inadvertent discovery has been made; and
- (2) from Indian tribes and Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony; and
- (3) from Indian tribes and Native Hawaiian organizations that have a demonstrated cultural relationship with the human remains, funerary objects, sacred objects, or objects of cultural patrimony.

**(b) Initiation of consultation.**

(1) Upon receiving notice of, or otherwise becoming aware of, an inadvertent discovery or planned activity that has resulted or may result in the intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal lands, the responsible Federal agency official must, as part of the procedures described in Sec. 10.3 and Sec. 10.4, take appropriate steps to identify the lineal descendant, Indian tribe, or Native Hawaiian organization entitled to custody of the human remains, funerary objects, sacred objects, or objects of cultural patrimony pursuant to Sec. 10.6 and Sec. 10.14. The Federal agency official shall notify in writing:

- (i) any known lineal descendants of the individual whose remains, funerary objects, sacred objects, or objects of cultural patrimony have been or are likely to be excavated intentionally or discovered inadvertently; and
- (ii) the Indian tribes or Native Hawaiian organizations that are likely to be culturally affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony that have been or are likely to be excavated intentionally or discovered inadvertently; and
- (iii) the Indian tribes which aboriginally occupied the area in which the human remains, funerary objects, sacred objects, or objects of cultural patrimony have been or are likely to be excavated intentionally or discovered inadvertently; and
- (iv) the Indian tribes or Native Hawaiian organizations that have a demonstrated cultural relationship with the human remains, funerary objects, sacred objects, or objects of cultural patrimony that have been or are likely to be excavated intentionally or discovered inadvertently.

(2) The notice must propose a time and place for meetings or consultation to further consider the intentional excavation or inadvertent discovery, the Federal agency's proposed treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony that may be excavated, and the proposed disposition of any intentionally excavated or inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(3) The consultation must seek to identify traditional religious leaders who should also be consulted and seek to identify, where applicable, lineal descendants and Indian tribes or Native Hawaiian organizations affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony.

**(c) Provision of information.**

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

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

**(d) Requests for information.**

During the consultation process, Federal agency officials must request, as appropriate, the following information from Indian tribes or Native Hawaiian organizations that are, or are likely to be, affiliated pursuant to Sec. 10.6 (a) with intentionally excavated or inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony:

- (1) Name and address of the Indian tribe official to act as representative in consultations related to particular human remains, funerary objects, sacred objects, or objects of cultural patrimony;
- (2) Names and appropriate methods to contact lineal descendants who should be contacted to participate in the consultation process;
- (3) Recommendations on how the consultation process should be conducted; and
- (4) Kinds of cultural items that the Indian tribe or Native Hawaiian organization considers likely to be unassociated funerary objects, sacred objects, or objects of cultural patrimony.

**(e) Written plan of action.**

Following consultation, the Federal agency official must prepare, approve, and sign a written plan of action. A copy of this plan of action must be provided to the lineal descendants, Indian tribes and Native Hawaiian organizations involved. Lineal descendants and Indian tribe official(s) may sign the written plan of action as appropriate. At a minimum, the plan of action must comply with Sec. 10.3 (b)(1) and document the following: [[Page 62163]]

- (1) The kinds of objects to be considered as cultural items as defined in Sec. 10.2 (b);
- (2) The specific information used to determine custody pursuant to Sec. 10.6;
- (3) The planned treatment, care, and handling of human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered;
- (4) The planned archeological recording of the human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered;
- (5) The kinds of analysis planned for each kind of object;
- (6) Any steps to be followed to contact Indian tribe officials at the time of intentional excavation or inadvertent discovery of specific human remains, funerary objects, sacred objects, or objects of cultural patrimony;
- (7) The kind of traditional treatment, if any, to be afforded the human remains, funerary objects, sacred objects, or objects of cultural patrimony by members of the Indian tribe or Native Hawaiian organization;
- (8) The nature of reports to be prepared; and
- (9) The disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony following Sec. 10.6.

