

TRIBAL CULTURAL RESOURCES LAW IN CALIFORNIA

**A TRAINING SERIES FOR
TRIBES**

By Hon. Christine Williams



Unit 8: Repatriation Disputes, Decisions, Dispositions and Transfers

Tribal Cultural Resources Law in California: A Training Series for Tribes



UC DAVIS SCHOOL OF LAW
400 MRAK HALL DRIVE
DAVIS, CALIFORNIA 95616
WWW.LAW.UCDAVIS.EDU

Instructions

This packet contains most, if not all, of the laws and resources mentioned throughout this unit of the training. A list of the included documents can be found on the next page titled, "Table of Resources." If there are any resources missing, they will be featured on the page of this packet titled, "Missing Documents." All documents featured in this packet are available for free online. Official versions of the document are included when available.

This packet is organized by the type of resources featured. Resources included are organized in the following order:

- Federal Legislative Materials
- California Legislative Materials
- Federal Code
- California Code
- Code of Federal Regulations (CFR)
- California Code of Regulations (CCR)
- Case Law
- Secondary Sources

Secondary Sources includes, among other documents, academic articles, reports, and studies.

Note: All California codes appear alphabetically (Health & Safety Code before Public Resources Code) then by section number (PRC § 5097.9, PRC § 5097.91, etc.).

Table of Resources

Federal Code

Title 25, § 3001 (25 USC 3001)

Title 25, § 3002 (25 USC 3002)

Title 25, § 3007 (25 USC 3007)

California Code

Health and Safety Code (HSC) § 8012

Health and Safety Code (HSC) § 8013

Health and Safety Code (HSC) § 8015

Health and Safety Code (HSC) § 8016

Health and Safety Code (HSC) § 8018

Health and Safety Code (HSC) § 8019

Health and Safety Code (HSC) § 8020

Health and Safety Code (HSC) § 8021

Health and Safety Code (HSC) § 8025

Health and Safety Code (HSC) § 8026

Health and Safety Code (HSC) § 8029

Public Resources Code (PRC) § 5097.94

Code of Federal Regulations

Title 43, Part 10 (43 CFR § 10.12)

FEDERAL CODE

(1) preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages;

(2) allow exceptions to teacher certification requirements for Federal programs, and programs funded in whole or in part by the Federal Government, for instruction in Native American languages when such teacher certification requirements hinder the employment of qualified teachers who teach in Native American languages, and to encourage State and territorial governments to make similar exceptions;

(3) encourage and support the use of Native American languages as a medium of instruction in order to encourage and support—

(A) Native American language survival,

(B) educational opportunity,

(C) increased student success and performance,

(D) increased student awareness and knowledge of their culture and history, and

(E) increased student and community pride;

(4) encourage State and local education programs to work with Native American parents, educators, Indian tribes, and other Native American governing bodies in the implementation of programs to put this policy into effect;

(5) recognize the right of Indian tribes and other Native American governing bodies to use the Native American languages as a medium of instruction in all schools funded by the Secretary of the Interior;

(6) fully recognize the inherent right of Indian tribes and other Native American governing bodies, States, territories, and possessions of the United States to take action on, and give official status to, their Native American languages for the purpose of conducting their own business;

(7) support the granting of comparable proficiency achieved through course work in a Native American language the same academic credit as comparable proficiency achieved through course work in a foreign language, with recognition of such Native American language proficiency by institutions of higher education as fulfilling foreign language entrance or degree requirements; and

(8) encourage all institutions of elementary, secondary and higher education, where appropriate, to include Native American languages in the curriculum in the same manner as foreign languages and to grant proficiency in Native American languages the same full academic credit as proficiency in foreign languages.

(Pub. L. 101-477, title I, §104, Oct. 30, 1990, 104 Stat. 1155.)

§ 2904. No restrictions

The right of Native Americans to express themselves through the use of Native American languages shall not be restricted in any public proceeding, including publicly supported education programs.

(Pub. L. 101-477, title I, §105, Oct. 30, 1990, 104 Stat. 1155.)

§ 2905. Evaluations

(a) The President shall direct the heads of the various Federal departments, agencies, and instrumentalities to—

(1) evaluate their policies and procedures in consultation with Indian tribes and other Native American governing bodies as well as traditional leaders and educators in order to determine and implement changes needed to bring the policies and procedures into compliance with the provisions of this chapter;

(2) give the greatest effect possible in making such evaluations, absent a clear specific Federal statutory requirement to the contrary, to the policies and procedures which will give the broadest effect to the provisions of this chapter; and

(3) evaluate the laws which they administer and make recommendations to the President on amendments needed to bring such laws into compliance with the provisions of this chapter.

(b) By no later than the date that is 1 year after October 30, 1990, the President shall submit to the Congress a report containing recommendations for amendments to Federal laws that are needed to bring such laws into compliance with the provisions of this chapter.

(Pub. L. 101-477, title I, §106, Oct. 30, 1990, 104 Stat. 1156.)

§ 2906. Use of English

Nothing in this chapter shall be construed as precluding the use of Federal funds to teach English to Native Americans.

(Pub. L. 101-477, title I, §107, Oct. 30, 1990, 104 Stat. 1156.)

CHAPTER 32—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION

Sec.	
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3002.	Ownership.
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§ 3001. Definitions

For purposes of this chapter, the term—

(1) “burial site” means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.

(2) “cultural affiliation” means that there is a relationship of shared group identity which can be reasonably traced historically or

prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.

(3) “cultural items” means human remains and—

(A) “associated funerary objects” which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.¹

(B) “unassociated funerary objects” which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,

(C) “sacred objects” which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and

(D) “cultural patrimony” which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

(4) “Federal agency” means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution.

(5) “Federal lands” means any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971 [43 U.S.C. 1601 et seq.].

(6) “Hui Malama I Na Kupuna O Hawai'i Nei” means the nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawaii by that name on April 17, 1989, for the purpose of providing guidance and ex-

pertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues.

(7) “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.]), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(8) “museum” means any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency.

(9) “Native American” means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

(10) “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.

(11) “Native Hawaiian organization” means any organization which—

(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, and

shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei.

(12) “Office of Hawaiian Affairs” means the Office of Hawaiian Affairs established by the constitution of the State of Hawaii.

(13) “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 of that object, unless the phrase so defined would, as applied in section 3005(c) of this title, result in a Fifth Amendment taking by the United States as determined by the United States Court of Federal Claims pursuant to 28 U.S.C. 1491 in which event the “right of possession” shall be as provided under otherwise applicable property law. The original acquisition of Native American human remains and associated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains.

(14) “Secretary” means the Secretary of the Interior.

(15) “tribal land” means—

(A) all lands within the exterior boundaries of any Indian reservation;

¹ So in original. The period probably should be a comma.

(B) all dependent Indian communities;²

(C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Public Law 86-3.

(Pub. L. 101-601, §2, Nov. 16, 1990, 104 Stat. 3048; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 101-601, Nov. 16, 1990, 104 Stat. 3048, known as the Native American Graves Protection and Repatriation Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Alaska Native Claims Settlement Act of 1971, referred to in par. (5), probably means the Alaska Native Claims Settlement Act. See note below.

The Alaska Native Claims Settlement Act, referred to in par. (7), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Hawaiian Homes Commission Act, 1920, referred to in par. (15)(C), is act July 9, 1921, ch. 42, 42 Stat. 108, as amended, which was classified generally to sections 691 to 718 of Title 48, Territories and Insular Possessions, and was omitted from the Code.

Section 4 of Public Law 86-3, referred to in par. (15)(C), is section 4 of Pub. L. 86-3, which is set out as a note preceding section 491 of Title 48.

AMENDMENTS

1992—Par. (13). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

SHORT TITLE

Pub. L. 101-601, §1, Nov. 16, 1990, 104 Stat. 3048, provided that: “This Act [enacting this chapter and section 1170 of Title 18, Crimes and Criminal Procedure] may be cited as the ‘Native American Graves Protection and Repatriation Act’.”

§ 3002. Ownership

(a) Native American human remains and objects

The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after November 16, 1990, shall be (with priority given in the order listed)—

(1) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American; or

(2) in any case in which such lineal descendants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony—

(A) in the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered;

(B) in the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects; or

(C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered 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 some Indian tribe—

(1) in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or

(2) if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph (1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.

(b) Unclaimed Native American human remains and objects

Native American cultural items not claimed under subsection (a) shall be disposed of in accordance with regulations promulgated by the Secretary in consultation with the review committee established under section 3006 of this title, Native American groups, representatives of museums and the scientific community.

(c) Intentional excavation and removal of Native American human remains and objects

The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if—

(1) such items are excavated or removed pursuant to a permit issued under section 470cc of title 16 which shall be consistent with this chapter;

(2) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;

(3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b); and

(4) proof of consultation or consent under paragraph (2) is shown.

(d) Inadvertent discovery of Native American remains and objects

(1) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands after November 16, 1990, shall notify, in writing, the Secretary of the Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable, and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to

² So in original. Probably should be followed by “and”.

(B) all dependent Indian communities;²

(C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Public Law 86-3.

(Pub. L. 101-601, §2, Nov. 16, 1990, 104 Stat. 3048; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

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§ 3002. Ownership

(a) Native American human remains and objects

The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after November 16, 1990, shall be (with priority given in the order listed)—

(1) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American; or

(2) in any case in which such lineal descendants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony—

(A) in the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered;

(B) in the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects; or

(C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered 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 some Indian tribe—

(1) in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or

(2) if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph (1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.

(b) Unclaimed Native American human remains and objects

Native American cultural items not claimed under subsection (a) shall be disposed of in accordance with regulations promulgated by the Secretary in consultation with the review committee established under section 3006 of this title, Native American groups, representatives of museums and the scientific community.

(c) Intentional excavation and removal of Native American human remains and objects

The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if—

(1) such items are excavated or removed pursuant to a permit issued under section 470cc of title 16 which shall be consistent with this chapter;

(2) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;

(3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b); and

(4) proof of consultation or consent under paragraph (2) is shown.

(d) Inadvertent discovery of Native American remains and objects

(1) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands after November 16, 1990, shall notify, in writing, the Secretary of the Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable, and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to

² So in original. Probably should be followed by “and”.

the Alaska Native Claims Settlement Act of 1971 [43 U.S.C. 1601 et seq.], the appropriate corporation or group. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.

(2) The disposition of and control over any cultural items excavated or removed under this subsection shall be determined as provided for in this section.

(3) If the Secretary of the Interior consents, the responsibilities (in whole or in part) under paragraphs (1) and (2) of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary with respect to any land managed by such other Secretary or agency head.

(e) Relinquishment

Nothing in this section shall prevent the governing body of an Indian tribe or Native Hawaiian organization from expressly relinquishing control over any Native American human remains, or title to or control over any funerary object, or sacred object.

(Pub. L. 101-601, § 3, Nov. 16, 1990, 104 Stat. 3050.)

Editorial Notes

REFERENCES IN TEXT

The Indian Claims Commission, referred to in subsec. (a)(2)(C), terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

The United States Court of Claims, referred to in subsec. (a)(2)(C), and the United States Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97-164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court [now United States Court of Federal Claims] that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

This chapter, referred to in subsec. (c)(1), was in the original “this Act”, meaning Pub. L. 101-601, Nov. 16, 1990, 104 Stat. 3048, known as the Native American Graves Protection and Repatriation Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Alaska Native Claims Settlement Act of 1971, referred to in subsec. (d)(1), probably means the Alaska Native Claims Settlement Act, Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, and which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

§ 3003. Inventory for human remains and associated funerary objects

(a) In general

Each Federal agency and each museum which has possession or control over holdings or collections of Native American human remains and associated funerary objects shall compile an inventory of such items and, to the extent possible based on information possessed by such museum or Federal agency, identify the geographical and cultural affiliation of such item.¹

(b) Requirements

(1) The inventories and identifications required under subsection (a) shall be—

(A) completed in consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders;

(B) completed by not later than the date that is 5 years after November 16, 1990, and

(C) made available both during the time they are being conducted and afterward to a review committee established under section 3006 of this title.

(2) Upon request by an Indian tribe or Native Hawaiian organization which receives or should have received notice, a museum or Federal agency shall supply additional available documentation to supplement the information required by subsection (a) of this section. 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 acquisition and accession of Native American human remains and associated funerary objects subject to this section. Such term does not mean, and this chapter shall not be construed to be an authorization for, the initiation of new scientific studies of such remains and associated funerary objects or other means of acquiring or preserving additional scientific information from such remains and objects.

(c) Extension of time for inventory

Any museum which has made a good faith effort to carry out an inventory and identification under this section, but which has been unable to complete the process, may appeal to the Secretary for an extension of the time requirements set forth in subsection (b)(1)(B). The Secretary may extend such time requirements for any such museum upon a finding of good faith effort. An indication of good faith shall include the development of a plan to carry out the inventory and identification process.

(d) Notification

(1) If the cultural affiliation of any particular Native American human remains or associated funerary objects is determined pursuant to this section, the Federal agency or museum concerned shall, not later than 6 months after the completion of the inventory, notify the affected Indian tribes or Native Hawaiian organizations.

(2) The notice required by paragraph (1) shall include information—

¹ So in original. Probably should be “items.”

(5) compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;

(6) consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;

(7) consulting with the Secretary in the development of regulations to carry out this chapter;

(8) performing such other related functions as the Secretary may assign to the committee; and

(9) making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated.

(d) Admissibility of records and findings

Any records and findings made by the review committee pursuant to this chapter relating to the identity or cultural affiliation of any cultural items and the return of such items may be admissible in any action brought under section 3013 of this title.

(e) Recommendations and report

The committee shall make the recommendations under paragraph² (c)(5) in consultation with Indian tribes and Native Hawaiian organizations and appropriate scientific and museum groups.

(f) Access

The Secretary shall ensure that the committee established under subsection (a) and the members of the committee have reasonable access to Native American cultural items under review and to associated scientific and historical documents.

(g) Duties of Secretary

The Secretary shall—

(1) establish such rules and regulations for the committee as may be necessary, and

(2) provide reasonable administrative and staff support necessary for the deliberations of the committee.

(h) Annual report

The committee established under subsection (a) shall submit an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

(i) Termination

The committee established under subsection (a) shall terminate at the end of the 120-day period beginning on the day the Secretary certifies, in a report submitted to Congress, that the work of the committee has been completed.

(Pub. L. 101-601, § 8, Nov. 16, 1990, 104 Stat. 3055.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c)(7) and (d), was in the original “this Act”, meaning Pub. L. 101-601,

² So in original. Probably should be “subsection”.

Nov. 16, 1990, 104 Stat. 3048, known as the Native American Graves Protection and Repatriation Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

Statutory Notes and Related Subsidiaries

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 3007. Penalty

(a) Penalty

Any museum that fails to comply with the requirements of this chapter may be assessed a civil penalty by the Secretary of the Interior pursuant to procedures established by the Secretary through regulation. A penalty assessed under this subsection shall be determined on the record after opportunity for an agency hearing. Each violation under this subsection shall be a separate offense.

(b) Amount of penalty

The amount of a penalty assessed under subsection (a) shall be determined under regulations promulgated pursuant to this chapter, taking into account, in addition to other factors—

(1) the archaeological, historical, or commercial value of the item involved;

(2) the damages suffered, both economic and noneconomic, by an aggrieved party,¹ and

(3) the number of violations that have occurred.

(c) Actions to recover penalties

If any museum fails to pay an assessment of a civil penalty pursuant to a final order of the Secretary that has been issued under subsection (a) and not appealed or after a final judgment has been rendered on appeal of such order, the Attorney General may institute a civil action in an appropriate district court of the United States to collect the penalty. In such action, the validity and amount of such penalty shall not be subject to review.

(d) Subpoenas

In hearings held pursuant to subsection (a), subpoenas may be issued for the attendance and testimony of witnesses and the production of relevant papers, books, and documents. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

(Pub. L. 101-601, § 9, Nov. 16, 1990, 104 Stat. 3057.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original “this Act”, meaning Pub. L. 101-601, Nov. 16, 1990, 104 Stat. 3048, known as the Native American Graves Protection and Repatriation Act, which is

¹ So in original. The comma probably should be a semicolon.

classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

§ 3008. Grants

(a) Indian tribes and Native Hawaiian organizations

The Secretary is authorized to make grants to Indian tribes and Native Hawaiian organizations for the purpose of assisting such tribes and organizations in the repatriation of Native American cultural items.

(b) Museums

The Secretary is authorized to make grants to museums for the purpose of assisting the museums in conducting the inventories and identification required under sections 3003 and 3004 of this title.

(Pub. L. 101-601, § 10, Nov. 16, 1990, 104 Stat. 3057.)

§ 3009. Savings provision

Nothing in this chapter shall be construed to—

- (1) limit the authority of any Federal agency or museum to—

- (A) return or repatriate Native American cultural items to Indian tribes, Native Hawaiian organizations, or individuals, and

- (B) enter into any other agreement with the consent of the culturally affiliated tribe or organization as to the disposition of, or control over, items covered by this chapter;

- (2) delay actions on repatriation requests that are pending on November 16, 1990;

- (3) deny or otherwise affect access to any 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 or stolen property.

(Pub. L. 101-601, § 11, Nov. 16, 1990, 104 Stat. 3057.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 101-601, Nov. 16, 1990, 104 Stat. 3048, known as the Native American Graves Protection and Repatriation Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

§ 3010. Special relationship between Federal Government and Indian tribes and Native Hawaiian organizations

This chapter reflects the unique relationship between the Federal Government and Indian tribes and Native Hawaiian organizations and should not be construed to establish a precedent with respect to any other individual, organization or foreign government.

(Pub. L. 101-601, § 12, Nov. 16, 1990, 104 Stat. 3058.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “This Act”, meaning Pub. L. 101-601, Nov. 16, 1990, 104

Stat. 3048, known as the Native American Graves Protection and Repatriation Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

§ 3011. Regulations

The Secretary shall promulgate regulations to carry out this chapter within 12 months of November 16, 1990.