**(f) Comprehensive agreements.**

Whenever possible, Federal agencies should enter into comprehensive agreements with Indian tribes or Native Hawaiian organizations that are affiliated with specific human remains, funerary objects, sacred objects, or

objects of cultural patrimony and have claimed, or are likely to claim, those human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands. These agreements should address all Federal agency land management activities that could result in the intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony. Consultation should lead to the establishment of a process for effectively carrying out the requirements of these regulations regarding standard consultation procedures, the determination of custody consistent with procedures in this section and Sec. 10.6, and the treatment and disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony. The signed agreements, or the correspondence related to the effort to reach agreements, must constitute proof of consultation as required by these regulations.

**(g) Traditional religious leaders.**

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

**Sec. 10.6 Custody.**

**(a) Priority of custody.**

This section carries out section 3 (a) of the Act, subject to the limitations of Sec. 10.15, regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal or tribal lands after November 16, 1990. For the purposes of this section, custody means ownership or control of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently in Federal or tribal lands after November 16, 1990. Custody of these human remains, funerary objects, sacred objects, or objects of cultural patrimony is, with priority given in the order listed:

- (1) In the case of human remains and associated funerary objects, in the lineal descendant of the deceased individual as determined pursuant to Sec. 10.14 (b);
- (2) In cases where a lineal descendant cannot be ascertained or no claim is made, and with respect to unassociated funerary objects, sacred objects, and objects of cultural patrimony:
  - (i) In the Indian tribe on whose tribal land the human remains, funerary objects, sacred objects, or objects of cultural patrimony were discovered inadvertently;
  - (ii) In the Indian tribe or Native Hawaiian organization that has the closest cultural affiliation with the human remains, funerary objects, sacred objects, or objects of cultural patrimony as determined pursuant to Sec. 10.14 (c); or
  - (iii) In circumstances in which the cultural affiliation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony cannot be ascertained and the objects were discovered inadvertently on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of an Indian tribe:
    - (A) In the Indian tribe aboriginally occupying the Federal land on which the human remains, funerary objects, sacred objects, or objects of cultural patrimony were discovered inadvertently, or
    - (B) If it can be shown by a preponderance of the evidence that a different Indian tribe or Native Hawaiian organization has a stronger cultural relationship with the human remains, funerary objects, sacred objects, or objects of cultural patrimony, in the Indian tribe or Native Hawaiian organization that has the strongest demonstrated relationship with the objects.

**(b) Custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony**

and other provisions of the Act apply to all intentional excavations and inadvertent discoveries made after November 16, 1990, including those made before the effective date of these regulations.

**(c) Final notice, claims and disposition with respect to Federal lands.**

Upon determination of the lineal descendant, Indian tribe, or Native Hawaiian organization that under these regulations appears to be entitled to custody of particular human remains, funerary objects, sacred objects,

or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands, the responsible Federal agency official must, subject to the notice required herein and the limitations of Sec. 10.15, transfer custody of the objects to the lineal descendant, Indian tribe, or Native Hawaiian organization following appropriate procedures, which must respect traditional customs and practices of the affiliated Indian tribes or Native Hawaiian organizations in each instance. Prior to any such disposition by a Federal agency official, the Federal agency official must publish general notices of the proposed disposition in a newspaper of general circulation in the area in which the human remains, funerary objects, sacred objects, or objects of cultural patrimony were excavated intentionally or discovered inadvertently and, if applicable, in a newspaper of general circulation in the area(s) in which affiliated Indian tribes or Native Hawaiian organizations' members now reside. The notice must provide information as to the nature and affiliation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony and solicit further claims to custody. The notice must be published at least two (2) times at least a week apart, and the transfer must not take place until at least thirty (30) days after the publication of the second notice to allow time for any additional claimants to come forward. If additional claimants do come forward and the Federal agency official cannot clearly determine which claimant is entitled to custody, the Federal agency must not transfer custody of the objects until such time as the proper recipient is determined pursuant to these [[Page 62164]] regulations. The Federal agency official must send a copy of the notice and information on when and in what newspaper(s) the notice was published to the Departmental Consulting Archeologist. Sec. 10.7 Disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony. [Reserved] Subpart C—Human remains, funerary objects, sacred objects, or objects of cultural patrimony in museums and Federal collections

#### Sec. 10.8 Summaries.

##### (a) General.

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

##### (b) Contents of summaries.

For each collection or portion of a collection, the summary must include: an estimate of the number of objects in the collection or portion of the collection; a description of the kinds of objects included; reference to the means, date(s), and location(s) in which the collection or portion of the collection was acquired, where readily ascertainable; and information relevant to identifying lineal descendants, if available, and cultural affiliation.

##### (c) Completion.

Summaries must be completed not later than November 16, 1993.

##### (d) Consultation.

(1) *Consulting parties.* Museum and Federal agency officials must consult with Indian tribe officials and traditional religious leaders:

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

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

(C) From whose aboriginal lands unassociated funerary objects, sacred objects, or objects of cultural patrimony originated.

(2) *Initiation of consultation.* Museum and Federal agency officials must begin summary consultation no later than the completion of the summary process. Consultation may be initiated with a letter, but should

be followed up by telephone or face-to-face dialogue with the appropriate Indian tribe official.

(3) *Provision of information.* During summary consultation, museum and Federal agency officials must provide copies of the summary to lineal descendants, when known, and to officials and traditional religious leaders representing Indian tribes or Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the cultural items. A copy of the summary must also be provided to the Departmental Consulting Archeologist. Upon request by lineal descendants or Indian tribe officials, museum and Federal agency officials must provide lineal descendants, Indian tribe officials and traditional religious leaders with access to records, catalogues, relevant studies, or other pertinent data for the limited purposes of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of objects covered by the summary. Access to this information may be requested at any time and must be provided in a reasonable manner to be agreed upon by all parties. The Review Committee also must be provided access to such materials.

(4) *Requests for information.* During the summary consultation, museum and Federal agency officials must request, as appropriate, the following information from Indian tribes and Native Hawaiian organizations that are, or are likely to be, culturally affiliated with their collections:

- (i) Name and address of the Indian tribe official to act as representative in consultations related to particular objects;
- (ii) Recommendations on how the consultation process should be conducted, including:
  - (A) Names and appropriate methods to contact any lineal descendants, if known, of individuals whose unassociated funerary objects or sacred objects are included in the summary;
  - (B) Names and appropriate methods to contact any traditional religious leaders that the Indian tribe or Native Hawaiian organization thinks should be consulted regarding the collections; and
- (iii) Kinds of cultural items that the Indian tribe or Native Hawaiian organization considers to be sacred objects or objects of cultural patrimony.

**(e) Museum and Federal agency officials must document the following information**

regarding unassociated funerary objects, sacred objects, and objects of cultural patrimony in their collections and must use this documentation in determining the individuals, Indian tribes, and Native Hawaiian organizations with which they are affiliated:

- (1) Accession and catalogue entries;
- (2) Information related to the acquisition of unassociated funerary object, sacred object, or object of cultural patrimony, including:
  - (i) the name of the person or organization from whom the object was obtained, if known;
  - (ii) The date of acquisition,
  - (iii) The place each object was acquired, i.e., name or number of site, county, state, and Federal agency administrative unit, if applicable; and
  - (iv) The means of acquisition, i.e., gift, purchase, or excavation;
- (3) A description of each unassociated funerary object, sacred object, or object of cultural patrimony, including dimensions, materials, and photographic documentation, if appropriate, and the antiquity of such objects, if known;
- (4) A summary of the evidence used to determine the cultural affiliation of the unassociated funerary objects, sacred objects, or objects of cultural patrimony pursuant to Sec. 10.14 of these regulations.