(Pub. L. 101-601, § 13, Nov. 16, 1990, 104 Stat. 3058.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 101-601, Nov. 16, 1990, 104 Stat. 3048, known as the Native American Graves Protection and Repatriation Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

§ 3012. Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary to carry out this chapter.

(Pub. L. 101-601, § 14, Nov. 16, 1990, 104 Stat. 3058.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 101-601, Nov. 16, 1990, 104 Stat. 3048, known as the Native American Graves Protection and Repatriation Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

§ 3013. Enforcement

The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this chapter and shall have the authority to issue such orders as may be necessary to enforce the provisions of this chapter.

(Pub. L. 101-601, § 15, Nov. 16, 1990, 104 Stat. 3058.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 101-601, Nov. 16, 1990, 104 Stat. 3048, known as the Native American Graves Protection and Repatriation Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

CHAPTER 32A—CULTURAL AND HERITAGE COOPERATION AUTHORITY

Sec.	
3051.	Purposes.
3052.	Definitions.
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CALIFORNIA CODE

State of California

HEALTH AND SAFETY CODE

Section 8012

8012. Terms used in this chapter have the same meaning as defined in the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), and as interpreted by federal regulations, except that the following terms have the following meaning:

(a) “Agency” means a division, department, bureau, commission, board, council, city, county, city and county, district, or other political subdivision of the state.

(b) “Burial site” means, except for cemeteries and graveyards protected or recognized under another state law, a natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were deposited as a part of the death rites or ceremonies of a culture.

(c) “California Indian tribe” means a tribe located in California to which either of the following applies:

(1) It meets the definition of Indian tribe under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

(2) It is not recognized by the federal government, but is a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of consultation pursuant to Section 65352.3 of the Government Code.

(d) “Commission” means the Native American Heritage Commission established pursuant to Section 5097.91 of the Public Resources Code.

(e) “Consultation” means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, achieving agreement. Consultation between agencies or museums and California Indian tribes shall be conducted in a manner that is respectful of tribal sovereignty. Consultation also shall recognize the tribes’ potential need for confidentiality with respect to tribal traditional knowledge and all tribal information shared during the consultation.

(f) “Control” means having ownership of Native American human remains and cultural items sufficient to lawfully permit an agency or museum to treat the object as part of its collection for purposes of this chapter, whether or not the human remains and cultural items are in the physical custody of the agency or museum. Human remains and cultural items on loan to an agency or museum from another person, agency, or museum shall be deemed to be in the control of the lender.

(g) “Cultural items” shall have the same meaning as defined in Section 3001 of Title 25 of the United States Code, as it read on January 1, 2020, except that it shall mean only those items that originated in California and are subject to the definition

of reasonable, as defined in subdivision (*l*). An item is not precluded from being a cultural item solely because of its age.

(h) “Inventory” means an itemized list that summarizes the collection of Native American human remains and associated funerary objects in the possession or control of an agency or museum. This itemized list may include the inventory list required under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

(i) “Museum” means an agency, museum, person, or entity, including a higher educational institution, that receives state funds. For purposes of this subdivision, “receives state funds” means that the museum has received funds after January 1, 2002, from a state agency through a grant, loan, or contract, other than a procurement contract, or other arrangement by which a state agency makes available aid in the form of funds. State funds provided for any purpose to a larger entity of which the museum is a part of are considered as the museum receiving those funds for the purposes of this subdivision.

(j) “Possession” means having physical custody of Native American human remains and cultural items with a sufficient legal interest to lawfully treat the human remains and cultural items as part of a collection. “Possession” does not include human remains and cultural items over which the agency has control but that are currently on loan to another person or entity.

(k) “Preponderance of the evidence” means that the party’s evidence on a fact indicates that it is more likely than not that the fact is true. Tribal traditional knowledge alone may be sufficient to meet this standard. If there is conflicting evidence, tribal traditional knowledge shall be provided deference.

(*l*) “Reasonable” means fair, proper, rational, and suitable under the circumstances. Tribal traditional knowledge can and should be used to establish reasonable conclusions with respect to determining cultural affiliation and identifying cultural items.

(m) “State aboriginal territory” means lands identified as aboriginally occupied by one or more California Indian tribes. State aboriginal territory may be recognized by any of the following: consultation with California Indian tribes, treaties, including those agreed to but not ratified, a final judgment of the federal Indian Claims Commission or the United States Court of Claims, an act of the United States Congress, or an executive order.

(n) “State cultural affiliation” means that there is a reasonable relationship of shared group identity that can reasonably be traced historically or precontact between members of a present-day California Indian tribe and an identifiable earlier tribe or group. Cultural affiliation shall be established based on one or more of the following:

- (1) Geography.
- (2) Kinship.
- (3) Biology.
- (4) Archaeology.
- (5) Linguistics.
- (6) Folklore.
- (7) Oral tradition.

(8) Historical evidence.

(9) Tribal traditional knowledge.

(10) Other information or expert opinion that reasonably leads to that conclusion.

(o) “Summary” means a document that summarizes the collection of unassociated funerary objects, sacred objects, or objects of cultural patrimony in the possession or control of an agency or museum. This document may include the summary prepared under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

(p) “Tribal traditional knowledge” means knowledge systems embedded and often safeguarded in the traditional culture of California Indian tribes and lineal descendants, including, but not limited to, knowledge about ancestral territories, cultural affiliation, traditional cultural properties and landscapes, culturescapes, traditional ceremonial and funerary practices, lifeways, customs and traditions, climate, material culture, and subsistence. Tribal traditional knowledge is expert opinion.

(Repealed and added by Stats. 2020, Ch. 167, Sec. 5. (AB 275) Effective January 1, 2021.)

State of California

HEALTH AND SAFETY CODE

Section 8013

8013. (a) On or before January 1, 2021, the commission shall develop a list of all California Indian tribes and their respective state aboriginal territories. The commission shall notify in writing all agencies, museums, and California Indian tribes that the commission maintains that list. This list is solely for the purpose of the repatriation of Native American tribal human remains and cultural items.

(b) (1) On or before January 1, 2022, each agency or museum that has possession or control of California Native American human remains and associated funerary objects shall complete an inventory, or update a preliminary inventory, of all these remains and associated funerary objects and, to the extent possible based on all information possessed by the agency or museum, do all of the following:

(A) Identify the geographical location, cultural affiliation, aboriginal territory, and the circumstances surrounding their acquisition.

(B) Consult, prior to new or additional inventory work being conducted, with affiliated California Indian tribes on any protocols to be used in the inventory process, including, but not limited to, all of the following:

(i) Minimizing handling.

(ii) Using a lot approach with a minimum number of individuals set at one.

(iii) Identifying human remains and associated funerary objects, burial site, or ceremonial items with tribal expertise receiving deference.

(C) (i) List in the preliminary inventory the human remains and associated funerary objects that are clearly identifiable as to state cultural affiliation with California Indian tribes. These human remains and cultural items shall be listed first to expedite the repatriation of these items.

(ii) Tribal traditional knowledge shall be used to establish state cultural affiliation and identify associated funerary objects. The museum also shall record any identifications of cultural items that are made by tribal representatives. The identifications may include broad categorical identifications, including, but not limited to, the identification of everything from a burial site as a funerary object.

(D) List the human remains and associated funerary objects that are not clearly identifiable by state cultural affiliation but that, given the totality of circumstances surrounding their acquisition and characteristics, including the unique circumstances of California history, are determined by a reasonable belief to be human remains and associated funerary objects with a state cultural affiliation with one or more California Indian tribes. Consult with California Indian tribes reasonably believed to be culturally affiliated with the items, during the compilation of the preliminary inventory as part of the determination of affiliation. If the agency or museum cannot determine which

California Indian tribes are believed to be culturally affiliated with the items, tribes that may be culturally affiliated with the items, in consultation with the commission, shall be consulted during the compilation of the preliminary inventory. The consultation shall be with California Indian tribes whose state aboriginal territory includes the area from which the human remains and associated funerary objects were removed.

(E) List the human remains and associated funerary objects that are not identifiable by state cultural affiliation, but, given the totality of the circumstances, including the unique circumstances of California history, are determined by a reasonable belief to have been removed from an area identified as the state aboriginal territory of one or more California Indian tribes.

(2) The museum or agency shall engage in consultation with California Indian tribes as part of the completion of the inventory required by this subdivision. The commission may assist with the identification of California Indian tribes, but the agency or museum bears the obligation to contact and consult with the California Indian tribes.

(F) Provide the original and any updated catalogues to the consulting California Indian tribes.

(c) (1) On or before January 1, 2022, an agency or museum that has possession or control over a California Indian tribe's unassociated funerary objects, sacred objects, or objects of cultural patrimony shall provide a written preliminary summary of the objects based upon available information held by the agency or museum. Because it may not be clear whether Native American objects are cultural items, all museum collections of Native American ethnographic or archaeological objects shall be included in the preliminary summary. The preliminary summary shall describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition, state cultural affiliation, and state aboriginal territory, where reasonably ascertainable. The preliminary summary shall be in lieu of an object-by-object inventory to limit unnecessary handling and damage to the items. Each agency or museum, following preparation of a preliminary summary pursuant to this subdivision, shall consult with California Indian tribes and tribally authorized government officials and tribally authorized traditional religious leaders.