**(f) Notification.**

Repatriation of unassociated funerary objects, sacred objects, or objects of cultural patrimony to lineal descendants, culturally affiliated Indian tribes, or Native Hawaiian organizations as determined pursuant to Sec. 10.10 (a), must not proceed prior to submission of a notice of intent to repatriate to the Departmental Consulting Archeologist, and publication of the notice of intent to repatriate in the **Federal Register**. The notice of intent to repatriate must describe the unassociated funerary objects, sacred objects, or objects of cultural patrimony being claimed in sufficient detail so as to enable other individuals, Indian tribes or Native

Hawaiian organizations to determine their interest in the claimed objects. It must include information that identifies each claimed unassociated funerary object, sacred object, or object of cultural patrimony and the circumstances surrounding its acquisition, and describes the objects that are clearly identifiable as to cultural [[Page 62165]] affiliation. It must also describe the objects that are not clearly identifiable as being culturally affiliated with a particular Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the objects, are likely to be culturally affiliated with a particular Indian tribe or Native Hawaiian organization. The Departmental Consulting Archeologist must publish the notice of intent to repatriate in the **Federal Register**. Repatriation may not occur until at least thirty (30) days after publication of the notice of intent to repatriate in the **Federal Register**.

## Sec. 10.9 Inventories.

### (a) General.

This section carries out section 5 of the Act. Under section 5 of the Act, each museum or Federal agency that has possession or control over holdings or collections of human remains and associated funerary objects must compile an inventory of such objects, and, to the fullest extent possible based on information possessed by the museum or Federal agency, must identify the geographical and cultural affiliation of each item. The purpose of the inventory is to facilitate repatriation by providing clear descriptions of human remains and associated funerary objects and establishing the cultural affiliation between these objects and present-day Indian tribes and Native Hawaiian organizations. Museums and Federal agencies are encouraged to produce inventories first on those portions of their collections for which information is readily available or about which Indian tribes or Native Hawaiian organizations have expressed special interest. Early focus on these parts of collections will result in determinations that may serve as models for other inventories. Federal agencies must ensure that these requirements are met for all collections from their lands or generated by their actions whether the collections are held by the Federal agency or by a non-Federal institution.

### (b) Consultation.

(1) *Consulting parties.* Museum and Federal agency officials must consult with:

- (i) Lineal descendants of individuals whose remains and associated funerary objects are likely to be subject to the inventory provisions of these regulations; and
- (ii) Indian tribe officials and traditional religious leaders:
  - (A) From whose tribal lands the human remains and associated funerary objects originated;
  - (B) That are, or are likely to be, culturally affiliated with human remains and associated funerary objects; and
  - (C) From whose aboriginal lands the human remains and associated funerary objects originated.

(2) *Initiation of consultation.* Museum and Federal agency officials must begin inventory consultation as early as possible, no later in the inventory process than the time at which investigation into the cultural affiliation of human remains and associated funerary objects is being conducted. Consultation may be initiated with a letter, but should be followed up by telephone or face-to-face dialogue.

(3) *Provision of information.* During inventory consultation, museums and Federal agency officials must provide the following information in writing to lineal descendants, when known, and to officials and traditional religious leaders representing Indian tribes or Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the human remains and associated funerary objects.

- (i) A list of all Indian tribes and Native Hawaiian organizations that are, or have been, consulted regarding the particular human remains and associated funerary objects;
- (ii) A general description of the conduct of the inventory;
- (iii) The projected time frame for conducting the inventory; and
- (iv) An indication that additional documentation used to identify cultural affiliation will be supplied upon request.

(4) *Requests for information.* During the inventory consultation, museum and Federal agency officials must request, as appropriate, the following information from Indian tribes and Native Hawaiian organizations

that are, or are likely to be, culturally affiliated with their collections:

- (i) Name and address of the Indian tribe official to act as representative in consultations related to particular human remains and associated funerary objects;
- (ii) Recommendations on how the consultation process should be conducted, including:
  - (A) Names and appropriate methods to contact any lineal descendants of individuals whose remains and associated funerary objects are or are likely to be included in the inventory; and
  - (B) Names and appropriate methods to contact traditional religious leaders who should be consulted regarding the human remains and associated funerary objects.
- (iii) Kinds of cultural objects that the Indian tribe or Native Hawaiian organization reasonably believes to have been made exclusively for burial purposes or to contain human remains of their ancestors.