(2) The agency or museum shall engage in consultation with California Indian tribes as part of the completion of the preliminary summary required pursuant to this subdivision and shall defer to tribal recommendations for appropriate handling and treatment. The agency or museum also shall record any identifications of cultural items that are made by tribal representatives. The identifications may include broad categorical identifications, including, but not limited to, the identification of regalia objects as sacred objects or the identification of everything from a specific site as a sacred object because that site is a sacred site. The commission may assist with the identification of California Indian tribes, but the agency or museum bears the obligation to contact and consult with California Indian tribes.

(d) Within 90 days of completing the preliminary inventory and summary specified in subdivisions (b) and (c), the agency or museum shall provide a copy of the preliminary inventory and summary to the commission. The commission shall, in

turn, publish notices of completion of preliminary inventories and summaries on its internet website for 30 days, and make the preliminary inventories and summaries available to any requesting potentially culturally affiliated California Indian tribe.

(e) The inventory and summary specified in subdivisions (a) and (b) shall be completed by all agencies and museums that have possession or control of Native American human remains or cultural items, regardless of whether the agency or museum is also subject to the requirements of the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.). Any inventory or summary, or any portion of an inventory or summary, that has been created to meet the requirements of the Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) may be used to meet the requirements of this chapter, if appropriate.

(f) An agency or museum that has completed an inventory and summary as required by the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) shall be deemed to be in compliance with this section provided that the agency or museum provides the commission with both of the following:

- (1) A copy of the inventory and summary.
- (2) Preliminary inventories and summaries to comply with subdivisions (b) and (c).

(g) (1) Upon the request of a lineal descendent or California Indian tribe, an agency or museum shall supply additional available documentation to supplement the information required by subdivisions (b) and (c). This section does not authorize the initiation or completion of any academic, museum, or scientific study of human remains or cultural items.

(2) For purposes of this subdivision, “documentation” means a summary of agency or museum records, including inventories or catalogs, 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 cultural items subject to this section.

(h) If the agency or museum determines that it does not have in its possession or control any human remains or cultural items, the agency or museum shall, in lieu of an inventory or summary, state that finding in a letter to the commission at the commission’s request.

(i) Following completion of the preliminary inventory and summary specified in subdivisions (b) and (c), each agency or museum shall update its inventory and summary within 90 days of receiving possession or control of human remains or cultural items that were not included in the preliminary inventory and summary. Upon completion, the agency or museum shall provide a copy of its updated inventory and summary to the commission.

(j) Once an agency or museum has provided a copy of its preliminary inventory and summary to the commission, the agency or museum shall consult with California Indian tribes that may be culturally affiliated with the human remains and cultural items. The commission may assist with the identification of tribes, but the agency or

museum bears the obligation to contact and consult with California Indian tribes. The consultation process shall include all of the following:

(1) Preliminary inventories and summaries shall be reviewed by culturally affiliated and potentially culturally affiliated California Indian tribes, who shall have the ability to concur or disagree with the information in the preliminary inventory or summary. Tribal concurrence, disagreement, or nonresponse shall be noted on the preliminary inventory or summary by the commission at the end of the 30-day review period. If a consulting California Indian tribe disagrees with the contents of the preliminary inventory or summary, the agency or museum shall either revise the preliminary inventory or summary to correct the disputed information or the commission shall offer to initiate dispute resolution as described in Section 8016.

(2) The status of the inventory or summary shall be changed from preliminary to final by the commission once all responding California Indian tribes listed in the inventory or summary concur with the information in the inventory or summary.

(3) An inventory or summary that has been finalized may be moved back to preliminary status at the request of a consulting California Indian tribe if inaccuracies are found in the finalized inventory or summary prior to repatriation.

(4) The designation of an inventory or summary as preliminary or final is intended to reflect whether consulting California Indian tribes agree with the decisions and identifications of the agencies and museums who are preparing these documents. An inventory or summary does not need to be marked as final for a California Indian tribe to place a claim. Nothing in this section shall be construed to mean that an agency or museum may delay the repatriation of items in a final inventory or summary.

(5) Commission staff shall note a summary of all claims and the claim status on the commission's internet website. The claim status may be pending, disputed, or accepted.

(6) Commission staff shall note the repatriation status on the commission's internet website. The repatriation status may be in process or completed.

(7) A claim may be submitted at any time and does not need to be resubmitted.

(8) A claim may be withdrawn at any time prior to transfer of control.

(Amended by Stats. 2020, Ch. 167, Sec. 6. (AB 275) Effective January 1, 2021.)

State of California

HEALTH AND SAFETY CODE

Section 8015

8015. (a) Upon receiving a written request for repatriation of an item on the inventory, the commission shall forward a copy of the request to the agency or museum in possession of the item, if the criteria specified in subdivision (a) of Section 8016 have been met. At this time, the commission shall also publish the request for repatriation on its internet website.

(b) This section does not prohibit a requesting lineal descendent or California Indian tribe, an agency, or a museum from coordinating directly with each other on repatriation. The commission shall receive, for their records, copies of all repatriation agreements and shall have the power to enforce these agreements.

(Amended by Stats. 2020, Ch. 167, Sec. 9. (AB 275) Effective January 1, 2021.)

State of California

HEALTH AND SAFETY CODE

Section 8016

8016. (a) An agency or museum receiving a repatriation request pursuant to Section 8014 shall repatriate human remains and cultural items if all of the following criteria have been met:

(1) The requested human remains or cultural items meet the definitions of human remains or cultural items that are subject to inventory and summary requirements under subdivisions (b) and (c) of Section 8013.

(2) The lineal descendent, state aboriginal territory, or state cultural affiliation of the human remains or cultural items is established as required under this section.

(3) The agency or museum is unable to present evidence that, if standing alone before the introduction of evidence to the contrary, would support a finding that the agency or museum has a right of possession to the requested cultural items.

(4) None of the exemptions listed in Section 10.10(c) of Title 43 of the Federal Code of Regulations apply. Scientific research shall be concluded within a reasonable period of time.

(5) All other applicable requirements of regulations adopted under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), contained in Part 10 of Title 43 of the Code of Federal Regulations, have been met, including, but not limited to, the completion of a summary and inventory, consultation with California Indian tribes, publication of notices of inventory completion and notices of intent to repatriate in the Federal Register, and, prior to disposition of culturally unidentifiable human remains to a tribe not recognized by the federal government, obtainment of the concurrence of the United States Department of the Interior.

(b) If there are no other requests for particular human remains or cultural items and there is no unresolved objection pursuant to paragraph (2) of subdivision (d), the agency or museum shall repatriate the requested human remains or cultural items to the requesting California Indian tribe or group within 90 days after posting the request for repatriation on the commission's internet website, unless a notice of inventory completion or notice of intent to repatriate also is required under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.). If the federal notice period extends beyond the 90-day period, the agency or museum shall repatriate the requested human remains or cultural items to the requesting California Indian tribe or group within 30 days following the completion of the federal notice period. Repatriation deadlines specified in this subdivision may be waived upon agreement of all parties.

(c) Within 30 days after notice has been provided by the commission, the museum or agency shall have the right to file with the commission any objection to the requested repatriation, based on its good faith belief that the requested human remains or cultural items are not culturally affiliated with the requesting California Indian tribe, have not been removed from the California Indian tribe's state aboriginal territory, or are not subject to repatriation under this chapter.

(d) If there is more than one request for repatriation for the same item, if there is a dispute between the requesting party and the agency or museum, if there is a dispute as to the contents of an inventory or summary, or if a dispute arises in relation to the repatriation process, the commission shall notify the affected parties of this fact and the state cultural affiliation or state aboriginal territory of the item in question shall be determined in accordance with this subdivision.

(1) The disputing parties shall submit documentation describing the nature of the dispute, in accordance with standard mediation practices and the commission's procedures, to the commission, which shall, in turn, forward the documentation to the opposing party or parties. The disputing parties shall meet within 30 days of the date of the mailing of the documentation with the goal of settling the dispute.

(2) If, after meeting, the parties are unable to settle the dispute, the commission, or a certified mediator who has the qualifications and experience appropriate to the dispute's circumstances and has been designated by the commission, shall mediate the dispute. If the museum or agency is subject to the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), any party also may request the assistance of the federal Native American Graves Protection and Repatriation Review Committee in resolving the dispute.

(3) Each disputing party shall submit complaints and supporting evidence to the commission or designated mediator and the other opposing parties detailing their positions on the disputed issues in accordance with standard mediation practices and the commission's mediation procedures. Each party shall have 20 days from the date the complaint and supporting evidence were mailed to respond to the complaints. All responses shall be submitted to the opposing party or parties and the commission or designated mediator.

(4) The commission or designated mediator shall review all complaints, responses, and supporting evidence submitted. Within 20 days after the date of submission of responses, the commission or designated mediator shall hold a mediation session and the parties shall come to a resolution or the mediator shall render a written decision within 7 days of the mediation session.