**(c) Required information.**

The following documentation must be included, if available, for all inventories completed by museum or Federal agency officials:

- (1) Accession and catalogue entries, including the accession/ catalogue entries of human remains with which funerary objects were associated;
- (2) Information related to the acquisition of each object, including:
  - (i) the name of the person or organization from whom the object was obtained, if known;
  - (ii) The date of acquisition,
  - (iii) The place each object was acquired, i.e., name or number of site, county, state, and Federal agency administrative unit, if applicable; and
  - (iv) The means of acquisition, i.e., gift, purchase, or excavation;
- (3) A description of each set of human remains or associated funerary object, including dimensions, materials, and, if appropriate, photographic documentation, and the antiquity of such human remains or associated funerary objects, if known;
- (4) A summary of the evidence, including the results of consultation, used to determine the cultural affiliation of the human remains and associated funerary objects pursuant to Sec. 10.14 of these regulations.

**(d) Documents.**

Two separate documents comprise the inventory:

- (1) A listing of all human remains and associated funerary objects that are identified as being culturally affiliated with one or more present-day Indian tribes or Native Hawaiian organizations. The list must indicate for each item or set of items whether cultural affiliation is clearly determined or likely based upon the preponderance of the evidence; and
- (2) A listing of all culturally unidentifiable human remains and associated funerary objects for which no culturally affiliated present-day Indian tribe or Native Hawaiian organization can be determined.

**(e) Notification.**

- (1) If the inventory results in the identification or likely identification of the cultural affiliation of any particular human remains or associated funerary objects with one or more Indian tribes or Native Hawaiian organizations, the museum or Federal agency, not later than six (6) months after completion of the inventory, must send such Indian tribes or Native Hawaiian organizations the inventory of culturally affiliated human remains, including all information required [[Page 62166]] under Sec. 10.9 (c), and a notice of inventory completion that summarizes the results of the inventory.
- (2) The notice of inventory completion must summarize the contents of the inventory in sufficient detail so as to enable the recipients to determine their interest in claiming the inventoried items. It must identify each particular set of human remains or each associated funerary object and the circumstances surrounding its acquisition, describe the human remains or associated funerary objects that are clearly identifiable as to cultural affiliation, and describe the human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with an Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the human remains or associated objects, are

identified as likely to be culturally affiliated with a particular Indian tribe or Native Hawaiian organization.

(3) If the inventory results in a determination that the human remains are of an identifiable individual, the museum or Federal agency official must convey this information to the lineal descendant of the deceased individual, if known, and to the Indian tribe or Native Hawaiian organization of which the deceased individual was culturally affiliated.

(4) The notice of inventory completion and a copy of the inventory must also be sent to the Departmental Consulting Archeologist. These submissions should be sent in both printed hard copy and electronic formats. Information on the proper format for electronic submission and suggested alternatives for museums and Federal agencies unable to meet these requirements are available from the Departmental Consulting Archeologist.

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

(6) If the museum or Federal agency official determines that the museum or Federal agency has possession of or control over human remains that cannot be identified as affiliated with a particular individual, Indian tribes or Native Hawaiian organizations, the museum or Federal agency must provide the Departmental Consulting Archeologist notice of this result and a copy of the list of culturally unidentifiable human remains and associated funerary objects. The Departmental Consulting Archeologist must make this information available to members of the Review Committee. Section 10.11 of these regulations will set forth procedures for disposition of culturally unidentifiable human remains of Native American origin. Museums or Federal agencies must retain possession of such human remains pending promulgation of Sec. 10.11 unless legally required to do otherwise, or recommended to do otherwise by the Secretary. Recommendations regarding the disposition of culturally unidentifiable human remains may be requested prior to final promulgation of Sec. 10.11.

(7) The Departmental Consulting Archeologist must publish notices of inventory completion received from museums and Federal agencies in the **Federal Register**.

**(f) Completion.**

Inventories must be completed not later than November 16, 1995. Any museum that has made a good faith effort to complete its inventory, but which will be unable to complete the process by this deadline, may request an extension of the time requirements from the Secretary. An indication of good faith efforts must include, but not necessarily be limited to, the initiation of active consultation and documentation regarding the collections and the development of a written plan to carry out the inventory process. Minimum components of an inventory plan are: a definition of the steps required; the position titles of the persons responsible for each step; a schedule for carrying out the plan; and a proposal to obtain the requisite funding.

**Sec. 10.10 Repatriation.**

**(a) Unassociated funerary objects, sacred objects, and objects of cultural patrimony.**

(1) *Criteria.* Upon the request of a lineal descendant, Indian tribe, or Native Hawaiian organization, a museum or Federal agency must expeditiously repatriate unassociated funerary objects, sacred objects, or objects of cultural patrimony if all the following criteria are met:

(i) The object meets the definitions established in Sec. 10.2 (b) (4), (5) or (6); and

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

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

- (B) by presentation of a preponderance of the evidence by a requesting Indian tribe or Native Hawaiian organization pursuant to section 7(c) of the Act; and
- (iii) The known lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the museum or Federal agency does not have a right of possession to the objects as defined in Sec. 10.10 (a)(2); and
- (iv) The agency or museum is unable to present evidence to the contrary proving that it does have a right of possession as defined below; and
- (v) None of the specific exceptions listed in Sec. 10.10 (c) apply.

(2) *Right of possession.* For purposes of this section, “right of possession” means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object, or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession to that object.

(3) *Notification.* Repatriation must take place within ninety (90) days of receipt of a written request for repatriation that satisfies the requirements of Sec. 10.10 (a)(1) from a culturally affiliated Indian tribe or Native Hawaiian organization, provided that the repatriation may not occur until at least thirty (30) days after publication of the notice of intent to repatriate in the **Federal Register** as described in Sec. 10.8.

**(b) Human remains and associated funerary objects.**

(1) *Criteria.* Upon the request of a lineal descendant, Indian tribe, or Native Hawaiian organization, a museum and Federal agency must expeditiously repatriate human remains and associated funerary objects if all of the following criteria are met:

- (i) The human remains or associated funerary object meets the definitions established in Sec. 10.2 (b)(1) or (b)(3); and
- (ii) The affiliation of the deceased individual to known lineal descendant, present day Indian tribe, or Native Hawaiian organization: [[Page 62167]]
  - (A) has been reasonably traced through the procedures outlined in Sec. 10.9 and Sec. 10.14 of these regulations; or
  - (B) has been shown by a preponderance of the evidence presented by a requesting Indian tribe or Native Hawaiian organization pursuant to section 7(c) of the Act; and
- (iii) None of the specific exceptions listed in Sec. 10.10 (c) apply.

(2) *Notification.* Repatriation must take place within ninety (90) days of receipt of a written request for repatriation that satisfies the requirements of Sec. 10.10 (b)(1) from the culturally affiliated Indian tribe or Native Hawaiian organization, provided that the repatriation may not occur until at least thirty (30) days after publication of the notice of inventory completion in the **Federal Register** as described in Sec. 10.9.

**(c) Exceptions.**

These requirements for repatriation do not apply to:

- (1) Circumstances where human remains, funerary objects, sacred objects, or objects of cultural patrimony are indispensable to the completion of a specific scientific study, the outcome of which is of major benefit to the United States. Human remains, funerary objects, sacred objects, or objects of cultural patrimony in such circumstances must be returned no later than ninety (90) days after completion of the study; or
- (2) Circumstances where there are multiple requests for repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony and the museum or Federal agency, after complying with these regulations, cannot determine by a preponderance of the evidence which requesting party is the most appropriate claimant. In such circumstances, the museum or Federal agency may retain the human remains, funerary objects, sacred objects, or objects of cultural patrimony until such time as the requesting parties

mutually agree upon the appropriate recipient or the dispute is otherwise resolved pursuant to these regulations or as ordered by a court of competent jurisdiction; or

(3) Circumstances where a court of competent jurisdiction has determined that the repatriation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony in the possession or control of a museum would result in a taking of property without just compensation within the meaning of the Fifth Amendment of the United States Constitution, in which event the custody of the objects must be as provided under otherwise applicable law. Nothing in these regulations must prevent a museum or Federal agency, where otherwise so authorized, or a lineal descendant, Indian tribe, or Native Hawaiian organization, from expressly relinquishing title to, right of possession of, or control over any human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(4) Circumstances where the repatriation is not consistent with other repatriation limitations identified in Sec. 10.15 of these regulations.