(5) When the disposition of human remains or cultural items is disputed, the party in possession of the human remains or cultural items shall retain possession until the mediation process is completed. Transfer or loan of human remains or cultural items shall not occur until the dispute is resolved.

(6) Deference shall be provided to tribal traditional knowledge, oral histories, documentation, and testimonies relative to other relevant categories of evidence.

(7) If the parties are unable to resolve a dispute through mediation, the dispute shall be resolved by the commission. The determination of the commission shall be

deemed to constitute a final administrative remedy. Any party to the dispute seeking a review of the determination of the commission is entitled to file an action in the superior court seeking an independent judgment on the record as to whether the commission's decision is reasonable. The independent review shall not constitute a de novo review of a decision by the commission, but shall be limited to a review of the evidence on the record. Petitions for review shall be filed with the court not later than 30 days after the final decision of the commission.

(8) No later than June 30, 2021, the commission shall develop and adopt mediation procedures that will recognize the need for mediators with qualifications and experience appropriate to a dispute's circumstances. Dispute procedures may incorporate aspects of restorative justice practices.

(Amended by Stats. 2020, Ch. 167, Sec. 10. (AB 275) Effective January 1, 2021.)

State of California

HEALTH AND SAFETY CODE

Section 8018

8018. An agency or museum that repatriates human remains and cultural items in good faith pursuant to this chapter is not liable for claims by an aggrieved party or for claims of breach of a fiduciary duty or the public trust or of violation of state law that are inconsistent with this chapter. No action shall be brought on behalf of the state or any other entity or person for damages or for injunctive relief for a claim of improper disposition of human remains or cultural items if the agency or museum has complied with the provisions of this chapter.

(Added by Stats. 2001, Ch. 818, Sec. 1. Effective January 1, 2002.)

State of California

HEALTH AND SAFETY CODE

Section 8019

8019. Nothing in this section shall be construed to prohibit the governing body of a California Indian tribe or group authorized by Section 8017 from expressly relinquishing control over any human remains or control or title to any cultural item.

(Added by Stats. 2001, Ch. 818, Sec. 1. Effective January 1, 2002.)

State of California

HEALTH AND SAFETY CODE

Section 8020

8020. Notwithstanding any other provision of law, and upon the request of any party or an intervenor, the commission or designated mediator may close part of a mediation session to the public if the commission or designated mediator finds that information required at the mediation session may include identification of the specific location of a burial site, human remains and cultural items or that information necessary for a determination regarding repatriation may compromise or interfere with any religious practice or custom.

(Added by Stats. 2001, Ch. 818, Sec. 1. Effective January 1, 2002.)

State of California

HEALTH AND SAFETY CODE

Section 8021

8021. The filing of an appeal by either party automatically stays an order of the commission or a designated mediator on repatriation of human remains and cultural items.

(Added by Stats. 2001, Ch. 818, Sec. 1. Effective January 1, 2002.)

State of California

HEALTH AND SAFETY CODE

Section 8025

8025. (a) In order to better implement the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) and this chapter, the Regents of the University of California shall not use state funds for the handling or maintenance of Native American human remains and cultural items unless the regents do all the following:

(1) Facilitate the establishment, composition, and function of systemwide and campus-level committees, established pursuant to Section 8026, with respect to reviewing and advising the university on matters related to the university's implementation of legal requirements to increase repatriation outcomes or dispositions of Native American human remains and cultural items to California Indian tribes.

(2) (A) Adopt and implement systemwide policies regarding the respectful and culturally appropriate treatment of Native American human remains and cultural items while in the possession of a University of California campus or museum, including policies regarding research requests and testing of any identified or potential Native American human remains or cultural items.

(B) Adopt and implement clear and transparent policies and procedures on the systemwide requirements for submitting, processing, and implementing claims for the repatriation of human remains and cultural items, demonstrating cultural affiliation, notification to tribes of human remains and cultural items deemed culturally affiliated and unidentifiable and from whose state aboriginal territory the items were removed, but that are not subject to a repatriation claim, dispute resolution regarding repatriation claims, and any other relevant subject governed by the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), Part 10 (commencing with Section 10.1) of Subtitle A of Title 43 of the Code of Federal Regulations, and this chapter.

(C) Adopt or amend, in consultation with California Indian tribes, systemwide University of California museum collection management policies to explicitly provide for the deaccession of collections containing Native American human remains and cultural items to effect the timely and respectful return of those items pursuant to valid claims submitted by a California Indian tribe.

(D) Adopt systemwide University of California policies and procedures for the identification and disposition of culturally unidentifiable human remains and cultural items, as required by the federal Native American Graves Protection and Repatriation Regulations (43 C.F.R. Part 10). Those policies shall include updates to existing inventories in order to determine whether cultural affiliation can be determined, or to confirm that the human remains are "culturally unidentifiable" as defined in

paragraph (2) of subsection (e) of Section 10.2 of Part 10 of Title 43 of the Code of Federal Regulations. These policies also shall include updates to existing inventories or summaries to identify cultural items that may not have been identified in the original inventories or summaries because traditional tribal knowledge was not incorporated into the identification process.

(3) Develop all policies and procedures pursuant to paragraph (2) in consultation with California Indian tribes on the contact list maintained by the Native American Heritage Commission pursuant to Section 8013. Each California Indian tribe appearing on the contact list shall be invited to consult on the proposed policies and procedures. For purposes of this section, "consultation" has the same meaning as defined in Section 65352.4 of the Government Code.

(4) Timely submit the policies and procedures adopted pursuant to paragraph (2) to the commission, so they may review and comment upon them pursuant to subdivision (p) of Section 5097.94 of the Public Resources Code.

(5) Implement the systemwide policies adopted pursuant to paragraph (2) by January 1, 2021, and implement any campus policies within one year after the adoption of the systemwide policies.

(6) Ensure that each campus Native American Graves Protection and Repatriation Act Implementation Committee implements the policies and procedures adopted pursuant to paragraph (2).

(7) Adopt procedures to support appeals and dispute resolution when a tribe disagrees with a campus determination regarding repatriation or disposition of human remains or cultural items directly to the Office of the President of the University of California or a different oversight committee.

(b) A campus of the University of California may adopt policies to supplement the systemwide policies adopted pursuant to paragraph (2) of subdivision (a), if the campus determines that individual circumstances involving that campus are not adequately addressed in the adopted and approved systemwide policies, in consultation with California Indian tribes. A policy or procedure adopted by a campus pursuant to this subdivision shall not conflict with the approved systemwide policies.

(Amended by Stats. 2020, Ch. 167, Sec. 13. (AB 275) Effective January 1, 2021.)

State of California

HEALTH AND SAFETY CODE

Section 8026

8026. (a) (1) As a condition for using state funds to handle and maintain Native American human remains and cultural items, the Regents of the University of California shall establish a systemwide Native American Graves Protection and Repatriation Act Implementation and Oversight Committee, which shall also be known as the U.C. NAGPRA Committee.

(2) The membership of the committee shall be as follows:

(A) Three voting members of an Indian tribe as described in paragraph (1) of subdivision (c) of Section 8012, meeting the requirements of subdivision (c) of this section.

(B) One voting member of an Indian tribe as described in paragraph (2) of subdivision (c) of Section 8012, meeting the requirements of subdivision (c) of this section, or if none is available, a member of an Indian tribe as described in paragraph (1) of subdivision (c) of Section 8012, meeting the requirements of subdivision (c) of this section.

(C) Four voting members from the University of California. Not fewer than two of these members shall be affiliated with an American Indian or Native American Studies program and each of these members shall meet the requirements of subdivision (d).

(D) One nonvoting member from each campus of the University of California that is subject to the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.). Each of these nonvoting members shall meet the requirements of subdivision (d).

(3) The regents or the regents' designee shall appoint members to the committee upon nomination by the commission.

(b) (1) The Regents of the University of California shall not use state funds for the handling or maintenance of Native American human remains and cultural items unless each campus of the University of California that is subject to the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) establishes a campus Native American Graves Protection and Repatriation Act Implementation Committee, which shall also be known as the NAGPRA Committee for that campus.

(2) The membership of the campus committee shall be as follows:

(A) Two voting members of an Indian tribe as described in paragraph (1) of subdivision (c) of Section 8012, meeting the requirements of subdivision (c) of this section.

(B) One voting member of an Indian tribe as described in paragraph (2) of subdivision (c) of Section 8012, meeting the requirements of subdivision (c) of this section, or if none is available, a member of an Indian tribe as described in paragraph (1) of subdivision (c) of Section 8012, meeting the requirements of subdivision (c) of this section.

(C) Three voting members from the University of California. At least one of these members shall be affiliated with an American Indian or Native American Studies program and each of these members shall meet the requirements of subdivision (d).

(3) The regents or the regents' designee shall appoint members to the committees upon nomination by the commission.

(4) All claims for repatriation or claims of any violation of the policies and procedures adopted pursuant to Section 8025 shall be submitted to the campus Native American Graves Protection and Repatriation Act Implementation Committee for determination.

(c) (1) A voting member of a California Indian tribe shall be an elder, spiritual leader, tribal leader, or tribal member, as designated by the governing body of the individual's tribe, with a minimum of five years' prior experience in any of the following:

(A) Repatriation of human remains and cultural items pursuant to the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

(B) Cultural resources protection under tribal, state, and federal law.