**(d) Place and manner of repatriation.**

The repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony must be accomplished by the museum or Federal agency in consultation with the requesting lineal descendants, or culturally affiliated Indian tribe or Native Hawaiian organization, as appropriate, to determine the place and manner of the repatriation.

**(e) The museum official or Federal agency official must inform the recipients**

of repatriations of any presently known treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony with pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects.

**(f) Record of repatriation.**

(1) Museums and Federal agencies must adopt internal procedures adequate to permanently document the content and recipients of all repatriations.

(2) The museum official or Federal agency official, at the request of the Indian tribe official, may take such steps as are considered necessary pursuant to otherwise applicable law, to ensure that information of a particularly sensitive nature is not made available to the general public.

**(g) Culturally unidentifiable human remains.**

If the cultural affiliation of human remains cannot be established pursuant to these regulations, the human remains must be considered culturally unidentifiable. Museum and Federal agency officials must report the inventory information regarding such human remains in their holdings to the Departmental Consulting Archeologist who will transmit this information to the Review Committee. The Review Committee is responsible for compiling an inventory of culturally unidentifiable human remains in the possession or control of each museum and Federal agency, and, for recommending to the Secretary specific actions for disposition of such human remains.

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

**Sec. 10.12 Civil penalties. [Reserved]**

**Sec. 10.13 Future applicability. [Reserved]**

***Subpart D. General***

**Sec. 10.14 Lineal descent and cultural affiliation.**

**(a) General.**

This section identifies procedures for determining lineal descent and cultural affiliation between present-day individuals and Indian tribes or Native Hawaiian organizations and human remains, funerary objects, sacred objects, or objects of cultural patrimony in museum or Federal agency collections or excavated intentionally or discovered inadvertently from Federal lands. They may also be used by Indian tribes and Native Hawaiian organizations with respect to tribal lands.

**(b) Criteria for determining lineal descent.**

A lineal descendant is an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the common law system of descent to a known Native American individual whose remains, funerary objects, or sacred objects are being requested under these regulations. This standard requires that the earlier person be identified as an individual whose descendants can be traced.

**(c) Criteria for determining cultural affiliation.**

Cultural affiliation means a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. All of the following requirements must be met to determine cultural affiliation between a present-day Indian tribe or Native Hawaiian organization and the human remains, funerary objects, sacred objects, or objects of cultural patrimony of an earlier group:

- (1) Existence of an identifiable present-day Indian tribe or Native Hawaiian organization with standing under these regulations and the Act; and
- (2) Evidence of the existence of an identifiable earlier group. Support for this requirement may include, but is not necessarily limited to evidence sufficient to:
  - (i) Establish the identity and cultural characteristics of the earlier group,
  - (ii) Document distinct patterns of material culture manufacture and distribution methods for the earlier group, or [[Page 62168]]
  - (iii) Establish the existence of the earlier group as a biologically distinct population; and
- (3) Evidence of the existence of a shared group identity that can be reasonably traced between the present-day Indian tribe or Native Hawaiian organization and the earlier group. Evidence to support this requirement must establish that a present-day Indian tribe or Native Hawaiian organization has been identified from prehistoric or historic times to the present as descending from the earlier group.

**(d) A finding of cultural affiliation**

should be based upon an overall evaluation of the totality of the circumstances and evidence pertaining to the connection between the claimant and the material being claimed and should not be precluded solely because of some gaps in the record.

**(e) Evidence.**

Evidence of a kin or cultural affiliation between a present-day individual, Indian tribe, or Native Hawaiian organization and human remains, funerary objects, sacred objects, or objects of cultural patrimony must be established by using the following types of evidence: Geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant information or expert opinion.

**(f) Standard of proof.**

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

**Sec. 10.15 Repatriation limitations and remedies.**

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

- (1) Any person who fails to make a timely claim prior to the repatriation or transfer of human remains, funerary objects, sacred objects, or objects of cultural patrimony is deemed to have irrevocably waived any right to claim such items pursuant to these regulations or the Act. For these purposes, a “timely claim” means the filing of a written claim with a responsible museum or Federal agency official prior to the time the particular human remains, funerary objects, sacred objects, or objects of cultural patrimony at issue are duly repatriated or disposed of to a claimant by a museum or Federal agency pursuant to these regulations.
- (2) If there is more than one (1) claimant, the human remains, funerary object, sacred object, or objects of cultural patrimony may be held by the responsible museum or Federal agency or person having custody thereof

pending resolution of the claim. Any person who has custody of such human remains, funerary objects, sacred objects, or objects of cultural patrimony and does not claim entitlement to them must place the objects in the custody of the responsible museum or Federal agency for retention until the question of custody is resolved.

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

**(c) Exhaustion of remedies.**

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

**(d) Savings provisions.**

Nothing in these regulations can be construed to:

- (1) Limit the authority of any museum or Federal agency to:
  - (i) Return or repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony to Indian tribes, Native Hawaiian organizations, or individuals; and
  - (ii) Enter into any other agreement with the consent of the culturally affiliated Indian tribe or Native Hawaiian organization as to the disposition of, or control over, human remains, funerary objects, sacred objects, or objects of cultural patrimony.
- (2) Delay actions on repatriation requests that were pending on November 16, 1990;
- (3) Deny or otherwise affect access to court;
- (4) Limit any procedural or substantive right which may otherwise be secured to individuals or Indian tribes or Native Hawaiian organizations; or
- (5) Limit the application of any State or Federal law pertaining to theft of stolen property.

**Sec. 10.16 Review committee.**

**(a) General.**

The Review Committee will advise Congress and the Secretary on matters relating to these regulations and the Act, including, but not limited to, monitoring the performance of museums and Federal agencies in carrying out their responsibilities, facilitating and making recommendations on the resolution of disputes as described further in Sec. 10.17, and compiling a record of culturally unidentifiable human remains that are in the possession or control of museums and Federal agencies and recommending actions for their disposition.

**(b) Recommendations.**

Any recommendation, finding, report, or other action of the Review Committee is advisory only and not binding on any person. Any records and findings made by the Review Committee may be admissible as evidence in actions brought by persons alleging a violation of the Act.

**Sec. 10.17 Dispute resolution.**

**(a) Formal and informal resolutions.**

Any person who wishes to contest actions taken by museums, Federal agencies, Indian tribes, or Native Hawaiian organizations with respect to the repatriation and disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony is encouraged to do so through informal negotiations to achieve a fair resolution of the matter. The Review Committee may aid in this regard as described below. In addition, the United States District Courts have jurisdiction over any action brought that alleges a violation of the Act.

**(b) Review Committee Role.**

The Review Committee may facilitate the informal resolution of disputes relating to these regulations among interested parties that are not resolved by good faith negotiations. Review Committee actions may include convening meetings between parties to disputes, making advisory findings as to contested facts, and making recommendations to the disputing parties or to the Secretary as to the proper resolution of disputes consistent with these regulations and the Act.

*Appendix A to Part 10*

**SAMPLE SUMMARY**

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

*Before November 17, 1993*

Chairman or Other Authorized Official  
Indian tribe or Native Hawaiian organization  
Street  
State

Dear Sir/Madame Chair:

I write to inform you of collections held by our museum which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony that are, or are likely to be, culturally affiliated with your Indian tribe or Native Hawaiian organization. This notification is required by section 6 of [[Page 62169]] the Native American Graves Protection and Repatriation Act.

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

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

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

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

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

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

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

Sincerely,

Museum Official  
Major Museum

*Appendix B to Part 10*

**SAMPLE NOTICE OF INVENTORY COMPLETION**

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

**NATIONAL PARK SERVICE**

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

AGENCY: National Park Service, Interior.

ACTION: Notice.

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

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

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

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

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

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

Dated: July 21, 1994

Francis P. McManamon, Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[Published: August 1, 1994] George T. Frampton, Jr., Assistant Secretary for Fish and Wildlife and Parks.

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