(C) Consultation with state and federal entities and agencies.

(2) Preference shall be given to members of a California Indian tribe. If no members of a California Indian tribe meeting the qualifications of paragraph (1) are available, members of other tribes may serve.

(d) (1) A representative of the University of California shall meet the following criteria:

(A) Have a graduate degree in either Archaeology, Anthropology, Native American Studies, Ethnic Studies, Law, Sociology, Environmental Studies, or History, with a focus in California.

(B) Have a minimum of five years' experience working in the applicable field of study.

(2) Preference shall be given to members who have demonstrated, through their professional experience, the ability to work in collaboration with Native American tribes successfully on issues related to repatriation or museum collection management.

(3) In the event that candidates from the University of California are not available or do not meet the criteria of paragraph (1), the University of California representative positions may be filled by retired emeriti of the University of California who meet the criteria of paragraph (1).

(Amended by Stats. 2020, Ch. 167, Sec. 14. (AB 275) Effective January 1, 2021.)

State of California

HEALTH AND SAFETY CODE

Section 8029

8029. (a) Any agency or museum that fails to comply with the requirements of this chapter may be assessed a civil penalty by the commission, not to exceed twenty thousand dollars (\$20,000) for each violation, pursuant to regulations adopted by the commission. A penalty assessed under this section shall be determined on the record after the opportunity for a hearing.

(b) In assessing a penalty under this section, the commission shall consider the following factors, in addition to any other relevant factors, in determining the amount of the penalty:

- (1) The archaeological, historical, or commercial value of the item involved.
- (2) The cultural and spiritual significance of the item involved.
- (3) The damages suffered, both economic and noneconomic, by the aggrieved party.
- (4) The number of violations that have occurred.

(c) If any agency or museum fails to pay a civil penalty pursuant to a final order issued by the commission and the time for judicial review has passed or the party subject to the civil penalty has appealed the penalty or after a final judgment has been rendered on appeal of the order, the Attorney General shall act on behalf of the commission to institute a civil action in an appropriate court to collect the penalty.

(d) An agency or museum shall not be subject to civil penalties for actions taken in good faith to comply with the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

(Added by Stats. 2001, Ch. 818, Sec. 1. Effective January 1, 2002.)

State of California

PUBLIC RESOURCES CODE

Section 5097.94

5097.94. The commission shall have the following powers and duties:

(a) To identify and catalog places of special religious or social significance to Native Americans, and known graves and cemeteries of Native Americans on private lands. The identification and cataloguing of known graves and cemeteries shall be completed on or before January 1, 1984. The commission shall notify landowners on whose property the graves and cemeteries are determined to exist, and shall identify the Native American group most likely descended from those Native Americans who may be interred on the property.

(b) To make recommendations relative to Native American sacred places that are located on private lands, are inaccessible to Native Americans, and have cultural significance to Native Americans for acquisition by the state or other public agencies for the purpose of facilitating or assuring access thereto by Native Americans.

(c) To make recommendations to the Legislature relative to procedures that will voluntarily encourage private property owners to preserve and protect sacred places in a natural state and to allow appropriate access to Native American religionists for ceremonial or spiritual activities.

(d) To appoint necessary clerical staff.

(e) To accept grants or donations, real or in kind, to carry out the purposes of this chapter and the California Native American Graves Protection and Repatriation Act of 2001 (Chapter 5 (commencing with Section 8010) of Part 2 of Division 7 of the Health and Safety Code).

(f) To make recommendations to the Director of Parks and Recreation and the California Arts Council relative to the California State Indian Museum and other Indian matters touched upon by department programs.

(g) To bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, pursuant to Section 5097.97. If the court finds that severe and irreparable damage will occur or that appropriate access will be denied, and appropriate mitigation measures are not available, it shall issue an injunction, unless it finds, on clear and convincing evidence, that the public interest and necessity require otherwise. The Attorney General shall represent the commission and the state in litigation concerning affairs of the commission, unless the Attorney General has determined to represent the agency against whom the commission's action is directed, in which case the commission shall be authorized to employ other counsel. In an action to enforce this subdivision the commission shall introduce evidence showing that a cemetery, place,

site, or shrine has been historically regarded as a sacred or sanctified place by Native American people and represents a place of unique historical and cultural significance to an Indian tribe or community.

(h) To request and utilize the advice and service of all federal, state, local, and regional agencies, including for purposes of carrying out the California Native American Graves Protection and Repatriation Act of 2001 (Chapter 5 (commencing with Section 8010) of Part 2 of Division 7 of the Health and Safety Code).

(i) To assist Native Americans in obtaining appropriate access to sacred places that are located on public lands for ceremonial or spiritual activities.

(j) To assist state agencies in any negotiations with agencies of the federal government for the protection of Native American sacred places that are located on federal lands.

(k) (1) To mediate, upon application of either of the parties, disputes arising between landowners and known descendants relating to the treatment and disposition of Native American human burials, skeletal remains, and items associated with Native American burials.

(2) The agreements shall provide protection to Native American human burials and skeletal remains from vandalism and inadvertent destruction and provide for sensitive treatment and disposition of Native American burials, skeletal remains, and associated grave goods consistent with the planned use of, or the approved project on, the land.

(l) To assist interested landowners in developing agreements with appropriate Native American groups for treating or disposing, with appropriate dignity, of the human remains and any items associated with Native American burials.

(m) To provide each California Native American tribe, as defined in Section 21073, on or before July 1, 2016, with a list of all public agencies that may be a lead agency pursuant to Division 13 (commencing with Section 21000) within the geographic area with which the tribe is traditionally and culturally affiliated, the contact information of those public agencies, and information on how the tribe may request the public agency to notify the tribe of projects within the jurisdiction of those public agencies for the purposes of requesting consultation pursuant to Section 21080.3.1.

(n) (1) To assume the powers and duties of the former Repatriation Oversight Commission and meet, when necessary and at least quarterly, to perform the following duties:

(A) Order the repatriation of human remains and cultural items in accordance with the act.

(B) Establish mediation procedures and, upon the application of the parties involved, mediate disputes among tribes and museums and agencies relating to the disposition of human remains and cultural items. The commission shall have the power of subpoena for purposes of discovery and may impose civil penalties against any agency or museum that intentionally or willfully fails to comply with the act. Members of the commission and commission staff shall receive training in mediation for purposes of this subparagraph. The commission may delegate its responsibility to mediate disputes to a certified mediator or commission staff.

(C) Establish and maintain an Internet Web site for communication among tribes and museums and agencies.

(D) Upon the request of tribes or museums and agencies, analyze and make decisions regarding providing financial assistance to aid in specific repatriation activities.

(E) Make recommendations to the Legislature to assist tribes in obtaining the dedication of appropriate state lands for the purposes of reinterment of human remains and cultural items.

(F) (i) Prepare and submit to the Legislature an annual report detailing commission activities, disbursement of funds, and dispute resolutions relating to the repatriation activities under the act.

(ii) A report submitted to the Legislature pursuant to this subparagraph shall be submitted in compliance with Section 9795 of the Government Code.

(G) Refer any known noncompliance with the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) to the United States Attorney General and the Secretary of the Interior.

(H) Impose administrative civil penalties pursuant to Section 8029 of the Health and Safety Code against an agency or museum that is determined by the commission to have violated the act.

(I) Establish those rules and regulations the commission determines to be necessary for the administration of the act.

(2) For purposes of this subdivision, the following terms have the following meanings:

(A) "Act" means the California Native American Graves Protection and Repatriation Act (Chapter 5 (commencing with Section 8010) of Part 2 of Division 7 of the Health and Safety Code).

(B) "Tribe" means a "California Indian tribe" as that term is used in the act.

(o) (1) To establish and assess a fee on a person or public or private entity that is reasonably related to the cost of conducting a search of catalogs, described in subdivision (a), inventories, described in Section 5097.96, or lists, described in Section 21073, for that person or entity, which funds shall be available to the commission upon appropriation by the Legislature.

(2) The Legislature finds that, pursuant to subdivision (b) of Section 3 of Article XIII A of the California Constitution, the fees established pursuant to paragraph (1) are not taxes. To the extent that these fees are appropriated through the Budget Act for the purposes for which they are collected to provide services to the people of the State of California, the Legislature finds that these fees are not subject to Article XIII B of the California Constitution.

(p) Review and provide comment and guidance on all policies and procedures proposed pursuant to Article 3 (commencing with Section 8025) of Chapter 5 of Part 2 of Division 7 of the Health and Safety Code.

(Amended by Stats. 2018, Ch. 823, Sec. 4. (AB 2836) Effective January 1, 2019.)

CODE OF FEDERAL REGULATIONS

§ 10.12

The Secretary recommends that museums and Federal agencies transfer control if Federal or State law does not preclude it.

(5) The exceptions listed at §10.10(c) apply to the requirements in paragraph (c)(1) of this section.

(6) Any disposition of human remains excavated or removed from Indian lands as defined by the Archaeological Resources Protection Act (16 U.S.C. 470bb (4)) must also comply with the provisions of that statute and its implementing regulations.

(d) *Notification.* (1) Disposition of culturally unidentifiable human remains and associated funerary objects under paragraph (c) of this section may not occur until at least 30 days after publication of a notice of inventory completion in the FEDERAL REGISTER as described in §10.9.

(2) Within 30 days of publishing the notice of inventory completion, the National NAGPRA Program manager must:

(i) Revise the Review Committee inventory of culturally unidentifiable human remains and associated funerary objects to indicate the notice's publication; and

(ii) Make the revised Review Committee inventory accessible to Indian tribes, Native Hawaiian organizations, Indian groups that are not federally-recognized, museums, and Federal agencies.

(e) *Disputes.* Any person who wishes to contest actions taken by museums or Federal agencies regarding the disposition of culturally unidentifiable human remains and associated funerary objects should do so through informal negotiations to achieve a fair resolution. The Review Committee may facilitate informal resolution of any disputes that are not resolved by good faith negotiation under §10.17. In addition, the United States District Courts have jurisdiction over any action brought that alleges a violation of the Act.

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

§ 10.12 Civil penalties.

(a) *The Secretary's authority to assess civil penalties.* The Secretary is authorized by section 9 of the Act to assess

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civil penalties on any museum that fails to comply with the requirements of the Act. The Assistant Secretary for Fish and Wildlife and Parks may act on behalf of the Secretary.

(b) *Definition of "failure to comply."*

(1) Your museum has failed to comply with the requirements of the Act if it:

(i) After November 16, 1990, sells or otherwise transfers human remains, funerary objects, sacred objects, or objects of cultural patrimony contrary to provisions of the Act, including, but not limited to, an unlawful sale or transfer to any individual or institution that is not required to comply with the Act; or

(ii) After November 16, 1993, or a date specified under §10.13, whichever deadline is applicable, has not completed summaries as required by the Act; or

(iii) After November 16, 1995, or a date specified under §10.13, or the date specified in an extension issued by the Secretary, whichever deadline is applicable, has not completed inventories as required by the Act; or

(iv) After May 16, 1996, or 6 months after completion of an inventory under an extension issued by the Secretary, or 6 months after the date specified for completion of an inventory under §10.13, whichever deadline is applicable, has not notified culturally affiliated Indian tribes and Native Hawaiian organizations; or

(v) Refuses, absent any of the exemptions specified in §10.10(c) of this part, to repatriate human remains, funerary object, sacred object, or object of cultural patrimony to a lineal descendant or culturally affiliated Indian tribe or Native Hawaiian; or

(vi) Repatriates a human remains, funerary object, sacred object, or object of cultural patrimony before publishing the required notice in the FEDERAL REGISTER;

(vii) Does not consult with lineal descendants, Indian tribe officials, and traditional religious leaders as required; or

(viii) Does not inform the recipients of repatriations of any presently known treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony with

pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects.

(ix) Upon receipt of a claim consistent with §10.11(c)(1), refuses to offer to transfer control of culturally unidentifiable human remains for which it cannot prove right of possession.

(2) Each instance of failure to comply will constitute a separate violation.

(c) *How to notify the Secretary of a failure to comply.* Any person may file an allegation of failure to comply. Allegations are to be sent to the NAGPRA Civil Penalties Coordinator, National NAGPRA Program, at the mailing address listed on the National NAGPRA Contact Information Web site, <http://www.nps.gov/nagpra/CONTACTS/INDEX.HTM>. The allegation must be in writing, and should:

(1) Identify each provision of the Act with which there has been a failure to comply by a museum;

(2) Include facts supporting the allegation;

(3) Include evidence that the museum has possession or control of Native American cultural items; and

(4) Include evidence that the museum receives Federal funds.

(d) *Steps the Secretary may take upon receiving such an allegation.* (1) The Secretary must acknowledge receipt of the allegation in writing.

(2) The Secretary also may:

(i) Compile and review information relevant to the alleged failure to comply. The Secretary may request additional information, such as declarations and relevant papers, books, and documents, from the person making the allegation, the museum, and other parties;

(ii) Identify the specific provisions of the Act with which you have allegedly failed to comply; and

(iii) Determine if the institution of a civil penalty action is an appropriate remedy.

(3) The Secretary must provide written notification to the person making the allegation and the museum if the review of the evidence does not show a failure to comply.

(e) *How the Secretary notifies you of a failure to comply.* (1) If the allegations are verified, the Secretary must serve you with a written notice of failure to comply either by personal delivery or by registered or certified mail (return receipt requested). The notice of failure to comply must include:

(i) A concise statement of the facts believed to show a failure to comply;

(ii) A specific reference to the provisions of the Act and/or these regulations with which you allegedly have not complied; and

(iii) Notification of the right to request an informal discussion with the Secretary or a designee, to request a hearing, as provided below, or to await the Secretary's notice of assessment. The notice of failure to comply also must inform you of your right to seek judicial review of any final administrative decision assessing a civil penalty.

(2) With your consent, the Secretary may combine the notice of failure to comply with the notice of assessment described in paragraph (h) of this section.

(3) The Secretary also must send a copy of the notice of failure to comply to:

(i) Any lineal descendant of a known Native American individual whose human remains, funerary objects, or sacred objects are in question; and

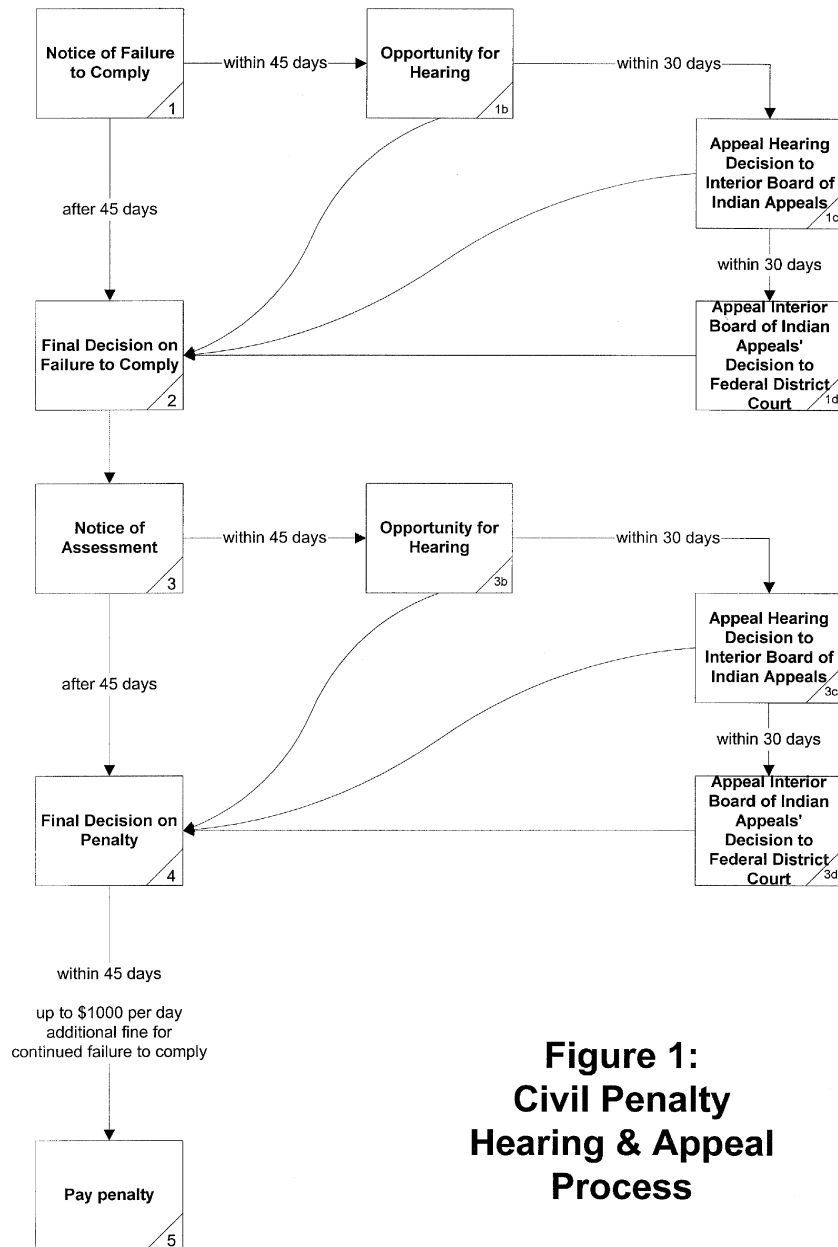
(ii) Any Indian tribes or Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony in question.

(f) *Actions you may take upon receipt of a notice of failure to comply.* If you are served with a notice of failure to comply, you may:

(1) Seek informal discussions with the Secretary;

(2) Request a hearing. Figure 1 outlines the civil penalty hearing and appeal process. Where the Secretary has issued a combined notice of failure to comply and notice of assessment, the hearing and appeal processes will also be combined.

(3) Take no action and await the Secretary's notice of assessment.



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

(g) How the Secretary determines the penalty amount. (1) The penalty amount must be determined on the record;

(2) The penalty amount must be .25 percent of your museum's annual budget, or \$6,955, whichever is less, and such additional sum as the Secretary may

determine is appropriate after taking into account:

(i) The archeological, historical, or commercial value of the human remains, funerary object, sacred object, or object of cultural patrimony involved; and

(ii) The damages suffered, both economic and non-economic, by the aggrieved party or parties including, but not limited to, expenditures by the aggrieved party to compel the museum to comply with the Act; and

(iii) The number of violations that have occurred at your museum.

(3) An additional penalty of up to \$1,392 per day after the date that the final administrative decision takes effect may be assessed if your museum continues to violate the Act.

(4) The Secretary may reduce the penalty amount if there is:

(i) A determination that you did not willfully fail to comply; or

(ii) An agreement by you to mitigate the violation, including, but not limited to, payment of restitution to the aggrieved party or parties; or

(iii) A determination that you are unable to pay, provided that this factor may not apply if you have been previously found to have failed to comply with these regulations; or,

(iv) A determination that the penalty constitutes excessive punishment under the circumstances.

(h) *How the Secretary assesses the penalty.* (1) The Secretary considers all available information, including information provided during the process of assessing civil penalties or furnished upon further request by the Secretary.

(2) The Secretary may assess the civil penalty upon completing informal discussions or when the period for requesting a hearing expires, whichever is later.

(3) The Secretary notifies you in writing of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The notice of assessment includes:

(i) The basis for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(ii) Notification of the right to request a hearing, including the proce-

dures to follow, and to seek judicial review of any final administrative decision that assesses a civil penalty.

(i) *Actions that you may take upon receipt of a notice of assessment.* If you are served with a notice of assessment, you may do one of the following:

(1) Accept in writing or by payment of the proposed penalty, or any mitigation or remission offered in the notice of assessment. If you accept the proposed penalty, mitigation, or remission, you waive the right to request a hearing.

(2) Seek informal discussions with the Secretary.

(3) *File a petition for relief.* You may file a petition for relief within 45 calendar days of receiving the notice of assessment. A petition for relief is to be sent to the NAGPRA Civil Penalties Coordinator, National NAGPRA Program, at the mailing address listed on the National NAGPRA Contact Information Web site, <http://www.nps.gov/nagpra/CONTACTS/INDEX.HTM>. Your petition may ask the Secretary not to assess a penalty or to reduce the penalty amount. Your petition must:

(i) Be in writing and signed by an official authorized to sign such documents; and

(ii) Fully explain the legal or factual basis for the requested relief.

(4) Request a hearing. Figure 1 outlines the civil penalty hearing and appeal process.

(i) In addition to the documentation required in paragraph (g) of this section, your request must include a copy of the notice of assessment and must identify the basis for challenging the assessment.

(ii) In this hearing, the amount of the civil penalty assessed must be determined in accordance with paragraph (h) of this section, and will not be limited to the amount assessed by the Secretary or any offer of mitigation or remission made by the Secretary.

(j) *How you request a hearing.* You may file a written, dated request for a hearing on a notice of failure to comply or notice of assessment with the Departmental Cases Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 405 South Main Street, Suite 400, Salt Lake City, UT 84111. You must also serve a copy of

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the request on the Solicitor of the Department of the Interior personally or by registered or certified mail (return receipt requested) at the address specified in the notice.

(1) Your request for a hearing must:

(i) Include a copy of the notice of failure to comply or the notice of assessment;

(ii) State the relief sought;

(iii) State the basis for challenging the facts used as the basis for determining the failure to comply or fixing the assessment; and

(iv) State your preferred place and date for a hearing.

(2) Your failure to file a written request for a hearing within 45 days of the date of service of a notice of failure to comply or notice of assessment waives your right to a hearing.

(3) Upon receiving a request for a hearing, the Hearings Division assigns an administrative law judge to the case, gives notice of assignment promptly to the parties, and files all pleadings, papers, and other documents in the proceeding directly with the administrative law judge, with copies served on the opposing party.

(4) Subject to the provisions of 43 CFR 1.3, you may appear by representative or by counsel, and may participate fully in the proceedings. If you fail to appear and the administrative law judge determines that this failure is without good cause, the administrative law judge may, in his/her discretion, determine that this failure waives your right to a hearing and consent to the making of a decision on the record.

(5) Departmental counsel, designated by the Solicitor of the Department of the Interior, represents the Secretary in the proceedings. Upon notice to the Secretary of the assignment of an administrative law judge to the case, this counsel must enter his/her appearance on behalf of the Secretary and must file all petitions and correspondence exchanges by the Secretary and the respondent that become part of the hearing record. Thereafter, you must serve all documents for the Secretary on his/her counsel.

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

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(i) The administrative law judge has all powers accorded by law and necessary to preside over the parties and the proceedings and to make decisions under 5 U.S.C. 554–557.

(ii) The transcript of testimony; the exhibits; and all papers, documents, and requests filed in the proceedings constitute the record for decision. The administrative law judge renders a written decision upon the record, which sets forth his/her findings of fact and conclusions of law, and the reasons and basis for them.

(iii) Unless you file a notice of appeal described in these regulations, the administrative law judge's decision constitutes the final administrative determination of the Secretary in the matter and takes effect 30 calendar days from this decision.

(k) *How you appeal a decision.* (1) Either you or the Secretary may appeal the decision of an administrative law judge by filing a Notice of Appeal. Send your Notice of Appeal to the Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 800 North Quincy Street, Suite 300, Arlington, VA 22203, within 30 calendar days of the date of the administrative law judge's decision. The notice must be accompanied by proof of service on the administrative law judge and the opposing party.

(2) To the extent they are not inconsistent with these regulations, the provisions of the Department of the Interior Hearings and Appeals Procedures in 43 CFR part 4, subpart D, apply to such appeal proceedings. The appeal board's decision on the appeal must be in writing and takes effect as the final administrative determination of the Secretary on the date that the decision is rendered, unless otherwise specified in the decision.

(3) You may obtain copies of decisions in civil penalty proceedings instituted under the Act by sending a request to the Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 800 North Quincy Street, Suite 300, Arlington, VA 22203. Fees for this service are established by the director of that office.

(1) *The final administrative decision.* (1) When you have been served with a notice of assessment and have accepted the penalty as provided in these regulations, the notice constitutes the final administrative decision.

(2) When you have been served with a notice of assessment and have not filed a timely request for a hearing as provided in these regulations, the notice of assessment constitutes the final administrative decision.

(3) When you have been served with a notice of assessment and have filed a timely request for a hearing as provided in these regulations, the decision resulting from the hearing or any applicable administrative appeal from it constitutes the final administrative decision.

(m) *How you pay the penalty.* (1) If you are assessed a civil penalty, you have 45 calendar days from the date of issuance of the final administrative decision to make full payment of the penalty assessed to the Secretary, unless you have filed a timely request for appeal with a court of competent jurisdiction.

(2) If you fail to pay the penalty, the Secretary may request the Attorney General of the United States to collect the penalty by instituting a civil action in the U.S. District Court for the district in which your museum is located. In these actions, the validity and amount of the penalty is not subject to review by the court.

(3) Assessing a penalty under this section is not a waiver by the Secretary of the right to pursue other available legal or administrative remedies.

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

§ 10.13 Future applicability.

(a) General. This section sets forth the applicability of the Act to museums and Federal agencies after expiration of the statutory deadlines for completion of summaries and inventories.

(b) New holdings or collections.

(1) Any museum or Federal agency that, after completion of the summaries and inventories as required by §§10.8 and 10.9, receives a new holding or collection or locates a previously unreported current holding or collection that may include human remains, funerary objects, sacred objects or objects of cultural patrimony, must:

(i) Within 6 months of receiving a new holding or collection or locating a previously unreported current holding or collection, or within 6 months of the effective date of this rule, whichever is later, provide a summary of the holding or collection as required by §10.8 to any Indian tribe or Native Hawaiian organization that is, or is likely to be, affiliated with the collection; and

(ii) Within 2 years of receiving a new holding or collection or locating a previously unreported current holding or collection, or within 2 years of the effective date of this rule, whichever is later, prepare, in consultation with any affiliated Indian tribe or Native Hawaiian organization, an inventory as required by §10.9 of these regulations. Any museum that has made a good faith effort to complete its inventory, but which will be unable to complete the process by this deadline, may request an extension of the time requirements under §10.9(f).

(2) Additional pieces or fragments of previously repatriated human remains, funerary objects, sacred objects and objects of cultural patrimony may be returned to the appropriate Indian tribe or Native Hawaiian organization without publication of a notice in the FEDERAL REGISTER, as otherwise required under §§10.8(f) and 10.9(e), if they do not change the number or cultural affiliation of the cultural items listed in the previous notice.

(3) A museum or Federal agency that receives a new holding or collection for which a summary or inventory was previously prepared, as required by §§10.8 or 10.9, may rely upon the previously prepared documents. The receiving museum or Federal agency must provide a copy of the previously prepared summary or inventory to all affiliated Indian tribes or Native Hawaiian organizations, along with notification that the receiving museum or Federal agency has assumed possession